ANTIDUMPING

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HEARINGS

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

EIGHTY-FIFTH CONGRESS

SECOND SESSION

ON

H. R. 6006

AN ACT TO AMEND CERTAIN PROVISIONS OF THE ANTIDUMPING ACT, 1921, TO PROVIDE FOR GREATER CERTAINTY, SPEED, AND EFFICIENCY IN THE ENFORCEMENT THEREOF, AND FOR OTHER PURPOSES

MARCH 26 AND 27, 1958

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ANTIDUMPING

WEDNESDAY, MARCH 26, 1958

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to call, at 10:20 a. m., in room 312, Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, Kerr, Frear, Anderson, Douglas, Martin, Williams, Malone, Carlson, and Bennett.

Also present: Elizabeth B. Springer, chief clerk.

The CHAIRMAN. The committee will come to order.

Senator Kerr has been called to the floor and he has asked me to explain his absence.

The first witness is the Honorable A. Gilmore Flues, Assistant Secretary of the Treasury, who will discuss the bill H. R. 6006.

(H. R. 6006 is as follows.)

[H. R. 6006, 85th Cong., 1st sess.]

AN ACT To amend certain provisions of the Antidumping Act, 1921, to provide for greater certainty, speed, and efficiency in the enforcement thereof, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 201 of the Antidumping Act, 1921 (19 U. S. C. 160), is amended as follows:

(1) By striking out "he shall forthwith authorize" in subsection (b) and inserting in lieu thereof "he shall forthwith publish notice of that fact in the Federal Register and shall authorize".

(2) By adding at the end of such section the following new subsection:

"(c) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the United States Tariff Commission, upon making its determination under subsection (a) of this section, shall each publish such determination in the Federal Register, with a statement of the reasons therefor, whether such determination is in the affirmative or in the negative."

SEC. 2. Subsections (b) and (c) of section 202 of the Antidumping Act, 1921 (19 U. S. C. 161 (b) and (c)), are amended to read as follows:

"(b) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate, that the amount of any difference between the purchase price and the foreign market value (or that the fact that the purchase price is the same as the foreign market value) is wholly or partly due to—

"(1) the fact that the wholesale quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale for exportation to the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

"(2) other differences in circumstances of sale, or

"(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212 (3) is used in determining foreign market value,
then due allowance shall be made therefor.

"(c) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the exporter's sales price and the foreign market value (or that the fact that the exporter's sales price is the same as the foreign market value) is wholly or partly due to—

"(1) the fact that the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

"(2) other differences in circumstances of sale, or

"(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212 (3) is used in determining foreign market value,
then due allowance shall be made therefor."

SEC. 3. The heading and text of section 205 of the Antidumping Act, 1921 (19 U. S. C. 164), are amended to read as follows:

"FOREIGN MARKET VALUE

"SEC. 205. For the purposes of this title, the foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value."

SEC. 4. (a) The heading and text of section 206 of the Antidumping Act, 1921 (19 U. S. C. 165), are amended to read as follows:

"CONSTRUCTED VALUE

"SEC. 206. (a) For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

"(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

"(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the

merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that (A) the amount for general expenses shall not be less than 10 per centum of the cost as defined in paragraph (1), and (B) the amount for profit shall not be less than 8 per centum of the sum of such general expenses and cost; and

"(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

"(b) For the purposes of this section, a transaction directly or indirectly between persons specified in any one of the paragraphs in subsection (c) of this section may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the paragraphs in subsection (c).

"(c) The persons referred to in subsection (b) are:

"(1) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

"(2) Any officer or director of an organization and such organization;

"(3) Partners;

"(4) Employer and employee;

"(5) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

"(6) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person."

(b) Sections 201 (b), 202 (a), 209, and 210 of the Antidumping Act, 1921 (19 U. S. C., secs. 160 (b), 161 (a), 168, and 169), are amended by striking out "cost of production" each place it appears and inserting in lieu thereof "constructed value".

SEC. 5. Section 212 of the Antidumping Act, 1921 (19 U. S. C. 171), is renumbered as section 213, and such Act is amended by inserting after section 211 the following:

"DEFINITIONS

"SEC. 212. For the purposes of this title—

"(1) The term 'sold or, in the absence of sales, offered for sale' means sold or, in the absence of sales, offered—

"(A) to all purchasers at wholesale, or

"(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

"(2) The term 'ordinary course of trade' means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise under consideration, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise under consideration.

"(3) The term 'such or similar merchandise' means merchandise in the first of the following categories in respect of which a determination for the purposes of this title can be satisfactorily made:

"(A) The merchandise under consideration and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise under consideration.

"(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise under consideration.

"(C) Merchandise (i) produced in the same country and by the same person as the merchandise under consideration, (ii) like the merchandise under consideration in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise under consideration.

"(D) Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.

"(E) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his delegate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.

"(F) Merchandise which satisfies all the requirements of subdivision (E) except that it was produced by another person.

"(4) The term 'usual wholesale quantities,' in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity."

SEC. 6. The amendments made by this Act shall apply with respect to all merchandise as to which no appraisement report has been made on or before the date of the enactment of this Act; except that such amendments shall not apply with respect to any merchandise which—

(1) was exported from the country of exportation before the date of the enactment of this Act, and

(2) is subject to a finding under the Antidumping Act, 1921, which (A) is outstanding on the date of enactment of this Act, or (B) was revoked on or before the date of the enactment of this Act, but is still applicable to such merchandise.

Passed the House of Representatives August 29, 1957.

Attest:

RALPH R. ROBERTS,
Clerk.

Senator MARTIN. Mr. Chairman, I will have to leave, because I am the senior Republican in Public Works. I never thought they were having such an early session. It is not discourteous to anybody.

The CHAIRMAN. I want the witnesses to know we had not expected the Senate to meet at 10 o'clock this morning.

You may proceed, Mr. Secretary.

STATEMENT OF HON. A. GILMORE FLUES, ASSISTANT SECRETARY OF THE TREASURY; ACCOMPANIED BY J. P. HENDRICK, ASSISTANT TO THE SECRETARY OF THE TREASURY; THEODORE B. AUDETT, ASSISTANT DEPUTY COMMISSIONER, BUREAU OF CUSTOMS; AND ARNOLD WEISS, OFFICE OF GENERAL COUNSEL OF THE TREASURY

Mr. FLUES. Mr. Chairman and members of the committee, I have with me this morning J. P. Hendrick, the assistant to the Secretary of the Treasury, who is at my immediate left; Theodore B. Audett, Assistant Deputy Commissioner, Bureau of Customs, who is a trifle behind me over on the left; and Arnold Weiss, of the Treasury General Counsel's Office.

These men are the real experts. And with the permission of the chairman and the members, there may be times when I will ask them about some of the more technical answers to possible questions.

With the permission of the chairman and the members, I would like to read a statement on behalf of the Treasury.

The CHAIRMAN. Proceed, sir.

Mr. FLUES. I believe each of the members has been supplied with a copy of this statement.

I am privileged to appear before this committee today in support of H. R. 6006, which would amend certain provisions of the Antidumping Act.

This legislation was prepared on the basis of section 5 of the Customs Simplification Act of 1956 which directed the Secretary of the Treasury, after consulting with the United States Tariff Commission, to review the operation and effectiveness of the Antidumping Act and to submit a report to the Congress.

Such a report was submitted on February 1, 1957.

This same section also directed that—

> * * * the Secretary shall recommend to the Congress any amendment of such Antidumping Act which he considers desirable or necessary to provide for greater certainty, speed, and efficiency in the enforcement of such Antidumping Act.

You may recall that this wording was put in at the instance of your committee.

The Secretary's report to the Congress outlined several amendments which were considered desirable or necessary in the interests of greater certainty, speed, and efficiency in the enforcement of the Antidumping Act. Legislation to effectuate these amendments was introduced in both Houses and was passed in the House in the form now before you on August 29, 1957.

I am submitting herewith, in addition to the usual comparative print of the law and amendments, a column-by-column analysis, and a detailed explanatory memorandum.

(The material referred to is as follows:)

COMPARISON BETWEEN ANTIDUMPING ACT AS PRESENTLY IN FORCE AND AS AMENDED BY PROPOSED BILL

DUMPING INVESTIGATION

Antidumping Act	H. R. 6006
Section 201 (a)	No change proposed.
Section 201 (b)	The words "constructed value" substituted for "cost of production."

SPECIAL DUMPING DUTY

Antidumping Act	H. R. 6006
Section 202 (a)	The words "constructed value" substituted for "cost of production."
Section 202 (b) (b) If it is established to the satisfaction of the appraising officers that the amount of such difference between the purchase price and the foreign market value is wholly or partly due to the fact that the wholesale quantities, in which such a similar merchandise is sold or freely offered for sale to all purchasers for exportation to the United States in the ordinary course of trade, are greater than the wholesale quantities in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered	(b) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the purchase price and the foreign market value (or that the fact that the purchase price is the same as the foreign market value) is wholly or partly due to— (1) the fact that the wholesale quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale for exportation to the United States in the ordinary course of trade, are less or are greater than the whole-

SPECIAL DUMPING DUTY—continued

for sale for home consumption, then for exportation to countries other than the United States), then due allowance shall be made therefor in determining the foreign market value for the purposes of this section.

sale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) other differences in circumstances of sale, or

(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212 (3) is used in determining foreign market value,

then due allowance shall be made therefor.

Section 202 (c)

(c) If it is established to the satisfaction of the appraising officers that the amount of such difference between the exporter's sales price and the foreign market value is wholly or partly due to the fact that the wholesale quantities, in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the United States in the ordinary course of trade, are greater than the wholesale quantities in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not sold or offered for sale for home consumption, then for exportation to countries other than the United States), then due allowance shall be made therefor in determining the foreign market value for the purposes of this section.

(c) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the exporter's sales price and the foreign market value (or that the fact that the exporter's sales price is the same as the foreign market value) is wholly or partly due to—

(1) the fact that the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) other differences in circumstances of sale, or

(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212 (3) is used in determining foreign market value,

then due allowance shall be made therefor.

PURCHASE PRICE

Section 203 — No change proposed.

EXPORTER'S SALES PRICE

Section 204 — No change proposed.

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FOREIGN MARKET VALUE

Section 205

For the purposes of sections 201–212 of this title, the foreign-market value of imported merchandise shall be the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign-market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign-market value for the purposes of said sections no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

SEC. 205. For the purposes of this title, the foreign-market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign-market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign-market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign-market value.

COST OF PRODUCTION

Section 206. For the purposes of sections 201–212 of this title, the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing, identical or substantially identical merchandise, at a time preceding the date of shipment of the particular merchandise

CONSTRUCTED VALUE

SEC. 206. (a) For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such

under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

(2) The usual general expenses (not less than 10 per centum of such cost) in the case of identical or substantially identical merchandise;

(3) The cost of all containers and coverings, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) equal to the profit which is ordinarily added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the same general trade as the manufacturer or producer of the particular merchandise under consideration.

materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that (A) the amount for general expenses shall not be less than 10 per centum of the cost as defined in paragraph (1), and (B) the amount for profit shall not be less than 8 per centum of the sum of such general expenses and cost; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

(b) For the purposes of this section, a transaction directly or indirectly between persons specified in any one of the paragraphs in subsection (c) of this section may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the paragraphs in subsection (c).

(c) The persons referred to in subsection (b) are:

(1) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

Antidumping Act | H. R. 6006

FOREIGN MARKET VALUE—continued

COST OF PRODUCTION—continued

CONSTRUCTED VALUE—continued

(2) Any officer or director of an organization and such organization;

(3) Partners;

(4) Employer and employee;

(5) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

(6) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

EXPORTER

Section 207 — No change proposed.

OATHS AND BONDS ON ENTRY

Section 208 — No change proposed.

DUTIES OF APPRAISERS

Section 209 — The words "constructed value" substituted for "cost of production."

APPEALS AND PROTESTS

Section 210 — The words "constructed value" substituted for "cost of production."

DRAWBACKS

Section 211 — No change proposed.

SHORT TITLE

Section 212 — Renumbered as section 213.

DEFINITIONS

Section 406

When used in sections 201–212 of this title—

The term "person" includes individuals, partnerships, corporations, and associations; and

The term "United States" includes all Territories and possessions subject to the jurisdiction of the United States, except the Philippine Islands, the Virgin Islands, the islands of Guam and Tutuila, and the Canal Zone.

SEC. 212. For the purposes of this title—

(1) The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of

Antidumping Act H. R. 6006

DEFINITIONS—continued

the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(2) The term "ordinary course of trade means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise under consideration, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise under consideration.

(3) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of this title can be satisfactorily made:

(A) The merchandise under consideration and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise under consideration.

(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise under consideration.

(C) Merchandise (i) produced in the same country and by the same person as the merchandise under consideration, (ii) like the merchandise under consideration, in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise under consideration.

(D) Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.

(E) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his delegate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.

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DEFINITIONS—continued

(F) Merchandise which satisfies all the requirements of subdivision (E) except that it was produced by another person.

(4) The term "usual wholesale quantities", in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

H. R. 6006 AS PASSED BY HOUSE OF REPRESENTATIVES AUGUST 29, 1957—COMPARATIVE TYPE SHOWING CHANGES IN ANTIDUMPING ACT MADE BY PROPOSED BILL

Changes in the Antidumping Act, 1921, proposed to be made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is in italics):

DUMPING INVESTIGATION

SEC. 201. (a) That whenever the Secretary of the Treasury (hereinafter called the "Secretary") 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. The said Commission, after such investigation as it deems necessary shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in this Act called a "finding") of his determination and the determination of the said Commission. The Secretary's finding shall include a description of the class or kind of merchandise to which it applies in such detail as he shall deem necessary for the guidance of customs officers.

(b) Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, the Secretary has reason to believe or suspect, from the invoice or other papers or from information presented to him or to any person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, than the [cost of production] *constructed value*), he shall forthwith *publish notice of that fact in the Federal Register and shall* authorize, under such regulations as he may prescribe, the withholding of appraisement reports as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping has been raised by or presented to him or any person to whom authority under this section has been delegated, until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subdivision (a) in regard to such merchandise.

(c) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the Tariff Commission, upon making its determination under subsection (a) of this section, shall each publish such determination in the Federal Register, with a statement of the reasons therefor, whether such determination is in the affirmative or in the negative.

SPECIAL DUMPING DUTY

SEC. 202. (a) That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided for in section 201, entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping was raised by or presented to the Secretary or any person to whom authority under section 201 has been delegated, and as to which no appraisement report has been made before such finding has been so made public, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, than the [cost of production] *constructed value* there shall be levied, collected, and paid, in addition to any other duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

(b) *In determining the foreign market value for the purposes of subsection (a)*, if it is established to the satisfaction of the [appraising officers] *Secretary or his delegate* that the amount of [such] *any* difference between the purchase price and the foreign market value *(or that the fact that the purchase price is the same as the foreign market value)* is wholly or partly due to—

(*1*) the fact that the wholesale quantities, in which such or similar merchandise is sold or [freely offered for sale to all purchasers], *in the absence of sales, offered for sale* for exportation to the United States in the ordinary course of trade, are *less or are* greater than the wholesale quantities in which such or similar merchandise is sold or [freely offered for sale to all purchasers], *in the absence of sales, offered for sale* in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(*2*) *other differences in circumstances of sale, or*

(*3*) *the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212 (3) is used in determining foreign market value,*

then due allowance shall be made therefor [in determining the foreign market value for the purposes of this section].

(c) *In determining the foreign market value for the purposes of subsection (a)*, if it is established to the satisfaction of the [appraising officers] *Secretary or his delegate* that the amount of [such] *any* difference between the exporter's sales price and the foreign market value *(or that the fact that the exporter's sales price is the same as the foreign market value)* is wholly or partly due to—

(*1*) the fact that the wholesale quantities in which such or similar merchandise is sold or [freely offered for sale to all purchasers], *in the absence of sales, offered for sale* in the principal markets of the United States in the ordinary course of trade, are *less or are* greater than the wholesale quantities in which such or similar merchandise is sold or [freely offered for sale to all purchasers], *in the absence of sales, offered for sale* in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(*2*) *other differences in circumstances of sale, or*

(*3*) *the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212 (3) is used in determining foreign market value,*

then due allowance shall be made therefor [in determining the foreign market value for the purposes of this section].

PURCHASE PRICE

SEC. 203. That for the purposes of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in

such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and plus the amount, if included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller, in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

EXPORTER'S SALES PRICE

SEC. 204. That for the purpose of this title the exporter's sales price of imported merchandise shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less (1) the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commissions, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

FOREIGN MARKET VALUE

SEC. 205. [That] For the purposes of this title the foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or [freely offered for sale to all purchasers], *in the absence of sales, offered for sale* in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, *or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison*, then *the price at which so sold or offered for sale* for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. *If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining for foreign market value.*

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[COST OF PRODUCTION]

[SEC. 206. That for the purposes of this title the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing, identical or substantially identical merchandise, at a time preceding the date of shipment of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

(2) The usual general expenses (not less than 10 per centum of such cost) in the case of identical or substantially identical merchandise;

(3) The cost of all containers and coverings, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2)) equal to the profit which is ordinarily added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers, or producers in the country of manufacture or production who are engaged in the same general trade as the manufacturer or producer of the particular merchandise under consideration.]

CONSTRUCTED VALUE

SEC. 206. (a) *For the purposes of this title, the constructed value of imported merchandise shall be the sum of—*

(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that (A) the amount for general expenses shall not be less than 10 per centum of the cost as defined in paragraph (1) and (B) the amount for profit shall not be less than 8 per centum of the sum of such general expenses and costs; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

(b) For the purposes of this section, a transaction directly or indirectly between persons specified in any one of the paragraphs in subsection (c) of this section may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the paragraphs in subsection (c).

(c) The persons referred to in subsection (b) are:

(1) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(2) Any officer or director of an organization and such organization;

(3) Partners;

(4) Employer and employee;

(5) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

(6) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

EXPORTER

Sec. 207. That for the purposes of this title the exporter of imported merchandise shall be the person by whom or for whose account the merchandise is imported into the United States:

(1) If such person is the agent or principal of the exporter, manufacturer, or producer; or

(2) If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer; or

(3) If the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

(4) If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per centum or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 per centum or more of such power or control in the business of the exporter, manufacturer, or producer.

OATHS AND BONDS ON ENTRY

Sec. 208. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and delivery of which has not been made by the collector before such finding has been so made public, unless the person by whom or for whose account such merchandise is imported makes oath before the collector, under regulations prescribed by the Secretary, that he is not an exporter, or unless such person declares under oath at the time of entry, under regulations prescribed by the Secretary, the exporter's sales price of such merchandise, it shall be unlawful for the collector to deliver the merchandise until such person has made oath before the collector, under regulations prescribed by the Secretary, that the merchandise has not been sold or agreed to be sold by such person, and has given bond to the collector, under regulations prescribed by the Secretary, with sureties approved by the collector, in an amount equal to the estimated value of the merchandise, conditioned: (1) that he will report to the collector the exporter's sales price of the merchandise within 30 days after such merchandise has been sold or agreed to be sold in the United States, (2) that he will pay on demand from the collector the amount of special dumping duty, if any, imposed by this title upon such merchandise, and (3) that he will furnish to the collector such information as may be in his possession and as may be necessary for the ascertainment of such duty, and will keep such records as to the sale of such merchandise as the Secretary may by regulation prescribe.

DUTIES OF APPRAISERS

Sec. 209. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and as to which the appraiser or person acting as appraiser has made no appraisement report to the collector before such finding has been so made public, it shall be the duty of each appraiser or person acting as appraiser, by all reasonable ways and means to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of [cost of production] *constructed value* to the contrary notwithstanding) and report to the collector the foreign market value or the [cost of production] *constructed value*, as the case may be, the purchase price, and the exporter's sales price, and any other facts which the Secretary may deem necessary for the purposes of this title.

APPEALS AND PROTESTS

Sec. 210. That for the purposes of this title the determination of the appraiser or person acting as appraiser as to the foreign market value or the [cost of production] *constructed value*, as the case may be, the purchase price, and the exporter's sales price, and the action of the collector in assessing special dumping duty, shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; and the United States Customs Court, and the Court of Customs and

Patent Appeals shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of appeals and protests relating to customs duties under existing law.

DRAWBACKS

SEC. 211. That the special dumping duty imposed by this title shall be treated in all respects as regular customs duties within the meaning of all laws relating to the drawback of customs duties.

DEFINITIONS

SEC. 212. *For the purposes of this title—*

(1) The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(2) The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise under consideration, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise under consideration.

(3) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of this title can be satisfactorily made:

(A) The merchandise under consideration and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise under consideration.

(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise under consideration.

(C) Merchandise (i) produced in the same country and by the same person as the merchandise under consideration, (ii) like the merchandise under consideration in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise under consideration.

(D) Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.

(E) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his delegate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.

(F) Merchandise which satisfies all the requirements of subdivision (E) except that it was produced by another person.

(4) The term "usual wholesale quantities", in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

SEC. 406. The term "person" includes individuals, partnerships, corporations, and associations; and

The term "United States" includes all Territories and possessions subject to the jurisdiction of the United States, except the Virgin Islands, the islands of Guam and Tutuila, and the Canal Zone.

SHORT TITLE

SEC. [212] *213.* That this title may be cited as the "Antidumping Act, 1921."

RULES AND REGULATIONS

SEC. 407. That the Secretary shall make rules and regulations necessary for the enforcement of this Act.

(NOTE.—The following provision is made for the effective date of the proposed amendments:)

Sec. 5. The amendments made by this Act shall apply with respect to all merchandise as to which no appraisement report has been made on or before the date of the enactment of this Act; except that such amendments shall not apply with respect to any merchandise which—

(1) was exported from the country of exportation before the date of the enactment of this Act, and

(2) is subject to a finding under the Antidumping Act, 1921, which (A) is outstanding on the date of enactment of this Act, or (B) was revoked on or before the date of the enactment of this Act, but is still applicable to such merchandise.

EXPLANATORY MEMORANDUM OF THE TREASURY DEPARTMENT FOR THE SENATE FINANCE COMMITTEE ON H. R. 6006, A BILL TO AMEND CERTAIN PROVISIONS OF THE ANTIDUMPING ACT, 1921

INTRODUCTORY

H. R. 6006 provides various amendments to the Antidumping Act designed to bring about greater certainty, speed, and efficiency in the enforcement of that act. It was drafted in compliance with the mandate of Congress contained in the concluding sentence of section 5 of Public Law 927, 83d Congress (Customs Simplification Act of 1956), enacted August 2, 1956, which provides:

"SEC. 5. Nothing in this Act shall be considered to repeal, modify, or supersede, directly or indirectly, any provision of the Antidumping Act, 1921, as amended (U. S. C., 1952 edition, title 19, secs. 160–173). The Secretary of the Treasury, after consulting with the United States Tariff Commission, shall review the operation and effectiveness of such Antidumping Act and report thereon to the Congress within six months after the date of enactment of this Act. In that report, the Secretary shall recommend to the Congress any amendment of such Antidumping Act which he considers desirable or necessary to provide for greater certainty, speed, and efficiency in the enforcement of such Antidumping Act."

The report provided for by the above-quoted provision was submitted to Congress on February 1, 1957. It recommended certain amendments to the Antidumping Act which were embodied in identical legislation introduced in the House of Representatives and the Senate shortly thereafter. The House of Representatives considered this legislation and approved it in the form now presented to the Senate, as H. R. 6006, on August 29, 1957. This is the bill now presently before the Senate Finance Committee.

THE AMENDMENTS

The Antidumping Act provides for assessment of dumping duties after a finding has been made under the act. The finding must be based on (*a*) determination of sales at a price less than fair value and (*b*) determination of resultant injury to an American industry. The price determination is made by the Treasury Department; the injury determination is made by the Tariff Commission.

The proposed amendments to the law may be briefly described.

1. *Price comparison.*—At present it is possible to have a finding under the Antidumping Act, but no dumping duties can be collected despite continuance of sales at less than fair value. Amendments are proposed to change the standards for measurement of dumping duties so as to put an end to this anomalous situation. Dumping duties are measured by the difference between foreign market value (where there is a foreign market value) and price to the United States market. The definition of foreign market value would be amended so that typically this value would be the price for consumption in the country of export. This is ordinarily a fairer and more easily ascertainable standard for comparison than third country prices, or the always uncertain estimate of cost of production (which is the standard when there is no foreign market value). To facilitate reference to foreign market value, and otherwise in the interests of certainty, speed and efficiency, provision would also be made to make possible price com-

parisons despite varying circumstances of sale or despite minor dissimilarities between the merchandise being compared.

2. *Customs Simplification Act definitions.*—The up-to-date definitions of the Customs Simplification Act of 1956 are, with occasional modifications necessitated by the differences between the process of valuation for ordinary duties and the calculation of dumping duties, incorporated into the proposed amendment. These new definitions cover the terms "sold or, in the absence of sales, offered for sale"; "constructed value"; "ordinary course of trade"; "such or similar merchandise"; "usual wholesale quantities."

3. *Published notice.*—Provision is made that publication shall be made in the Federal Register when any of the following events occur: (*a*) when the Secretary of the Treasury has reason to believe or suspect sales at less than foreign market value; (*b*) when the Secretary of the Treasury determines whether or not there are sales at less than fair value; (*c*) when the Tariff Commission determines whether or not there is injury. Publication in the second and third of these events shall include a statement of the reasons for the determination.

DETAILED DISCUSSION DUMPING INVESTIGATION

Section 201

Section 201 (b) is amended to provide for publication of the Secretary of the Treasury's belief or suspicion that there are sales at less than foreign market value, contemporaneously with the withholding of appraisement effected pursuant to the existing provision of the law contained in this section.

A new subsection (c) is added providing for publication of the Secretary of the Treasury's determinations whether or not there are sales at less than fair value and of the Tariff Commission's determinations as to injury, in each case with reasons therefor.

SPECIAL DUMPING DUTY

Section 202

In section 202 (a) the words "cost of production" are deleted and the words "constructed value" substituted therefor. This is due to the fact that the present cost of production basis of valuation has been redefined in another section of the bill and is renamed "constructed value," based upon a similar change contained in the Customs Simplification Act of 1956, relating to normal valuation.

There are several changes in section 202 (b), which can be explained as follows:

(1) The words "freely offered for sale to all purchasers" are deleted wherever they appear and the words "in the absence of sales, offered for sale," substituted. This change occurs also in the definition of foreign market value, in section 205, and is discussed at length below in connection with that section.

(2) The present section 202 (b) provides that if the difference between purchase price and foreign market value is wholly or partly due to the fact that the merchandise is sold to the United States in wholesale quantities which are greater than the wholesale quantities in which it is sold in the country of exportation, or in the absence of home market sales, to third countries, due allowance shall be made for such difference in quantity in determining foreign market value. As this language does not permit a similar adjustment in those cases where the quantities sold in the home market or to third countries are greater than those sold to the United States, section 202 (b) is amended by H. R. 6006 to permit such an adjustment. This amendment would apply in those cases where the price to the United States is not lower than the home market or third country price only by reaosn of the fact that the greater quantities sold in the other markets entitle the purchasers to a quantity discount. An example follows.

Example 1: Manufacturer A sells a product both in the home market and for exportation to the United States. Sales in the home market are made only to large wholesalers, in quantities of 10,000 units or more, at a price of $2 per unit, f. o. b. factory, less 20 percent. The product has recently been introduced into the United States and sales have been in lots of only 1,000 units, at the same price. The manufacturer's home market price list shows the following discounts, for various quantities:

Less than 5,000 units, $2 net
5,000 units or more but less than 10,000 units, $2, less 10 percent
10,000 units or more, $2 less 20 percent

Although all purchasers in the home market receive the 20-percent discount, it appears that this is due to the fact that they buy in sufficient quantities to avail themselves of the maximum discount. Under the present law no dumping duty could be collected. The new bill would permit the imposition of dumping

duties, in the event of a finding of dumping, equal to the difference between $2 net and $2 less 20 percent.

(3) A further change in section 202 (b) requires that allowance be made for differences in circumstances of sale in determining foreign market value. An example would be the payment of advertising expenses in the United States by a manufacturer attempting to introduce a product into the United States market, whereas in the home market the advertising expenses are borne by the distributors. Under the present law this would not constitute any basis for the assessment of dumping duties. The amendment would require that the amounts expended by the manufacturer for advertising in connection with his sales to the United States be added to his home market price for the purpose of determining foreign market value; if as a result the foreign market value is higher than the price to the United States and a finding of dumping has been made, dumping duties would be assessed in an amount equal to the difference. Conversely, if the manufacturer paid advertising costs in the home market but not in the United States, the advertising expenses would be deducted from the home market price in determining foreign market value.

Other circumstances of sale would be selling costs, restrictions affecting value, commissions, differences in inland freight costs, and other items affecting the price of the merchandise in one market as compared with another.

(4) The only remaining change in section 202 (b) consists of the deletion of the words "appraising officers" and the substitution therefor of the words "Secretary or his delegate," in order that the wording may conform with the existing legal status, in view of 1950 Reorganization Plan No. 26, whereby all functions of all offices of the Treasury Department, and all functions of all agencies and employees of the Department are placed in the Secretary with authority to delegate. Matters of detail such as here dealt with will continue to be handled by subordinates, by delegation.

Section 202 (c) deals with exporter's sales price, which is used in lieu of purchase price, for comparison with foreign market value, when the exporter and the United States importer are related. (For example, if the importer is an agent or subsidiary of the exporter.) The changes in this section are identical to the changes in section 202 (b).

FOREIGN MARKET VALUE

Section 205

Section 205 defines foreign market value. As pointed out in the introductory description given above of the amendments, one of the objectives of H. R. 6006 is to put an end to the anomalous situation whereby it is possible to have a finding under the Antidumping Act, but no dumping duties can be collected despite continuance of sales at less than fair value. This objective is sought to be accomplished by bringing the definition of foreign market value generally into line with the definition of fair value. (It will be recalled that a dumping finding under the law is based on a determination of sales at less than fair value, accompanied by injury; assessment of dumping duties is based on sales at less than foreign market value.)

Prior to April 1955, fair value was defined by regulation as being the equivalent of foreign market value or, in the absence of such value, cost of production. As it became apparent that this definition was subject to all of the weaknesses herein described as inherent in the statutory definition of foreign market value, the regulations defining fair value were amended, effective April 5, 1955, to permit the consideration of restricted as well as unrestricted sales, to take into consideration circumstances of sale and other available criteria, and to permit the fair value determination to be based upon sales to third countries as well as to the home market in those instances where home market sales are so small as to be an inadequate basis of comparison.

It was, of course, realized that this would result in the anomalous situation referred to above, in that findings of dumping might be made under circumstances which would not permit the assessment of dumping duties. However, it was considered important to place fair value determinations upon a more realistic basis without further delay, with a view to recommending corresponding changes in the statutory definition of foreign market value as soon as the practicability of the new approach had been thoroughly tested in actual practice.

The amended definition of foreign market value (sec. 205 of the Antidumping Act) is designed to place the determination of foreign market value on the same realistic basis as that now pertaining to fair value.

The first of the changes in section 205 deletes the words "freely offered for sale to all purchasers" and substitutes therefor the words "in the absence of sales, offered for sale."

With respect to the term "freely offered for sale to all purchasers," the courts have held that a sale or offer which restricts the purchaser in the resale or use of the merchandise, or which is limited to certain classes of purchasers, is not "freely offered" within the meaning of the statute. Accordingly, even the existence of such ordinary restrictions as the granting of territories or fixing of resale prices has operated as a bar to the determination of a foreign market value based upon sales subject to these restrictions. This makes it possible for a foreign shipper to sell merchandise to the United States at what over the years have been traditionally considered as dumping prices (i. e., at less than his prevailing prices in the home market and to third countries), without fear of any dumping duties being imposed, by the simple expedient of placing unimportant restrictions upon all of his sales which are at higher prices and freely offering the merchandise in relatively unimportant markets at a price equal to or lower than the price to the United States. This can be illustrated by the following example:

Example 2: Manufacturer A sells the following units during the course of a year, at the prices indicated:

Country to which sold	Number of units sold	Price per unit (f. o. b. factory)
Home market	1,000,000	$5
United States	600,000	3
England	500,000	5
France	500,000	5
Germany	500,000	5
Brazil	100,000	3
Venezuela	50,000	3

Sales in the home market and to England, France, and Germany are restricted to exclusive distributors, each of whom is assigned a certain territory. Sales to Brazil and Venezuela are unrestricted.

Under these circumstances foreign market value could only be based upon the unrestricted sales to Brazil and Venezuela, even though more than 90 percent of the manufacturer's total sales other than to the United States were made at a much higher price. Foreign market value would be the same as the price to the United States and no dumping duties could be assessed.

It seems reasonable to base foreign market value in this case on the $5 rather than the $3 unit price, and to enable assessment of dumping duties. The amendment provides that this shall be done.

The second change inserts, following the words "if not so sold or offered for sale for home consumption," the additional language "or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States." The foregoing relates to the conditions under which sales for exportation to countries other than the United States are to be considered in determining foreign market value. This change is designed to meet the type of situation set forth in example 3 below, in which the home market sales are insufficient to constitute a realistic basis for such value.

Example 3: Manufacturer A produces merchandise primarily intended for export, for which there is little demand in the home market. He has made the following sales during the course of a year:

Country to which sold	Number of units sold	Price per unit (f. o. b. factory)
Home market	100,000	$3
United States	1,000,000	3
England	700,000	5
France	700,000	5
Germany	700,000	5
Various countries	2,000,000	5

All sales are unrestricted. Although home market sales represent less than 3 percent of all sales other than to the United States, foreign market value would under the existing law be based upon the home market price and no dumping duties could be collected even though the manufacturer continues to sell to the United States at far less than his prevailing world price.

It seems reasonable to base foreign market value in a case such as this on third-country price instead of home-market price, and the amendment provides that this shall be done.

The final change in section 205 adds the following language at the end of the section: "If sales are made through a sales agency or other organization related to the seller in any of the respects described in section 207 hereof, the prices at which the merchandise is sold by such sales agency or other organization may be used in determining the foreign market value." This corresponds to a similar provision in the revised definition of "fair value" and is designed to prevent avoidance of dumping duties by the device of selling at a low price to a related organization, which in turn resells at the prevailing market price.

CONSTRUCTED VALUE

Section 206

The value provisions of the Customs Simplification Act of 1956, which deal with valuation for the purposes of regular ad valorem duties, contain definitions of various terms common to both the Antidumping Act and the regular value provisions, such as "ordinary course of trade," "such or similar merchandise," and "usual wholesale quantities." The cost-of-production basis of valuation is redefined and given the new title "constructed value."

From the standpoint of efficient administration it is highly desirable that terms used in the two statutes have similar meanings; otherwise much confusion would result, particularly among importers and shippers. Section 206 of the Antidumping Act, defining cost of production, is accordingly amended by H. R. 6006 to conform substantially with the definition of constructed value in the Customs Simplification Act. In addition, as indicated below, a new section 212 is added to define various terms which are also defined in the Simplification Act. It has, of course, been necessary to retain certain distinctions due to the different purposes for which the two statutes are intended.

(1) In section 206 the title of the basis of value involved is changed from "Cost of Production" to "Constructed Value," to accord with the change in the Simplification Act.

(2) Subparagraph (a) (1) of section 206 is identical to the corresponding subparagraph of the Simplification Act, except that the words "under consideration" are substituted for the words "undergoing appraisement." This change is necessary due to the fact that merchandise "under consideration" for the purposes of the Antidumping Act is not necessarily "undergoing appraisement." This same substitution is made in subparagraphs (a) (2) and (a) (3).

(3) Subparagraph (a) (2) also differs from the corresponding subparagraph of the Simplification Act in the following respects:

(*a*) The words "for shipment to the United States" are omitted, as it would be unrealistic for purposes of the Antidumping Act to base the addition for gen-

eral expenses and profit upon those incurred in connection with shipments to the United States; such additions must be based upon the shipper's overall profit and expenses in connection with merchandise of the same general class or kind.

(*b*) The minimum additions of 10 percent for general expenses and 8 percent for profit, provided for in the present law, are retained, to prevent unrealistically low constructed value figures. For example, if the shipper manufactures merchandise of the same general class or kind only for shipment to the United States and there is no statutory minimum for general expenses and profit, constructed value would in all cases be identical with the selling price to the United States, unless such price is actually less than the cost of manufacture.

(4) A new subparagraph (b) is added, which is identical to the corresponding provision of the Simplification Act, except that it applies only to constructed value, whereas the corresponding provision of the Simplification Act relates to constructed value and United States value, and except for the substitution of the words "under consideration" for the words "undergoing appraisement." United States value has no relation to the Antidumping Act; the reason for the other change has been previously explained.

DEFINITIONS

Section 212

The following definitions are included in this section:

"Sold or, in the absence of sales, offered for sale."—This definition differs from the corresponding definition in the Simplification Act in that provision is made for the consideration of all sales in the ordinary course of trade, whether or not restricted, with adjustment for restrictions which affect value. This is in line with the change in the definition of foreign-market value previously described.

"Ordinary course of trade."—This definition is identical with the corresponding definition in the Simplification Act, except for the substitution of the words "under consideration" for the words "undergoing appraisement."

"Such or similar merchandise."—The proposed new definition of such or similar merchandise is identical with the corresponding definition in the Simplification Act except for the substitution of the words "under consideration" for the words "undergoing appraisement" and the addition of two new subdivisions, "(E)" and "(F)."

These new subdivisions are added to permit comparison between merchandise sold to the United States and merchandise sold in the home market or to third countries which is the same as that sold to the United States except for minor differences in the process of production or manufacture, which might prevent the merchandise from being "similar" for normal valuation purposes.

The term "such or similar merchandise" has been construed by the courts as meaning identical merchandise or merchandise "made of approximately the same materials, * * * commercially interchangeable, * * * adapted substantially to the same uses, and so used." Cases are frequently encountered where the merchandise sold in the home market or to third countries is nearly identical to the merchandise sold to the United States except for minor differences in construction or component materials, but no foreign market value can be found because the differences are such as to prevent the merchandise from being commercially interchangeable in the various markets. An example is the use of a different preservative in canned foodstuffs, to meet United States food and drug requirements.

In addition, the language of these subdivisions permits adjustment for differences in the cost of production or manufacture, for more realistic comparison. Such adjustments could not be made under the language of the provisions relating to normal valuation, as the courts have held that it is incorrect to appraise merchandise by adding to or subtracting from the price of merchandise of a different grade or value.

"Usual wholesale quantities."—This definition is identical with the corresponding definition in the Simplification Act.

Mr. FLUES. Before getting into the technicalities of the amendments which we are proposing, and they are technical, I should like to discuss briefly the general objectives of the Antidumping Act. The act is designed to prevent foreign producers from conducting dumping price raids which injure American industry. Such raids should be met with full and swift enforcement of the law.

Conversely, the act is not designed to provide for assessment of dumping duties merely because of technicalities when there has been no injury and when commonsense shows that action is not warranted.

The law provides that dumping duties should be imposed when there are (*a*) sales of less than fair value and (*b*) resultant injury to an American industry. There is no disposition in the amendments before you to change this basic concept.

The act goes on to provide in detail just how the dumping duties are to be calculated, once the determinations of sales of less than fair value and injury have been established. It is here that the very detailed language set forth in the act has with the passage of time become in some respects obsolete and ineffective. This language is the subject of most of the amendments in the proposed legislation.

Expressed in simplest terms, the dumping duty was to be calculated by subtracting the lower price to the United States importer from the higher going price to purchasers for consumption in the country of export. This was in accord with the traditional economists' definition of dumping as to price: "foreign sales below the home price." If there was no home price (that is, price for consumption in the country of export), then the duty was to be calculated by subtracting the price to the United States importer from the going price to purchasers in third countries.

In defining what I have here referred to as "going price" the 1921 law uses the term "freely offered for sale to all purchasers." Obviously what the Congress had in mind when this act was passed was the going market price in the exporting country or third country. If one talks of recognized commodities such as steel scrap or hides, the easy and direct way to calculate the price is to find what is the market quotation in any given country. These market quotations show the price freely offered for sale to all purchasers.

In the early years apparently no difficulty was encountered with this approach to the problem. In recent years, however, we have come across this sort of a problem.

A product which we investigate under the antidumping law is sold for home consumption with certain restrictions—for example, the purchaser must agree not to resell except within a given territory. What is the going price for that product? The courts tell us the restricted sales do not furnish a going price.

We are forced therefore to have reference to unrestricted sales to third countries. The sophisticated exporter can very easily limit his unrestricted sales to those who purchase at a low price, and unless his sales to the United States are at an even lower price, no dumping duties can be assessed against him.

Going back to the 1921 law, we have said that the standard for calculating dumping duties was typically the exporter's home price. If that price was higher than the price to the United States, the difference was the dumping duty. Now, the effect of a restriction such as limiting resale to a geographic area is, if anything, to reduce the value of the article in the purchaser's hands. Does it make sense to say that when such a restriction is placed on home sales, the standard for dumping duty should instead be an even lower third country price? We do not think it does. We do not think that such would have been the intention of Congress when it enacted the 1921 legislation.

The 1921 law is so worded as to use the exporter's home prices as the standard for calculating dumping duties unless there are no home sales or offers. Our experience today shows occasions when this appears unreasonable. An exporter sells 1,000 units for home consumption, 1 million units to third countries and 1 million units to the United States. Are the home sales involving only 1,000 units a reasonable standard for calculating dumping duties? Perhaps if one deals with staple commodities such as steel scrap or hides, they would be, assuming other producers in the same exporting country make sufficient home sales to establish a market. But nowadays it is usual to find complaints of dumping of further processed articles, where there is only one exporter in the given country. If that exporter has his business, to all intents and purposes, with third countries and the United States, it seems unrealistic to use the relatively few home sales as a base under the antidumping law. In such case it seems reasonable to suppose that the drafters of the 1921 law, looking at present day trade patterns, would have approved use of third country prices.

These considerations have concerned us for some time. During 1954 and for part of 1955 we developed in consultation with interested parties a revised concept of fair value, which was embodied in regulations issued in April 1955. In these regulations we provide for consideration of sales despite restrictions, and for consideration of third country sales where home sales are in insufficient volume to provide an adequate basis for comparison.

It now seems desirable to make the same sort of change in our definition of foreign market value, which is the basis for determination of dumping duties. These changes should, we feel, be accompanied by provisions allowing more ready comparison of similar merchandise, taking into consideration varying circumstances of sale, and other provisions which are detailed in the papers I have submitted to you.

In addition, the proposed legislation conforms value definitions with definitions now contained in the Customs Simplification Act of 1956. It provides also for published notice of cases where dumping sales are believed or suspected to have been made, and of determinations, with reasons therefor.

H. R. 6006 has, therefore, the purpose of accomplishing three primary objectives: First, put an end to the anomalous situation whereby sales can be made at less than fair value, with injury to American industry, but no dumping duties collected; second, bring the value definitions of this 1921 law up to date; third, provide for published notice of pending cases and of decisions.

There is no attempt to change the original concept of the Antidumping Act. Nor do we claim that the amendments now being considered would necessarily make a perfect Antidumping Act. We do claim that the law as originally written cannot be administered as we feel it was intended to be administered unless these changes are made.

We believe that the law as enacted in 1921 established machinery which, with the amendments here proposed, can continue to do an effective job. Such a law can stand the test of time.

If our experience in the Ways and Means Committee is any guide, you will hear rather strong comment from persons on one side of the fence that the proposed changes go much too far, and you will hear equally strong comment from persons on the other side of the fence

that they do not go nearly far enough. We have made no conscious effort to steer a course exactly in the middle, but it may well be this is where we are. Our effort, as I have said before, has been to try to change the law only insofar as to enable it effectively to carry out its original purpose.

It is for these reasons that the Treasury Department favors enactment of H. R. 6006.

The CHAIRMAN. Thank you you very much, Mr. Secretary.

Does what you have said represent the views of the State Department as well?

Mr. FLUES. Not of the State Department. Did I say State Department?

The CHAIRMAN. I understood you to say Treasury. But is there any department of the Government which opposes this legislation?

Mr. FLUES. Not that I know of, sir. I am sure not.

The CHAIRMAN. Are there any questions?

Senator DOUGLAS. Mr. Chairman.

The CHAIRMAN. Senator Douglas.

Senator DOUGLAS. I would defer asking any questions until others senior to me on the committee have asked their questions, but if they do not have questions, I do have some.

The CHAIRMAN. Senator Frear.

Senator FREAR. No questions.

The CHAIRMAN. Senator Douglas, go ahead, sir.

Senator DOUGLAS. Mr. Flues, I would like to ask, what are the commodities which have given rise to these problems? The discussion is in very general terms, but what are the specific commodities where foreign producers and sellers sell in third countries at prices differing from the home country and differing from the prices at which they sell in the United States? What are the commodities in question? Because the issue is whether this is an important matter or whether this deals with only a few items.

Mr. FLUES. Senator Douglas, some of the commodities that have led us to give special consideration to these amendments are rayon, calculating machines, bicycle pedals, fiberboard, and canned mushrooms.

Senator DOUGLAS. Are these the 4 or 5?

Mr. FLUES. Those are the ones that specially have brought our attention to the need for amendments.

Senator DOUGLAS. May I ask, what has been the practice in rayon? What is the problem in rayon, sir?

Mr. FLUES. Sir, the practice with rayon has been exactly in line with what we have outlined here.

Senator DOUGLAS. But what are the countries involved? What are the producing countries and what are the third countries, and the comparison of prices in each case?

Mr. FLUES. Senator Douglas, on a technical question such as that, I think you would probably get a more competent and more comprehensive answer if I were to ask Mr. Hendrick to answer your question.

The CHAIRMAN. Would you identify yourself, please.

Mr. HENDRICK. J. P. Hendrick, assistant to the Secretary of the Treasury.

Senator, I do not have the exact lists here, but in general the producers of rayon that we are concerned with are European countries.

Senator DOUGLAS. Exactly what countries?

Mr. HENDRICK. As I remember, they are Belgium, France, Italy, Germany, Austria, Switzerland, and the United Kingdom.

Senator DOUGLAS. Virtually all the countries of Western Europe. Now, what is their practice in selling rayon?

Mr. HENDRICK. Their practice seems to be to sell for home consumption, that is, in the country of export, with various restrictions, so that those sales cannot be taken as representing the foreign market value, which is the basis for calculating duties.

Senator DOUGLAS. How much would they sell for in Latin America, for example?

Mr. HENDRICK. They do make some sales to Latin America; and as I remember it, some of those sales are unrestricted.

Senator DOUGLAS. But what about the comparative prices in Europe and Latin America or whatever these third-party countries are, and the United States? What is the unit of measurement in the rayon industry?

Mr. HENDRICK. Pounds.

Senator DOUGLAS. All right. What would be the price per pound of Belgium rayon in Belgium?

Mr. HENDRICK. I could not give you the figures, sir. I am very bad on figures, and I cannot remember what the exact figures are, but obviously I can get some.

Senator DOUGLAS. You see, it is a very important question with us, because we want to know whether this is an important problem.

Mr. HENDRICK. I can perfectly well give you in general what the situation is.

Senator DOUGLAS. I would appreciate it.

Mr. HENDRICK. In general, the situation has been—the situation changes from time time—but there have been times when you will find a European rayon producer—and we have before us specifically rayon staple fiber; we have not dealt with filament—we find European producers who on occasion have sold for home consumption and to certain other European countries under restricted circumstances at a higher price than they have sold to other countries unrestricted.

On occasion, the margin is substantial, but I hope, sir, you will not ask me the exact figures, because I do not have them.

Senator DOUGLAS. And then the comparison with the price at which sold to the United States?

Mr. HENDRICK. When you talk about the price sold to the United States, of course, there are two ways of figuring that. One is the price at which the rayon is sold f. o. b. foreign factory; and the other is the duty-paid, transportation-paid price which actually the importer is out of pocket.

Now, the margin of difference between the home price and the f. o. b. factory price for export to the United States is substantial.

Senator DOUGLAS. You mean it is lower——

Mr. HENDRICK. In other words, the price to the United States is considerably lower on occasion than the price for home consumption f. o. b. factory.

That is also true——

Senator DOUGLAS. How much lower, in terms of percentages?

Mr. HENDRICK. Well, we have had occasions where it seemed to be as much as 6 to 10 percent, in some cases.

There is also the question of how that price compares with the American producers' price, which I think you have asked me. That price, duty paid and delivered, is still in many cases lower than the going American price.

Senator DOUGLAS. How would the price quoted to the United States compare with prices quoted to third countries?

Mr. HENDRICK. That would vary. Often we find that the prices quoted by European producers to other European producers will be higher than the prices quoted by European producers to, let us say, Latin American countries.

Senator DOUGLAS. Is it commonly believed that there is a rayon cartel combining the British firms and the Belgian firms?

Mr. HENDRICK. I could not answer that question, sir.

Senator DOUGLAS. The Lowenstein interests are very important in this field, and Lowenstein at the time of his death was operating both in England and Belgium. You do not know whether there is an international cartel?

Mr. HENDRICK. No, sir; I do not.

Senator DOUGLAS. What about this canned mushroom? I think the troubles here are not digestive, but prices.

Mr. HENDRICK. That was a case that we had some time ago. And that involved canned mushrooms from France.

Senator DOUGLAS. They were selling in the United States quoted at an f. o. b. price lower than the price at which they sold in France?

Mr. HENDRICK. In that case, the question was, Could you compare like with like? The mushrooms sent to the United States were treated with ascorbic acid, and the mushrooms sold for consumption in France were treated with citric acid.

Senator DOUGLAS. Now, from what you say about rayon, could you not reach that under the present dumping act if the prices and the f. o. b. prices to the United States of a Belgian or English producer are lower than the prices quoted in the home market—would the present Antidumping Act not enable you to proceed?

Mr. HENDRICK. No, sir; not the way our General Counsel construes the law.

Senator DOUGLAS. Why not? I may be misinformed, but I hastily read the memorandum you submitted and the testimony of the Assistant Secretary. I thought that the 1921 act provided that if the price in the United States was lower than the price in the home country, that this constituted by that fact the dumping.

Mr. HENDRICK. If you can turn to page 3 of Mr. Flues statement, that goes into some detail in showing why, when the home price is restricted, we are not allowed to use that price as the basis for dump duties.

Senator ANDERSON. Who stops you?

Mr. HENDRICK. There have been court decisions which rule that a restricted home price is not, to use the words of the statute, freely offered for sale to all purchasers. There was a court decision on that.

Senator ANDERSON. When was it given?

Mr. HENDRICK. Some years ago. I cannot remember. So long as that holds, the present law leaves us powerless to use——

Senator DOUGLAS. What are these restrictions which are imposed on the sale of rayon in the home market?

Mr. HENDRICK. One of the restrictions is limiting geographic area. Another is that the purchaser undertakes not to resell the unprocessed fiber.

Senator DOUGLAS. Not to resell anywhere, or not to resell in another market?

Mr. HENDRICK. Not to resell anywhere. And that is the usual restriction, as I understand it, with rayon. In other words, a purchaser in Belgium from the Belgian factory will not be allowed by the terms of this purchase contract to take that fiber unprocessed and sell it to somebody else. He may, and of course does, process the fiber and sells it in processed form.

Senator DOUGLAS. Why does this give the foreign producer an advantage?

Mr. HENDRICK. What we have in mind there is that the real reason behind the provision of the 1921 act to base foreign market values typically on home price is that that should represent the going home price.

Now, to us, if all the rayon producers in a particular country sell at a certain price, and they all sell under this restriction as to resale by the purchaser, that would seem to us the type of foreign market value that the law was intended to cover. But due to the fact that since 1921 this type of restriction has come into practice fairly extensively, we feel that the purpose of the 1921 law is now not being carried out in this type of case. We feel that the amendment we suggest will cure it.

Senator DOUGLAS. I must confess I am still puzzled by this. It is probably my own fault.

Senator ANDERSON. I am very much interested now. I was not going to have any questions, but you have got me a little curious now. Do I understand when he asked you about the difference in competitive prices on rayon that you said you did not know what the price situation was?

Mr. HENDRICK. Senator, I apologize for being a person who is totally unable to keep figures in his mind.

Senator ANDERSON. You do not have to. You can keep them in a book. I do not care where you keep them, but you ought to have some figures when you come here.

Mr. HENDRICK. We have some figures.

Senator ANDERSON. What are they?

Mr. HENDRICK. I can submit figures for you, and I could give you specimen figures. But I had thought that if I told you that the difference between the home price and the price to the United States was, say, 6 to 10 percent, that that would give you the information you need.

Senator ANDERSON. Let me go to Mr. Flues.

You did give us 6 percent, and there was a figure of 20 percent you started to give us. My point is this: If you are going to build up a case on this, you ought to have some information on it. You cannot proceed on the rayon people the way your General Counsel construes the laws.

How did he construe the laws? Have you got a version of how he construed it?

Mr. FLUES. I have no statement by the General Counsel, but we can supply that to you.

Senator ANDERSON. I think it ought to be supplied in connection with the hearing. He does not know when the court decisions took place on which he relies. You get into all sorts of things. But when you get into atomic energy, all the lawyers know all the cases.

At one time I was very much interested in the rayon situation, because we had some American producers who were growing cotton, and they had a very keen interest in the European market.

Does somebody have figures that tell us what the European people have been doing? Is there, as Senator Douglas has brought up, the possibility of a cartel, and that the price is the same in France or Belgium or England as when offered to the United States? What is the price? And what is the American price?

Mr. FLUES. If I may have a moment, I will find out whether the gentlemen here can supply that information.

There have been a number of antidumping cases, of course, as you know.

Senator ANDERSON. I am sorry?

Mr. FLUES. I say, there has been a number of antidumping cases, as you know.

Senator ANDERSON. I am not interested in that. I am interested in what the situation is at this time. What is it on rayon?

Mr. FLUES. There are files on each one. They are not here today.

Senator ANDERSON. What is that situation?

Mr. FLUES. We will bring you that in and submit a memorandum for your guidance.

Senator ANDERSON. I do not want a memorandum. I want to have the chance to question somebody. Bring the memorandum when you can, but we ought to have a witness.

Let me go on. What is the situation on bicycle pedals? What is the price abroad and what is the price at home and what is it doing to the American market?

Mr. HENDRICK. That is a case which was closed some time ago. That is not now a case which we have under consideration.

Senator ANDERSON. A minute ago you gave a list of 5 or 6 commodities. Did you not mention bicycle pedals?

Mr. FLUES. Those were cases that we listed as having been considered when this question of making up the amendment was gone over.

Senator ANDERSON. The Senator from Illinois asked you what the commodities were, and you gave bicycle pedals and canned mushrooms and some others. What about the bicycle pedals? Is that still causing you trouble?

Mr. FLUES. No, sir; it is not.

Am I correct on that?

Mr. HENDRICK. It may be they will.

Senator ANDERSON. But it is not now?

Mr. HENDRICK. At the present time we have no case pending.

Senator ANDERSON. So you do not need any legislation on bicycle pedals?

Mr. HENDRICK. We cannot answer that question, Senator, because if the same situation comes up again that came up some years ago, possibly we would need the legislation on that.

Senator ANDERSON. May I ask you, at that time or now?

Mr. HENDRICK. It stands to reason, in our opinion, that there are a number of commodities in which the home price is higher than the prices elsewhere, and where the home price should, in order to carry out the intent of the law, be used as the basis for dumping duties, but where we are not able to do so because of the provisions of the sale agreements and because of this decision—and the decision I now find was reached in 1933. I apologize for not remembering that before.

Senator ANDERSON. The only one on which you hang your case is that?

Mr. HENDRICK. There have been a number of cases along that line on commodities.

Senator ANDERSON. You say there are a number of commodities. Are those not the commodities we ought to hear about in this hearing?

Mr. HENDRICK. If we had a chance to make an overall study, we would do so. But it seemed to us so obvious that there has been a number of commodities representing this situation that we have spent our time processing such cases as we have.

We do know at this particular moment we have a pending case on rayon staple fiber where that situation exists. We know that just a short while ago we had a situation in regard to South African hardboard, where that situation very likely existed, although in that case there was no injury to industry.

Senator DOUGLAS. Will you describe the hardboard case?

Mr. HENDRICK. In that case there were sales of hardboard made from South Africa to the United States. The South African home price was very substantially above the price to the United States.

Senator DOUGLAS. How much higher?

Mr. HENDRICK. In some cases I believe that the margin was as much as 50 percent.

Senator DOUGLAS. Why could you not reach it under the present antidumping?

Mr. HENDRICK. There was a question as to whether we would have been able to reach it under the present law. We actually did find that those sales were made at less than fair value, and we proceeded with the case and sent it to the Tariff Commission.

The Tariff Commission, however, found that there was no injury, because of the fact that in general the delivered duty paid price of that hardboard was in line with the prices of American producers.

Now this is very technical and it is sometimes difficult to understand—the difference between, on the one hand, the home price f. o. b. factory, which is the standard on calculating dumping duties and on the other hand, the delivered duty paid price, which is the main element in deciding whether there is injury.

Senator DOUGLAS. In other words, the Tariff Commission found that transportation and insurance costs plus tariff duties made the price of South African hardboard in the United States higher than the price quoted on comparable hardboard by American firms; is that correct?

Mr. HENDRICK. Not higher, but competitive with.

Senator DOUGLAS. Competitive with. And so there was no injury done?

Mr. HENDRICK. That is right, sir.

Senator DOUGLAS. If there was no injury done, what is the need for special legislation in the case of hardboard?

Mr. HENDRICK. In that case there was no need.

Senator DOUGLAS. Now then, we seem to come down to rayon—bicycle pedals are out—rayon and canned mushrooms. Now was there a fifth commodity that you cited?

Senator ANDERSON. Would you read that list again?

Mr. HENDRICK. We cited also fiberboard.

Senator DOUGLAS. As distinguished from hardboard?

Mr. HENDRICK. Yes, sir. And calculating machines.

Senator DOUGLAS. What is the situation on fiberboard?

Mr. HENDRICK. On fiberboard we had some sales which again were made at a price to third countries lower than the home price, but we could not collect dumping duties because the home prices were retricted; the home sales were restricted.

Senator DOUGLAS. What countries are involved?

Mr. HENDRICK. That was Sweden. And in that case the Swedes proceeded to revise their pricing so that there was nothing further needed to be done.

Senator DOUGLAS. Nothing needed to be done? In what way did the Swedes do that?

Mr. HENDRICK. The Swedes then proceeded to raise the price to the United States up to the level of the home price.

Senator DOUGLAS. So that there was no grievance left?

Mr. HENDRICK. That is right.

Senator DOUGLAS. Now fiberboard goes out with no reason for action. And so far we are left with rayon and canned mushrooms. What about calculating machines?

Mr. HENDRICK. That again was the same situation: There was a revision of price by the manufacturer, but——

Senator DOUGLAS. What countries were involved?

Mr. HENDRICK. The United Kingdom.

Senator DOUGLAS. The United Kingdom.

Mr. HENDRICK. The reason that these prices were revised in my judgment was that we are now allowed, because of our regulations which define fair value, to proceed with a dumping case despite restriction on home sales, even though we cannot assess any dumping duties.

Now the various countries concerned are well aware of this legislation, and I believe it is quite possible that the revision in prices was due to the fact, first, that they did not want a dumping finding, and, second, because they felt that there was a good chance that there would be legislation imposing duties.

Senator DOUGLAS. In other words, the cause for the grievance has been removed, whatever the reason behind it?

Mr. HENDRICK. That is right, sir.

Senator DOUGLAS. So that we are really left with rayon fiber and canned mushrooms as the only two industries that you can cite where damage is now being done by the interpretations given to the 1921 act antidumping clause?

Mr. HENDRICK. Well, to be perfectly honest, I should go ahead and say that I do not know what the situation is today as to canned mushrooms.

Senator ANDERSON. I was just going to come to that. Where are the American growers of canned mushrooms being bothered by the European market?

Senator DOUGLAS. The mushroom industry in the United States is concentrated in West Chester, just outside of Philadelphia.

Mr. HENDRICK. That is right, sir. I do not believe they are any too happy.

Senator ANDERSON. Most farmers are not right now. You had better get something else besides happiness.

Mr. HENDRICK. I should also go ahead to say that the rayon staple fiber producers in Europe are now endeavoring to raise the price to the United States or lower the home price.

Senator DOUGLAS. So that that will disappear?

Senator ANDERSON. No. It is the other way around, is it not?

Mr. HENDRICK. That cause will disappear if they do it successfully for the time being, but the reason they do that is because of the threat of legislation.

Senator ANDERSON. And all we have to do is keep the legislation before the committee, then? Is that the answer?

Senator CARLSON. Mr. Chairman.

The CHAIRMAN. Senator Carlson.

Senator CARLSON. Mr. Hendrick, I sat through this customs simplification hearing, and when we get into all these foreign values, home values, and market values, it is right confusing. But it seems to me, listening to the interrogation by the Senator from Illinois and the Senator from New Mexico, which I thought was most helpful, that this is not a problem which ends on a particular date; this is a continuous recurring problem. In other words, from 1921 on it gets to be a question of whether we should or should not do something about the antidumping provisions if we want to protect our home markets.

I wanted to ask you: You mentioned the cases that we have had in the past. In Mr. Flues' statement he says that there are three things that they want to do with this legislation.

First, they want to put an end to the anomalous situation whereby sales would be made at less than fair value, with injury to the American industry, but with no dumping duties permitted.

Now assuming that we enacted this legislation, who would set the dumping duties, the duties to be collected on the goods to be dumped in here? Who would set that?

Mr. HENDRICK. The Bureau of Customs.

Senator CARLSON. This would not become, then, a matter for the Tariff Commission?

Mr. HENDRICK. The calculation of the duties would be a Treasury responsibility carried out by the Bureau of Customs.

Senator CARLSON. Secondly, it says here, "to bring the value definitions of this 1921 law up to date."

Now would that— and I have not read this act, which I should do— does the act itself set these rates, or will the Bureau, or the Tariff Commission, or someone else set them? Who?

Mr. HENDRICK. In calculating the actual rates of duty, there are various factors which have to be taken into consideration. Among those are such concepts as "such or similar merchandise," "ordinary course of trade," and so forth, which are outlined in the explanatory memorandum which you have before you.

If, for example, you go to page 13, there is a list of each one with an explanation.

Senator CARLSON. Well, this says, it will bring the value definition of this 1921 law up to date.

Now will the act do that itself? Will an agency in a branch of the Government do it?

Mr. HENDRICK. If this legislation is passed, this legislation will change those definitions so as to bring them up to date into line with the 1956 law.

Senator CARLSON. Then, third, it says; "provide for a published notice of pending cases and of decisions." Do you not give notice now, or what is the situation at the present time?

Mr. HENDRICK. The present situation is that where we make a decision, we put out a published notice, if it is of general interest. We do not always put out published notices, but if this legislation passes, we shall.

Senator CARLSON. Let us just take a specific case—and I am like the Senator from New Mexico; I like to get down to cases where I can see an actual picture of the things—let us take some commodity that is being dumped in here, and someone complains, I assume, that the goods are being dumped at low American values, or something like that.

Now do you hold hearings?

Mr. HENDRICK. We hold them if anybody asks us for them.

Senator CARLSON. In other words, someone in this country who feels that he is injured must come in and make a request that you hold a hearing to determine whether or not they have complied with or violated the antidumping laws?

Mr. HENDRICK. The answer to that is "Yes." And in that connection, in our experience we have never had a request for a hearing, if by that you mean something formal.

Of course, the people come in, and we discuss cases with them very thoroughly.

Senator CARLSON. That is all, Mr. Chairman.

Senator BENNETT. Mr. Chairman.

The CHAIRMAN. Senator Bennett.

Senator BENNETT. I have been interested, too, in the point of view represented by the questioning on the other side. And it has left a question in my mind.

There were five commodities mentioned. It has been my impression that they were mentioned as examples of dumping in the past, or claims that dumping was going on.

On the other hand, it is my impression that the purpose of this law is to correct what has become an obvious technical loophole. And the fact that these five examples might disappear does not mean—it is my impression that that does not mean that other examples may not arise, and other foreign producers may not take advantage of that same technicality.

Am I right in that impression?

Mr. FLUES. That is right, Senator.

Senator BENNETT. But the important thing is not to prevent the dumping of these five specific commodities, but to correct a situation that has grown out of, to quote a phrase from Mr. Flues' statement, "the increased sophistication of the foreign producers," who have figured a way to get around the 1921 law. And they do that by the

simple process of putting a restriction on their home sales, a restriction that has no significance to us in the United States, but which creates then a technical protection for them against the use of their home price in determining the antidumping—whether or not that product is subject to the American antidumping law.

Mr. FLUES. You are right, Senator.

Senator BENNETT. Now that is a technical evasion made possible by their sophistication. And as I understand it, the purpose of this legislation is, in effect, to return the spirit of the law to the situation that existed in 1921 when the law was passed and before they found a way to get around that situation by a technical evasion.

Mr. FLUES. True.

Senator BENNETT. I can understand how simple it would be to put a local restriction, to say that they limit their territory to certain areas in their own country, or the restriction mentioned that you cannot resell this fiber, this rayon fiber, but people did not buy it to resell it; they bought it to weave or process into cloth, and there is no restriction on their sale of cloth.

But because of a court decision, this restriction which does not in effect restrict their home market relieves them by a technical interpretation of the local situation.

Mr. FLUES. Right, sir. With this amendment we can look through those restrictions.

Senator BENNETT. That is as I understand it. Now, of course, you have no way of predicting what other products may come before you in the future.

Mr. FLUES. That is true.

Senator BENNETT. And the fact that either because of the fact that this legislation is pending or for other reasons, the examples mentioned may have disappeared, that does not eliminate the need for some form of antidumping legislation in your opinion?

Mr. FLUES. That is true, Senator. I would think one of the great values of this legislation and of the amendments which we recommend is that it is a deterrent, it is like a policeman on the beat. We do not know what will happen in the future, but we do believe it will have a very salutary effect in preventing these exporters in foreign countries, manufacturers in foreign countries, from taking advantage of technicalities in getting around the purposes of this act.

Senator BENNETT. Is our Nation the only one that is concerned with dumping?

Mr. FLUES. Sir, there are some 12 nations that have antidumping legislation other than the United States.

Senator BENNETT. Is dumping considered to be beneficial to foreign trade or detrimental to it? Maybe I had better make that, in your opinion are we restricting or hampering our foreign trade with an effective antidumping law, or are we helping it?

Mr. FLUES. We think we are trying to help American industry in this instance, and that, we feel, was the purpose of the original act of 1921, without unfairly impairing or damaging foreign trade with the United States.

Senator BENNETT. Let me change——

Mr. FLUES. We are insisting on certain rules as to this traffic coming into the United States.

Senator BENNETT. Let me rephrase my question. If there are 12 countries—and I assume they are 12 comparatively important trading countries—that have antidumping legislation, would you assume that that would be an evidence that these 12 countries want foreign trade restricted by such legislation, or they want to facilitate it?

Mr. FLUES. I would think their purpose would be the same as ours: They insist that traffic coming into them shall be brought in under certain rules to eliminate unfairness to their own industries.

Senator BENNETT. That is all, Mr. Chairman.

Senator ANDERSON. I wanted to get back to one thing. You said in the case of this hardboard, that there was no injury, because the duty paid plus various other things brought the price up where it was competitive with American hardboard. Is that the definition of injury, the concept of injury that you have, and the only one?

Mr. FLUES. It is just one of the elements, Senator.

Senator ANDERSON. Do you have any definition of injury?

Mr. FLUES. No; we have none in the act.

Senator ANDERSON. Did you put any in?

Mr. FLUES. None is being put in under these amendments.

Senator ANDERSON. Is any needed?

Mr. FLUES. We do not think so.

Senator ANDERSON. Now it just happens that I come from a State that produces a small amount of potash. You did not list potash as one of these commodities. Has there been more protests about rayon or canned mushrooms than there has been with foreign potash?

Mr. FLUES. I shall have to ask one of the gentlemen with me.

Senator ANDERSON. What is your title?

Mr. FLUES. Assistant Secretary.

Senator ANDERSON. What is your responsibility with reference to this program? Is it under you?

Mr. FLUES. Customs does come under my jurisdiction.

Senator ANDERSON. You have full charge of this program?

Mr. FLUES. Customs has full charge of it, but, of course, they are acting as a bureau of the Treausry.

Senator ANDERSON. What about potash?

Mr. HENDRICK. If I might answer, sir, as to potash there were no restrictions on the home sales of potash. It was sold to the United States at a price which we determined to be less than fair value. The case went to the Tariff Commission. It was decided that there was no injury and therefore there was nothing further that we could do.

Senator ANDERSON. That is what I am trying to find out about this legislation. If there is any need for this legislation, I cannot find out what in the world it is. I thought I was in favor of it until this morning. But if you say that your Department found that the European potash was coming in at less than fair value, and you so certified to the Tariff Commission, and the Tariff Commission said, "What the devil, nobody is being hurt," then what is their concept of injury? Is it not true that the European potash is being sold below the American prices and is gradually taking more of the market?

Mr. HENDRICK. I cannot speak for the Tariff Commission, but I believe the record shows in that case that over the years the European producers typically had a certain share of the United States market on the eastern seaboard. That potash was purchased by the

processors for the farmers in that area at a lower price than they could get it from New Mexico. That has gone on for many years. At the time the complaint was made, there was no particular rise in volume of imports.

It is my impression that the Tariff Commission felt that at that time the absence of a rise in volume of imports from the European countries was a significant factor in determining that the situation was no different from what it had been in for years.

Senator ANDERSON. The rise in volume, you said?

Mr. HENDRICK. I said there was at that time no rise in volume.

Senator ANDERSON. No rise in volume?

Mr. HENDRICK. Let us say, for example, that the Europeans had 10 percent of the United States market, and that that 10 percent went to the eastern seaboard. At this time they continued to have 10 percent.

Under those circumstances that was one of the factors the Tariff Commission took into consideration.

Senator ANDERSON. Has there been a change in the pattern of agriculture so that there is more potash used in this country?

Mr. HENDRICK. As I understand it, there is a constantly increased use of potash.

Senator ANDERSON. And therefore you believe that the European producer is entitled to have his fair share, so-called, of the market, no matter how large it may become? If it grew to 20 times what it now is, he is still entitled to his tenth of it, and can dump in order to get it?

Mr. HENDRICK. I must disqualify myself from giving you any opinion on that, because the Treasury does not judge injury in cases.

But, I believe, also from my recollection, that the percentage of the European contribution to the market was going down rather than going up. But I don't think that I should give you an opinion as to whether that was a wise or an unwise decision.

Senator ANDERSON. I am trying to find out the purpose of the legislation. Now, we find it would not do any good in hardboard, since because of transportation and various other things the price tends to equalize and therefore there is what they call no injury.

And we find out that with canned mushrooms the difference is that one is cured by one acid and the other is cured by another, and hence there is no injury—there may be a very substantial injury for all we know.

Bicycle pedals, we have no figures on it. I know that there has been a complaint that potash has been hurt by dumping; European producers have charged less for it than they charge in their own countries. I thought that was dumping.

Is this not an antidumping bill?

Mr. HENDRICK. If I could refer to Secretary Flues' statement, he says:

> The act is designed to prevent foreign producers from conducting dumping price raids which injure American industry.

Senator ANDERSON. Then the answer to my question whether it is an antidumping bill is "yes"?

Mr. HENDRICK. This certainly is an antidumping act by its terms.

Senator ANDERSON. And if potash is being dumped, and you say

that Europeans have a certain part of the market, you say that is all right, we are not trying to stop that, because they always had a part of the market?

Does that make it any better, because they always had a part of the market?

Mr. HENDRICK. That is for the Tariff Commission to decide.

In another case, for example, where the share of the United States market by the Europeans was only four-tenths of 1 percent, the Tariff Commission found that there was injury.

Senator ANDERSON. Precisely.

Senator DOUGLAS. If I may add, I would say that the Tariff Commission has never been too—it has been quite restrictive in its definition of injury.

Senator ANDERSON. I am only trying to say to you that there is a threat to the American cotton producer by the constant importation of these fabrics, rayon particularly. Now, there is an American rayon industry that is coming into existence. That market for rayon may grow very substantially in the United States, and I would not want the yardstick to be that the Europeans had a percentage of the market, because they were very early in this field, as you well know. And they make a very satisfactory fabric for the automobile tires.

The American cotton producer also has an interest in this, but he is pretty well crowded out of that market at the present time. If you are looking for injury, we might find many places where there is obviously an injury, but if they get ruled out, I am trying to find out what the bill is designed to do.

It is not going to protect potash, it is not going to protect fiberboard, it is not going to protect hardboard.

What about typewriters?

Mr. HENDRICK. These are all cases which can arise in the future. What happens is, if an article is sold at less than home price, and if there is injury, that sets the dumping act into motion, and dumping duties are collected.

Senator ANDERSON. Are collected? It sets them in motion. You then find there is injury. That goes to the Tariff Commission and the Tariff Commission says no, and nothing is to be done about it.

Mr. HENDRICK. The Tariff Commission by no means always says nothing is to be done about it.

Senator BENNETT. Mr. Chairman, may I just ask one more question?

In the opinion of the witness, would this bill strengthen or weaken the power of the Treasury to move it against dumping?

Mr. FLUES. It would materially strengthen it, Senator.

Senator BENNETT. That is all.

Mr. FLUES. May I point out that this law is divided into two sections. The first is that the sales be at less than fair value, and second, the injury is to be determined by the Tariff Commission.

These amendments deal only with the Treasury calculations of sales at less than fair value. We believe that these amendments will materially strengthen the Treasury in its dealings with these calculations as to fair value.

Senator BENNETT. The bill does not change in any particular the responsibility or the power of the Tariff Commission?

Mr. FLUES. It does not, sir.

Senator BENNETT. But it does increase the power of the Treasury in its ability to use information obtained in determining whether or not there has been dumping, it broadens the base of information that the Treasury can use in making its determination?

Mr. FLUES. That is true, sir. And that carries out the purpose of the request made by this committee, certainly, speed and efficiency in the administration of this act.

Senator BENNETT. That is all, Mr. Chairman.

The CHAIRMAN. Is this act in any way inconsistent with the policy of the reciprocal trade program?

Mr. FLUES. Mr. Chairman, it has nothing to do with the extension of the trade treaties.

The CHAIRMAN. I understand that. But is it inconsistent?

Mr. FLUES. It is inconsistent in no way.

The CHAIRMAN. It is an underlying policy of the reciprocal trade program?

Mr. FLUES. That is true, sir.

The CHAIRMAN. For the record please explain briefly what you regard as dumping.

Mr. FLUES. If we were to put it in the briefest possible language, we would say that dumping constitutes a price raid which injures American industry.

The CHAIRMAN. It is based on the fact that a particular commodity is sold for less price in this country than in the country where it is produced; is that one of the basic principles?

Mr. FLUES. That is true, sir.

The CHAIRMAN. Are there any further questions?

Senator DOUGLAS. Mr. Chairman, I do not want to press the witness too hard, but there is one point I think that should be raised.

On page 3 of Mr. Flues' testimony in the last paragraph it says: "* * * restricted sales do not furnish the going price." And it is this fact apparently that makes them believe that the 1921 provision should be changed.

I would like to ask Mr. Flues whether he has exhausted all of his legal remedies, and what courts made these decisions.

For example, are these Customs Court decisions?

Mr. FLUES. They are Customs Court decisions, yes.

Senator DOUGLAS. Were the cases carried to the circuit court and the United States Supreme Court?

Mr. FLUES. They did go up to the Court of Customs and Patent Appeals.

Senator DOUGLAS. I know. But is that the final court that you may appeal from the Customs Court? The United States circuit court, is that the court of final jurisdiction?

Mr. FLUES. Senator, I will ask Mr. Weiss to answer that question.

Mr. WEISS. Senator, that was a 1933 decision. It only went up as far as the Court of Customs and Patent Appeals.

Senator DOUGLAS. You mean that is the last decision?

Mr. WEISS. There have been some affirming decisions in the Customs Court.

Senator DOUGLAS. What about the subsequent decisions?

Mr. WEISS. I am sorry, Senator, I can supply that, but I do not have it. (See p. 44.)

Senator DOUGLAS. You see, this is a very important question. You come to us and ask for legislation because of a decision of the Customs Court. But as I understand it, subject to correction, there is always the possibility of appeal from the Customs Court to the circuit court, I think, of the District of Columbia, and from the circuit court of the District of Columbia to the United States Supreme Court.

The question I should like to ask is this: Why do you not exhaust your legal remedies rather than come to us for legislation?

Frankly, from what has been said, it would seem to me that the decision of the Court of Customs Appeals sounds a bit capricious. They may have good ground for it, but as the situation has been laid out, it seems a little bit capricious when the restriction is not really important. It would seem to me that if the price in the home country was above the f. o. b. price to the United States, that the 1921 act should be able to reach it.

And if a minor restriction is used to throw out this interpretation, it would seem to me that before the Treasury comes running to Congress for legislation that they should exhaust their legal remedies. Very frankly, I am a little bit tired of the tendency for us to be put in the situation where we are always regarded as a judicial body.

Mr. FLUES. May I point out that the Treasury is here today with these recommended amendments in answer to a request of this committee.

Senator ANDERSON. Do I understand that if we had not asked for it, the Treasury would have just sat there?

Mr. FLUES. We understand that this committee was, of course, interested in seeing that this act was improved, if it could be improved, and brought as much up to date as possible.

Senator ANDERSON. And I understand you think this is all that needs to be done to it?

Mr. FLUES. At this point that is true. The needs may develop in the future, but as of now, these are the recommendations which we feel will modernize, if you want to use that term, this particular act.

Senator DOUGLAS. Let me say, then, that perhaps the Treasury is not so much to blame as my statement might have indicated. But the question remains, however, as to whether the legislature should take action or whether we should encourage the Treasury to seek further and higher judicial interpretation.

Senator ANDERSON. Does this bill, in your opinion, completely cure the situation where a country can sell at a substantially higher price at home and say that that is not dumping because it puts a restriction that you have to use the goods in that country; does that cure that?

Mr. FLUES. Senator, I wish I could say that it completely cures it. We think it does.

Senator ANDERSON. How?

Mr. FLUES. I expect that some smart person in the future may find ways of getting around this act. But we cannot anticipate that until it happens.

Senator ANDERSON. I am not worried about the smart persons. They always come along somehow. But does this bill strike directly in the specific terms of the situation you have described?

Mr. FLUES. We believe it does.

Senator ANDERSON. What are the terms?

Mr. FLUES. We believe that with this amendment we can look through these artificial restrictions which are placed on sales within the country of production.

Senator ANDERSON. And you cannot ignore them now because of the court decision?

Mr. FLUES. That is true.

Senator ANDERSON. What did the court say in that case? Can you tell us what it was?

Mr. FLUES. I cannot, sir. I must say this: that you probably feel from my remarks that my testimony here is somewhat inadequate. Well, let us say that it is. I have been with the Treasury just 3 months. And the history of this legislation——

Senator ANDERSON. But the Treasury has been here longer than 3 months.

Mr. FLUES. That is true, sir.

Senator ANDERSON. Has the Treasury not someone who has been with them longer than 3 months?

Mr. FLUES. That is why I have brought these gentlemen with me this morning; to give you the expert testimony where I felt myself incompetent to do so.

Senator ANDERSON. You have a perfect right to say that you have been there only 3 months. You certainly cannot master the Treasury in that time, and no one would expect you to. I merely want to know what the court held in that case that you think is cured by this language.

Mr. FLUES. Senator, I will ask Mr. Weiss to answer that question.

Senator ANDERSON. What did the court hold in that case, the 1933 case? What was involved in the 1933 case? Was it on all fours with the situation that has just been described?

Mr. WEISS. Senator, I would like to provide a memorandum for you. I do not have the case here with me. (See p. 44.)

Senator ANDERSON. I did not say that you did. The testimony is that the whole approach is based on a case, and you must know what that case is. How can you do business without knowing what it is?

Mr. WEISS. I just did not bring it with me. (See p. 44.)

Senator ANDERSON. Have you got anybody here who is familiar with the case?

Mr. FLUES. We do not, apparently.

Senator DOUGLAS. Mr. Chairman, I suggest, since this matter is so important, that the Treasury be given sufficient time to prepare the legal material in connection with this, and that Mr. Flues and his associates be invited to come back for examination.

Mr. FLUES. We can bring with us our Assistant General Counsel.

Senator ANDERSON. Bring the man who wrote the opinion that you are being guided by. (See p. 44.)

Mr. FLUES. We will do so, Senator.

Senator MALONE. Mr. Chairman.

The CHAIRMAN. Senator Malone.

Senator MALONE. I note on page 2 of this mimeographed H. R. 6006, not in the regular printed bill, that it says that if the purchase price is less, or that the export or sales price is less, than the foreign market value, or in the absence of such value, then the cost of production—con-

structed value—notice of the fact shall forthwith be published in the Federal Register, and so on.

Then I notice in the first section, 201, on the first page, that when the said Tariff Commission shall determine within 3 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 in the United States, then do I understand that your definition of dumping is, whenever it is sold in this country at a lesser price than it is sold in the country of origin?

Mr. FLUES. Yes, the dumping would be the sale in this country of a commodity which was sold for less than in the country of origin.

Senator MALONE. Now, I presume that having this job, and having all the advisers that you have, you know something about competition between nations. When you are dealing with nations that have a labor cost of 10 percent or 20 percent or 50 percent of the cost in this country, and with American machinery and know-how and everything there, why would they have to sell for less here in this country than in their own to destroy an industry in this country? Why would it be necessary, because it is so much cheaper anyway?

Mr. FLUES. There may be, of course, a desire to establish a market in this country where none existed before.

Senator MALONE. I guess they all have that desire. But the desire of the people of this Nation is to have some kind of equal access to their own markets, would you not suppose?

Mr. FLUES. That is true, surely.

Senator MALONE. They do not have it under this policy?

Mr. FLUES. This act is designed to try to prevent any such raids or establishment of such markets at the expense of American industry.

Senator MALONE. But it does not prevent anything if they get labor at 50 cents a day or at $2 a day, where we pay $17 and $18, when they have the same machinery and the same setup to manufacture. It is no protection if they just sell it at the same price over here that they sell it in their home nation?

Mr. FLUES. If it were at the same price, and there were no other considerations which changed that, then the dumping finding would not be made.

Senator MALONE. I cannot understand why it is necessary for them to practice what you call dumping to destroy an industry here. It is not necessary. They can destroy an industry by selling at an even higher price than they do at home. They just take what the traffic will bear here and undersell the industry, and when it is destroyed, then they can get any price the traffic will bear again.

You are familiar with all this, I suppose?

Mr. FLUES. Yes. As I say, my familiarity goes just 3 months, Senator.

Senator MALONE. Where were you 3 months ago? You must have been an American citizen.

Mr. FLUES. That is true. I was practicing law in Toledo, Ohio.

Senator MALONE. Did you have any clients that were in business?

Mr. FLUES. Out in the Middle West there is not quite the emphasis on trade and traffic that there is along the seaboard.

Senator MALONE. Have you been home lately?

Mr. FLUES. Yes. I am in the process of trying to get my family moved to Washington.

Senator MALONE. If you will listen, the seacoast is all for foreign products coming in and the Middle West and the West are not. I am referring to these States along the Atlantic coast.

Anyway, we will pass that. Did I understand you to say that a customs court decision is not appealable?

Mr. FLUES. A customs court case is appealed to the Court of Customs and Patent Appeals, so there is an appeal court.

Senator MALONE. But there is no appeal beyond that?

Mr. FLUES. It can go into the Supreme Court from there, if someone wants to carry it further, there is that appeal.

Senator MALONE. Then Senator Douglas and Senator Anderson are probably right in suggesting that you exhaust your remedies before you ask for a change in the law. Would you agree with that?

Mr. FLUES. No, I would not agree with that, Senator.

Senator MALONE. Why?

Mr. FLUES. Because, as I say, these amendments do, we believe, increase the speed and efficiency and the certainty with which the Treasury is able to make its calculations as to whether something has been sold at less than fair value in the American economy.

Senator MALONE. Now, as a matter of fact, of course, the executive department of the Government does now regulate the foreign trade of the Nation?

Mr. FLUES. I beg your pardon?

Senator MALONE. The Executive now, the President of the United States, and the executives surrounding him, do have complete control of regulating foreign trade, do they not, and in regulating duties and tariffs?

Mr. FLUES. Within the framework of legislation.

Senator MALONE. Yes. Well, you know what that framework is. In 1934 the law was passed taking the constitutional responsibility of Congress and transferring it to the President, the executive branch, to determine whether the Tariff Commission finding should be adhered to, when the Tariff Commission determined what a tariff should be for fair and reasonable competition with foreign goods of the chief competing nation in each product, but if the President believes—and this was so testified by the Secretary of State—if he believes that his foreign policy would be furthered by the sacrifice of a part or all of any industry, he can do that. You know that is true.

Mr. FLUES. Yes.

Senator MALONE. Then the Tariff Commission has no authority now whatever except to do just as it is told. Their recommendations in these matters may then be adopted or not be adopted. That is true, is it not?

Mr. FLUES. Well, upon complaint of something like that, I assume that the Executive has an opportunity to step in.

Senator MALONE. No. I am speaking of where the authority rests in all these matters. You see, proper legislation by Congress at different times has given the Tariff Commission the opportunity to handle these matters. If it was shown that a certain price was being used in a foreign nation, the Tariff Commission, under the 1930 law, or under the law for 150 years, could compensate, or our committees could.

Now, we have transferred that authority to the Executive, which means the Treasury in this case, I suppose, so you have to see about the dumping.

Mr. FLUES. That is true. It would be up to us to make the calculation.

Senator MALONE. So the Tariff Commission has no authority whatever to get into this picture, does it?

Mr. FLUES. Of course, a dumping finding is never made until the Tariff Commission itself has found injury resulting from the sale at less than fair value.

Senator MALONE. I would like to discuss that just a minute with you. You are a very upstanding young man——

Mr. FLUES. Thank you.

Senator MALONE. You have been in the practice of law, and you must know something about how people make a living. If you had a client who wanted to invest money in an industry that needed protection—protection to make up the difference between the effective wages, taxes and all here and in the chief competing country—how would you advise him to invest that money knowing that the President of the United States could trade that industry or any part of it in order to further his foreign policy without consulting Congress at all? Would you advise him to make such an investment?

Mr. FLUES. Sir, we give that advice every day to people who want to enter American industry, not only myself but others.

Senator MALONE. How do you advise them?

Mr. FLUES. I see that you are getting me into a discussion of general trade problems and the authority of the President and his attitude on foreign trade and all that, sir——

Senator MALONE. No. It is not what his attitude is at all. It is the authority to destroy any industry he wants to if it will further his foreign policy.

Now, if anybody had that authority without consulting Congress, would you advise a client to put money in that business?

Mr. FLUES. Well, sir, I must say I have confidence in the President of the United States that he is not going to destroy any American industry.

Senator MALONE. My friend, I have news for you. He has destroyed them. And that is a fact.

I only wanted to know what your answer would be, and if that is it, that is it.

But I will go further, just for the record. No man can afford to put money in a business that does not have a principle of protection if his product cannot be produced here with our labor standard as against the labor standard in the chief competing nation. And if an industry must be damaged before a correction can be made even if you want to correct it, the industry is destroyed before you get around to the correction. I offer that gratis. It does not cost you anything. But I want you to study it, because you are in a very responsible position.

Mr. FLUES. Thank you, Senator.

The CHAIRMAN. Thank you very much.

I understand that you will prepare the information that has been requested and be ready to return when we recall you.

Senator ANDERSON. They will come back for examination?

The CHAIRMAN. That is right. You will come back in person for the examination.

Mr. FLUES. Yes, sir.

(Mr. Flues subsequently submitted the following for the record:)

STATEMENT OF A. GILMORE FLUES, ASSISTANT SECRETARY OF THE TREASURY

During my testimony on Wednesday, March 26, Senator Anderson asked why the Treasury Department was proposing legislation providing the method for the computation of "foreign market value" rather than adopting the same method administratively and defending the method in litigation carried through the Supreme Court.

As I have said, the Antidumping Act of 1921 provides that when a dumping duty is to be assessed, it is to be assessed on the difference between the "foreign market value" and the sales price to the United States importer.

In determining the "foreign market value" the statute states that the price at which the commodity is "freely offered for sale to all purchasers" in the home market is to be considered first, and, if that formula cannot be used, the price at which the commodity is "freely offered for sale to all purchasers" in third market areas is to be used. If in turn this formula cannot be used, reference is made to cost of production.

In 1932, in *J. H. Cottman & Co.* v. *United States* (20 USCCPA 344), the Court of Customs and Patent Appeals decided that "restricted sales" in the home market do not qualify as "freely offered for sale to all purchasers." The Treasury, on the basis of this decision, is forced therefore to have reference to unrestricted sales in third market areas, or, if none, to cost of production.

The Court of Customs and Patent Appeals was established by the Congress to be the court of last resort in technical customs matters. Although legally further review may be sought in the Supreme Court, it has been the policy of the Government, recognizing the congressional intent, not to petition the Supreme Court for certiorari in any case involving a technical customs problem. In fact, we are aware of only 2 cases in the past 20 years in which the Supreme Court has reviewed decisions of the Court of Customs and Patent Appeals. In the Cottman case review was requested by the importer, but the Supreme Court denied certiorari (289 U. S. 750).

The Treasury accordingly accepted the decision of the Court of Customs and Patent Appeals in 1932 as final. It was not, however, until recently that cases have arisen in which it has become evident that the application of the formula required by the decision produced anomalies. In the rayon cases, previously discussed in these hearings, it became clear that the formula required by the court decision, i. e., the price of commodities in third countries, did not produce a realistic result in conformity with our understanding of the objectives of the Congress in enacting the Antidumping Act of 1921. It is for this reason that the Treasury, under direction from the Congress in the Customs Simplification Act to make suggestions in this area, has proposed, a statutory formula which will, we believe, place operation of the act more in line with the original intent in enacting it. Very frankly, if a dumping finding had been made in the rayon cases, the formula which this bill would provide would have produced a different result from what we have in the existing law. Dumping duties could have been assessed, whereas under the existing law they could not have been assessed.

With reference to the two findings now in effect, I may say that in the Swedish hardboard case the formula which this bill would provide would have produced lower dumping duties as of 1953-54, but as of more recent years it would have produced duties similar in amount or if anything higher. In the United Kingdom soil-pipe case the formula which this bill would provide would have produced lower duties.

In proposing the amendment on this point we are not concerning ourselves with the result on any specific industries. We simply feel that present circumstances, different from those in 1921 or 1932, under which restrictions preventing reference to home price are or can be common to many foreign industries, the original intent of the law can best be served by the amendment here proposed.

The CHAIRMAN. The next witness is Mr. Robert C. Keck of the Hardboard Association.

STATEMENT OF ROBERT C. KECK, ATTORNEY FOR HARDBOARD ASSOCIATION

The Chair would suggest, since we are running behind schedule, that you shorten your statement if you can.

Mr. KECK. Mr. Chairman, attached to my statement is a series of notes. I ask leave to have the notes incorporated as though I might have read them.

The CHAIRMAN. Without objection, it may be done.

Mr. KECK. My name is Robert C. Keck. I am a partner in the law firm of MacLeish, Spray, Price & Underwood, 134 South LaSalle Street, Chicago, Ill. I appear before the committee on behalf of the Hardboard Association, a nonprofit trade association of the domestic hardboard[1] producers, in opposition to portions of H. R. 6006.

I might state at the beginning that I am for the amendments contained in this bill in the main, but I do not feel that the amendments go nearly far enough.

This committee will undoubtedly recall the legislative efforts to correct the classification of hardboard——

Senator MALONE. To keep the record straight, you do not oppose H. R. 6006 because it attempts to correct a wrong here, but you oppose it because it does not correct it?

Mr. KECK. I oppose it in part, as I will get to more specifically, Senator. There are some very fine things in the bill, but I do not feel it goes far enough.

We happen to be the one industry that got the first finding of dumping in 14 years, and I would like to relate our experience and show the ineffectiveness of the present act and then relate it to this bill.

Senator MALONE. We know it is ineffective. If you can make the language plain enough for people to understand, it will be very helpful.

Mr. KECK. Thank you, sir.

This committee will doubtless recall the legislative efforts to correct the classification of hardboard from its present classification under the "Paper and books" schedule to a "manufacture of wood" under the "Wood and manufactures of" schedule.[2]

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[1] Hardboard is a hard, dense, grainless board, composed of wood, having high tensile strength and density, and low water absorption. It is essentially reconstituted wood, being wood that has been taken apart and reformed into large, wide boards having great utility. It is wood made better, that will not split, splinter, or crack.

From a simple origin in 1926, as an American invention of a way to use sawmill slab waste and edgings, hardboard has become a product of hundreds of uses in all walks of life. It is widely used in the merchandising and display, transportation, furniture, and millwork, education, recreation, electronic, and manufacturing fields.

Hardboard manufacture affords a real opportunity to utilize more fully the tremendous quantities of wood waste generated annually in this country in lumbering operations and wood lots. During World War II hardboard became highly essential to the war effort and literally went to war, virtually the entire domestic hardboard production being preempted for war uses. Because of this essentiality and utilization of our forest resources, the Federal Government since World War II has encouraged and fostered in various ways the development of a large domestic hardboard industry.

[2] Various bills have sought to reclassify hardboard, tariffwise, as a "manufacture of wood" in the "wood" schedule of the Tariff Act of 1930, as amended. In the 2d sess. of the 82d Cong., the House passed H. R. 9666 by a rollcall vote of 285 to 109. In the closing days of that session, the Senate Finance Committee directed the U. S. Tariff Commission to make an exhaustive investigation of hardboard and its tariff classification. This resulted in the U. S. Tariff Commission's Report on Hardboard of March 1955 to this committee. Thereafter, in the 1st sess. of the 83d Cong., the Senate unanimously passed the hardboard reclassification measure, attaching it as an amendment to H. R. 5559, a tariff bill then before the Senate. In conference committee, the hardboard reclassification measure was deleted in response to a letter of President Eisenhower to the chairman of the House Ways and Means Committee.

In that connection, a hearing before this committee on August 9, 1954, will be recalled, as a result of which the first finding of dumping in 14 years was made on August 26, 1954, under the Antidumping Act of 1921, against Swedish hardboard, about which I shall have considerable to say.

I appear in opposition to H. R. 6006 in two respects:

First, to oppose the bill insofar as it seeks to ameliorate the effects of the restricted market concept. Our opposition springs from the ironic fact that the bill, ostensibly intended to strengthen the Antidumping Act, may well have the opposite effect in respect to the finding of dumping of Swedish hardboard and any other finding based upon third country prices.

Secondly, to oppose H. R. 6006 for its failure to come to grips with ways and means of making enforcement of the act more effective.

H. R. 6006 resulted from the direction in the Customs Simplification Act of 1956 to the Secretary of the Treasury to review the operation and effectiveness of the Antidumping Act and to report thereon to Congress within 6 months, giving his recommendations for amendments to that act "to provide for greater certainty, speed and efficiency in the enforcement of" that act.[3]

It presumably contains all amendments which the Treasury Department considers necessary or desirable "in light of its experience in the administration of the act,"[4] although, significantly, in its report of February 1, 1957, the Treasury did not analyze the effectiveness of the act in light of its two current findings, that is, on hardboard and cast-iron soil pipe, or in light of the teeth in the act, that is, the dumping duties actually collected in recent years.

The industry I represent, the dumping finding it obtained under the act, and the record of ineffectual enforcement under it, represent a prime example why H. R. 6006 is insufficient to accomplish the purposes it is intended to accomplish, and may in fact thwart the enforcement of that finding.

I make that statement confidently, for the August 1954 dumping finding as to Swedish hardboard is the first such finding since 1940, the only one of national scope in nearly 18 years, and together with the more limited soil pipe finding, represent the only examples by which to appraise the effectiveness of the act in the postwar period.

Let me relate briefly our experience:

Swedish hardboard was first imported into this country in substantial quantities in 1951, when the largest domestic producer was strikebound for a time and the demand for hardboard exceeded the supply. Such imported hardboard then sold for "premium" prices at what the traffic would bear.[5]

As such imports continued to increase in 1952, the prices of Swedish hardboard in this country were drastically reduced, by as much as

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[3] This had been a Randall Commission recommendation. See Report of Commission on Foreign Economic Policy to the President and Congress, January 1954, pp. 47–48.

[4] See H. Rept. No. 1261, 85th Cong., 1st sess.

[5] In the domestic industry's March 31, 1953, petition for a finding it was stated:

"A new feature of these Swedish hardboard imports is the greatly reduced prices quoted in recent months by importers of such board as compared to their previous quotations when American mills were hard pressed to meet the demand. The attached affidavit of Paul B. Shoemaker shows that whereas in 1951, when the domestic demand for hardboard clearly exceeded the supply, a large industrial user in New York area purchased ⅛-inch Swedish hardboard in 4- by 6-foot and larger sheets at prices of from $52.26 to $55.32 per thousand square feet delivered in Mineola, N. Y., it is now offered the same Swedish hardboard at $35.75 per thousand square feet delivered in Mineola, N. Y."

40 percent, to the point where such prices, less the costs of getting the board here, were well below Swedish home market prices and prices for export to other countries.

Senator MALONE. I would like to ask a question at this point. Was it the policy of the foreign competitors to reduce the price to the point where it was impossible for the domestic industry to survive, and then after they are out of business to take what the traffic will bear?

Mr. KECK. I cannot answer that categorically. In certain areas of the country that was apparently their purpose. In other areas of the country where their transportation costs were higher than ours they have not been successful.

Senator MALONE. But that is what they apparently tried to do?

Mr. KECK. In my own judgment, yes, sir.

Senator MALONE. And then after the domestic industry is down, the consumer does not get the benefit of the low competitive price. While the American producer is in business, as so argued by some who favor the 1934 Trade Agreements Act, the so-called Reciprocal Trade Act, the customer is entitled to the low price, but he really does not get it in anything after the American production is down, does he?

Mr. KECK. I would have to answer that abstractly. The Swedish price is still extremely low in this country at this time. We are engaged in a very——

Senator MALONE. But you are still in business?

Mr. KECK. We are very much in business; yes, sir.

Senator MALONE. But I am asking you, if, when you are out of business, and you have had that experience, apparently, then what happens to the foreign sales of the foreign product in this country?

Mr. KECK. I would anticipate the prices would go up.

Senator MALONE. In other words, take what the traffic would bear?

Mr. KECK. Yes.

These imports at such low prices began having serious repercussions in the domestic hardboard markets.

In looking about for some remedy against this unfair trade practice[6], the domestic hardboard industry looked to the Antidumping Act of 1921. It found that that act sought to "prevent dumping of foreign merchandise on the markets of the United States," not by excluding dumped merchandise from this country, but by providing for the assessment of a "special dumping duty" sufficient to equalize competitive conditions, so far as the dumping is concerned, between the exporter (or importer) and the American industry affected.[7]

The object of the 1921 act, we found, was:

> "* * * to authorize the Secretary of the Treasury, where dumping of foreign goods in the United States occurs, or is likely to occur, to set into operation machinery by which said merchandise will pay an equalizing duty, by means

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[6] Art. VI 1 of GATT recognizes that dumping is objectionable. Dumping is thus internationally condemned. Sweden is a signatory to GATT, and in 1954 itself imposed dumping duties on imports of ladies' hosiery from the United Kingdom and Northern Ireland, and on hydrogen peroxide from certain European countries.

[7] It was pointed out in congressional debates on the 1921 act that a "finding of dumping would not exclude the merchandise" but "simply result in the Government assessing against it a dumping duty," which would make "it unprofitable to dump goods" and would remove "all reward or inducement to dumping" 61 Congressional Record 261–262, 1101.

whereof industry in the United States will not be likely to be injured or be prevented from being established.[8]

We also found that the effectiveness of enforcement of this act over the years has been up and down; that in the early days it was vigorously applied, there being 54 dumping findings from October 1921 through 1933, or 1 every 3 months; but that in more recent years the effectiveness of the act had slowed practically to a halt, and that during the 20-year period beginning January 1, 1934, out of a total of 152 antidumping complaints that had been filed, only 6, or less than 4 percent, had resulted in a finding of dumping, and that although this would appear to be a finding every 3 years, the actual fact was that 4 of those 6 findings dealt with a single product, that is, ribbon flycatchers, and that 5 of the 6 had been made on the same day and had also been later canceled on the same date.[9]

Senator CARLSON. Would you object if I interjected at this point?

It seems as though the Treasury made the statement that they had difficulty as a result of the Customs Court decision in 1933. I notice you draw a line here beginning in 1933, and there have been only a few instances, only a few cases since that time. In your opinion, is that the result of the decision, or what is the case?

Mr. KECK. No, Senator Carlson. I am thoroughly familiar with that decision. It is a decision which purported to apply the restricted market concept which normally comes under the general tariff valuation provisions over into this dumping field. It was not of great significance even in the dumping field.

The reason for the break in 1933 is that there has been a change in philosophy with respect to the enforcement at that time, in my own judgment.

Senator MALONE. What is that philosophy?

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[8] *C. J. Tower & Sons* v. *United States*, 21 C. C. P. A. (Customs), 417, 71 F. 2d 438, 442-443 (1934). In upholding the act, the court there said:

"* * * We cannot escape the conviction that the expressed purpose of Congress, in the Antidumping Act of 1921, was to impose not a penalty, but an amount of duty sufficient to equalize competitive conditions between the exporter and American industry affected, in order to carry out the manifest intent of this act, which was to provide revenue, to regulate commerce, and *to prevent dumping and the consequent destruction of domestic industries.* * * * The Congress at various times, and more especially so in recent years, has found it necessary to enact certain measures to regulate international trade and commerce, and *to protect the industries of the country.*" [Emphasis added.]

[9] See statement of Hon. H. Chapman Rose, Assistant Secretary of the Treasury, before House Ways and Means Committee, in hearings on Customs Simplification Act of 1954, on June 22, 1954 (pp. 15-17, committee reprint).

These 6 dumping findings were as follows:

Commodity	Country	Complaint date	Finding date	Date revoked
Ribbon flycatchers	Japan	July 29, 1935	Dec. 12, 1939	Dec. 15, 1949
Glass frostings	Germany	Dec. 24, 1935	Sept. 20, 1940	Do.
Ribbon flycatchers	Belgium	Oct. 16, 1936	Dec. 12, 1939	Do.
Do	Germany	Dec. 12, 1936	do	Do.
Do	United Kingdom	June 26, 1937	do	Do.
Wool knitted berets	France	Feb. 19, 1938	do	Feb. 16, 1951

The reasons given why over 96 percent of these dumping complaints did not result in findings were as follows:

Volume of imports negligible	23
No evidence of injury submitted	7
Complaints withdrawn	6
Treasury unable to find injury	13
Sales not made at less than fair value	81
Complaints still pending at time of study	16
Findings made	6
Total	152

Mr. KECK. There again, in my own judgment, the enforcers of this act have been out of sympathy with this law since 1933. I draw that from the results I see under it.

Senator MALONE. Have we not generally been out of sympathy since that time with protecting an industry in this country through the duty referred to in article I, section 8 of the Constitution, which puts that adjustment in Congress? Have we not been out of sympathy since that date of adjusting that duty or tariff to make up the difference in the cost of production here and in the chief competing country on each product?

Mr. KECK. Yes, sir. There is a wide disparity between the labor rates in Sweden and in this country on this particular article.

Senator MALONE. Yes. But has there not been a change since that date in the philosophy? The old 1934 Trade Agreements Act was a change in philosophy, was it not?

Mr. KECK. Very definitely, yes.

Senator ANDERSON. You said you knew what this 1933 case was. We could not find it out from the Treasury witnesses. Could you tell us anything about it?

Mr. KECK. I can, if I may have a moment, Senator.

It was *U. S.* v. *J. H. Cottman & Co.*, 20 Court of Customs and Patent Appeals, 344, 1932. This is a decision which the Treasury has relied upon in our dealings with them for the very point the gentleman was talking about.

Senator ANDERSON. 20 court of appeals at——

Mr. KECK. 344.

Senator ANDERSON. Thank you very much.

Senator CARLSON. May I inquire at that point now: Did the Treasury press this case, or did some private corporation or individual press this case, or is it the duty of the Treasury to press these into further courts, carry them into other courts, or whose obligation is that?

Is that the aggrieved party? Who is?

Mr. KECK. If I may answer it solely as a lawyer——

Senator CARLSON. Yes; I would like to know.

Mr. KECK. These cases have invariably come up, and there are a lot of cases under this dumping act, they have invariably come up by an importer protesting or taking an appeal for reappraisement of a dumping duty that has been imposed. He takes it to the United States Customs Court. The United States then is a party in interest as a defendant.

Senator MALONE. You say that this case was not solely on antidumping. It had another application, and the antidumping was sort of a side issue. Would you explain that.

Mr. KECK. Senator, it was a case involving dumping, but it sought to apply the restricted market concept which had developed in earlier cases after the Goodyear case under the general valuation provisions, it sought to apply that same concept over under the Antidumping Act.

It made no basic change in the application of the act except in this one very narrow field.

Senator MALONE. But you did not believe that it was purely on the antidumping provision as we are discussing it here?

Mr. KECK. No, sir, because there always has been a statutory language difference between these two acts, the general valuation provi-

sions and the Antidumping Act, because of the different purposes they have to serve.

Senator MALONE. This is a combination and not purely on the antidumping?

Mr. KECK. That is right.

Senator MALONE. Therefore, it not a reliable decision for this purpose in any case?

Mr. KECK. I believe that. And we so regarded it in our discussions with the Treasury Department. We filed elaborate briefs with them opposing the position the counsel took here this morning.

Senator MALONE. Then you think that this change in philosophy from 1933 and carried on under this administration is somewhat to blame for pouncing on this decision for this purpose?

Mr. KECK. Senator, I do not know what has motivated them to mention the decision.

Senator MALONE. You said a while ago that there had been a change in the philosophy.

Mr. KECK. I think there has been a change in philosophy under this act in the past 22 or 23 years, because there has been no enforcement of it.

Senator MALONE. What I am asking you is: This would be an excuse to use this decision, if they really wanted to do something about it?

Mr. KECK. In my own judgment; yes, sir.

Senator MALONE. Thank you.

Mr. KECK. In the light of that analysis, the domestic hardboard industry proceeded under the act in March 1954 for relief against the dumping of Swedish hardboard.

A total of 18 months elapsed between the filing of our petition for a finding of dumping and the issuance of that finding, the chronology of events being:

March 31, 1953: Petition filed.

October 15, 1953: Notice of withholding of appraisements issued.

August 9, 1954: Hon. H. Chapman Rose and domestic industry representatives appeared before this commitee regarding delays in making a dumping finding. Secretary Rose promised action.

August 26, 1954: Finding made as to dumping of Swedish hardboard.[10]

This long delay was caused, we were told, by the case serving as a guinea pig for the development of departmental procedures in such cases under a then 33-year-old act.

Has that finding been effective in the ensuing 3½ years? The following facts speak for themselves:

EFFECT ON VOLUME OF SWEDISH HARDBOARD IMPORTS

Although Swedish interests promptly predicted that the finding would "Probably result in the ending of the import of Swedish hardboard,"[11] precisely the converse has taken place.

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[10] T. D. 53567, 19 F. R. 5631.

[11] The Swedish Embassy on August 30, 1954, issued Comments With Regard to a Finding of Dumping for Swedish Hardboard by the Treasury Department, in which it predicted that the finding would probably end imports of Swedish hardboard. The often expressed lament that the withholding of appraisals in dumping cases, even where no finding results, has a disastrous effect on importers is completely refuted in the case of importers of Swedish hardboard, for such imports have grown tremendously since the 1953 withholding of appraisals.

Since 1953 imports of Swedish hardboard have increased 450 percent in the face of that finding, while imports of Finnish hardboard have decreased to about 26 percent of 1953 entries despite a simultaneous denial of a finding as to such hardboard.[12]

This is an ironic result indeed, which the Treasury Department has never been able to explain.[13]

In fact, imports of Swedish hardboard have steadily risen to the point that the last available figures from the Bureau of the Census are the highest ever recorded, and to where the hardboard imported into this country from Sweden alone, in November 1957, was more than triple all such imports in 1952.[14]

AMOUNT OF DUMPING DUTY COLLECTED

Since the 1921 act does not outlaw or prevent dumped goods coming into this country, but rather imposes a dumping duty to remove the reward or incentive to dumping,[15] clearly the dumping duty imposed (and not a mere Secretary's finding or a withholding of appraisement) is the intended deterrent to dumping and is, therefore, a direct measure of the effectiveness of enforcement.

Although the Swedish hardboard finding was made nearly 3½ years ago, it appears doubtful that a single dollar of antidumping duties has yet been collected by the United States Government from importers of Swedish hardboard.

I must correct that statement slightly. Ironically, this morning I was reliably informed that the total amount of dumping duties collected by this Government under this act since 1946, that is 12 years, is a total of $370. That would be an average of $31 a year.

Senator MALONE. Let me ask you at this point: You would object to Swedish competition if, in accordance with article I, section 8, of the Constitution, the duty or tariff were to be adjusted to make up the difference in the labor and tax costs and only give them equal access, but no advantage, in the market? You probably would not object very much to the competition, would you?

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[12] The ironic effects of that finding on imports of Swedish hardboard as compared to the simultaneous denial of a finding as to Finnish hardboard are as follows (taking 1953 as 100):

	Hardboard imports from—	
	Sweden	Finland
1952	28.7	39.3
1953 (withholding announced Oct. 15, 1953)	100.0	100.0
1954 (Swedish finding made Aug. 26, 1954; Finnish finding denied Aug. 26, 1954)	162.1	46.8
1955	209.7	41.3
1956	371.4	27.9
1957 (on basis of 11 months available figures)	446.2	26.3

[13] Hon. H. Chapman Rose wrote a domestic producer on October 19, 1954, stating: "Just why it was that Swedish imports continued to increase in volume during the time that appraisement was withheld, whereas in all other cases that have been brought to my attention the withholding action resulted in substantially reduced imports almost immediately, is a question we may never get fully answered."

[14] In the entire year 1952 a total of 4,282,000 square feet (⅛-inch basis) of Swedish hardboard was imported into the United States. See Tariff Commission, March 1955, Report on Hardboard to this committee, p. 60. Census reports 11,972,702 square feet (⅛-inch basis) Swedish hardboard imported in November 1957.

[15] For the legislative history delineating this objective see 61 Congressional Record 261–262, 1067, 1100–1101. The device of a finding by the Secretary was added, when the 1921 act was before the Senate, simply to save the time of customs administration, to keep appraisers from looking for dumping until the Secretary's finding indicated probable cause to suspect dumping (ibid., pp. 1067, 1100–1101).

Mr. KECK. That is true; we would not.

Senator MALONE. But no such law applies.

Mr. KECK. No, sir. They have consistently undersold us by a very wide margin.

Senator MALONE. But do you agree, then, that under the 1934 Trade Agreements Act the philosophy was changed, and under that act the regulation of the duty, or tariff, was transferred to the President and he has the added gimmick, that whether it is hardboard or something else and regardless of what the Tariff Commission says, he may sacrifice a part or all of any industry if he believes by so doing it will further his foreign policy—that was so testified by Secretary Dulles before this committee in 1955.

Mr. KECK. I believe that is possible; yes, sir.

Senator MALONE. Do you believe it is being done?

Mr. KECK. It is not being done to this industry. We have not sought escape-clause relief, because we think it is very ineffective, also. But there have been instances very definitely, as the Senator says.

Senator MALONE. The only way you can determine whether it would be done here would be to seek relief under the tariff clause. Then, if the Commission fixed the duty and the President refused to recognize it, as he has in many instances, that would be trading a part or all of an industry for foreign policy; would it not?

Mr. KECK. Yes, sir.

This is a shocking result in light of the Randall Commission's admonition that "prompt action in such cases is in the national interest."

The record of efforts to impose and collect such duties is a most dismal one. Consider these facts:

(*a*) There was a clear indication about the time of the 1954 finding that Swedish importers had been assured by someone in the Treasury Department that innocuous dumping duties would be involved, for Swedish Embassy officials in protesting the findings to Secretary Dulles made the startling statement that—

> * * * for 7 months [prior to the finding] the position of the Treasury Department, communicated to this Embassy and the importers, was that an antidumping duty would probably not exceed $2.[16]

The domestic industry challenged promptly that contention, on the grounds that it could not believe responsible Government officials would advise persons suspected of violating our antidumping laws that the fines would be small, particularly when it had been assured "that there has been no such back door dealings on the part of our Government."[17]

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[16] The official Swedish protest was dated September 1, 1954, being reprinted in the Swedish Timber and Wood Pulp Journal, November 17, 1954.

[17] The Hardboard Association on November 2, 1954, replied to the official Swedish protest by letter to Secretary of State Dulles, saying in part:

"Finally, there is an allegation in the Swedish protest which we simply cannot believe, and that is to the effect that our Treasury officials were advising the Swedish Embassy and importers of what the probable dumping penalty was going to be in advance of the finding, and during the period when evidence was being gathered. The alleged advance information included an assurance that the penalty was going to be light—would probably not exceed $2. Now the chargé d'affaires is supposedly protesting over being misled by our officials because of the possibility of higher penalties being levied than was promised. As stated above, we cannot believe that any of our governmental officials would be advising the representatives of persons suspected of violating our Federal dumping laws as to what the decision was going to be and the probably amount of the fine, and in particular, during the period when the domestic industry was in good faith gathering additional evidence at their request. We feel further that as long as the chargé d'affaires has leveled this accusation at our Treasury officials it would be appropriate to request him to state specifically the basis for such and that his reply be brought to our attention. I might add that the domestic industry has had very definite assurance that there has been no such back door dealings on the part of our Government."

Receipt was acknowledged by the State Department on November 12, 1954.

Despite this exchange of letters, the dumping duties assessed appear nevertheless to be about $2 per thousand square feet.[18]

(*b*) Efforts to assess and collect dumping duties on particular entries under the August 1954 finding have been extremely slow. The techniques followed was to prepare first a so-called master list of Swedish producers' prices for 1953, the first full year of entries subject to such duties.[19] Nearly a year elapsed before that list was prepared.

Hence, most 1953 entries were not appraised for 2 years after the entries, and dumping duties in excess of $2.50 per thousand square feet took even longer as they were specially reviewed in Washington.

(*c*) Eventually, in 1955, dumping duties were assessed against a small fraction of the 1953 entries, those duties ranging as low as 5 cents per thousand square feet and averaging less than $3 per square feet.[18]

These impositions resulted in appeals to the Customs Court, and finally in 1957 the first such case was ultimately tried.[20]

(*d*) In March 1956, when the finding was 18 months old and no efforts had yet been made to assess dumping duties on 1954 and 1955 entries, although consideration was being given to a revocation of the finding,[21] the domestic hardboard industry contacted Secretary Humphrey about the matter.

As a result, Secretary Humphrey on March 20, 1956, advised the domestic industry that:

> As I get into it, I find that there have, as you say, been delays and I feel that your complaint is more than understandable * * * I am assured that the Commissioner of Customs will continue to take the necessary steps to complete with all reasonably possible dispatch the remaining work in connection with all unliquidated entries.

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[18] An analysis in 1956 of the 79 cases then pending in the United States Customs Court, involving dumping duties on Swedish hardboard on 1953 entries, indicated the following:

Port	Number of cases	Range of dumping duties per thousand square feet	Average dumping duties per thousand square feet
Baltimore	1	$0.80 -$2.52	$1.488
Boston	2	(a)	(a)
Houston	1	1.625	1.625
Miami	1	1.38 - 1.92	1.489
New Orleans	10	1.22 - 4.97	1.822
New York	50	.5 -10.65	3.267
Philadelphia	13	.5 -10.11	3.281
San Diego	1	1.583	1.58
Total	79	.5 -10.65	2.913

a Notice of appraisement not filed in time.

[19] The August 1954 finding, by reason of the 1954 amendments to the Act, extended back to include all entries of Swedish hardboard on and after December 1, 1952. The Anti-dumping Act, 1921, has been amended only once, by the Customs Simplification Act of 1954 which was one of the first steps taken by the Congress to implement the Randall Commission report that urged "speedier and more efficient operation of" the act. That amendment had the effect (*a*) of making antidumping duty applicable retroactively only to unappraised entries first entered, or withdrawn from warehouse, for consumption, within 120 days before the question of dumping was first raised by or presented to the Secretary of the Treasury, and (*b*) of causing the United States Tariff Commission to find whether dumping causes injury or the likelihood of injury to or prevents domestic industry from being established.

[20] *Elof Hansson, Inc.* v. *United States*, Reappraisement No. 262982-A. All pending cases are now suspended awaiting decision in that case.

[21] The Journal of Commerce Import Bulletin of December 7, 1955, and the Boston Commercial Bulletin of December 17, 1955, carried stories to the effect that the dumping finding as to Swedish hardboard was about to be canceled.

Despite that assurance, and before any dumping duties had been assessed on 1954 entries or a 1955 master list had been prepared, Treasury revoked the findings as to six Swedish producers.[22]

(*e*) Paradoxically, at the same time, when the domestic hardboard industry sought to assist the Treasury Department in the defense of the customs court cases involving dumping duties on Swedish hardboard—when I was amicus curiae in those cases—we were told that no facts about those cases could be made available to the public, and that that included us, the industry involved.[23]

That is to say, the domestic industry, which the act seeks to protect, was told at one and the same time that it was simply "the public," and also that it was an interested party—and that for both reasons it could not learn the facts so as to help the Government defend the suits.

(*f*) Shortly thereafter, when implementation of the Swedish hardboard finding was at a complete standstill, the Treasury Department issued its report on the operation and effectiveness of the Antidumping Act, and amendments to the act that were considered desirable and necessary, which resulted in H. R. 6006.

That report, in discussing the effectiveness of the act, does not analyze it in terms of the only two findings in effect, or the paucity of dumping duties imposed under them. Rather, it broadly asserted that:

> * * * there is no doubt that foreign governments are keenly aware of our Antidumping Act, and fear its sanctions—perhaps most of all they fear the withholding of appraisement.

As we have seen, Swedish hardboard importers fear such withholding so much that their imports have increased 450 percent since the withholding in October 1953—to the point where a single importer in the Philadelphia area has recently contracted to import 70 million square feet annually, and an importer in North Carolina has contracted to import 10 million square feet annually, which 2 commitments alone are 4 times the annual volume of imports at the time of withholding.[24]

These are facts, not theories.

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[22] The Treasury Department revoked the finding as to five Swedish producers on August 17, 1956, as to another Swedish producer on October 1, 1956.

[23] When the domestic hardboard industry first sought to help defend against the more than 300 importers' appeals to reappraisement involving dumping duties in October 1956, it was told that the Commissioner of Customs had instructed the Customs Service not to disclose any facts regarding assessments of antidumping duties on Swedish hardboard to the public and that that letter precluded the dometic industry and its amicus curiae from learning any of the pertinent facts regarding the pending suits. On October 18, 1956, the domestic industry wrote an Assistant Secretary of the Treasury about the matter, asking to have the pertinent facts given in confidence to any 1 of the 8 nationally known firms of certified public accountants to enable amicus curiae to participate with some understanding in the preparation of the deefnse in the trial of those cases. On November 6, 1956, the domestic industry was advised that—

"* * * I am doubtful if we could find our way clear to make arrangements to permit representatives of one party to participate in or observe the appraisement procedures in the Bureau of Customs. We do not believe that such an arrangement would be fair to all interested parties or be conducive to the efficient administration of Government business."

[24] The Philadelphia Chamber of Commerce News of December 1957 carried an extensive story on Norjac Trading Co. becoming sole United States agent for a Swedish hardboard mill (one that is still subject to the 1954 finding). It is stated that Norjac's president estimated 1958 imports of Swedish hardboard by his company through Philadelphia at "close to 70 million square feet." Substantially the same facts are reported in the September 15, 1957, issue of the Swedish Timber & Wood Pulp Journal.

In January 1958, it was learned that Industrial Hardboard Co., Silver City, N. C., has placed orders for 10,000,000 square feet of Swedish hardboard with importer Thomason Plywood Co., Fayetteville, N. C.

(*g*) As of this date in March 1958, it is believed that no dumping duties have yet been assessed on 1956 or 1957 entries of Swedish hardboard.

(*h*) Recent efforts of the domestic hardboard industry to document needed correction of errors in the greatly reduced values shown in the 1956 master list that has been prepared[25] have been met by an intensive investigation by customs agents as to how the domestic hardboard industry obtained access to the 1956 master list.

PRICES OF SWEDISH HARDBOARD IN THIS COUNTRY

If our Antidumping Act were effective in eradicating dumping, one would expect that a finding of dumping and the imposition of dumping duties thereunder would affect prices of the imported and dumped article in this country. In fact, the Treasury Department's report, on which H. R. 6006 is based, asserts that the act "had in general kept exporters prices up to a level where the competition has not been hurt."

Can that be true under the Swedish hardboard finding? Decidedly not, for the low prices of Swedish hardboard sold in this country not only have not changed, but are and for many years now have been substantially below the going American prices, as can be readily demonstrated.

In the original 1953 petition of the domestic industry regarding the dumping of Swedish hardboard, certain sales of dumped one-eighth-inch untreated Swedish hardboard by a prominent importer were pointed out which ranged from $41.50 to $42 per thousand square feet delivered in New York, Boston, and Philadelphia.[26]

Since that finding, the same importer has continued to offer and to sell at the same or considerably lower prices (that is, $36 to $43 per

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[25] On February 25, 1958, the domestic hardboard industry wrote an Assistant Secretary of the Treasury Department suggesting the recall for correction and revision of the 1956 master list, on the grounds that—

(*a*) A comparison of prices in the 1955 master list and in the 1956 master list, for the same type of hardboard of a given Swedish producer, shows a great disparity of as much as 25 percent on a single day;

(*b*) A comparison of prices in the 1956 master list for the same type of hardboard by different Swedish manufacturers shows inexplicable differences; and

(*c*) The highest-to-third-country prices which had been privately gathered abroad were as much as from $3.62 to $8.41 per thousand square feet higher than prices in the 1956 master list.

[26] Importer All American's prices as shown in the domestic industry's original petition were as follows:

Date	Place	Price—⅛-inch untreated hardboard
Jan. 24, 1953		
Mar. 10, 1953	New York	$42 per thousand (1,000 square feet), delivered.
Mar. 14, 1953		
Mar. 5, 1953	Boston	$41.50 per thousand square feet, delivered.
Sep. 12, 1953	Philadelphia	$42 per thousand square feet, delivered.
Mar. 2, 1953		

thousand square feet), and the Swedish hardboard finding has apparently not affected it in any way.[27]

I particularly call the committee's attention to my Note 27 which appears at the bottom of page 8 and page 9 of my notes which give the actual prices that are documented in each case.

In summation, despite 5 years of effort, and in the $3\frac{1}{2}$ years since I last appeared before this committee, the domestic hardboard producers have yet to get any effective relief under the Antidumping Act against the dumping of Swedish hardboard. If they and the domestic soil-pipe producers, who have the only findings under the act made since 1940, do not get such relief, it is difficult to see how the act, as presently administered, can be effective, and certainly the proposed amendments to the act in H. R. 6006 do not come to grips with the problem.

During that period, imports of Swedish hardboard have rapidly grown in volume; no dumping duties (the teeth in the act)—except the $370 I mentioned—have yet been collected; and Swedish hardboard is till being dumped in this country.

During that period the domestic hardboard industry has presented literally hundreds of documented instances of suspected dumping to the Treasury Department; done everything possible to assist the United States in defending customs court attacks by importers on the dumping duties that have been assessed; and has left no stone unturned to obtain effective relief.

Since H. R. 6006 was considered favorably by the House last session, a possible result of that bill that would be detrimental to the domestic

[27] Importer All American's prices as shown in the voluminous documented information furnished by the domestic industry to the Treasury Department are as follows:

Date	Place	Price—⅛" Untreated Hardboard
Aug. 11, 1954	Boston	$42 per thousand square feet, f. o. b. dock.
Nov. 18, 1954	do	$42 per thousand square feet, ex-warehouse.
Jan. 10, 1955	New York	$41.50 per thousand square feet, delivered.
Sept. 15, 1955	Boston	$42 per thousand square feet, delivered.
Oct. 27, 1955	New York	$43 per thousand square feet, delivered.
Nov. 2, 1955	Boston	$42 per thousand square feet, f. o. b. dock.
Nov. 12, 1955	New Jersey	$43 per thousand square feet, delivered.
Dec. 7, 1955	Philadelphia	$41 per thousand square feet, f. o. b. dock.
Dec. 29, 1955	Boston	$40 per thousand square feet, f. o. b. dock.
Jan. 6, 1956	Philadelphia	$41 per thousand square feet, f. o. b. dock.
Feb. 10, 1956	New York	$42 per thousand square feet, delivered.
Sept. 15, 1956	New York	$38.25 per thousand square feet, delivered.
Oct. 16, 1956	Philadelphia	$38.50 per thousand square feet, dock.
Oct. 22, 1956	do	$39 per thousand square feet, delivered.
Dec. 21, 1956	New York	$42 per thousand square feet, delivered.
Feb. 23, 1957	do	$40 per thousand square feet, delivered.
Mar. 5, 1957	do	Do.
Apr. 1, 1957	Baltimore	$40 per thousand square feet, loaded on trucks.
Apr. 3, 1957	New York	$40.80 per thousand square feet, delivered.
Apr. 7, 1957	Albany, N. Y.	$40 per thousand square feet, loaded on trucks.
May 29, 1957	Baltimore	$39 per thousand square feet, loaded on trucks.
June 10, 1957	New York	$41 per thousand square feet, delivered.
June 14, 1957	Philadelphia	$38.50 per thousand square feet, loaded on trucks.
June 27, 1957	Baltimore	Do.
Aug. 29, 1957	Boston	$37 per thousand square feet, loaded on trucks.
Sept. 9, 1957	Philadelphia	$36 per thousand square feet, f. o. b. dock.
Sept. 12, 1957	Baltimore	$37 per thousand square feet, f. o. b. dock.
Sept. 17, 1957	New York	$38 per thousand square feet, f. o. b. warehouse.
Oct. 4, 1957	Baltimore	$36 per thousand square feet, f. o. b. dock.
Oct. 25, 1957	Philadelphia	$38 per thousand square feet, f. o. b. warehouse.
Nov. 8, 1957	Baltimore	$39 per thousand square feet, f. o. b. warehouse.

These resale prices, after deducting the costs necessarily incurred in getting such hardboard here (i. e., costs of packing and crating, ocean freight, import duty, port charges, selling expense, warehousing and truckloading, inland delivery cost, etc.), indicate that All American, absent a subsidy, could not have paid more than from $16–18 for the hardboard in Sweden.

hardboard industry has come to our attention. We are informed that last fall Swedish hardboard interests learned that the passage of H. R. 6006 would help them. That is to say, that bill, in making country of origin prices the only basis for comparison with sales prices in the United States in calculating dumping duties, would be of benefit to the Swedish interests in reducing dumping duties under the 1954 finding. This results from the fact that heretofore, because of a restricted market in Sweden, sales prices to third countries have been used as a basis of comparison in calculating dumping duties.

The 1954 finding was based upon an assumption that prices in the country of origin could not be used in calculating dumping duties because Sweden was considered to be a restricted market, and that therefore under the Antidumping Act, sales prices to third countries had to be used in calculating dumping duties. It is indeed anomolous that this administration sponsored bill, in bringing the 1921 act in line with comparable definitions based on the Customs Simplification Act of 1956, may have the effect of reducing dumping duties that we hope will eventually be collected from importers of Swedish hardboard. Unfortunately, we do not and cannot know the precise effect of this bill in that regard, and therefore believe that the committee should give considerable study to the effect of H. R. 6006 on the 1954 finding and dumping duties under it. Certainly H. R. 6006, if it is to be enacted in the face of these facts, should clearly and expressly have no retroactive effect of any kind.

In closing, I reiterate that the domestic hardboard industry is baffled by the fact that although it obtained a finding against Swedish hardboard, it has not seen any effective enforcement under it. The enigma continues to this very day. Although last June Treasury officials testified that "the facts were perfectly simple" regarding why the finding was made which facts are even more indicative of dumping today[28], the Swedish trade press is now predicting that "a notice of annulment of the dumping decision * * * may now probably be expected within the nearest future."[29]

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[28] On June 19, 1957, an Assistant to the Secretary of the Treasury testified in *Elof Hansson, Inc.* v. *United States*, No. 262982–A:

"The investigation was under three separate headings, I would say: First, a comparison of the delivered price of the import with the delivered price of the American product; second, what was happening to the volume of imports; third, what was the effect on the United States industry * * * the facts were perfectly simple. The facts were that as to comparison of price, the Swedish imports were coming in substantially lower. * * * The Swedish prices were substantially lower than the prices charged by American producers. To take an extreme, there were Swedish imports coming in, delivered price $80 or thereabouts; American product delivered price up as high as $58.50; substantial difference. On the question of volume of imports in 1950, the volume was around—this is from Sweden—around 5 million square feet, 1/8 inch—1951 was exceptional—that was the year in which there was a strike; 1952, the volume was 4 million square feet; in 1953, which was when a price reduction in Swedish import took place, the volume was up to from 4 million to 20 million; in 1954, according to our estimate, at the time we made the decision, it was going to be around 30 million square feet * * * *our decision* * * * *was a perfectly simple bit of reasoning, on the basis of three factors, which I have already outlined*" (emphasis added).

Swedish prices are still substantially lower than prices of American producers who for the most part must withdraw from the markets; the volume of Swedish hardboard imports in 1957 were nearly 100 million square feet; and the relatively increased volume of the low priced Swedish import is causing havoc in more and more domestic markets.

[29] The Swedish Timber and Wood Pulp Journal (No. 4, 1958), just released, states:

"The question of the dumping tariff remains unsettled during the year (1957), but a notice of annulment of the dumping decision in relation to all Swedish wallboard mills may now probably be expected within the nearest future."

Obviously, an effective antidumping remedy is needed. H. R. 6006 should be amended to assure that effectiveness.[30]

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you Mr. Keck.

(Pursuant to a telephone request by Senator Anderson, Assistant Secretary Flues subsequently submitted the following memorandum relative to the Swedish Hardboard Dumping Case discussed during the testimony of the above witness, Mr. Robert Keck.)

MEMORANDUM SUBMITTED BY TREASURY DEPARTMENT RELATIVE TO THE SWEDISH HARDBOARD DUMPING CASE

APPLICATION OF THE ANTIDUMPING ACT TO THE CASE OF SWEDISH HARDBOARD

The Antidumping Act goes into effect when it is found that a foreign producer is selling to United States importers below fair value, and that a United States industry is injured or is likely to be injured thereby. The result of a dumping finding is that dumping duties are imposed on those shipments of the commodity in question as to which the "foreign market value" is higher than the price paid by the United States importers. The duty is measured by the amount of such difference.

In the Swedish hardboard case, foreign market value is the price for Swedish hardboard charged importers in third countries—that is, countries other than Sweden and the United States.

At the time the dumping finding was made, Swedish producers were selling hardboard to importers in third countries at a higher price than they were selling it to United States importers.

To use hypothetical figures, Swedish producers were selling hardboard to importers in countries X, Y, and Z at, say, $1 a unit and to importers in the United States at $0.85 a unit.

The first result of the finding was that as long as the Swedish third country price remained at $1 and the Swedish price to the United States remained at $0.85, a dumping duty would be owing in the amount of $0.15 a unit. Purchasers in the United States would, therefore, have to pay $1 a unit, of which $0.85 went to the Swedish company and $0.15 to the United States Treasury as dumping duties.

Typically, the second result of a dumping finding in a case such as this is for the foreign producer to raise his price to the United States from $0.85 to $1. If he does this, he avoids the payment of dumping duties on subsequent shipments of the item because such duties are computed separately for each entry or shipment. Obviously it is poor business for him to continue to get only $0.85 a unit if the United States purchaser is paying $1 a unit. He will feel it is better for him to get the extra $0.15 than to see it paid to someone else—in this case the United States Treasury. Alternatively, the foreign producer may find it feasible to lower his third country price from $1 to $0.85; if he does so, here again he avoids—quite legally—payment of dumping duties.

Foreign producers often take corrective action along these lines to avoid payment of dumping duties once a finding has been made. It is the established pattern in the enforcement of the law that when such corrective action has been satisfactorily confirmed over a period of time the dumping finding is rescinded. In all the findings which have been issued under the law, other than the two presently outstanding, it was established that the corrective action above

[30] The 1956 Democratic platform stated:

"Under Democratic administration, the operation of this act was conducted in a manner that recognized equities for agriculture, industry, and labor. Under the present Republican administration there has been a very flagrant disregard of these important segments of our economy resulting in serious economic injury to hundreds of thousands of Americans engaged in these pursuits. We pledge correction of these conditions."

The 1956 Republican platform adopted a week later provided:

"Barriers which impede international trade and the flow of capital should be reduced on a gradual, selective, and reciprocal basis, with full recognition of the necessity to safeguard domestic enterprises, agriculture, and labor against unfair import competition. We proudly point out that the Republican Party was primarily responsible for initiating the escape-clause and peril-point provisions of law to make effective the necessary safeguards for American agriculture, labor, and business. We pledge faithful and expeditious administration of these provisions."

indicated was taken, or the imports discontinued; the findings were therefore rescinded.

Why do Swedish hardboard imports continue?

The Antidumping Act, once a finding is made, is aimed at correcting one thing: the selling of imported merchandise to the United States at a lower price than the price at which it is sold in designated other markets. If the foreign producer does not adjust the two prices to eliminate this differential, we assess a dumping duty in the amount of the difference. If the foreign producer on his own initiative adjusts the two prices so as to eliminate the difference, the remedy called for in the Antidumping Act has been provided, and there is nothing further we can do to give protection under that act.

We do not dispute the figures which have been supplied us from time to time showing the very substantial increase in imports of Swedish hardboard since the time that the dumping finding was published in August 1954. Equally indisputable, however, are the figures we get from our customs appraisers showing that the Swedish producers have since that time taken action to lower or to do away with the dumping margin represented by the difference between a higher third country and a lower United States price.

The Antidumping Act involves a number of technicalities, some of them not easily understood. The basic principle outlined above is, however, a fairly simple one. Dumping duties cannot be imposed unless there are sales to United States importers at prices below foreign market value—here the price for Sweden's third country sales. No knowledgeable foreign producer would long continue, once a dumping finding has been issued, to sell below foreign market value. Our figures show that the Swedish producers have since the dumping finding revised their pricing with the result that there are each year less sales below foreign market value, and each year smaller dumping duties which can be and are assessed.

When the Swedish companies sell to American importers at a lower price than that charged by American producers, it is to be expected that the imports of Swedish board will increase. When the Antidumping Act succeeds in forcing revision of Swedish prices so that the price to the United States and the price to third countries are in line, it has accomplished its stated purpose, just as effectively as when such equalization is forced by imposition of dumping duties.

The explanation for the declining figures for dumping duties assessed each year is a trend toward equalization of the prices to the United States and to third countries.

Now, despite this equalization of the prices to the United States and to third countries, the imports continue to rise. This can only mean that the Swedish producers are selling in both markets at prices below the American producers. This happens even though the American producers have been given the full protection of the Antidumping Act.

The reasons for the increase in imports despite an outstanding dumping finding apply equally to the increase in imports despite the earlier withholding of appraisement.

This pattern of increased imports following withholding of appraisement or following a dumping finding has no parallel, at least in our recent experience. The result in other cases has been a substantial drop in, or complete cessation of, imports. In the British soil pipe case, one of the two principal importers has testified before the House Ways and Means Committee that the finding had put him out of business.

Duties calculated at $2

The American industry complainant in this case has publicly challenged the contention of the Swedish Embassy that the Treasury Department had stated dumping duties would probably not exceed $2 per thousand square feet. We have been able to reconstruct no satisfactory record of the meeting at which this statement was alleged to have been made, none of the participants who are available having recalled the statement; but it would require no very great ingenuity on the part of the Swedes to have made the calculation on their own part. They knew the price paid by American importers; they knew the price in other markets. Whether the arithmetic was done by them or anyone else, the answer would be substantially the same. The calculation of $2 was apparently fairly close to correct for the most part. It should be noted that the ultimate assessment of duties in some cases amounted to over $10. This was because, while the 1954 Swedish home consumption price (which at the beginning was thought

to be the basis for foreign market value) was fairly constant, and not far above the price to the United States, the sales to third countries (which were thereafter determined to be the basis for foreign market value) were at varied prices, in some instances considerably above the price to the United States. The situation was speedily corrected by the Swedes as to sales following the dumping finding, so that there was no possibility of assessing such large duties from then on.

Appraisal of information submitted by complainants

We have had frequent meetings with the American industry representatives on these questions. Our meetings dealt also with the question whether our method of calculating the third country and the United States prices charged by the Swedes was correct. Briefs have been submitted to us showing United States delivered prices charged by the Swedes, and estimating what must have been the cost of delivery. If these prices and estimates are accepted, there is a good case for continued assessment of dumping duties. We have explained in some detail to the domestic industry to what extent we accept the prices and estimates, and to what extent we do not. In every case of an actual importation, the purchase price is compared with the foreign market value in accordance with the most accurate information it has been possible to secure; where the purchase price is lower than the foreign market value a dumping duty is assessed.

Assessment of dumping duties

It is perfectly true that the amount of dumping duties collected in the last 12 years has been extremely small. The reason for this is that appeals have been taken from the assessments in all but a few unimportant cases. These appeals are presently pending in court. Collection of duties cannot be made in such event until authorized by court decision. The Treasury Department has proposed legislation which would require a deposit of such duties where protest is filed; this is provided for in the now pending H. R. 6424, introduced in the 85th Congress, 1st session.

The total amount of dumping duties assessed or which can likely be collected in respect of the two outstanding dumping findings, hardboard and cast iron soil pipe, for 1953–56 (including $12,000 for Swedish hardboard assessed in 1956) amounts to $155,000.

Delays in processing of hardboard and soil pipe cases

Shortly after the finding of dumping in the Swedish hardboard case, in August 1954, it was concluded that in view of the wide variety of types of hardboard, the fluctuation in third country prices, and the scarcity of information as to some of the shippers, the preparation of a master list was essential to assure uniformity, accuracy, and a minimum of delay at the various custom ports of entry throughout the country where Swedish hardboard is entered. As our dumping investigations in Sweden were conducted during the latter part of 1953, no information was available as to third country sales during 1954. Reasonably adequate information was not received until the end of 1955 and a master list was issued on January 24, 1956. Supplementary information was issued February 27, 1956. The 1955 and 1956 master lists were issued on May 31, 1957, and January 16, 1958, respectively, as soon as the necessary price information was received. Field offices were instructed to complete appraisements as promptly as possible after issuance of master lists; however, some unavoidable delays occurred because of record current workloads.

A master list covering cast iron soil pipe from the United Kingdom was issued on March 30, 1956, 5 months after the dumping finding. This master list included information as to foreign market values which went into effect on April 1, 1956, which values are still in effect. However, the importers obtained a temporary injunction against the assessment of dumping duties and we were unable to proceed with appraisements until January 1957. Appraisements have since been completed on all importations subject to dumping duties with the exception of those importations on which appraisement was withheld because of a question of legality—death of the importer and consequent failure to secure nonexporter's certificates required by regulations. These latter are now being appraised.

Effect of proposed legislation on pending findings

At the time the dumping investigation started in the hardboard case certain third country prices were higher than the Swedish home consumption prices, and since foreign market value was based on third country prices it is clear that in general the dumping duties assessed for the 1953 and 1954 imports were higher than they would have been if foreign market value had been based on home consumption prices. Our information as to imports since that time indicates a reversal of this situation. The more recent imports show more instances of home prices higher than third country prices than of third country prices higher than home prices. The differences are not large, and it is doubtful that as of the present date either foreign market value or dumping duties for Swedish hardboard would be substantially different under an enacted H. R. 6006 from what they are under the existing law. The effect of the proposed legislation on the cast iron soil pipe case would have been lower dumping duties.

It must be understood that H. R. 6006 was not tailored to fit any particular case, but was based upon the generally accepted premise that home market sales, if made in significant quantities, furnish the best indication of market value for purposes of the Antidumping Act.

Confidentiality of information

The Treasury has long understood that confidentiality was provided for the records resulting from the Secretary's investigation under section 201 (a) of the act as amended (19 U. S. C. (1952 ed.) 160 (a)). That section authorized him to make the "findings (as to the operative facts) public to the extent he deems necessary * * *." It has been the Treasury view that this confidential status attached to information submitted by complainants (domestic industries), importers and other foreign interests, as well as information developed by the Treasury Department itself in its investigations.

This statute, making possible the receipt of evidence in confidence, has been of great advantage to domestic industries since they make the complaints and under these provisions are able to submit confidential business-type information to support their case. In the recent hardboard litigation, *Elof Hansson* v. *United States*, the Government insisted on the status of confidentiality of both domestic and foreign information, citing such decisions as *Kleberg & Co.* v. *United States*, (21 C. C. P. A. (Customs) 110, T. D. 46446); and *Cline Stewart Co.* v. *United States*, 61 Treasury Decisions 1447, Abstract 18998). At the time of the trial in the Elof Hansson case the Government released only that portion of the information submitted in confidence by the domestic industries as to which domestic producers had specifically consented to disclosure by the Government.

As to information secured from foreign sources, we believe the same basis for confidentiality exists. However, in this case the Treasury Department did advise the Assistant Attorney General, after the Elof Hansson case had been instituted and was in the hands of the Department of Justice for trial, that he was authorized to disclose such information in the case as was necessary to provide for the most effective presentation of the Government's case.

In this case, an importer of hardboard was the plaintiff and the Government was the defendant. The domestic industry is not a party in such a proceeding and entered this case only upon leave of the court as amicus curiae.

The Treasury Department not only regards the case for confidentiality of information on which it bases its findings in such cases as a clear one but also is of the opinion that this is in the best interest of all parties concerned. Much of the information needed to decide such cases intelligently is confidential business-type information either from domestic or foreign sources. The Government has been and will continue to be able to obtain such information freely only if those furnishing it can have assurances that the confidentiality of the information will be maintained.

The Chair is informed by Senator Anderson that Mr. Rufus Poole's wife is very ill and he has to catch a plane, so we will call him as the next witness.

STATEMENT OF RUFUS G. POOLE, ATTORNEY, ON BEHALF OF DOMESTIC POTASH INDUSTRY; ACCOMPANIED BY ROBERT D. MANNING, UNITED STONE AND ALLIED PRODUCERS WORKERS OF AMERICA, AFL-CIO

The CHAIRMAN. Will you proceed, Mr. Poole?

Mr. POOLE. I appreciate this very much, Senator.

Mr. Chairman, I would like to say at the outset that Robert D. Manning, who is attorney for the principal union that represents the employees in the potash industry in New Mexico, is here at my left, and he is asking for the privilege of filing a statement at the conclusion of my testimony.

The CHAIRMAN. Without objection, it will be put in the record.

(The written statement of Mr. Manning follows the testimony of Mr. Poole.)

Mr. POOLE. Mr. Chairman, my name is Rufus G. Poole. I am an attorney at law from Albuquerque, N. Mex.

I am appearing before this committee on behalf of 6 companies which produce more than 90 percent of the potash produced in the United States. (See exhibit 1.)

I want to emphasize at the outset that the potash industry does not seek a tariff. The domestic industry is highly competitive and efficient. We are well able to stand up against any legitimate foreign competition. We are asking only that the Antidumping Act be amended so that it will prevent dumped imports from taking over a substantial part of our domestic market.

Under the present Antidumping Act, a domestic industry to obtain relief must secure, first, a finding by the Treasury Department that imported merchandise is being sold in the United States at less than fair value (or at dumped prices) and, second, a finding by the Tariff Commission that the domestic industry is being injured or is likely to be injured by such sales. As presently administered, we feel that the Antidumping Act is almost wholly ineffective. And this is due, not to procedural or technical weaknesses, although these may exist also, but to the presence of a requirement that injury must be proved without any definition or guide as to what constitutes injury.

Mr. Chairman and members of the committee, I cannot impress upon you too strongly that regardless of what other changes are made in this act, unless there is some legislative clarification of this term "injury," this act will remain, as it is today, worthless as a real protection for American industry against dumping.

The act furnishes no standards whatsoever to guide the Tariff Commission in determining whether an industry has been injured or is likely to be injured by dumped imports.

I might say that insofar as the duty of the Tariff Commission is concerned, this act leaves them exactly where they are, I mean this proposed act, it does not clarify the meaning of injury, nor does it change any of their duties.

The omission of a definition for the term "injury" was a matter of concern to the Senate Finance Committee when it had the Antidumping Act under consideration in 1954. And I refer here to a report that was issued by the committee in which the committee said:

> The committee recognizes that further substantive changes in the antidumping law may be desirable, particularly in relation to price and injury definitions * * *

The failure of the act to afford any relief is illustrated graphically by the proceedings brought by the domestic potash industry in 1954. In these proceedings the Treasury Department found that muriate of potash originating in the Soviet zone of Germany, the West German Republic, and France, was being sold in the United States at less than fair value or at dumped prices. And I might say, Mr. Chairman, that this was an unusual finding, and it was made after an extensive investigation.

Then the question of whether such dumping had caused injury to the domestic potash industry was then submitted to the Tariff Commission for determination. Evidence was introduced before the Tariff Commission, and not contradicted at any point, which clearly showed that from early 1953 to the date of the 1954 proceedings, 8 percent of the total domestic market was being supplied by potash from East Germany, West Germany, and France at dumped prices. This represented 20 percent of the market along the Atlantic coast, where 40 percent of domestic consumption takes place.

The evidence also showed that the domestic producers could have supplied this market and would have done so had it not been for the dumped imports. Based on published statements of the Department of Agriculture, it is estimated that the annual domestic demand for potash is roughly 500,000 K_2O tons less than our productive capacity. (See exhibits II and III.)

And I might say that this has been so since about 1955, that is, we are in long supply in the United States; we are hunting for a market.

The Tariff Commission, however, was unable to find that the domestic potash producers were injured or were likely to be injured as a result of such dumped imports. No indication was given of what test of injury the Commission had applied.

I might add at this point, it never tells you how it reaches a particular decision. It either finds injury or no injury. There is no articulation, reasons assigned, or anything else, so you are left completely in the dark as to what, if any, standards have been used.

Prior to 1954 and for a period of 33 years the Antidumping Act was administered exclusively by the Treasury Department. In all those years, the Treasury Department did not undertake to define this crucial term. Moreover, an examination of the cases which came before the Treasury Department fails to reveal any workable or consistent standards of injury. Now, working standards have been developed by almost all of the agencies of the Government where terms used in laws have not been defined by the National Labor Relations Board and the Federal Trade Commission and the other agencies.

Notwithstanding that the Tariff had no definition of injury in the law itself, it never undertook to get out a definition, and you can't tell from an examination of the cases what standard, if any, was used.

Nevertheless, the Treasury has recommended that "injury" continue to be undefined and that the Tariff Commission apply its discretion—which in this case means a completely unbounded discretion—in defining the term.

It is instructive to note that from January 1, 1934, until the enactment of the 1954 Customs Simplification Act, out of 146 cases disposed of by the Treasury, injury was found in only 7 instances. And since

October of 1954 through 1956, out of 52 cases disposed of by the Tariff Commission, there was only 1 finding of injury. And we learn this morning that even with respect to 1 of these 2 cases in which there was an injury finding since 1938 there has been no assessment of duties. (See report of Secretary of Treasury to the Congress contained in printed hearings before Committee on Ways and Means, 85th Cong., on H. R. 6006, 6007 and 5120—bills to amend the Antidumping Act of 1921.)

The basic question posed by this hearing must be: "What is the purpose of the Antidumping Act?" Before the merit of the proposed legislation can be analyzed, the Congress must determine what the act should accomplish.

This determination cannot be made without considering the meaning which should be given the word "injury." To avoid that problem is to avoid the question of the purpose of antidumping legislation. This question is a broad legislative policy question which only Congress is qualified to decide. It must not be left, as the present statute leaves it, in the hands of an appointive administrative body. House bill 6006, drafted by the Treasury Department, does not face this problem.

House Report No. 1261, at page 2, states correctly:

> The amendments to the Antidumping Act contained in H. R. 6006 are of a technical nature and do not involve any change in the basic policy of the act.

The legislative recommendations by the Treasury embodied in H. R. 6006 were submitted pursuant to the Customs Simplification Act of 1956, section 5 of which provided that the Secretary of the Treasury "recommend to the Congress any amendment of such Antidumping Act which he considers desirable or necessary to provide for greater certainty, speed and efficiency in the enforcement of such Antidumping Act."

For unexplained reasons, the Treasury Department apparently believed that greater "certainty, speed, and efficiency" would be attained by leaving the matter of "injury" completely to the discretion of the Tariff Commission. In view of the congressional directive, we think it is incumbent upon the Treasury to justify this view and we feel that its testimony before the House committee fails utterly to justify it. It cannot be justified in the face of the experience of 37 years of administration of the act which has failed to build up any authoritative precedent on the meaning of "injury" and has left interested parties in complete uncertainty.

As we see the problem, Congress must either do away with the injury requirement or formulate a test for injury. There is precedent for doing away with the injury requirement. There is no injury test under the contravailing duties law (antisubsidy), and the antidumping problem is very similar in its economic aspects to the problem which prompted that legislation.

If the injury test is to be retained, it simply has to be defined if the act is to have any vitality. The proposed definition which we think is the most sound and which would make for "certainty, speed, and efficiency" in the enforcement of the Antidumping Act is the one offered last year during the House Ways and Means Committee hearings by Kenneth Royall on behalf of the rayon staple fiber industry. It would amend section 201 (a) to read as follows.

Now, I have set forth the section here as it would be amended, showing the new matter in italic.

The CHAIRMAN. That will be inserted in the record.

(The section referred to is as follows:)

(Words in black brackets are proposed deletions from the present text of the Antidumping Act, 1921, as amended; words in italic are proposed additions.)

201. (a) Whenever the Secretary of the Treasury (hereinafter called the "Secretary") 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 (*hereinafter called the "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], *wholly or partly* by reason of the importation of such merchandise into the United States, *injury is being or is likely to be caused to an industry in the United States or to the employees of such industry evidenced by a decline in sales, or by nonutilization of the full productive capacity of such industry, or by prevention or retardation of its establishment or expansion, or by unemployment, or by lay-offs, or by reduction in wages or wage rates, or by any other factors which the Commission shall deem relevant.* The [said] Commission, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in this Act called a "finding") of his determination and the determination of the [said] Commission. The Secretary's finding shall include a description of the class or kind of merchandise to which it applies in such detail as he shall deem necessary for the guidance of customs officers. *In making its determination under this subdivision, the Commission shall find that injury is not being or is not likely to be caused in any case in which the effect or probable effect of the sale of the merchandise under consideration upon an industry in the United States or to the employees of such industry is insignificant. In making his determination under this subdivision, the Secretary shall find that merchandise is being, or is likely to be sold in the United States at less than its fair value if the purchase price of such merchandise is less, or the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, than the cost of production).*

Mr. POOLE. By this definition, injury is to be measured by lost sales, by the nonutilization of the productive capacity of a domestic industry, by unemployment or a reduction in employee earnings or by the prevention of the establishment of an industry. These are the factors which should be determinative of whether an industry has in fact been injured.

It must be borne in mind that this is not a penal statute. All it does to dumped imports is to add to the dumped price an amount sufficient to bring the price up to fair value.

It should also be noted that the imports which the statute would affect are not desirable imports. They do not represent a continuing source of a cheap product to the consumer. The history on potash, and surely in other commodities, has been that the bargain price lasts only as long as the oversupply. During a strike in the potash industry some years ago, the price of potash imports rose far above the level of the domestic product, and only dropped again when adequate domestic supply was reestablished. And I have an exhibit (exhibit IV) which bears that out by rather precise facts.

The potash industry in the United States is comparatively new. Prior to the First World War, nearly all the potash that was used in this country was produced and sold here by a European cartel, and at prices much higher than present prices of domestic potash. Today seven major companies are engaged in producing potash in

the United States. Two of these commenced operations in 1952, another early in 1957. At the present time an eighth company has sunk a shaft with the intention of commencing production as soon as market conditions permit.

This new industry would like to know whether its development is to be retarded and its future threatened by imports dumped onto the domestic market.

(The exhibits referred to above are as follows:)

EXHIBIT I

My appearance before this committee is in behalf of six companies that are engaged in producing potash in the United States.

The names and addresses of these companies are:

Duval Sulphur & Potash Co., Mellie Esperson Building, Houston, Tex. (plant at Carlsbad, N. Mex.).

International Minerals & Chemical Corp., 20 North Wacker Drive, Chicago, Ill. (plant at Carlsbad, N. Mex.).

National Potash Co., 205 East 42d Street, New York, N. Y. (plant at Carlsbad, N. Mex.).

Potash Company of America, Carlsbad, N. Mex. (plant at Carlsbad, N. Mex.).

Southwest Potash Corp., 61 Broadway, New York, N. Y. (plant at Carlsbad, N. Mex.).

United States Borax & Chemical Corp., 630 Shatto Place, Los Angeles, Calif. (plant at Carlsbad, N. Mex.).

These 6-named companies produce more than 90 percent of the potash produced in the United States.

EXHIBIT II

Potash consumption, United States[1] *(including Hawaii and Puerto Rico), short tons, K_2O*

Year	Total import deliveries	Total domestic deliveries from United States sources [2]	Total domestic deliveries from both United States and foreign sources	Year	Total import deliveries	Total domestic deliveries from United States sources [2]	Total domestic deliveries from both United States and foreign sources
1947	26,053	[3] 988,641	1,014,694	1953	124,117	[4] 1,675,859	1,799,976
1948	18,240	[3] 1,075,311	1,093,551	1954	114,222	[4] 1,850,472	1,964,694
1949	17,211	[3] 1,047,048	1,064,259	1955	162,281	[4] 1,865,253	2,027,534
1950	188,060	[3] 1,194,187	1,382,247	1956	168,753	[4] 1,869,516	2,038,269
1951	299,829	[3] 1,319,244	1,619,073	1957	169,269	[4] 1,870,265	2,039,534
1952	179,288	[3] 1,532,558	1,711,846				

[1] Total potash consumption in the United States is shown by total domestic deliveries.
[2] Figures in this column include both agricultural and nonagricultural deliveries from United States sources.
[3] Potash from United States sources in short supply and import prices at or above domestic prices.
[4] Potash from United States sources in over supply and imports sold at dumped prices.

EXHIBIT III

Potassium salts produced, sold, and in producers' stock in the United States, 1947–51 (average) and 1952–56 (Bureau of Mines data)

Year	Production			Sales				Producers' stocks Dec. 31	
	Operators	Potassium salts (short tons)	Equivalent potash (K_2O) (short tons)	Operators	Potassium salts (short tons)	Equivalent potash (K_2O) (short tons)	Value f. o. b. plant	Potassium salts (short tons)	Equivalent potash (K_2O) (short tons)
1947–51 (average)	8	2,163,679	1,190,240	8	2,167,747	1,200,366	$43,065,000	36,331	17,579
1952	10	2,866,462	1,665,113	10	2,757,252	1,598,354	59,852,000	170,608	98,244
1953	10	3,266,429	1,911,891	10	2,965,986	1,731,607	65,403,000	471,939	279,168
1954	10	3,322,395	1,948,721	10	3,270,006	1,918,157	71,819,000	526,398	312,070
1955	[1] 11	[1] 3,540,141	[1] 2,080,311	[1] 11	[1] 3,429,966	[2] 2,018,807	[1] 77,217,000	[1] 628,938	[1] 371,549
1956	10	3,678,834	2,171,584	11	3,571,405	2,103,347	79,751,000	[3] 736,228	[3] 439,702

[1] Revised figures.
[2] Revised figure as reported by producers.
[3] Figure reflects losses in handling.

EXHIBIT IV

The European exporters who are dumping potash here cannot be regarded as a permanent source of cheap supply. The domestic price of potash f. o. b. Carlsbad in 1949 was $21.60 per ton of 60 percent muriate of potash (the form in which the produce is customarily sold), with a freight rate to the central Atlantic seaboard of approximately $15.90 a ton. This resulted in a delivered price to port consumers of $37.50 per ton of muriate. In that year, Europeans began to reduce prices and our records show quotations were made by both French and German interests of $35.40 per ton, delivered, for the same grade of material. Late in 1949 the Carlsbad industry was hit with a lengthy general strike lasting some 75 days. This strike resulted in a substantial loss of production which threw the industry into a shortage position when the domestic users were clamoring for more product. The European exporters filled the gap at prices which were raised to $51 per ton before the end of 1950. In 1951, the imported potash was being sold at approximately $40 a ton along the Atlantic seaboard. The domestic price remained at $21.60 per ton muriate, f. o. b. Carlsbad. In 1952, the year a new Carlsbad producer, Duval Sulphur & Potash Co., commenced full-scale production, an approximate balance between production and consumption was again achieved and the result was, as the findings of the Treasury Department show, foreign potash was dumped on the American market as low as $20.70 per ton in 1953.

Mr. POOLE. Mr. Chairman, in connection with the first page, I think that there is an important statement that I would like to add, and that is this: We are not here asking for a tariff. Potash is on the free list. And we are very proud of our efficiency, and we thing we can compete with any potash in the world in our own market here if dumping is stopped. But we cannot compete against the dumped products.

The CHAIRMAN. Thank you very much, Mr. Poole.

Are there any questions?

Senator DOUGLAS. Mr. Chairman.

The CHAIRMAN. Senator Douglas.

Senator DOUGLAS. Again I do not wish to ask the witnesses any questions if those who are senior to me have questions.

The CHAIRMAN. Go ahead, sir.

Senator DOUGLAS. Mr. Poole, I wondered if you would turn to exhibit II. You can find there that the American potash industry has really had a very hard time because of these dumped imports of Swedish potash. The record would seem to indicate that prior to the war the American production was very slight, is that not true, and that we got our supply almost totally from abroad?

Mr. POOLE. That was true, up until the early 1930's, when the first company started operation here.

Senator DOUGLAS. Now, I would like to point out some figures from 1950 on. I will take first percentages and then I will take absolute figures—and make some rough calculations. I am not sure the figures go down to the decimal point, but I think they are approximately correct. The 1950 record seems to show that 13 percent of the total domestic deliveries were imports.

Mr. POOLE. Yes.

Senator DOUGLAS. 1950, 13 percent; 1951, 18 percent; 1952, 10 percent. Now, for 1955, 1956, and 1957, the percentages, as I get them, are 8 percent, about 8 percent, and 8½ percent.

So the imports form a smaller fraction of the total in the last 3 years than they did in the first 3 years of the 1950's; is that not correct?

Mr. POOLE. Yes.

Senator DOUGLAS. Now then, if you take imports, I note that there are 188,000 tons in 1950 to 299,000, virtually 300,000 tons in 1951, and 179,000 in 1952.

But notice the last 2 figures, and 162,000 tons, 168,000 tons, and 169,000 tons. So that the absolute quantities imported these last 3 years are less.

Mr. POOLE. Yes. May I comment on that?

Senator DOUGLAS. Yes. But who can prove that you have been injured? And furthermore, in view of the fact that you mentioned, that two companies entered operations in 1952, and another early in 1957, at the present time the eighth company sunk a shaft, which would seem to indicate that you have got new firms entering, and none of the older firms going out of the industry.

Mr. POOLE. First, Senator, I would like to call attention to the fact that the increase was between 1949 and 1950, and then the larger amount in 1951 came about as a result of a strike that took place in the potash industry when there were no deliveries being made.

Senator DOUGLAS. You mean that is the cause for those 3 years?

Mr. POOLE. That is when the big importation started.

Senator DOUGLAS. Did you have a strike on for 3 years?

Mr. POOLE. No, we did not. It started, they came into the market during the strike in 1950, and they stayed in the market, as you will see, but not as extensively as they did in 1951. They dropped back in 1952 a little better than 100,000 tons, using absolute figures.

Senator DOUGLAS. 179,000 tons according to these figures.

Mr. POOLE. Yes. I say they dropped back a little more than 100,000 tons between 1951 and 1952.

Senator DOUGLAS. I beg your pardon.

Mr. POOLE. Now, there is a statement in this exhibit over on the right-hand side which is important, and I would like to comment on it in connection with the balance of your question.

Potash from the United States sources was in short supply and import prices were at or above domestic prices through 1952.

Starting in 1953, the potash from United States sources is in oversupply, and the imports sold here at dumped prices.

Now, the question, Senator, basically, is: What is the purpose of the act? Now, we started in 1932 or 1933, and we did not come into a position of supplying the domestic demand until, I should say, 1953 and 1954. At that time dumping started, and the prices were lowered by the importers to the point, you see, where they could beat out the potash that was being sold on the eastern seaboard area.

Senator DOUGLAS. I would not say that they had beaten much of the market away from you. As a matter of fact, the percentage, as I pointed out, is very appreciably less than it was for the 3 years 1950, 1951, and 1952, and the strike certainly did not last all 3 of those years.

Mr. POOLE. No.

Senator DOUGLAS. The percentage has remained constant the last 3 years and the absolute quantities are less now than they were then. Furthermore, instead of firms going out of business, new firms are coming into business. Therefore, it would seem the operation is very profitable.

Mr. POOLE. As we understand the act, the sale of a commodity in this country at less than it is sold for at home constitutes dumping. And I might say, Senator, that, contrary to the implications of your remark, the Treasury Department found that potash was being dumped here; they made that finding, and they made it with respect to potash coming from three different countries back in 1954. And then the question remained as to whether or not we had been injured.

It seems to us that, under a fair administration of the statute as it now exists, there should have been a finding of injury, because we think that the loss of 8 percent of the market constitutes a very substantial loss.

Senator DOUGLAS. I take it what you want is to define injury along the lines of Mr. Royall's suggestion?

Mr. POOLE. Yes.

Senator DOUGLAS. You gave that on page 6. Is that not pretty broad language?

> By this definition, injury is to be measured by lost sales, by the nonutilization of the productive capacity of a domestic industry.

There are very few industries which operate at 100 percent of capacity. At the present time, I suppose, the average percent capacity of American industry is not very much above 70, but this certainly is not caused by dumping or by prevention or retardation of its establishment or expansion, whatever those words mean, or by unemployment. Unemployment is a common characteristic in many instances. It is not caused by layoffs or by a reduction in wages or wage rates, or by any other factors which the Commission should deem relevant.

Mr. POOLE. Senator, this proposed definition comes into operation only after there is a finding of dumping, and when it comes to the question of injury.

Senator DOUGLAS. I understand. But I mean, in this term "injury" in the Royall definition made as broad as a barn door?

Mr. POOLE. Well, it would seem as a matter of policy that it is sound, if you first have had a finding that dumping is going on, and

you ask the question as to whether or not it should be permitted to continue, where you are not utilizing all your productive capacity, and employees are being thrown out of work; that is really what this definition undertakes to say.

Senator DOUGLAS. Why not for other reasons?

Mr. POOLE. I think that the definition intends to define injury in terms of what is actually resulting from the imports that are being sold here at dumped prices. I do not say that this is a perfect definition. I am sure it will receive careful scrutiny if it is going to be seriously considered.

Senator DOUGLAS. That is all, Mr. Chairman.

The CHAIRMAN. Thank you very much.

(The prepared statement of Mr. Manning follows:)

Mr. Chairman, my name is Robert D. Manning. I am an attorney at law, with offices at 44 School Street, Boston, Mass.

I am appearing before this committee on behalf of the United Stone and Allied Products Workers of America, AFL-CIO, the labor union which represents a substantial majority of the workers employed in mining and refining potash in Carlsbad, N. Mex.

The labor organization which I represent has become increasingly concerned with the impact of the dumping of foreign potash in the United States on the domestic companies. The purpose of my appearance is to urge that the Antidumping Act of 1921 be amended to prevent the dumping of foreign potash where such dumping affects the employment of those workers whom we represent.

Twenty-two percent of the market in the Atlantic Seaboard States is now being supplied by imported potash and, according to the findings of the Treasury Department, most of this potash is being sold here at less than fair value or at dumped prices. Experience has demonstrated that domestic producers are unable to compete with these prices. Every ton of imported potash which is being dumped in this country is displacing the sale of a ton of domestic potash.

The failure of the Antidumping Act of 1921 to protect the domestic industries has resulted in the unemployment of several hundred workers in this industry. The inability of the domestic companies to meet this unfair competition will, in the immediate future, cause further reductions in available job opportunities and add materially to the unemployment rolls in the State of New Mexico.

We do not seek tariff protection on potash. We do not seek to restrict or limit legitimate foreign competition. However, we do seek reasonable restrictions on unreasonable dumping. The present type of foreign importation should not be protected or encouraged while, at the same time, our workers in this industry are required to make unwarranted sacrifices.

We are aware, as is this committee, of the grave economic problems confronting both labor and industry in terms of unemployment and the reduction of the workweek. Particularly at this time, therefore, the United Stone and Allied Products Workers of America, AFL-CIO, urges the enactment of that kind of legislation which will stimulate domestic industry and provide job protection.

The CHAIRMAN. The next witness is Mr. William J. Barnhard, of the National Antidumping Committee.

STATEMENT OF WILLIAM J. BARNHARD, SECRETARY, NATIONAL ANTIDUMPING COMMITTEE, INC.

Mr. BARNHARD. Mr. Chairman and members of the committee, I am William J. Barnhard, a Washington attorney with the firm of Sharp & Bogan, located at 1108 16th Street NW. I appear before you today as secretary of the National Antidumping Committee, Inc., whose headquarters are at 1101 Vermont Avenue NW., and whose members include a substantial number of businessmen and others vitally concerned with the administration of our national antidumping policy.

Because of our concentration on this one segment of the trade program, we have made a fairly extensive examination of the history and purposes of the Antidumping Act of 1921, as well as an analysis of the Treasury Department's recommendations as incorporated into H. R. 6006. With the chairman's permission, I should like to file this document for the record, and restrict my statement here to a brief discussion of the Antidumping Act generally and H. R. 6006 specifically.

The CHAIRMAN. Without objection, it may be included.

(The document referred to is as follows:)

STATEMENT OF WILLIAM J. BARNHARD, SECRETARY, NATIONAL ANTIDUMPING COMMITTEE, INC., ON AMENDMENTS TO THE ANTIDUMPING ACT OF 1921

I. INTRODUCTION

"The now obsolete Antidumping Act * * * is grossly unfair in several respects. * * * The law fails to guarantee adequate notice and hearings to the importer and permits what are in effect star-chamber practices contrary to American principles of justice" (Representatives Daniel Reed and Richard Simpson, 1954).

"I recommend that the antidumping law * * * be changed * * * to prevent undue interference with trade" (President Eisenhower, 1954).

"Present antidumping policy can make the 'escape clause' look like small potatoes" (Prof. Jacob Viner, 1956).

"The operation of the antidumping provision creates a real hazard" (Randall Commission staff, 1954).

"Capricious use of the antidumping penalty * * * could negate much of our reciprocal program of trade liberalization" (Joint Economic Committee, 1956).

"Although dumping, in the economic sense, embraces any price discrimination across national boundaries, it has long been recognized by economists that such price differentials are not necessarily unfair" (Boggs subcommittee, 1957).

This obsolete statute, which violates elementary principles of justice, threatens our national programs, unduly interferes with our trade, and penalizes fair prices in normal commerce, is not the fault of the 67th Congress which enacted the antidumping law in 1921. Rather, this act is today the object of almost universal condemnation because of the administrators, who, over a period of 36 years, have perverted its intent and corrupted its procedures.

The Antidumping Act of 1921 was enacted for a worthy and necessary purpose. The "dumping" it was intended to prevent was—and is—a pernicious practice in international trade, an unfair trade practice that must be effectively controlled. The American economy—including its industries, workers, farmers, and consumers—is entitled to protection against the predatory purposes of a foreign cartel intent on destroying competition or establishing a monopoly in the American market. Perhaps even more important in today's world, our Nation must have adequate and effective protection against any hostile foreign group whose economic commissars may try to destroy an essential segment of our defense-mobilization base.

But the 67th Congress never intended—and the present Congress should not perpetuate—"capricious use of the antidumping penalty" to permit "undue interference with trade" that is not properly within the scope of the Antidumping Act. Our world trade must be fair, and effective controls against actual dumping will help keep it that way. But our restrictions on trade must also be fair and must be kept within their proper sphere.

Only in this way can we accomplish the dual goal of effectively preventing the evil of dumping while permitting and encouraging the expanding level of legitimate trade which both the Congress and the Executive have repeatedly recognized as one of our most essential national objectives.

II. PURPOSE OF ANTIDUMPING LEGISLATION

The word "dumping" is used in many different ways to cover a wide variety of circumstances. Before considering the scope of proper antidumping legislation, it is necessary to define the meaning of the word as used in the law and the economic evil the law is designed to prevent.

A domestic manufacturer facing increased competition from abroad will often criticize the "flood of imports being dumped on our market." This loose use of the word has no significance in economics or in law, unless it is related to the pricing practice that is the basis of "dumping."

As the United States Tariff Commission stated in its excellent report on dumping, issued during the period when the act of 1921 was under consideration:

"The answers [by domestic companies to the Commission's questions on dumping experiences] evidence a tendency to complain indiscriminately, not only of these methods condemned everywhere as unfair, but also of every form of successful foreign competition. The latter attitude, if given legal sanction, would affect American business usages in the promotion of foreign trade and would invite retaliation by other countries."

A more precise definition of "dumping" is that used by the economists—"price discrimination across national boundaries." If a manufacturer sells in one national market for a lower price than he charges in another market, he is engaging in technical dumping. This is exactly the type of price discrimination which, in the area of interstate commerce, is meant to be prevented by the Robinson-Patman Act, as part of our antimonopoly policy.

This international price discrimination is the essential element of "dumping." Thus, if a foreign producer sells his articles for the same price at home and in the United States, even though that price is one-half the price of competitive United States products, there is no "dumping" involved and this trade cannot properly be affected by any antidumping policy or law. If Congress chose to restrict such low-priced competition or grant protection to the domestic industry, it could do so by raising the tariff or by any other constitutional means. But this trade would not be within the scope of any antidumping law because there is no element of international price discrimination by the foreign producers.

The only remaining question—and the key problem posed by the Treasury Department's recommendations—is whether a proper antidumping policy should try to prevent every instance of price discrimination across national boundaries—i. e., should an antidumping law stop every instance of "technical dumping"?

This is exactly the question posed by the Treasury Department's conclusion that finding a "dumping price"—or, in the words of the statute, a sale at "less than fair value"—is nothing more than an "exercise in arithmetic."

All impartial experts who have considered this question, both in Congress and out, have reached the unanimous conclusion that a proper antidumping policy is meant to prevent only those price discriminations that are unfair. There is no purpose served by penalizing prices that are fair prices. Moreover, as the Boggs subcommittee report points out, low prices, such as those resulting from dumping, are "generally desirable from the point of view of the importing country." These lower prices are meant to be stopped only where they "involve unfair and injurious competition." In the absence of such unfair competition, what is wrong with being able to buy at lower prices?

Prof. John Perry Miller states in his recent report to the Treasury Department:

"A dumping price may result either from an abnormally low price in the American market or from an abnormally high price in the foreign market. In the former case, the American producer is experiencing an unfair method of competition. But in the latter case the foreign consumer is experiencing a monopolistically high price. In such cases, the price in the American market may be a normal competitive one. There is surely no desire to protect American industry by insisting that foreign producers charge American buyers monopolistically high prices."

In his classic text on dumping, Prof. Jacob Viner states:

"It is not intended here to make the term 'price discrimination' necessarily denote unfair competitive practices. Some types of price discrimination may be regarded as fair and others as unfair by the mores and the law."

Alfred Marshall, in his 1919 study on Industry and Trade, points out that "it is customary to sell abroad at lower net prices," and, therefore, antidumping restrictions should be applied only to "malignant" forms of underselling.

In describing the type of dumping properly subject to antidumping restrictions, Professor Viner states:

"Where the dumping is activated by predatory motives, the suppression of such dumping is clearly and unqualifiedly consistent with free-trade principles, just as the suppression of unfair competition in domestic trade is wholly reconcilable with the general argument for free and unhampered competition in such trade."

Official analysis of this problem has produced identical responses. In its report on dumping, prepared during the period when the antidumping bill was under consideration in 1919, the Tariff Commission had this to say:

"Ordinary price cutting and underselling are so universal, both in domestic and foreign fields, that it is taken for granted that restrictions are contemplated only when their practice is accompanied by unfair circumstances or by unfortunate public consequences."

The Assistant Secretary of the Treasury, in his presentation before this committee only a few days ago, stated:

"Selling at less than fair value, as we define it—that is, the foreign exporter selling to the United States at a price less than his price for consumption in the country of exportation, calculated f. o. b. foreign factory—is a benefit to the American consumer and to the American reprocessor, as well as the American importer. It may or may not injure an industry in the United States. The fact that a sale is at less than 'fair value' is not of itself an indication of injury, nor does it indicate the price is 'unfair.' "

Additional official analyses showing the circumstances under which a price differential in international trade is not necessarily an unfair price are contained in the report of the Boggs subcommittee (quoted on p. 1 of this statement) and in greater detail in the appendixes attached to this statement.

It is obvious, therefore, that the proper, and indeed the only, purpose of antidumping legislation is to prevent only those international price discriminations which are unfair trade practices. If the lower price in the importing country is a fair price, and yet threatens injury to the domestic industry, relief is to be found not in the Antidumping Act, but in the "escape clause," in the constitutional power of the Congress to raise tariff rates, and in other methods of protection. Where the price is fair and the sale is a fair-trade practice, there is no occasion for application of antidumping sanctions.

III. CONGRESSIONAL ACTION ON PRICE DISCRIMINATIONS

The proper purpose of antidumping legislation, as explained above, limiting such restrictions only to cases of unfair price differentials, has been explicitly recognized by the Congress in at least three major instances:

(1) The Antidumping Act of 1916;
(2) The Clayton Act of 1914; and
(3) The Antidumping Act of 1921.

1. *The Antidumping Act of 1916.*—It is not generally recognized that dumping is a crime, punishable by fine and imprisonment. These sanctions on the unfair trade practice of dumping can be imposed under the Antidumping Act of 1916, which is still the law (15 U. S. C. 72). This act, which was the first attempt by the Congress in this century to cope with the threat of cartel dumping, makes it a misdemeanor to dump articles on the United States market "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." In addition to providing for a fine up to $5,000 or imprisonment up to 1 year, or both, the statute follows the standard pattern of antitrust legislation by authorizing treble damages to be recovered by injured persons.

In this 1916 statute, the Congress specifically spelled out that its concern with international price discrimination related only to "predatory dumping"—that is, artificial price cutting with the intent to destroy or injure a competing industry. Under this statute, it is obvious that normal price cutting without such intent could not be subjected to the penalties of the law.

Because of the difficulties inherent in attempting to prove the intent of businessmen located abroad, this statute has never been actively enforced. It was to remedy the inadequacy of this 1916 act that Congress undertook to rewrite antidumping legislation in 1921, in order to make two basic changes—first, in the method of proof required under the law and, second, in the sanctions to be applied. But, as the legislative history of the 1921 act clearly shows, the purpose of that statute was restricted to the same type of unfair trade practice encompassed by the 1916 law.

2. *The Clayton Act of 1914.*—The restrictions against unfair price discrimination in international trade followed almost exactly the pattern established by the Congress in the other major area of price discrimination—interstate trade. In discussing the price-discrimination section of the Clayton Act of 1914, House Report No. 627, 63d Congress, 2d session, states:

"Section 2 of the bill is intended to prevent unfair discrimination. The necessity for legislation needs little argument to sustain the wisdom of it. In the past it has been a most common practice of great and powerful combinations engaged in commerce—notably the Standard Oil Co., and the American Tobacco Co., and others of less notoriety, but of great influence—to lower prices of their commodities, oftentimes below the cost of prices of production in certain communities and sections where they had competition, with the intent to destroy and make unprofitable the business of their competitors, and with the ultimate purpose in view of thereby acquiring a monopoly in the particular locality or section in which the discriminating price is made. Every concern that engages in this evil practice must of necessity recoup its losses in the particular communities or sections where their commodities are sold below cost or without a fair profit by raising the price of the same class of commodities above their fair market value in other sections or communities. Such a system or practice is so manifestly unfair and unjust, not only to competitors who are directly injured thereby but to the general public, that your committee is strongly of the opinion that the present antitrust laws ought to be supplemented by making this particular form of discrimination a specific offense under the law when practiced by those engaged in commerce" (pp. 8-9).

Not only the legislative history of the Clayton Act, but also its specific language shows many circumstances under which a price discrimination is not unfair and is therefore not subject to the statutory sanctions. The act states, for example, that it is not meant to prevent "price changes from time to time in response to changing conditions affecting the market for or the marketability of the goods concerned, such as * * * imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned" (15 U. S. C. 13 (a)). The act also recognizes that a lower price "made in good faith to meet an equally low price of a competitor" is not an unfair price and therefore not actionable (15 U. S. C. 13 (b)). And the statute leaves to judicial decision the other circumstances under which a price discrimination may be reasonable or justified or fair, and therefore not within the proscription of the law.

This is a clear exposition of the pattern that Congress followed in halting unfair price discrimination in interstate trade by the 1914 law and unfair price discrimination in international trade by the 1916 and 1921 laws.

3. *The Anti-Dumping Act of 1921.*—The legislative history of the 1921 statute is spelled out in some detail in the analysis of the Treasury Department's recommendations attached to this statement as appendix IV. This history demonstrates clearly that the Congress was not intending to penalize or prevent price discriminations that might be fair or beneficial to the American economy, but only those that were unfair trade practices.

The House report on the antidumping bill (H. Rept. No. 1, 67th Cong., 1st sess., p. 23) states that the bill "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 or above normal levels to recoup dumping losses."

In the Senate, Senator McCumber, who was in charge of the bill, said (61 Cong. Rec. 1011):

"There may arise a month from now * * * a condition in which some foreign business concern desiring to enter the American market may be willing to slaughter its profits for a given length of time for the purpose of destroying the American industry. This bill * * * is simply aimed at that possible condition."

Perhaps the clearest evidence of the limited definition of "dumping" intended by Congress appears in the Congressional Record, volume 61, part 2, at page 1194, during Senate debate on the bill. Senator Stanley there stated:

"Hon. William S. Culbertson, member of the Tariff Commission, in a recent and very admirable work entitled 'Commercial Policy in War Time and After,' inserts a most instructive chapter on antidumping legislation. He defines three kinds of trade practices properly falling under the head of 'dumping,' as follows:

"(1) The sporadic selling of goods in order to relieve a surplus; that is, the offering of bargain sales in international trade;

"(2) A permanent policy of foreign industries of selling in this country a portion of their output at a price below their domestic price in order to keep their factories running full time; and

"(3) Unfair price cutting, the objective of which is to injure, destroy, or prevent the establishment of an American industry.

"The sporadic selling of goods to relieve a surplus and a custom of selling a portion of the output at less price than in domestic markets is almost universally practiced and justified by American industries. This act is ostensibly designed to meet the condition described by Mr. Culbertson as unfair price cutting, the object of which is to injury, destroy, or prevent the establishment of an American industry."

"Dumping" as used in the 1921 statute, therefore, does not, and was not intended to, encompass every form of price differential that falls within the economist's concept of "technical dumping." Where the price differential is not "accompanied by unfair circumstances or by unfortunate public consequences," to use the Commission's words, the penalty of the act was not meant to be applied.

Where large quantities of a commodity are unloaded on a market at below-cost prices, or where a consistent program of dumping is carried on for the purpose of eliminating competition or destroying an industry or preventing a new industry from getting a start, or where a dumping program causes a sharp and injurious drop in domestic price levels, then the Dumping Act should and must be applied. This is the type of dumping Congress wanted to prevent, and this is the concept of dumping it wrote into the 1921 statute.

True, by rejecting the 1916 act Congress eliminated the need for proving a subjective intent to destroy on the part of the dumpers. But it clearly did not intend to eliminate all objective consideration of the purpose and the effect of any price differential that might exist. The type of dumping condemned by the 1921 act was basically the same type of dumping that had been condemned by the 1916 act. The change was a change in the manner of proof, and a change from a criminal to an administrative method of enforcement. This was exactly the change recommended by the Tariff Commission in its 1919 report, where it criticized the 1916 act on several counts, and recommended that future dumping legislation should "instruct the President or Secretary of the Treasury to impose additional duties or refuse entry whenever the existence of dumping in any industrially destructive form is established" (p. 33).

This phrase of the Tariff Commission is as good a thumbnail description as there is for the type of dumping prohibited by United States antidumping legislation. Not any dumping. Not dumping wherever a price differential exists. But "dumping in any industrially destructive form."

4. *Legislative treatment of price discrimination.*—It is apparent from the language and the history of these three legislative enactments that they are all designed to cope with identical problems—namely, the danger that unfair price discrimination will destroy competition and establish a monopoly.

The Congress made it clear, in the language of the 1916 act and in the legislative history of the 1921 act, that antidumping legislation was part and parcel of its antitrust legislation. The antidumping policy, therefore, was meant to be directed against any foreign monopoly or cartel that might seek to establish or reestablish a monopoly within the United States. Indeed, the 1921 act was specifically aimed at one European chemical cartel and its pending threat to reestablish the prewar monopoly it had enjoyed in certain industrial chemicals for the United States market.

This legislative attitude is in complete accord with the economic and business realities of the dumping problem. Ordinarily a businessman, whether he be American or foreign, is in business to make a profit. He does not, except for unusual circumstances, sell at a loss, nor does he voluntarily sell at the lowest possible price. The artificial underselling that is a basic ingredient of true dumping can only be a weapon of economic strength—that is, a tool in the hands of a monopolist. A business organization in such circumstances can afford, for a time, to sell at a loss in order to monopolize a particular market, in hopes that the resulting monopoly will allow it to recoup its losses through controlled high prices.

For this reason, it is preposterous to conclude that a small foreign exporter who sells only a minute fraction of the American market can be guilty of dumping. In the circumstances of the cast iron soil pipe case, for example, it would be preposterous to conclude that these imports which constituted less than four-tenths of 1 percent of domestic production were restraining competition or threatening monopoly in the United States market.

For this same reason, there has been little threat of dumping on the United States market during the past two decades or more, for most of the economic strength which permits dumping is located not in the countries that sell goods to us but in our own country. It is not because of lax enforcement that the

Treasury Department has made findings of dumping in less than 4 percent of the dumping investigations it has conducted. Rather, the reason for this small occurrence of dumping lies in the economic reality that, with very few exceptions, the power to dump is vested almost exclusively in the United States.

It is interesting to note, in this connection, that under the definition of a dumping price proposed by the Secretary of Treasury the sales of agricultural surpluses abroad by the Secretary of Agriculture are clearly labeled as dumping sales. If the concept of a dumping price, as Congress intended in all three of the legislative enactments here discussed, were adopted, it is probable that these surplus disposal sales could be freed of the taint of dumping which the Secretary of the Treasury has attached to them.

The legislative intent of the 1921 Antidumping Act seems to be clear and convincing, and administrative deference to that intent could have prevented the inequities and absurdities that have appeared in our history of antidumping enforcement.

We submit that the purpose and the intent of the 67th Congress was proper and necessary, and that all that is required in the substantive revisions of the Antidumping Act now being considered is to restate in more specific terms the original intent of the statute.

IV. OUTSTANDING FINDINGS OF DUMPING

Applying the standards of a proper antidumping program to the two cases where findings of dumping are now in existence reveals the extreme levels to which our antidumping policy has fallen:

1. *Hardboard from Sweden.*—In this case the Antidumping Act has been used not to prevent a threatened monopoly but to consolidate an existing monopoly. In the domestic hardboard industry, one company dominates the market, supplying between 84 and 90 percent of the entire United States market for each of the past 6 years. This 1 company, moreover, has a virtual 100-percent monopoly in the eastern half of the United States, where the great bulk of all imports are concentrated, for the small domestic producers are centered in the Pacific Northwest.

During the period of alleged dumping, imports of hardboard from Sweden totaled a little less than 2½ percent of the total United States consumption. During this same period, the United States monopolist increased its sales by 12 percent and its net operating profit by 60 percent. During this same period, the small United States producers increased their sales by 40 percent and their net operating profits by almost 50 percent.

The imports, which were priced at the highest prices they could command in the United States market, offered the only wedge of competition in the monopoly that the domestic giant enjoyed in the eastern half of the country. In fact, several small industrial businesses have testified that their only hope of obtaining the small quantities of hardboard they need in their business operations was through the availability of a small quantity of imports.

In these circumstances, the finding of dumping issued in August 1954 bears no relation to the intent of the Antidumping Act or to the proper scope of antidumping policy.

2. *Cast-iron soil pipe from Great Britain.*—In this case, the sanctions of the Antidumping Act were applied against imports that represented less than four-tenths of 1 percent of domestic pipe production. During the period of alleged dumping, the domestic industry increased its production, prices, sales and profits by at least 25 percent. The complaint was filed by a marginal producer who was not even a regular producer of soil pipe, and had failed in at least three previous attempts to enter that business at a time when there were no imports of the commodity. Even in the California market, where only about 8 percent of domestic production was located, imports constituted less than 3 percent of California production, and by the admission of the producers themselves did not prevent a substantial increase in their production and sales nor a substantial increase in their prices. The price of the imported pipe, while lower than the British producers could command in their home market and in Malaya, was a competitive price fixed by the American businessmen to whom it was sold. To conclude that these imports restrained competition or threatened a monopoly in the face of a domestic industry that sold 25,000 percent more pipe than all the imports is a reductio ad absurdum.

V. TREASURY DEPARTMENT RECOMMENDATIONS

An analysis of the recommendations made to the Congress by the Treasury Department is atached hereto as appendix IV. The criticism of the Treasury Department proposals stems in part from what they say and and in part from what they do not say.

In what they say, the Treasury Department proposals are deficient because:

1. Arithmetic is not the true test of a dumping price, and was never intended to be such.

2. The refusal to prescribe any standards of injury leaves the enforcement of this vital statute, which can have such drastic effects on American businessmen, to the unreviewable whim of a grand vizier.

3. The "anomalous situation" whereby dumping duties cannot be collected after a finding of dumping has been made was created by the Treasury Department itself, and is in any event, a hypothetical phenomenon which need never arise under a proper reading of the statute.

In what the proposals do not say, they are particularly deficient in denying the elementary principles of justice to American citizens affected by the administration of the act. Provision must be made for notice, hearings and judicial review as the very minimum in fair administrative procedure. In addition, provision should be made for Presidential review in order to assure that the enforcement of this policy is in accord with our national program and in our own national interest.

Both of these deficiencies we have attempted to remedy in the attached proposed bill which has been drafted by the members of the National Antidumping Committee, Inc., and approved by its board of directors.

VI. IMPACT OF ANTIDUMPING POLICY

1. *Effect of investigation.*—The greatest impact of antidumping enforcement lies not in the findings of dumping which are actually issued but in (*a*) the withholding of appraisals during the period of investigation, and (*b*) the deterrent effect of the statute itself. The impact of antidumping enforcement on American importers and American consumers of foreign commodities is therefore not to be reckoned in terms of the 8 findings of dumping that have been issued during the past 23 years, but rather in term of the 200 or more investigations on which withholding of appraisements has been ordered.

At the moment, there are apparently more than 30 antidumping investigations going on, at one stage or another. This is a very substantial increase over the number under investigation in any recent period. Apparently, more American industries are finding that the mere filing of a dumping complaint can eliminate a substantial part of their import competition, even though it eventually turns out that there was no dumping at all.

Under the secrecy that clouds antidumping procedures, it is impossible to determine the volume of trade which now being threatened by these investigations. The last figure made available in this connection shows that, as of the beginning of last year, appraisements were being withheld on imports having a value of approximately $100 million. The current figure is probably substantially greater.

2. *Penalizing innocent bystanders.*—A strange circumstance of antidumping enforcement is that penalty is usually inflicted upon an innocent bystander. If there is dumping, the dumper is not the American importer but the foreign manufacturer, yet it is the American importer who must pay the punitive duties leveled on the goods he has bought and sold. Since the finding of dumping is based on prices which his foreign supplier charges to other customers, either in his own market or in a third country, the American importer is being penalized, even to the point of being forced out of business, because of an action over which he has no control and of which he usually has no knowledge.

3. *Retroactive penalties.*—The retroactive penalties imposed upon the American importer cannot be completely avoided. We recognize that in cases of real dumping, a retroactive effect is necessary to assure effective control of this unfair trade practice. However, because of the uniquely unfair penalty which can thus be imposed upon American businessmen, it is doubly important that adequate provision be made for fair administrative and judicial processes. Moreover, discretion should be vested in the Secretary of Treasury to permit appraisement of particular entries where it is obvious they can have no predatory purpose or destructive effect.

4. *Threat of dumping.*—The danger of dumping on the United States market is extremely limited in the economic circumstances of the world today. However, it is necessary that a proper antidumping law remain as a deterrent to any foreign cartel that may attempt to establish any limited form of monopoly in the United States.

More significant in the circumstances today is the danger of political dumping, whereby a hostile foreign power intent on weakening our economy and our defense mobilization base, could exercise its economic controls in such a way as to unload large quantities of a particular strategic commodity on the United States market with the resultant deteriorating effect on a segment of our defense industry.

VII. CONCLUSION

While antidumping problems are complex and often technical, the basic principles of a proper antidumping policy are not difficult to define:

1. An effective antidumping law is an essential adjunct of our basic antimonopoly policy.
2. A "dumping price" is not found by mere arithmetic, but requires a showing that a price differential is unfair or is not economically justifiable.
3. The "injury to an industry" which the antidumping policy is designed to prevent is a restraint of competition or threat of monopoly resulting from unfair price discrimination.
4. Fair procedure must be provided for all persons affected by the antidumping enforcement policies.
5. Restraints on dumping, while essential, must be kept within their proper sphere if the national goal of expanded world trade is to be reached.

With these principles accepted, the complexities of antidumping policy will not be insurmountable.

APPENDIX I

COMMISSION ON FOREIGN ECONOMIC POLICY (RANDALL COMMISSION)—MINORITY REPORT (JANUARY 1954) BY REPRESENTATIVES DANIEL A. REED AND RICHARD M. SIMPSON

We approve the recommendations with respect to proposed study by the Treasury Department of amendments to be recommended to Congress for changes in the now obsolete Antidumping Act, which is no longer adequate under changed conditions to perform the functions intended.

In addition, the law is grossly unfair in several respects. The test of injury to domestic industries requires revision in light of technological developments in industry and reciprocal trade policies of recent years. The law fails to guarantee adequate notice and hearings to the importer and permits what are in effect star-chamber practices contrary to American principles of justice. The law also permits retroactive application of antidumping practices, as well as the dragging out of proceedings for months and even years before final determination, with additional imports suspended or reduced to nominal volume in the interim (pp. 7–8).

APPENDIX II

JOINT COMMITTEE ON THE ECONOMIC REPORT—REPORT NO. 1312 (84TH CONG., 2D SESS.) ON FOREIGN ECONOMIC POLICY

Quirks in our laws should not be allowed to dominate trade policy in a manner never intended by the Congress. The Antidumping Act of 1921 was intended to control discriminatory pricing policies predatory in character by foreign suppliers against United States producers, if it could be shown that such lower priced imports were damaging to the American industry concerned. For many years this law was administered by the Treasury Department. Treasury still determines the existence of a price differential, but the determination of injury now has been transferred to the Tariff Commission.

A recent decision on cast-iron soil pipe (Investigation No. 5 before the Tariff Commission) has followed a line of reasoning which if applied universally could negate much of our reciprocal program of trade liberalization. In this remarkable case, the challenged imports constituted no more than four-tenths of 1 percent of domestic production of cast-iron soil pipe, and the domestic industry

during the period of this importation had expanded its production, sales, capacity, and prices. The Tariff Commission reached its conclusion regarding injury by deciding that the approximately 8 percent of national production located in California constituted a separate industry. But only one California producer who was represented at the hearings had shown losses during the period of imports, and these losses apparently were not the first he had experienced. A further circumstance of Tariff Commission findings on all antidumping cases is that the Commission is not required to make public its data and reasoning related to the decision made.

Some price differences are a normal occurrence in trade. If each time that this occurs and there is also a marginal domestic producer, then the penalties of the Antidumping Act could be invoked by the cast-iron soil pipe interpretation. This broadening of the scope of the law is most serious. It is additionally serious because, unlike escape-clause actions, the President is given no authority to override suh a Tariff Commission finding in the broader national interest.

It should be noted further that the mere setting in motion of the investigatory machinery, which has occurred 165 times since 1934, generally prevents all imports in the category under study from clearing customs. All appraisals cease, and the cloud of possible retroactive penalties hangs over trade. This suggests the door is open to a dangerous tactical diversionary effort by domestic producers even in cases where they do not expect to have a finding favorable to their case (p. 27).

The problem of interpretation of antidumping penalties is a complicated one which deserves careful study rather than precipitate action; the need for change is recognized as its interpretation threatens to negate our foreign economic policy goals, but the remedies must be sought only with thorough investigation. At the very least, the President should be given authority to override Tariff Commission decisions when the national interest requires this (p. 31).

Appendix III

REPORT OF THE (BOGGS) SUBCOMMITTEE ON CUSTOMS, TARIFFS, AND RECIPROCAL TRADE AGREEMENTS ON "UNITED STATES CUSTOMS, TARIFF, AND TRADE AGREEMENT LAWS AND THEIR ADMINISTRATION" (MARCH 8, 1957)

The net effect of (commercial dumping) is to reduce the price of commodities in the importing country below the price those commodities command in the exporting country. Low prices are generally desirable from the point of view of the importing country. However, where lower prices on imports involve unfair and injurious competition to domestic producers, it has long been the policy of the United States Government to impose antidumping duties (p. 91).

Although dumping, in the economic sense, embraces any price discrimination across national boundaries, it has long been recognized by economists that such price differentials are not necessarily unfair. For example, when domestic concerns are forced to vary their prices for delivery to different destinations, the lower mill net return on sales to some points of delivery are not necessarily considered unfair to competing producers in those areas. Again, it sometimes occurs that goods shipped to a particular area cannot be sold at the high price the manufacturer had anticipated, and the high cost involved in shipping those goods to another destination requires that they be sold at a lower price in the area to which they were originally shipped. Under these circumstances, sales at lower than the regular price are also not necessarily considered unfair (p. 94).

Since the injury determination was transferred to the Tariff Commission, the Commission has made only one finding of injury to a domestic industry. This decision, rather than clarifying the standards of injury, has given rise to considerable controversy, which has called attention to the lack of any statutory standards to be observed in the administration of the Antidumping Act. The absence of such standards would appear to fortify the desirability of the Tariff Commission and Treasury issuing reports on antidumping cases, as a means of informing the Congress and business interests how these agencies interpret the act (p. 96).

The usual reasons of equity for the requirement of notice at the start of an investigation are fortified in antidumping cases by the fact that special dumping duties are imposed retroactively. The act provides for the possible imposition of antidumping duties on all entries made during a period starting 120 days before a complaint is filed with the Secretary of the Treasury. Since the Secretary may,

and frequently does, take a considerable period of time before determining the issues raised, imports may have special duties imposed on them months, or even years, after they have been entered, sold, and consumed. Adequate notice of this date in all cases would at least apprise all persons subject to the investigation of the date from which penalties might accrue, as well as of their opportunity to provide essential information (pp. 96–7).

A collateral aspect of the antidumping procedures is the absence of any provision for review of the need for imposing penalty duties on shipments of the article that has been found to be dumped. Consideration should be given to provisions which would afford an opportunity for importers to petition for a review of the dumping finding and for a revocation of the finding upon adequate review by the Secretary of the Treasury (p. 98).

Appendix IV

ANALYSIS OF TREASURY DEPARTMENT'S RECOMMENDATIONS FOR AMENDMENT OF ANTIDUMPING ACT OF 1921

I. Trade restrictions generally

An expanding level of world trade—that is, both imports and exports—is essential to the continued strength and prosperity of the United States. This has been the accepted and uniform policy of the United States Government, both executive and legislative, for at least the past 20 years. This has been the foundation for vital issues of national policy and for our relations with other nations of the free world. Our $30 billion worth of world trade has provided the sustenance for thousands of American companies, tens of thousands of farmers, and millions of workers.

Trade is essential, whether for the individual, the company, or the Nation, and more trade is better than less, because more business is better than less business. An expanding level of world trade is essential to the American businessman, farmer, worker, consumer, and taxpayer, in terms of his own pocketbook and his economic future, without regard to the great benefits our country derives from the economic stability of our allies and the strength of our international alliances.

It is obvious, therefore, that restrictions on this vital segment of our economy should be imposed only when they are necessary and only to the extent that they are necessary. Antidumping controls are among those which are necessary, for dumping in world trade is an unfair trade practice that must be prevented. But if antidumping controls are to be helpful to the economy, rather than harmful, they must not only be effective but they must be effective only in their proper sphere. This, it seems to us, is the key to an effective and a proper antidumping policy, and it is this aspect of that the Treasury Department has almost completely neglected in its recommendations.

II. "Dumping"

A policy against "dumping" presupposes a definition of the unfair trade practice which is the target of the statute. Unfortunately, the Antidumping Act of 1921, as amended, contains no such definition. In such circumstances, established standards of statutory construction demand recourse to the legislative history of the act to determine its intent and its scope.

Did Congress intend that a "dumping price" should be established by nothing more than "an exercise in arithmetic" (Treasury repot, p. 18)—that is, by a sale price in this country lower than the price anywhere else in the world?

The Tariff Commission did not think so during the time this bill was being considered, for it said in 1919:

"Ordinary price cutting and under selling are so universal, both in domestic and foreign fields, that it is taken for granted that restrictions are contemplated only when their practice is accompanied by unfair circumstances or by unfortunate public consequences."

Prof. Jacob Viner, the foremost authority on dumping during this period, did not think so, for he said:

"It is not intended here to make the term price discrimination necessarily denote unfair competitive practice. Some types of price discrimination may be regarded as fair and others as unfair by the mores and the law."

The House Ways and Means Committee considering this bill did not think so, for it said of the antidumping bill passed in 1921:

"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 normal levels to recoup dumping losses."

The principal proponent of the 1921 bill in the Senate did not think so, for he stated:

"There may arise 2 months from now a condition in which some foreign business concern desiring to enter the American market may be willing to slaughter its profits for a given length of time for the purpose of destroying the American industry. This bill * * * is simply aimed at that possible condition."

The Senate and the Conference Committee which approved the bill destined to be the Antidumping Act of 1921 did not think so, for they specifically rejected the antidumping bill passed by the House (H. R. 2435, 67th Cong., 1st sess.), which had clearly and pointedly based a finding of dumping on "nothing more than an exercise in arithmetic." The original House bill provided for an automatic assessment of dumping duties by the local appraisers equal to the artithmetical difference between the United States purchase price and the "home market value." There was to be no Cabinet-level decision, no policy determinations, no proof of injury—in short, the finding of dumping and the determination of the dumping duty was to be automatic and mathematical. This was the bill that the Senate rejected when it interposed a Cabinet-level determination of sales at less than "fair value." The conference report (report No. 79, 67th Cong., 1st sess.) points out specifically that the Senate bill, which became the law, adopts the basis of the House bill in determining the dumping duty, but rejects that basis in determining whether there are sales at less than fair value. It is hard to believe that the Congress was giving a member of the Cabinet no more than the authority to check the arithmetic of his subordinates. It is hard also to believe that there is no significance in the deliberate avoidance of the term "foreign market value" which was used at least seven times throughout the remainder of the statute and which was specifically defined in mathematical terms in section 205 of the act.

It is clear from these contemporaneous statements and actions that the "dumping" Congress intended to prevent involved much more than the existence of an arithmetical price differential. The price differentials that Congress intended to stop were those involving "commercial warfare," or those which were "accompanied by unfair circumstances or by unfortunate public consequences," or those which were regarded as "unfair by the mores and the law," or those which were established "for a given length of time for the purpose of destroying the American industry." In such cases, the arithmetical price differential—that is, the sale at less than "foreign market value"—was also a sale at "less than fair value." If the arithmetical price differential was normal, or fair, or reasonable, or commercially justifiable—in short, if the price differential reflected a fair market price—then it was not to be regarded as a sale at "less than fair value."

That this was the only concept of "dumping" Congress intended to bring within the scope of the statute is amply supported by the extensive debates accompanying the enactment of the bill. Throughout the debate, there were frequent references to "unfair trade practices," "unfair competitive practices," "unfair dumping," and the like. The only specific instances of "dumping" cited during the debate were examples of "predatory dumping" by I. G. Farben in Germany and by the old Steel Trust in the United States. The constant and undeviating reference to these instances of predatory dumping was a clear indication of the evil that was intended to be stopped by the statute. That evil was not meant to include any price differential that favored an American buyer. It was intended to include only those price differentials that constituted an unfair trade practice, that had either the purpose or effect of destroying competition, or destroying the domestic industry, or establishing a monopoly. It was in this sense that the Congress used the word "dumping," and the act which was adopted in 1921 was effectively designed to cope with the unfair trade practice at which it was aimed. For a variety of reasons, the administration of the statute in the 36 intervening years has departed farther and farther from the original and proper objectives of the Congress, culminating in the latest administrative determination that the evil of dumping can be established by mere arithmetic, and that "fair value" does not mean "fair value."

III. "Fair value"

The principal change recommended by the Treasury Department proposes congressional adoption of the recent administrative regulation defining "fair value," and substitution of this administrative definition for the statutory definition of "foreign market value" in section 205 of the act. The principal purpose for this recommendation, according to the Treasury report, is "to put an end to the anomalous situation whereby a finding can be made under the Anti-Dumping Act but no dumping duties can be collected."

The Treasury report fails to point out that this anomalous situation did not exist for the first 34 years of the statute's history, but that it was, in fact, created by the Treasury Department itself when in April of 1955 it broke with the 34-year administrative practice and redefined "fair value" by regulation. The Department was warned by many experts in the customs field, prior to the adoption of the regulation, that it was creating just such an anomaly, but the Department chose to ignore these warnings in the interest of making its ultimate determinations easier and quicker. Having created the anomaly, the Treasury Department now, less than 2 years later, proposes to compound the resulting confusion by departing even farther from the original purposes and intent of the Anti-Dumping Act.

In making a determination of sales at "less than fair value," the simple subtraction by which a price differential is found constitutes the first step, not the last step, in the administrative process. If there is an arithmetical price differential—that is, if there is a sale in the United States at less than "foreign market value" as specifically defined in section 205—then the statute directs the Secretary of the Treasury to determine whether that price differential is fair or unfair. At page 19 of the Treasury report, the Secretary states: "The word 'fair' as used here simply means what one ordinarily conceives of as the 'fair market' value—what a willing buyer will pay a willing seller." This is certainly true. Unfortunately, however, the Department apparently ignores the only conclusion that must be drawn from its own reasoning—that is, that fair market value can mean only the fair value in the market in which the commodity is offered and bought, and that "what a willing buyer will pay a willing seller" can refer only to the conditions in the market where the buyer and the seller are dealing. This is exactly what Congress intended by section 201 (a) of the act, when it directed the Secretary to determine whether a United States purchase price reflecting a price differential was a fair price in the United States market. What is a fair market value for a product in the United States may not be a fair market value in Malaya. What a willing buyer may pay in the United States may differ substantially from what a willing buyer might pay in Mozambique.

On page 20 of the Treasury report, the Department notes that "the legislative history shows contemporary realization of the fact that international price discrimination was regarded as usual at the time the Anti-Dumping Act first became law," and then quotes the early Tariff Commission report that "ordinary price cutting and underselling are so universal * * * that it is taken for granted that restrictions are contemplated only when their practice is accompanied by unfair circumstances or by unfortunate public consequences." Here again, the Department refuses to reach the obvious conclusion to be drawn from its own reasoning.

This legislative history on which the Department relies obviously means that not every arithmetical price differential was intended to be stopped by the statute. This language can only mean that some price differentials were usual, were fair, and were not meant to be prohibited. To conclude from this that a "dumping price" can be found by "nothing more than an exercise in arithmetic" is a complete non sequitur and a perversion of unequivocal language. As the Treasury Department's report so clearly points out, arithmetic was not the test of a dumping price. Only when the arithmetic was "accompanied by unfair circumstances" or by "unfortunate public consequences" or by other unusual or artificial factors was it intended to be regarded as a sale at less than "fair value."

Example No. 1: Brass widgets sell on the world market, including the United States market for 25 cents apiece. From 1950 to 1955, domestic producers sell 80 percent of the United States market, while imports sell the additional 20 percent. In 1956, because of an overexpansion of domestic productive facilities and mistaken business judgment as to changes in consumer taste, there is a price drop in the United States market to 20 cents. Imports obviously cannot sell in the United States market during 1956 at 25 cents, but must sell at the

going market price of 20 cents. Because the local and temporary economic factors which caused a price drop in the United States were not present throughout the world, the world price remained at about 25 cents during the year 1956. During 1956, the domestic industry increases its share of domestic consumption to 85 percent of the market, while imports decline to 15 percent of the market. Is the 20-cent price charged by importers to meet the price of the domestic market an unfair price? Is it a sale at less than fair value? Is it dumping?

Example No. 2: A foreign producer of brass widgets has a monopoly of this product in his home market, being the only local producer. In his home country, therefore, with no competition and a 100 percent monopoly, he charges what the market will bear. He also exports a small percentage of his total production to other countries, including the United States, which has a substantial brass widget producing industry of its own. Because of the competitive circumstances in the United States markets the fair market value of brass widgets in the United States is considerably less than the artificially high monopolistic price maintained in this hypothetical foreign country. If imports are to sell in the United States at all, they must sell at the going market price, which is obviously below the artificially high price maintained abroad. If the importer matches the going price in the United States, is he selling at an unfair price? Is he selling at less than fair value? Is he dumping?

Example No. 3. A foreign cartel producing gold-plated mousetraps and enjoying a monopoly in most of the countries of Western Europe desires to establish a monopoly in the United States as well. The United States has three small companies producing this commodity. The foreign cartel offers and sells its articles in the United States market at a price somewhat below its own cost of production, which is substantially below the going market price of the United States-produced mousetraps. With large quantities of this commodity offered from abroad at artificially low prices, the domestic producers can find no buyers for their products.

We submit that of these three examples, only example No. 3 is an instance of "dumping" that Congress intended to prohibit by the Antidumping Act of 1921. In example No. 1, the United States price of the imports is a fair price, dictated by the economic circumstances of the local market, and is not "accompanied by unfair circumstances or by unfortunate public consequences" even though the foreign producer is able to maintain the 25 cent price on his home market and in other export markets.

In example No. 2, also, the price of the import in the United States is a fair price in terms of the conditions of the United States market. The only price in this example which is "unfair" is the artificially high price that the foreign producer is able to maintain in his own home market.

Example No. 3 is "dumping." This is a classic example of the unfair trade practice that Congress intended to prohibit. The artificially low price in the United States market is an unfair price, which will destroy the American industry, eliminate competition in the United States market, and threaten the establishment of a monopoly.

It was pointed out above that the existence of a price differential—that is, the existence of a United States price which is below the "foreign market value" as defined in section 205—constitutes the first step, not the last step, in making a determination of sales at less than fair value. This suggestion is borne out not only by the legislative history of the act, but also by its express language. The two subsections of section 201 of the act make this conclusion clear.

Section 201 (b), which describes the action to be taken at the start of an investigation before there has been a finding of dumping, directs the Secretary to withhold appraisement whenever he has reason to suspect that the purchase price of the exporter's sales price is less than foreign market value. In other words, the first step in an antidumping investigation hinges on the existence of sales at less than the foreign market value, as specifically defined in the act—that is, on the existence of an arithmetic price differential. With this as the starting point, the Secretary has been directed to conduct an investigation in order to determine whether or not such sales have been made at "less than fair value," within the meaning of section 201 (a) of the act. If the requisite finding is made under section 201 (a), then in accordance with the terms of section 202 of the act, a "special dumping duty" is assessed equal to the arithmetical difference—that is, the difference between the United States price and the "foreign market value" as defined in section 205.

Thus, foreign market value originates the antidumping investigation, and the same foreign market value when finally ascertained determines the amount of

the dumping duty. But in the all-important section 201 (a), relating specifically to the finding of dumping, foreign market value is not the determining factor, and was never intended to be such. Here, for the only time in the entire statute, the Congress avoided the use of the term "foreign market value" and instead used the term "fair value." Moreover, it chose a Cabinet officer to make the determination of fair value, while arithmetical determination of foreign market value was left to the export appraisers and other subordinates of the Department.

This clear legislative pattern and the obvious conclusions to be drawn from the words used by Congress indicate also that there is no substance to the major fear posed by the Treasury Department, which apparently forms the major basis for its current legislative recommendations. That fear is the so-called anomalous situation whereby a finding of dumping can be issued but no dumping duties can be assessed because of the difference in the standards of fair value and foreign market value. This hypothetical danger, which has never actually existed in any dumping case, is completely eliminated by a proper reading of section 201 of the act. If, as we believe, the existence of sales at less than foreign market value is the first step in a dumping investigation, then in every case where a finding of dumping is issued, there will automatically be dumping duties assessable, for these duties are based on the very value which initiated the investigation. Thus, we find that the hypothetical and imaginative dilemma in which the Treasury now seems to find itself was solved by the Congress 38 years ago, when it drafted the statute. All that is needed is for the present Congress to spell out the intent of the 67th Congress in order to prevent the administrative perversion of both procedure and policy which have characterized the enforcement of this statute for many decades.

IV. Foreign market value

In order to eliminate the hypothetical anomaly that it has read into this statute, the Treasury Department proposes to redefine "foreign market value," which is the statutory formula for determining the amount of any dumping duty. It seeks to have the Congress redefine this term to make it coincide with the fair value regulation the Secretary promulgated 2 years ago. The principal difference in these two definitions is the proposed elimination of the existing requirement that goods must be freely offered before they can be used to establish value.

Aside from the fact that this proposed change is unnecessary, as detailed above, it is also inequitable, dangerous, and self-defeating:

(1) In every customs case where value is to be determined, the Congress has insisted that a true value can be based only on a freely offered price. It has taken many decades of study and litigation to establish the details of this concept. A departure from this universally accepted principle should be approached with the utmost caution and can be justified only by a clear-cut need for such a drastic step.

(2) Treasury proposes to disregard all restrictions on sales because some of them may appear meaningless. But restrictions on sales contracts are not an invention of the conspirator. They are normal and legitimate terms of trade, adopted in the exercise of reasonable business judgment. To disregard all restrictions is to penalize normal trade operations and to ignore the economic consequences of normal business activities which have a real and a legitimate influence on price.

(3) The uncertainty resulting from the proposed definition would make it impossible for any importer or exporter to know whether he was engaging in sales at a dumping price. A foreign producer selling in the United States at a higher price than in his home market may find himself guilty of dumping merely because the Secretary arbitrarily assigns to a particular trade restriction a value different from that fixed by the producer. If business reality is to be ignored and the sole test of value is to be the arbitrary determination in the mind of the Secretary, then no man can ever know whether or not he is violating the law. Such arbitrariness raises serious questions of constitutionality.

(4) Since dumping duties must be fixed on each individual entry by the examiners or appraisers in each port of entry, the adoption of such an uncertain and arbitrary formula could result in wide variations in value determinations of identical products from port to port and even from shipment to shipment. The result would be hopeless confusion and endless litigation.

(5) At the moment, there are two outstanding dumping orders—hardboard and soil pipe. The supporters of the proposed change may not have realized that in both these cases, the only cases now on the books, application of the

proposed formula would substantially reduce the amount of the dumping duties and thereby materially decrease, rather than increase, the protective influence of the antidumping law.

V. Injury

The intense controversy over the question of "injury to the domestic industry" has been almost completely ignored by the Treasury Department in its report. For some reason not completely explained, the Treasury Department feels that increased certainty, speed, and efficiency in the enforcement of the Antidumping Act can be achieved by leaving to the unreviewable whim of the Tariff Commission a determination of what constitutes injury in a particular case. The statute unfortunately contains no definition of the term "injury," nor even a listing of the standards and criteria which are to be considered by the administrators of the statute. This, coupled with the failure of the Tariff Commission and, earlier, of the Secretaryof the Treasury to provide any reasons or justification for its determination of injury questions, results in complete uncertainty, rather than certainty, in the scope and the enforcement of antidumping legislation.

It was because of this uncertainty, plus the unreviewable discretion granted to the United States Tariff Commission, that Prof. Jacob Viner recently stated to Congress that, so far as import restrictions are concerned, the administration of the Antidumping Act "can make the escape clause look like small potatoes." It is for this reason that the recent report of the Joint Committee on the Economic Report stated that the latest injury determination "could negate much of our reciprocal program of trade liberalization."

The failure of the Treasury Department to recommend any reasonable standards for a determination of injury leaves in effect two outstanding determinations which are at complete variance with the intent of the statute and with any reasonable interpretation thereof:

(1) In one case, where a domestic monopoly makes and sells more than 85 percent of the particular commodity involved and where it is challenged in its monopolistic sales only by imports that constitute less than 3 percent of the total United States sales, it was held that this small quantity of imports was likely to injure the domestic industry. This is a strange decision under a statute which was intended to prevent the establishment of any monopoly and which was here used to encourage a monopoly.

(2) In the second case, where the domestic industry had increased its production, sales and profits by more than 30 percent over the period of alleged dumping, injury to the domestic industry was found even though total importations represented less than four-tenths of 1 percent of domestic production.

This is indeed a far cry from the original intent of Congress in enacting the Antidumping Act to prevent "a new type of commercial warfare" intended to "destroy an American industry."

VI. The domestic industry

The Treasury report also ignores the important question as to the limits of the "domestic industry" that is being threatened by the importations at less than fair value. It seems clear from the language of the statute and from its legislative history that Congress had in mind an entire industry, consisting of all the producers of a particular commodity. If such an industry were threatened with extinction or with material injury, within the scope of the Antidumping Act, then the protection of the statute was meant to be applied. But the most recent decision of this issue determined that a small segment of the national industry, consisting of less than 10 percent of all the producers of the particular commodity involved, constituted a separate and distinct "industry in the United States" merely because they happened to be located in one State of the Union. By this definition, there are apparently 49 industries in the United States producing this particular commodity, if you include the District of Columbia.

Even more significant, such a definition would allow injury to be found to a domestic industry when only 1 or 2 marginal producers can show that their profits are not up to the level of the industry as a whole. This, in fact, was the basis of the finding of injury in the cast-iron soil pipe determination. Since there is no industry in the United States, however profitable, which does not have one or more marginal producers, the logical effect of such a determination would mean application of the dumping sanctions to numerous cases of legitimate trade that were never intended to be brought within the scope of the Antidumping Act.

VII. Procedure

(*a*) *Fair procedure.*—Public participation in the issuance of a finding of dumping is as essential to the requirements of fair administrative procedure and effective enforcement as it is in any of the myriad of administrative problems regularly considered by the agencies of Government. The antidumping procedure in the Department of the Treasury has been characterized as "star chamber practices" by foes as well as friends of a liberal trade policy. The requirements of the Administrative Procedure Act with regard to adequate public notice, public participation in rulemaking, public hearings, etc., have been established by the Congress as the very minimum in fair administrative procedure. Yet the Secretary of the Treasury has not only refused to adopt these procedures in his antidumping enforcement policies, but has completely neglected to discuss them in his report to the Congress.

(*b*) *Presidential review.*—Antidumping policy is an increasingly vital portion of the foreign economic policy of the United States. To many world traders it is at least as significant as the escape clause and other more commonly discussed phases of our economic policy. The action taken under the terms of the Antidumping Act can be as significant to our national programs and our national objectives as any action taken pursuant to the escape clause. It is therefore in our own interests to permit the President to determine, in such particular case, whether the application of antidumping sanctions is in the national interest. As the Joint Committee on the Economic Report recently recommended, "At the very least, the President should be given authority to override Tariff Commission decisions when the national interest requires this."

(*c*) *Judicial review.*—The strongest safeguard against administrative caprice and official perversion of the congressional intent lies in judicial review of the administrative action. In the absence of such review, a complacent administrator can regard the mandate of the statute not as an authorization to act within its terms but merely as a suggestion of the way he should operate, with no one to say him nay if he goes beyond its intent or its language. To give an administrator such unreviewable discretion in matters that are of vital importance to so many American citizens and American businesses, with no opportunity for those citizens or businesses to have their day in court, is to invite disaster, both to our economy and to our form of government. If an administrative decision is sound, it should be defensible in court, and if it is not sound, citizens who have been adversely affected by it should have an opportunity to challenge it.

(*d*) *Revocation.*—There is no provision, either in the statute, the regulations or the Treasury Department recommendations, granting any rights or establishing any procedures for revocation of a finding of dumping which has been issued but which is no longer necessary or appropriate. In equity to those citizens and friends who are adversely affected by a finding of dumping, provision should be made for at least an annual review of an outstanding finding of dumping, with a view to revoking the finding if the circumstances warrant.

Mr. BARNHARD. I should like to make it clear at the outset that our criticism of the act is not directed to the law itself, for the 1921 act was enacted for a necessary and worthy purpose and was clearly intended to accomplish that purpose. Effective controls against unfair and injurious price discrimination are essential, and one of the major purposes of our committee is to make antidumping legislation even more effective against such practices. Unfortunately, however, the administration of this vital statute has departed far from the original intent of the Congress, until today the law, as applied, permits the wrong agency to inflict penalties on the wrong people, for the wrong acts, at the wrong time, and in the wrong way.

I say the wrong agency for this reason: This is perhaps the only major phase of our foreign trade policy in which the President has no opportunity to view the national interest or consider the effect on our national and international policies. Antidumping enforcement today is handled by two bodies without a single head, with the Treasury Department making its finding, the Tariff Commission making its finding, and no one looking at the entire problem or at its effect on basic national programs.

I say it applies these programs to the wrong people because the antidumping program doesn't punish the foreign manufacturer who may be guilty of dumping. Instead, it punishes the United States importer or the United States consumer of imported material for something he could not control and probably did not even know about.

I say the wrong acts because the purpose of the Antidumping Act was to keep foreign cartels from selling below cost of production and thus destroying a United States industry that could not match the artificially low price. Today it is being used to prevent sales that are not at artificially low prices, but are set at the highest competitive price they can command in the market place. And the act is being used, not to prevent the destruction of a United States industry, but to eliminate competition for industries that are steadily increasing their production, sales, capacity, prices and profits.

I say the wrong time because the penalties of the Antidumping Act are assessed retroactively, sometimes covering as much as 3 years or more prior to the date of the finding of dumping. And since appraisements of imports are suspended as soon as the investigation has started, the United States businessmen involved may be severely penalized, and even forced out of business, whether or not there ever was any dumping. This is a rare case not only of a presumption of guilt before the verdict, but in many cases the imposition of a drastic sentence before the verdict.

And I say finally, this is administered in the wrong way because aside from the retroactive penalties and the presumption of guilt, the importers and other affected parties have no right to a hearing in the Treasury Department, they are subject to decisions of the Tariff Commission that, as you heard from the previous witness, require no reasons or justification, they have been denied the right to judicial review to see if the agency actions were legal, and they have no established procedure they can follow to seek revocation after the alleged dumping has ceased.

I defer any further criticisms of the act (and I have many of them, particularly in the administration of it), because the specific legislation before this committee is not the Antidumping Act, but H. R. 6006, which has been described as a technical, innocuous, noncontroversial bill. This bill is certainly highly technical, but it is not innocuous, nor is it noncontroversial, as the committee is discovering today. Others have discussed, or will discuss, the detailed proposals made by the Treasury Department.

Mr. Flues, the Assistance Secretary, said that some witnesses will think this bill doesn't go far enough, some will think it goes too far. I am in neither of these categories; I believe this bill probably doesn't go anywhere, for I think a careful analysis of the bill will show that it will not accomplish any of the ends sought by its supporters.

To those who place greater emphasis on the need for developing a sound and an expanding world trade, this bill promises new obstacles to the orderly development of such trade.

To those who place greater emphasis on the need for protecting domestic industries against import competition, this bill promises less, rather than more protection from dumped imports.

To those charged with administering the act, this bill promises greater headaches and problems in devising practical rules within the

almost unlimited discretion granted to the Secretary and the Commission.

And to those who may be subjected to the sanctions of the act, this bill provides new elements of uncertainty and inequity that discourage any commercial activity.

To be specific, the first major purpose of this bill is to change the definition of "foreign market value." It is no secret that this amendment has among its most ardent supporters the domestic rayon staple fiber industry, and its chief purpose seems to be to permit the assessment of dumping duties if and when any imports of rayon fiber are found to be dumped, within the meaning of the act. It is thought that H. R. 6006 will provide to this domestic industry a measure of protection it does not now enjoy. But, whether or not this is so, the proposed definition will have as its inevitable consequence the reduction of protection for many other United States industries. Ironically, in the case of the two commodities now subject to findings of dumping (that is, hardboard, which was discussed by Mr. Keck, and soil pipe), H. R. 6006 will substantially reduce or even completely eliminate the dumping duties now being assessed against those imports.

In this connection, I should like to read just a few lines from the testimony presented only 10 days ago to the House Ways and Means Committee during the hearings on the trade agreements extension bill. The witness was Robert Keck, who testified here this morning, counsel for the United States Hardboard Association, who was then being questioned by Representative Richard Simpson, Republican, of Pennsylvania.

> Mr. KECK. At the time that the House passed H. R. 6006, we did not appear in opposition to it because there were many things in it that were very constructive. Since that time, we have learned that ironically the effect of that bill will be unquestionably to reduce substantially the dumping duties that should be imposed under our hardboard finding.
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> Mr. SIMPSON. That matter was not brought to the attention of this committee according to my recollection.
>
> Mr. KECK. No, sir. It was because it came to our attention for the first time last fall.
>
> Mr. SIMPSON. If I understand correctly, H. R. 6006 contains within itself measures which would have the effect of reducing the possible penalty under the finding of antidumping.
>
> Mr. KECK. I believe that is right, sir.

I can say from my own knowledge, and this can easily be confirmed by the Treasury Department, that the same result is applicable to the dumping duties being assessed against imports of soil pipe—that is, that the protection provided by these duties will be substantially reduced if H. R. 6006 is enacted.

The second major change in this bill would amend the definition of "such and similar" to permit easier comparisons to be made during an antidumping investigation. Currently, in making its price comparisons, Treasury can compare the United States price on imports with the price of the same merchandise abroad, or if there is no such merchandise, of similar products. The purposeo f this amendment is to permit a comparison with dissimilar merchandise, so long as it is in the same general class of merchandise. For example, this could be construed by Treasury as showing the "dumping" of Fords because they are sold for a lower price than Cadillacs, since these are both items in the same general class of merchandise, namely, automobiles.

I cannot believe this committee desires to authorize any such unfair and unrealistic comparison.

The third major change, to conform "constructed value" to the definition recently adopted in the Customs Simplification Act, also falls short of its objective, for it fails to make what in the earlier statute was the major change in the new definition.

For these reasons, and a variety of others contained in the statement filed for the record, I urge the committee to table H. R. 6006, as a bill which will accomplish none of its major purposes and will create more problems than it solves. In place of this piecemeal revision of an inherently complex statute, I respectfully urge that consideration be given to a long-overdue modernization of this obsolete law in tune with today's commercial needs and national policies.

Mr. Chairman, that completes my prepared statement, but if the committee is interested in a brief discussion of the hardboard problem discussed by Mr. Keck this morning, I should like, with the committee's permission, to make 1 more minute's remarks on the hardboard problem.

Mr. Keck raised several questions with regard to the application of the Antidumping Act to the imports of hardboard from Sweden.

He implied, first, that the Treasury had been derelict in assessing dumping duties against these imports. I can say to the committee and to you, Mr. Chairman, that the Treasury has determined the applicability of antidumping duties to every bit of Swedish hardboard that came into the United States during 1953, 1954, 1955, and 1956, and will soon be preparing its analysis of the entries during 1957.

It has found in only a small percentage of these cases that any dumping duty is at all applicable.

Second, why have no duties been collected? The reason for that is very simple. The Tariff Act for 1930 provides that where an importer questions a duty being appraised against him by the Government, he may file an appeal in the Customs Court.

The filing of an appeal in the Customs Court suspends the collection of the duty. Now, the importer must file a bond, and bonds have been filed on every one of these entries on Swedish hardboard, there has been that penalty hanging over the heads of the hardboard importers.

But, as Mr. Keck well knows, the actual collection of the duty by law cannot be accomplished until the test cases in the Court of Customs have been determined.

Now, why has the hardboard industry not gone to the Tariff Commission under the escape law?

This question was asked, I believe, by Senator Malone. There are two very obvious reasons for this.

One: the United States hardboard industry is one of the fastest growing industries in the United States today. It is mushrooming at a tremendous pace and filling tremendous new markets that have opened up for the use of this material. There is no "injury" being suffered by this industry.

Second, this industry, more than almost any other that has been involved in trade problems, is characterized and has been for many years by an almost complete monopoly in the hands of one company. The Tariff Commission report on the hardboard industry only a few years ago showed that 1 United States company sold and produced between 84 and 87 percent of all the hardboard sold and produced in

the United States. The escape clause is not used to protect such a monopoly.

Now, the fourth and final question is why should imports have increased in the face of this finding of dumping that was issued in 1954? There was no reason why they should not have increased; there was no reason why imports of hardboard should not have shared with the domestic industry this tremendous expanding market that is coming into the United States economy, unless they were truly dumping, and the reason imports of Swedish hardboard have continued to come in and have grown along with the domestic sales of hardboard is that they have not actually been guilty of dumping in this market.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Barnhard.

Our next witness is Mr. Richard H. Anthony, of the American Tariff League. Mr. Anthony, will you proceed?

STATEMENT OF RICHARD H. ANTHONY, EXECUTIVE SECRETARY, THE AMERICAN TARIFF LEAGUE, INC.

Mr. ANTHONY. Mr. Chairman and Senators, the American Tariff League wishes to go on record as supporting the earliest possible enactment of H. R. 6006. It is our conviction that the bill will close loopholes in the present law and will make for increased certainty, speed, and efficiency in the enforcement of the Antidumping Act.

During the hearings before the Ways and Means Committee last year, the league stressed the importance of a vigorous attack upon dumping practices. Dumping, of course, brings injury to domestic producers of articles in competition with those being dumped. In addition, dumping disrupts and demoralizes domestic markets and merchandising channels generally and, so, is an undesirable practice in itself, whatever its immediate effects upon this or that American producer.

For this reason, the league views the current necessity of proving injury to an American producer, as a condition precedent to antidumping relief, as an unnecessarily complicating and time-consuming process. We have long urged the elimination of the injury test from the Antidumping Act, and we here urge it again.

Of prime importance, however, is that this bill be speedily enacted so that the Treasury Department will have a perfected tool to use to meet the unfair dumping practices which are certain to increase if our markets continue their present narrowing trend.

Thank you.

The CHAIRMAN. The Chair regrets to state that we must now adjourn until 10 o'clock tomorrow morning because there is a very important vote in the Senate. Those witnesses not heard today may file their statement for the record or be rescheduled for tomorrow.

(Whereupon, at 12:50 p. m., the hearing was recessed, to reconvene at 10:20 a. m., Thursday, March 27, 1958.)

ANTIDUMPING

THURSDAY, MARCH 27, 1958

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to recess, at 10:20 a. m., in room 312, Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, Frear, Douglas, Martin, Williams, and Bennett.

Also present: Elizabeth B. Springer, chief clerk.

The CHAIRMAN. The meeting will come to order.

The first witness is Mr. Harry S. Radcliffe.

The Chair would like to make this statement. We are running behind in our schedule. The Senate meets at 12 o'clock. We shall have very important voting after that. I would like to ask every witness to be as concise as possible.

Senator BENNETT. Is that not 11 o'clock?

Senator MARTIN. I thought it was 12.

Senator BENNETT. The paper this morning said 10, and I questioned that, and I was told 11.

The CHAIRMAN. Senator Johnson said 12 o'clock.

Senator BENNETT. I am glad to be corrected.

The CHAIRMAN. The committee is anxious to give the fullest consideration to this bill, but it will be helpful if all the witnesses will be as concise as possible.

STATEMENT OF HARRY S. RADCLIFFE, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC.

Mr. RADCLIFFE. My name is Harry S. Radcliffe. I am executive vice president of the National Council of American Importers, and I appear here today in opposition to the enactment of this bill.

When public hearings were held on H. R. 6006 before the House Committee on Ways and Means last July, I presented testimony on behalf of the National Council of American Importers, Inc., offering a series of specific criticisms of the bill, and presented suggestions for changes that we urge should be made if the 1921 Antidumping Act is to be amended.

The most important objection that our organization has to this bill is that it would effect a fundamental departure from the purpose of the present law in that it fails to restrict the scope of the Antidumping Act to the necessary protection of our domestic industries against deliberate or predatory dumping, and it also fails to define the all-important term "fair value."

The report of the committee (H. Rept. 1261 of August 27, 1957) gave the following explanation for the narrow scope of the bill now before this committee:

> Suggestions have been advanced for the amendment of the Antidumping Act to provide for a statutory definition of "fair value," definition of the terms "injury" and "industry," judicial review of the determinations of the Treasury Department and the Tariff Commission, presidential review of dumping findings, etc. Consideration of these aspects of the act would involve reexamination of the basic policy issues involved in antidumping legislation. * * * Your committee is of the opinion that these matters require careful and detailed study, and that amendment of the act in these respects at this time would be premature. The amendments to the Antidumping Act contained in H. R. 6006 are of a technical nature and do not involve any change in the basic policy of the act (p. 2 of H. Rept. 1261)

The amendments to the act that would result from the enactment of H. R. 6006 are technical, it is true, but by no means just minor procedural changes. If enacted, these amendments will change the fundamental policy of antidumping legislation and alter the original purposes of the law, despite the House statement that this bill involves no change in basic policy. I think there has been a serious misunderstanding about the scope of this bill.

The circumstances that led to the original enactment of the Antidumping Act in 1921, and its legislative history, show clearly that it was designed to assign to a Cabinet officer, namely, the Secretary of the Treasury, the responsibility for making a determination as to whether or not foreign merchandise was being imported at prices so far below their actual market value as to constitute an unfair trade practice.

The sole purpose of the 1921 act was to afford our domestic industries a special form of protection against what is known as predatory dumping. Predatory dumping consists of international price discriminations whereby the foreign producer deliberately plans more or less frequent sales at abnormally low prices for the purpose of driving out competition and taking over the market.

Prior to the enactment of the 1921 act, the Congress passed the Antidumping Act of 1916 (15 U. S. C. 72) which makes it a crime punishable by a fine up to $5,000 or imprisonment up to 1 year, or both, to import articles into the United States "with the intent of destroying or injuring an industry in the United States."

This law, which has never been repealed, could not be effectively enforced because of the legal difficulties inherent in proving statutory intent. It was to remedy this difficulty in the 1916 act, as well as to prepare for expected unfair incursions by European manufacturers on the United States market after World War I—which, incidentally, never did materialize—that the Antidumping Act of 1921 was enacted as special legislation.

The only justification for antidumping legislation is, we respectfully submit, to prevent international price discriminations which are unfair trade practices. If lower prices of any imported article are fair market prices, and the articles are sold under fair trading practices and yet represent competition that threatens serious injury to a domestic industry, relief should not be afforded in the application of antidumping sanctions, but rather by resort to the escape clause, or in the use of the constitutional power of the Congress to raise tariff rates.

We submit that the dumping matter is not a tariff question.

Our primary objection to H. R. 6006 is that its enactment would clearly amount to congressional approval of a change of the fundamental policy of this legislation as originally enacted, and there is, in our opinion, no justifiable reason for such a change.

The report of the Secretary of the Treasury to the Congress on the operation and effectiveness of the Antidumping Act formed the basis for the drafting of H. R. 6006. In all of the testimony presented to the Committee on Ways and Means, the Treasury Department has made it clear that, if this bill is passed, it has no intention to determine whether or not particular prices are fair or unfair in any commercial or ethical sense, or whether or not there is a predatory dumping situation.

Instead, that report clearly indicates that the Treasury will limit its work in dumping cases to the accumulation of reputedly unevaluated facts, and consider the determination as to fair value "as a simple matter of arithmetic." After that, the Department would merely pass on to the Tariff Commission "the problem of the effect of sales at less than fair value on American industry."

The term "fair value" is not defined in the present act, nor is there a definition of that most important term contained in H. R. 6006, although many other less important terms are defined in this bill. The term "fair value" is, however, defined in section 14.7 of the customs regulations. This new definition of fair value was inserted in the customs regulations on April 8, 1955.

As explained in annex A of the Treasury report of February 1, 1957, the Department interprets the term to mean:

> "Fair value" is the measure of the price of foreign merchandise, usually the home consumption price in the country of export, which is to be compared with the "price to the United States market" *for the purpose of determining whether there is a price differential* which, if it injures an industry in the United States, justifies a finding under the Antidumping Act (p. 21, House hearings on H. R. 6006.) [Italic added.]

There are many valid commercial reasons for a price differential between a price for home consumption in a foreign country and a price for export to the United States. Our organization made a study of this matter a few years ago, and, if this is in order, I would like to shorten my statement by asking that the summary of the report that we published in December 1955 be inserted in the record at this point. I have supplied the clerk with copies of that report.

The CHAIRMAN. Without objection, that will be done.

(The report referred to is as follows:)

SPECIAL REPORT ON CUSTOMS VALUATION BY CUSTOMS COMMITTEE, NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC.

SUMMARY OF THE REPORT

The purpose of this report is to examine in some detail typical situations that arise in the finding of dutiable value under section 402 of the present tariff law and, at the same time to set forth some of the common reasons why, when duties on ad valorem goods are assessed under the present law, they are often calculated on a dutiable value that differs from the prices at which they are sold for export to the United States. There has been much misunderstanding about this subject, particularly since legislation proposing to revise section 402 has been under consideration by the Congress, and if this report helps to clarify the situation it will have served its purpose.

This report is based chiefly upon information received in response to a valuation questionnaire circulated by the National Council of American Importers to United States importers located in all sections of the country, and dealing in many diversified kinds of ad valorem products. It reflects the actual experience of these importers with the problem of dutiable value. The report may be summarized as follows:

I. LEGISLATIVE HISTORY OF PROPOSALS TO REVISE CUSTOMS VALUATION STANDARDS

This section of the report outlines the sequences of events in the Congress on the proposal to revise the value section of the Tariff Act of 1930 from the time the first customs simplification bill (H. R. 8304) was introduced on May 1, 1950, to the adjournment of the 1st session of the 84th Congress early in August 1955.

II. TYPICAL SITUATIONS WHICH OCCUR IN DETERMINING DUTIABLE VALUE

1. "Foreign value" is higher than "export value"

(a) *Quantity differentials.*—The quantities ordinarily bought by United States importers are much larger than the quantities bought for home consumption in many foreign countries. In some cases, foreign producers maintain a scale of quantity discounts, and United States importers regulate their purchases so as to obtain the greatest possible price advantage. In some lines, American importers maintain substantial inventories in bonded or free warehouses, foreign-trade zones, or in stock, while home distributors in closer proximity to the foreign supplier do not have to carry large inventories.

(b) *Different classes of buyers in the home market.*—It is common for foreign producers to sell at wholesale to different classes of trade, such as dealers, wholesalers, and retailers or industrial users, with a class discount to those who normally buy in larger quantities. Thus, "foreign value" frequently turns out to be the price paid by a class of buyers in the foreign country which is not entitled to a class discount. Furthermore, sales to some classes of purchasers in the foreign country which are entitled to substantial discounts are restricted, and thus, not "freely offered for sale for home consumption to all purchasers" as that term is interpreted under our present law.

(c) *Home market sales to small buyers.*—Foreign producers sometimes sell to small retail shops or to small industrial users, or even to ultimate consumers in the home market, and the "foreign value" is ascertained on the basis of such sales in certain circumstances.

(d) *Promotional expenses.*—For some types of products, the foreign producers include in domestic prices the expense of advertising and promoting their articles in the home market, but sell to United States importers at lower prices because such expenses are not included.

(e) *Internal taxes.*—In certain countries, there are internal taxes, such as transaction taxes, turnover taxes, sales taxes, etc., which are not assessed when the same goods are exported, or are rebated upon exportation.

(f) *Home market sales on credit.*—It is a general practice in many lines for the foreign producer or distributor to grant his domestic customers credit terms ranging from 1 month to as much as 6 months or more. Home market prices include the financing cost, and also some allowance for the credit risks involved. Usually, United States importers purchase goods on terms that provide immediate payment at time of shipment.

(g) *Other considerations.*—There are other considerations leading to a finding of a "foreign value" higher than "export value." Among these may be cited cases where the foreign producer imports his raw material, and secures the benefit of drawback of custom duties upon the export of his finished product; and, cases where, while the exported article is not sold for domestic consumption, "similar merchandise" is sold in the home market or merely offered for sale by another producer of the same kind of goods at higher prices at the time of exportation of the goods being appraised.

2. "Foreign value" is the same as "export value"

(a) *An open market.*—United States importers constantly look abroad for unusual or unique specialty items, or for articles that are suitable for seasonal promotion. Some of these items are casual imports, while others become regular staples in the trade. In such cases, the purchases are made in the open market in the foreign country, and usually there is no difference between the "foreign value" and the "export value."

(*b*) *Deliberate practice.*—In some regularly established lines, the foreign suppliers follow a deliberate practice of maintaining identical prices for home market sales and for export to the United States, either because they know if higher prices are obtained from their customers in the domestic market, it will create a higher "foreign value" on which their important American customers will have to pay ad valorem duties; or because they can see no reason for charging different prices for goods sold at home or exported.

3. "Foreign value" is lower than "export value"

(*a*) *Supply and demand.*—World market prices fluctuate according to supply and demand, and when the demand from United States importers is stronger than from domestic customers, export prices are higher than home prices.

(*b*) *Limited supplies.*—Sometimes price levels in our market permit United States importers to outbid domestic customers in the foreign country for the supplies available. This is particularly true with respect to certain agricultural products under price-support programs in the United States.

(*c*) *Export packing.*—Where the "foreign value" and the "export value" would normally be identical, the additional expense involved for the foreign producers to provide stronger containers for exported goods than used for his home trade causes a higher "export value."

4. No "foreign value" exists

(*a*) *Not sold in home market.*—Such or similar articles are not sold at all in the home market for domestic consumption because—

(i) There is no domestic demand for them.

(ii) Such or similar articles are specially designed for the American market, or are made according to particular specifications for American requirements.

(iii) The imported article is a semimanufacture which requires processing into a finished article after importation. In the home market, the semimanufactured article is processed before being offered for sale for domestic consumption.

(*b*) *Restricted market.*—Under the requirements of the present law, such or similar articles are not considered as being "freely offered for sale for domestic consumption to all purchasers," and thus a closed or controlled market exists.

5. "Export value" is higher than the importer's invoice price

(*a*) *Advance orders.*—On a rising market, the prices prevailing for export to the United States are very often higher than the invoice price which reflects what the importer agreed to pay when he placed his orders months before. Incidentally, many importers strongly feel that duty should be based on their purchase prices rather than on any other basis.

(*b*) *Offers for future delivery.*—Another situation that frequently arises relates to certain kinds of goods which the foreign producer does not carry in stock for immediate delivery, but manufactures upon receipt of orders. While the goods are being manufactured pursuant to orders given by United States importers, the foreign producer may quote higher prices for future deliveries. The offers being made at the time of exportation of the goods become the "export value," even though the foreign producer has failed to secure any orders at such higher quotations.

6. "United States value" applies

(*a*) Where neither a "foreign value" nor an "export value" can be ascertained, the "United States value" becomes the basis of appraisement. The present law limits the deductions for commissions, or for profit and general expenses to arbitrary percentages. When the actual commissions, or profits and general expenses, exceed these limits, the result is an artificial and fictitious dutiable value.

7. Appraisement is on the basis of "cost of production"

When computing cost of production under the present law, an arbitrary addition is required for general expenses of not less than 10 percent of the cost of materials and manufacturing processes; and also an addition for profit of not less than 8 percent of such costs, plus general expenses. Where the general expenses and profits of the foreign producer are lower than these arbitrary limits, an unrealistic dutiable value results.

Mr. RADCLIFFE. Further light as to what is proposed by the Treasury Department in the determination of dumping prices is to be found in the following extract from the Treasury report of February 1, 1957:

With regard to decisions as to dumping price, the Treasury sees no justification for regarding these as anything more than an exercise in arithmetic. The comparison to be made is between the price the exporter sells in the United States market and the price he sells, not for export, in his own country. These prices must be adjusted so that they are properly comparable, which typically means a comparison f. o. b. factory. If the price in the United States market is lower, then as a simple matter of arithmetic, there is a sale at less than fair value. The word "fair" as used here simply means what one ordinarily conceives of as the "fair market" value—what a willing buyer will pay a willing seller. There is no connotation of "equitable" in this use of the word. For this reason the effect on American industry is not an element to be considered in connection with determinations as to fair value (pp. 16 and 17, House hearings on H. R. 6006).

And I might point out that the Treasury by putting this definition of the important term "fair value" in its regulations, may at any time in the future amend that meaning of the term to suit its own convenience.

The Treasury Department's definition of the term "fair value" definitely results in a fundamental change in the basic policy objectives of the original act, and the result of such change will be a statute under which domestic producers in very many cases will be able to seek, and perhaps obtain, additional tariff levies on competitive imported articles without any showing whatsoever that the prices paid by importers are unfair under any standards of fair-trade practice recognized in the United States, or that prices have any connection whatsoever to the type of predatory dumping at which the 1921 act was directed.

We strongly urge that H. R. 6006 be held in abeyance pending the careful and detailed study that the House committee states is necessary to reexamine the basic policy objectives involved in antidumping legislation. Enactment of this legislation at this time, we quite agree, is premature.

Senator BENNETT. Mr. Chairman, may I ask the witness if this is the report to which he refers [indicating]?

Mr. RADCLIFFE. That is correct.

Senator FREAR. He asked for the summary only.

Mr. RADCLIFFE. Yes, sir. Only the first pages, 7 to 11, of the summary.

The CHAIRMAN. You say it should be delayed, Mr. Radcliffe, until the House makes a detailed study. I assumed a study was made before the House passed the bill. The action of the House was unanimous in the committee as well as on the floor.

Mr. RADCLIFFE. That is correct, sir.

The CHAIRMAN. And the Ways and Means Committee did not consider a detailed study was necessary?

Mr. RADCLIFFE. The Committee on Ways and Means in its report did say that they thought an amendment of the Antidumping Act going into the basic policy objectives of that legislation would require a more detailed study, and therefore——

The CHAIRMAN. So far as this particular bill is concerned, they did not think that it was necessary, because they reported it favorably, unanimously, and the House passed it unanimously?

Mr. RADCLIFFE. That is correct, sir.

The CHAIRMAN. Do you have any questions, Senator Douglas?

Senator DOUGLAS. Mr. Radcliffe, since 1933 the Congress of the United States has adopted as the fundamental foreign trade policy of the country the principle of reciprocal trade.

Mr. RADCLIFFE. Yes, sir.

Senator DOUGLAS. There are many Members of Congress who disagree with this policy—I am not one. But it is the policy until it is changed.

I would like to ask you whether you see anything in this bill which might be inconsistent with the general policy of reciprocal trade?

Mr. RADCLIFFE. Well, Senator Douglas, as I say, I think that this bill has no relation to our, let us call it, the liberal-trade program. The Antidumping Act was passed in 1921 to deal with a particular situation where foreign producers might try to ship goods at abnormally low prices to drive out an industry in this country.

Senator DOUGLAS. Well, I remember a book on dumping—I think it is the classic on the subject—by Professor Viner, now at Princeton.

Mr. RADCLIFFE. That is correct, sir.

Senator DOUGLAS. In which he said that we might have antidumping legislation which, by administrative regulations, would become more onerous even than a protective tariff. Would you agree?

Mr. RADCLIFFE. I would agree with Professor Viner on that if we had harsh administration.

Senator DOUGLAS. Do you see any dangers in this provision? Suppose in the hands of the Tariff Commission, committed firmly to the principle of protection, as I believe the present Tariff Commission is—do you see any possible dangers of interpretation?

Mr. RADCLIFFE. Under this bill, if the Treasury Department considers any price at which the goods are being imported lower than the price in the home market as an exercise in arithmetic, and then passes the matter of injury on to the Tariff Commission. I do see a danger there.

Senator DOUGLAS. With no appeal to the President?

Mr. RADCLIFFE. No, sir; no review whatsoever. The Tariff Commission's function both in escape-clause cases, and in this dumping legislation as to the determination of injury is very narrow in scope. It does not take into consideration the broad national interest in either escape clause or dumping cases, and has no authority to do so.

When I testified before the House, we urged strongly that the findings on dumping cases first by the Treasury on fair value, and then by the Tariff Commission on injury, should be subject to the President's review, and also should be subject to an appeal to the courts.

Senator DOUGLAS. But I have repeatedly charged, and I think the evidence indicates, that the present Tariff Commission is strongly biased in favor of the principle of protection and high protective tariffs.

Now, the power of the Tariff Commission to do injury is limited in escape clause matters by Presidential review.

Mr. RADCLIFFE. Yes, sir; all findings of the Commission in escape-clause cases are subject to Presidential review.

Senator DOUGLAS. Now, with no Presidential review in these antidumping cases, what do you think of the possibility either of the

present Tariff Commission or one constituted like it, in so interpreting injury so as, in effect, to bring back strongly protective measures?

Mr. RADCLIFFE. In our House testimony we suggested that a definition of injury be provided so that it would be clear what is meant by that term—I mean, a witness testified here yesterday that the term is loosely understood.

Senator DOUGLAS. When I raised this point earlier, a reply was made that the functions of the Tariff Commission under this bill are purely nominal and that the findings have to be made by the Treasury.

Now, what reply would you make to that?

Mr. RADCLIFFE. No, sir; the initial finding as to whether or not the price at which the goods are being imported are less than fair value, is to be found by the Treasury Department. As I point out in my statement here today, the Treasury Department, which for many years, I believe, considered the bill in the light of its original objectives as aimed at predatory dumping, now has put out, in 1955, a regulation defining fair value simply as an exercise in arithmetic.

Senator DOUGLAS. That is, where the f. o. b. price in a foreign country and sales to the United States are less than the sales to buyers in the domestic market?

Mr. RADCLIFFE. That is correct, sir. And there are many reasons why there is a different trading position in foreign countries.

Senator DOUGLAS. This brings us to a very important point. The summary which you wish to have printed in the record will probably be printed in fine type, which is frequently not read. I wonder if you would briefly summarize it so that it can be printed in broad type or ordinary type, why there are certain sales in the home market at prices higher than f. o. b. sales to importers to this country, and yet for this not to be adopted?

Mr. RADCLIFFE. To go very quickly through it, there is the question of the quantities involved, and, of course, the present Antidumping Act allows consideration for that differential. But we find also that there are different classes of buyers——

Senator DOUGLAS. You mean the American importers buy in larger quantities than foreign buyers in their own country?

Mr. RADCLIFFE. That is right. And they also buy, that is, place their orders further in advance, which allows a manufacturer to work out his production schedules more economically. Then, of course, in the home market there are different classes of buyers, and sometimes the home market sales are being made even to consumers rather than to wholesalers or to large customers.

Senator DOUGLAS. And do you think under the terms of this act the Treasury would find the average price, including prices for sales in small quantities, and to consumers?

Mr. RADCLIFFE. Well, of course, under the present act, even without this law, they would take that into consideration.

Senator DOUGLAS. I mean under the bill now before us.

Mr. RADCLIFFE. Under the bill they do have a vague term about differences in circumstances of sale. But we fear that they might not be able to detect, that, if they are going to consider the whole difference as a mere exercise in arithmetic.

The present bill does——

Senator DOUGLAS. What about sales to retailers in foreign countries?

Mr. RADCLIFFE. Well, retailers or consumers rather than to wholesalers, that would be one of the——

Senator DOUGLAS. And the country would charge a higher price to the retailer than it would to the wholesaler, and since the American buyer would be in the capacity of a wholesaler, he would get a lower price than the retailer in the home market?

Mr. RADCLIFFE. That is correct, sir.

Senator DOUGLAS. And yet you would say that is not dumping?

Mr. RADCLIFFE. No, sir.

Senator DOUGLAS. All right.

Mr. RADCLIFFE. Then, going on, promotional expenses are a very important thing. In the United States market, we have advertising and promotional methods using television, radio and other media, and when an importer buys an article that is being promoted at home in a different way, he says, "I do not want to pay your price; I will do my own promotion here." That is another element to be considered.

There are also internal taxes in foreign countries such as turnover and sales taxes which are not assessed when the goods are exported.

Senator DOUGLAS. Have you ever made a compilation of these excise taxes, transaction taxes, and so forth, from foreign countries?

Mr RADCLIFFE. No, sir, we have not.

Senator DOUGLAS. I wonder if the Treasury has done it?

Is there a representative of the Treasury here?

I will ask the acting chairman to be privileged to ask the representative of the Treasury Department.

Senator FREAR (presiding). The Treasury Department representative may come forward and identify himself.

STATEMENT OF J. P. HENDRICK, ASSISTANT TO THE SECRETARY OF THE TREASURY

Mr. HENDRICK. My name is J. P. Hendrick, assistant to the Secretary of the Treasury.

Senator DOUGLAS. The question I wanted to ask was whether you have ever compiled the internal taxes which domestic purchasers in foreign countries have to pay on the purchase of goods but which American importers do not have to pay?

Mr. HENDRICK. We calculate those in every case that we process. But we have not made an overall computation.

I would draw to your attention the fact that the deduction of those taxes on exports is already provided for in the present existing law.

Senator DOUGLAS. What about the bill?

Mr. HENDRICK. The bill does not change that.

Senator DOUGLAS. Could it be changed by administrative determination under the proposed bill?

Mr. HENDRICK. The situation would be no different under the proposed bill from what it is at the present.

Senator DOUGLAS. What would you say to that, sir?

Mr. RADCLIFFE. Well, I would agree that there would be no change in that situation.

Senator DOUGLAS. Thank you very much.

Before you leave, Mr. Hendrick, I wonder if it would be too much trouble if you would prepare a table showing the internal taxes in the

chief exporting countries of Europe, and Japan, on goods in which the American importer pays no tax.

Mr. HENDRICK. Certainly, sir; we could prepare some examples.

Senator DOUGLAS. But not a comprehensive table?

Mr. HENDRICK. I would hesitate to promise that.

(The material referred to follows:)

EXAMPLES OF TAXES REFUNDED OR NOT COLLECTED BY REASON OF EXPORT

Section 203 of the Antidumping Act provides that in calculating the purchase price of merchandise imported into the United States there shall be added the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

Following are examples of taxes imposed by various countries which are rebated or not collected upon exportation.

AUSTRIA

Austria has set up a system for the refund of previously accumulated turnover taxes upon the exportation of various types of merchandise. The rate of refund varies according to the nature of the commodity, as more taxes are accumulated in the production of highly manufactured products than in the production of basic materials. The usual rate applicable to commodities of a type normally exported to the United States, most of which have undergone a fairly substantial amount of processing, is 5.78 percent. In addition, the normal turnover tax of 5.25 percent is not collected upon export sales.

BELGIUM

Various products exported from Belgium receive a tax refund of 2 percent, based upon previously accumulated taxes.

ITALY

Italian law provides for tax refunds of from 3 percent to 5 percent on various commodities when exported, based upon previously accumulated taxes. There is also a transaction tax, usually 3 percent, which is not collected upon exportation.

WEST GERMANY

Merchandise exported from West Germany receives tax refunds ranging from 1.38 percent to 3.68 percent, depending upon the nature of the commodity. In addition, the turnover tax of 4 percent is not collected upon export sales.

UNITED KINGDOM

Merchandise sold in the United Kingdom is subject to a purchase tax, at varying rates. However, as this tax is not included in the freely offered price at the wholesale level, it does not enter into purchase price calculations. The United Kingdom tariff laws provide for the payment of drawback upon the exportation of merchandise produced with the use of imported commodities, the rates of drawback varying depending upon the nature of the commodity.

JAPAN

There are no sales taxes applicable at the wholesale level in Japan, nor is there any provision for the refund of taxes upon exportation.

STATEMENT OF HARRY S. RADCLIFFE—Resumed

Mr. RADCLIFFE. I would agree, that would be quite a task.

And then, too, there are home market sales where the foreign producer grants to his customers long-range credit terms running up to 6 months or more, and the home market prices, because of the financing cost and also the credit risk involved, has to be somewhat

higher than when the foreign producer sells to the American importer, who usually puts up an irrevocable letter of credit, so the payment is made immediately upon delivery of the goods.

Senator DOUGLAS. Is the payment immediate in the case of imports? Is that the general procedure?

Mr. RADCLIFFE. Yes, sir. And then sometimes, of course, the foreign value is lower, because of limited supplies or drawback advantages on raw material imported by the producer, or things of that sort.

Senator DOUGLAS. Your fear is that these various considerations which you have briefly listed might not be taken into account by the Treasury?

Mr. RADCLIFFE. That is correct, if they carry out their proposal under their regulation defining "fair value" and considered it merely an exercise in arithmetic. I believe that if the Dumping Act is to be amended at all, it should be a thoroughgoing job, and not merely what is proposed in this bill.

Senator DOUGLAS. The Secretary of the Treasury's report was included in your earlier statement, which I quote:

> The comparison to be made is between the price the exporter sells in the United States market and the price he sells, not for export in its own country. These prices must be adjusted so that they are properly comparable—which typically means a comparison f. o b. factory. If the price in the United States market is lower, then it is a simple matter of arithmetic, there is a sale less than fair value.

What you are saying is that mere comparison of f. o. b. prices at the factory——

Mr. RADCLIFFE. Is inadequate to determine whether or not there is a predatory dumping situation.

Senator DOUGLAS. Thank you very much.

Senator BENNETT. May I ask the witness a question or two.

Senator FREAR. The Senator from Utah.

Senator BENNETT. This has developed some interesting angles. What is your position?

Mr. RADCLIFFE. I am the executive vice president of the National Council of American Importers.

Senator BENNETT. Then you should be familiar with recent antidumping cases, or with typical antidumping cases.

Mr. RADCLIFFE. We do not follow commodity questions, because we are working on the overall import trade policy problems.

Senator BENNETT. My first question is very simple: You come here with a statement and list 7 or 8 fears, areas in which you fear the Treasury will be unfair in determining fair market value.

Mr. RADCLIFFE. I do not mean to imply that the Treasury Department would be unfair, but as I point out, the antidumping legislation was directed at predatory dumping, and now the Treasury, by saying that they consider——

Senator BENNETT. You are avoiding me.

Mr. RADCLIFFE. I am not trying to.

Senator BENNETT. You have issued a special report, and you put it in the record, and you just discussed with Senator Douglas the headings of certain paragraphs.

Mr. RADCLIFFE. Yes, sir.

Senator BENNETT. Can you give this committee specific examples to show that the Treasury has in fact ignored these considerations in making its determination of value?

Mr. RADCLIFFE. No, sir, I am not able to do that.

Senator BENNETT. Then those are your imagination, these are things that might happen, they have not happened.

Mr. RADCLIFFE. Excuse me, Senator. This study was based on a questionnaire procedure where we circularized importers throughout the United States of all kinds of commodities, and asked them to indicate if there was a difference between their invoice price and the home market value, why that difference occurred.

Senator BENNETT. Can you give this committee specific examples involved in antidumping cases where these differences have, in fact, been used, or have occurred, or ignored, as the case may be, where they have affected a decision?

Mr. RADCLIFFE. Well, I have not studied the individual cases on dumping such as hardboard or potash or what have you.

Senator FREAR. Mr. Radcliffe, can you supply such information for the record?

Mr. RADCLIFFE. I could for the record at this point.

Senator FREAR. Would the Senator desire to have that?

Senator BENNETT. This is an interesting potential criticism; this is an interesting expression of doubt of the good faith or ability of the Treasury to apply this law equitably; for these reasons, you think they will ignore or take into consideration unfairly certain commercial conditions. Now, I would like to know whether it is possible to validate that statement in terms of actual experiences in the antidumping cases? And my second question——

Mr. RADCLIFFE. May I comment on that a moment?

Senator BENNETT. Yes.

Mr. RADCLIFFE. I do not believe that the Treasury Department would ignore these factors deliberately, but if they consider the determination of sales at "less than fair value" as merely an exercise in arithmetic, they would not go into these things.

Senator BENNETT. You keep coming back to a phrase which was written into a report, and you build your case around it. And then you follow up with certain specific areas in which you think a mere, as you call it, exercise in arithmetic would leave out important factors.

Mr. RADCLIFFE. That is right, sir.

Senator BENNETT. Now, I am trying to determine whether these headings have just been arrived at by a process of speculation, attempting to put down on paper all the remote possibilities, or whether there actually have been cases in which these elements which should have been considered have, in fact, been ignored in antidumping laws.

Mr. RADCLIFFE. I will be glad to examine that and put it in the record.

(The material referred to follows:)

MEMORANDUM SUBMITTED BY HARRY S. RADCLIFFE ON PAST PROCEDURES BY TREASURY DEPARTMENT IN FINDINGS OF SALES AT LESS THAN FAIR VALUE IN CASES UNDER ANTIDUMPING ACT OF 1921

During the public hearings on H. R. 6006 on March 27, Senator Wallace F. Bennett inquired as to dumping cases where the Treasury Department ignored elements that should have been considered in arriving at a determination that

sales of imported merchandise were being made at less than fair value. I stated I would examine the situation, and put a statement in the record.

Investigations under the Antidumping Act of 1921, calendar years 1950–56

	1950	1951	1952	1953	1954	1955	1956
Number of cases on hand at beginning of year	12	14	12	12	34	30	15
Number of cases received during year	14	6	5	29	36	20	25
Findings under Antidumping Act	0	0	0	0	1	1	0
No findings under Antidumping Act	12	8	5	7	39	34	22
Number of cases on hand at end of year	14	12	12	34	30	15	18

As will be noted from the foregoing table, there was one finding of dumping in 1954 (which related to certain hardboard from Sweden) and one finding in 1955 (which related to cast iron soil pipe from the United Kingdom). These 2 cases during the period 1950–56 were the only findings of dumping of the 129 cases considered. I have examined all information available about these cases, and find that the Treasury Department has never issued any explanation of the reasons for a determination that sales are being made to the United States market at less than fair value. It is, therefore, impossible to furnish to the committee any information as to what considerations were involved in such determinations.

Senator BENNETT. My other question, again, arises out of your colloquy with Senator Douglas. I recognize and accord him his right to assume that the present Tariff Commission is biased in favor of protection, as that relates to the question of findings of injury in antidumping cases. Can you give us a list of the number of antidumping cases in which the Tariff Commission has, in fact, found injury in the last 5 or 10 years?

Mr. RADCLIFFE. I think there has only been about 3 cases in the last 5 years.

Senator BENNETT. In which injury has been found?

Mr. RADCLIFFE. Yes, sir.

Senator BENNETT. How many cases have they considered?

Mr. RADCLIFFE. I do not know that.

Senator BENNETT. Do you have that information? We can get it from the Tariff Commission, if you do not have it. I was interested—I reacted to this colloquy because yesterday there was evidence—or, rather, the opinion was expressed that the Tariff Commission was expected to find injury, and did not, and the industry was disappointed that, even after it had presented all the facts to the Tariff Commission, they failed to find injury. Do you feel, personally, that the Tariff Commission has been biased in its consideration of injury?

Mr. RADCLIFFE. No, sir. I have great admiration for the Tariff Commission. I would not agree with the assertion that the Tariff Commission is biased on the protectionist side.

Senator DOUGLAS. Of course, Mr. Radcliffe has to appear before the Tariff Commission.

Mr. RADCLIFFE. I very rarely appear, sir.

Senator DOUGLAS. Or your associates have to appear. I say that, if the present Tariff Commisison has not found injury in many cases, there has not been injury, because they would find injury if the slightest excuse existed.

Senator BENNETT. This was a situation we knew existed before the colloquy.

Senator FREAR. I assume you both brought it up to date.

The Senator from Pennsylvania.

Senator MARTIN. In this appendix No. 2: Products and Countries Covered by Responses to the Questionnaire, how did you arrive at that list?

Mr. RADCLIFFE. We sent out a questionnaire to, as I say, several thousand importers in the country, whether they were members of our organization or not. And those that returned the questionnaire, we tabulated in appendix 2, to which you refer, a list of the types of products and the countries from which they were imported.

Senator MARTIN. Do you have any information as to the amount that is imported?

Mr. Radcliffe, take, for example, I notice here blown glassware from England. I did not know England produced any blown glassware. Do you have any information as to the amount that they have imported?

Mr. RADCLIFFE. In my files at the office I still have these questionnaires. I have been holding them in order to verify any item in this report.

Senator MARTIN. I notice another item here of "oil-well casing and tubing from West Germany." I did not know that there was any oil-well casing and tubing coming from any place abroad. I thought our steel mills were—well, they are now only producing at about 52 percent of capacity, and I wonder if you have any information as to how much?

Mr. RADCLIFFE. No; I do not believe we have the information on total amounts. Of course, this report was prepared in December 1955, a couple of years ago.

Senator MARTIN. All right. I just wanted to know.

Mr. RADCLIFFE. If it is of any pertinent interest, I would be very happy to——

Senator MARTIN. It is not necessary, but, with the permission of the Chair, I submit for the record a letter I received from Mr. Ted Settlemyer, president of the Arnold Local 17 of the United Glass and Ceramic Workers of North America. Although this does not relate directly to the bill under discussion, it presents a realistic picture of the critical situation confronting the American glass industry.

(The letter referred to is as follows:)

UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA,
Arnold, Pa., March 20, 1958.

Due to the reciprocal trade agreements whereby window glass and plate glass is being shipped to the United States by the foreign glass manufacturers that are protected by our present tariff laws, causing mass unemployment, the following is a report on square feet of plate glass and window glass imported into the United States in 1956 and the equivalent in jobs in domestic plants.

According to the United States Department of Commerce figures an estimated total of 40.8 million square feet of plate glass was imported into the United States in 1956. This is equivalent to 828 employees, each working an average of 2,000 hours per year.

In 1956, according to United States Department of Commerce figures, (converted to single-strength equivalent), 280 million square feet of window glass was imported into the United States. This is equivalent to approximately 1,500 employees, each working an average of 2,000 hours per year.

According to information available at this time, some window glass coming from countries behind the Iron Curtain is being delivered in New York City at prices 30 percent below the American window glass manufacturers' delivery price. Most of the imports from Western Europe, which are higher quality, are being delivered in New York City at prices about 15 percent below the American window glass manufacturers' delivered price.

Imports of plate and window glass into the United States

	Plate glass (millions of square feet)	Window glass (thousands of S. S. boxes)		Plate glass (millions of square feet)	Window glass (thousands of S. S. boxes)
1930 [1]	5.3	252.0	1944 [3]	.02	.6
1931	4.9	149.0	1945 [3]	.02	.3
1932	1.2	74.0	1946	.2	1.6
1933	.2	89.0	1947	.7	1.7
1934 [2]	.05	45.0	1948	1.2	16.0
1935	.4	62.0	1949	1.1	80.0
1936	2.1	235.0	1950	10.4	556.0
1937	.5	776.0	1951	9.8	1,545.0
1938	.3	400.0	1952	9.1	611.0
1939 [3]	.5	432.0	1953	26.8	1,901.0
1940 [3]	.003	156.0	1954	[4] 11.3	1,616.0
1941 [3]	.0004	3.0	1955	32.7	3,797.0
1942 [3]	...	2.0	1956	38.2	5,410.0
1943 [3]	...	.5	1957 [5]	30.0	2,800.0

[1] Smoot-Hawley Act.
[2] Trade Agreements Act. Import duties on glass were not immediately affected. In fact, they remained constant at 1.55 cents per pound on window glass from 1934 through 1947. In 1948 they were reduced to 1.08 cents, in 1951 to 0.8 cent and in 1956 to 0.76 cent. As a percentage of United States (wholesale New York) selling price, there has been a steady annual reduction from 42.5 percent in 1930 to 6.5 percent in 1956.
[3] World War II.
[4] Does not include blanks imported and ground and polished here.
[5] Projected on 9-month basis.

The following are today's tariff rates compared with the rates of 1931:

Plate glass:
- 1931—approximately 19 cents per square foot.
- 1956—approximately 6 cents per square foot.

Window glass:
- 1931—approximately $1.21 per 50-foot box, S. S.
- 1956—approximately 42 cents per 50-foot box, S. S.

Since 1934, when the reciprocal trade agreements program became effective, sizable cuts have been made in United States import duties, including a 60-percent tariff reduction on glass.

The year 1956, for instance, sufficient window glass was imported to glaze 1 million homes.

Glass imports were from Belgium, West Germany, Canada, France, United Kingdom, Italy, Japan, Mexico, Poland, and other smaller countries.

Foreign made flat glass is being delivered on the Pacific coast and to other coastal cities such as Boston, New York, New Orleans, etc., at prices considerably less than American manufacturers can deliver to these same points.

The average hourly earned rate in our glass division fluctuates considerably but a reasonable average for the year 1956 would be $2.95. We do not have current information on the European wage rates, but our best information indicates that they are about 25 percent of our rates.

In August 1957, three companies cut glass prices. Libbey-Owens-Ford Co., Pittsburgh Plate Glass Co., and American Window Glass Co. reduced prices by 5 to 16 percent on heavy sheet glass and thin glass. According to trade sources, the reductions were made to meet imported glass competition of the two types.

Glass plants in United States

WINDOW GLASS

Location	Employed—	
	1956	1957
West Virginia:		
Local No. 1, Charleston	1,314	800
Local No. 2, Nutteo Fort	865	520
Local No. 6, Roland	315	30
Local No. 7, Adamston	362	100
Pennsylvania:		
Local No. 17, Arnold	663	156
Local No. 21, Jeannette	523	475
Louisiana: Local No. 5, Shreveport	560	425
Oklahoma:		
Local No. 3, Henryetta	543	420
Local No. 10, Okmulgee	362	225
Arkansas: Local No. 4, Fort Smith	406	203
Ohio: Local No. 20, Mount Vernon	655	500
Total	6,568	3,854

PLATE GLASS

Location	1956	1957
Pennsylvania:		
Local No. 15, Butler	160	85
Local No. 12, Creighton	3,364	1,890
Local No. 14, Ford City	2,661	2,100
Ohio: Local No. 9, Toledo	5,474	4,000
Illinois: Local No. 19, Ottawa	2,332	1,950
Missouri: Local No. 63, Crystal City	2,726	2,000
Maryland: Local No. 180, Cumberland	(1)	(1)
Total	16,717	12,025

[1] New plant.

The above reports for years 1956 and 1957 show our problem of employment. In our entire industry, namely plate glass and window glass, the figures for the year of 1958 show better than 40 percent as being unemployed. The figures available are approximately 23 percent of our entire industry is affected by the present tariff laws of the United States of America and between 17 and 20 percent are affected by the automobile industry.

The present tariff law, that I have mentioned, also affects a craft organization known as the Window Glass Cutters of America, who work in the window glass industry and who are not under our jurisdiction. They have approximately 2,200 members and there are between 600 and 700 laid off due to the tariff law.

The unemployment problem in the glass industry of America causes a terrific layoff in other industries such as railroad and trucking, sand, chemicals, lumber, paper, etc.

It is estimated that three employees of the allied industry are affected and laid off for each unemployed glassworker of America.

Yours very truly,

TED SETTLEMYER, *president, Arnold Local No. 17.*

Senator BENNETT. May I ask one more question.

Senator FREAR. The Senator from Utah.

Senator BENNETT. In these questionnaires on the basis of which your special report was made, were any questions asked regarding dumping or antidumping activities on any of these products?

Mr. RADCLIFFE. No, sir. At the time we made this survey, our attention was really on the value problem as it relates to the Customs Simplification Act.

Senator BENNETT. I see. Thank you.

Senator FREAR. Thank you very much, Mr. Radcliffe.

The next witness is Mr. Claude E. Hobbs, of the Manufacturing Chemists Association.

STATEMENT OF CLAUDE E. HOBBS, COUNSEL FOR MANUFACTURING CHEMISTS ASSOCIATION

Senator FREAR. You are familiar with the customs here, Mr. Hobbs, I am sure.

Mr. HOBBS. Yes, sir.

Mr. Chairman and members of the committee, my name is Claude Hobbs. I am counsel for the Manufacturing Chemists Association. My appearance here today is on behalf of that association and another, the Synthetic Organic Chemical Manufacturers Association.

I will try to observe the chairman's request and be very concise.

Both of these associations urge the Committee on Finance to approve H. R. 6006 in its present form, and we hope that the Senate will pass it in that form.

I would like to request that my slightly more lengthy statement be included in the record in its entirety.

Senator FREAR. That is a very fine statement, and your full statement will be included in the record.

(The statement referred to is as follows:)

Mr. HOBBS. My name is Claude E. Hobbs. I am counsel for the Manufacturing Chemists Association, Inc.

On behalf of this association and the Synthetic Organic Chemical Manufacturers Association, I am authorized to recommend the enactment of H. R. 6006 in the form in which it was passed by the House in August 1957.

The Manufacturing Chemists Association has a membership of 172 companies engaged in the manufacture and sale of chemicals, and 91 such companies are members of the Synthetic Organic Chemical Manufacturers Association. Together the members of these 2 organizations account for more than 90 percent of the total domestic production of chemicals.

H. R. 6006, as passed by the House, would provide for greater efficiency, speed, and certainty which is needed in the enforcement of the Antidumping Act of 1921. Our associations commend the Treasury Department for supporting this bill in its present form and for approving amendments to the act which will facilitate and improve the act's enforcement.

Almost without exception the Treasury Department has adhered to the original basic concept of the Antidumping Act that dumping is in essence simply the export of goods to this country at a price less than the prevailing price in the country of origin. H. R. 6006 conforms to that concept and provides for technical amendments which will be of assistance to domestic producers who invoke the protection of this law against the unfair competition which occurs when foreign goods are dumped into the domestic market.

As the Treasury Department has pointed out, there is no justification for complacency as to the need for an effective antidumping law. Since World War II the chemical industries in other countries have shown a remarkable revival and expansion. Especially in Western Europe and Japan there are far greater productive capacities than before 1940, and entirely new chemical industries have appeared in other parts of Europe, Asia, and the Americas.

In many cases, chemical plants built abroad are designed for a volume of production which exceeds the domestic requirements of the country in which the plants are located. There will, therefore, be an increasing temptation for the rest of the world to look upon the United States market, which is the world's largest, as a convenient place in which to dispose of surplus production. The improvements in the Antidumping Act which would be provided by H. R. 6006 will help to protect American industry against unfair dumping of foreignmade chemicals into our market.

In the testimony presented to the Ways and Means Committee on behalf of these two associations we recommend both substantive and procedural changes

in the original version of H. R. 6006. The House bill presently before you reflects some of the improvements which we recommended, but not all.

We feel that all of the changes we recommended to the House, which are set forth at pages 210 through 216 of the Ways and Means Committee hearings on this bill, would be desirable and constructive, but we also recognize that some of our recommendations are not acceptable to all industry groups and have not received the approval of the Treasury Department. We believe it would be unfortunate for the enactment of this bill to be delayed or prevented because of lack of agreement regarding all proposals for substantive changes in the Antidumping Act.

We therefore respectfully urge that your committee recommend and that the Senate promptly enact H. R. 6006 as now written in order to give our domestic economy and its industries the benefits which the bill would provide.

Senator FREAR. Are there questions?

Senator DOUGLAS. I am much interested in the passage on page 2 that seems to bear out the interpretation of Mr. Radcliffe that almost without exception the Treasury Department has adhered to the original basic concept of the Antidumping Act that dumping is in essence simply the export of goods to this country at a price less than the pervading price in the country of origin.

H. R. 6006 conforms to that concept, and provides for a technical amendment which will be of assistance to domestic producers who invoke the protection of this law against the unfair competition when referring to dumpers of domestic matter.

You have just heard the testimony of Mr. Radcliffe in which he argues that comparison of f. o. b. prices of the factory in Germany to the buyers in Germany, and f. o. b. prices to importers in this country is not necessarily a fair comparison, because the sales may be in different quantities and stages of the distributing process, in some cases domestically they may include taxes when foreign sales do not exceed that, and then may include promotional expense for domestic sales but not for foreign, and have a loading for a credit factor for home purchases but not for foreign purchasers.

You apparently, going on the assumption that what will be followed in this bill is simply the prevailing price f. o. b. for home market purchases and for foreign purchases. So what do you see to these points that Mr. Radcliffe has raised?

Mr. HOBBS. In the first place, as I understood Mr. Radcliffe, Senator, he was talking about the fair value concept which, while not precisely so, in effect is a statutory device for making out a prima facie case that there is discrimination on the part of the exporter between sales to his home market and sales to the United States.

Senator DOUGLAS. The Treasury has said that it will accept as a prima facie case an arithmetic comparison, and that f. o. b. typically means a comparison to f. o. b.

Mr. HOBBS. Yes; that is correct. And I think that that is an adequate basis. In our testimony before the House, however, we recommended that the 2 value standards be converted into 1, and that foreign market value appear in both places in the statute, first to make out a prima facie case to show that there was some discrimination in price between domestic and foreign sales, and, secondly, that the same valuation provision be used in assessing dumping duties, assuming the case got by the finding of injury stage and dumping duties were to be assessed.

We do not like the quality of standards to determine whether or not there had been actionable dumping under the act.

Senator DOUGLAS. No more questions.
Senator FREAR. Thank you, Mr. Hobbs.
Our next witness is Mr. J. Bradley Colburn, representing the American Bar Association. Mr. Colburn, will you come forward and let us have the benefit of the views of the bar association on the pending bill.

STATEMENT OF J. BRADLEY COLBURN, AMERICAN BAR ASSOCIATION

Mr. COLBURN. Mr. Chairman, my name is J. Bradley Colburn. I am a member of the firm of Barnes, Richardson & Colburn, attorneys at law, with offices in New York and Washington, D. C. I appear before you today as chairman of the standing committee on customs law of the American Bar Association to present and support amendments to the bill, H. R. 6006, approved and adopted by the house of delegates of said association at its midwinter meeting in Atlanta, Ga., in February 1958.

A certified copy of the amendments proposed by the American Bar Association to the bill now before your committee has been filed with the secretary of the committee. I ask that such certified copy be inserted in the record immediately following my statement.

The amendments proposed by the association relate to adeqaute provision for public notice of proceedings instituted under the antidumping statute, for a statutory right for all interested parties to present evidence and be heard, for publication of a full statement of the basis of and the reasons for determinations by the Secretary of the Treasury and the Tariff Commission, and for an adequate and complete judicial review.

As passed by the House of Representatives the bill, H. R. 6006, incorporates recommendations of the American Bar Association for publication of notice of dumping investigations by the Treasury Department and for publication by the Secretary of the Treasury and the Tariff Commission of their respective findings and the reasons therefor. The bill, as passed by the House, did not, however, include other changes recommended by the bar association. The report of the Committee on Ways and Means states with regard to these suggestions and others that more careful and detailed study was required and that "amendments of the act in these respects at this time would be premature." (House of Representatives Report No. 1261, 85th Congress, 1st sess., p. 2.)

It will be kept in mind that pursuant to direction of the Congress contained in Public Law 927 of August 2, 1956, the Treasury Department and the Tariff Commission made a complete investigation and report to the Congress on the operation and effectiveness of the Antidumping Act, with a view to providing greater certainty, speed and efficiency in the enforcement thereof. The bill, H. R. 6006, is presumably based in part, at least, on that investigation and report. If more careful and detailed study is required, then it is respectfully submitted that such further study should be completed before any revision of the law is undertaken.

A fundamental objection to the operation and application of the antidumping statute has consistently been the lack of adequate notice

to importers and other interested parties of the institution of an investigation by the Treasury Department to determine whether basis exists for finding a violation of the statute. Frequently, appraisements have been withheld for long periods of time awaiting possible dumping determinations with many importers being, meanwhile, left in the dark and piling up extensive potential liabilities for additional dumping duties.

In the conduct of dumping investigations by the Secretary up to this time, interested parties, if aware of the pendency of the proceedings, have been uniformly accorded courteous opportunity to present facts and views to the Department. Frequently, however, the pendency of a dumping investigation is not known generally, and the very informal character of the opportunity to file data and present views has meant, in many instances, the failure to channel such information to the proper source. In attempting to present data, furthermore, interested parties are at a disadvantage in seeking to sustain or meet a charge of dumping through the failure of the Department to make known the extent and area of its investigation.

Insofar as the Tariff Commission proceedings are concerned, it has been the practice of the Commission since it was vested with jurisdiction to determine injury in dumping investigations, to hold public hearings preceded by public notice. The statute, however, makes no specific provision for such notice and hearing. The existing practice of the Commission should be crystallized and formalized by incorporation of a specific provision in the statute.

The bill, H. R. 6006, as passed by the House, provides that the Secretary of the Treasury shall public in the Federal Register notice of any action taken by him to authorize withholding of appraisement reports on merchandise under investigation for possible dumping (p. 1, lines 5–8). This proposed amendment is sound but it fails to meet the fundamental objection that no adequate notice is given to interested parties of institution of an investigation prior to withheld appraisement action and there is no statutory provision for right to be heard prior to any determination. Interested parties are entitled to know when an investigation of possible dumping is undertaken and should have a statutory right to present evidence and be heard on the questions involved before any determination is made.

The specific amendment to accomplish this result is as follows:

A. Amend H. R. 6006 by inserting after line 4, page 1 thereof, the following:

"By adding at the end of subsection (a) thereof the following:

Provided, That adequate public notice shall be given of institution of investigations by the Secretary of the Treasury or the Tariff Commission hereunder, and in the course thereof and prior to any determination by either, all parties interested shall be given reasonable opportunity to appear, to produce evidence and be heard."

The Secretary of the Treasury, so far as appears from the published records, has never made available a statement of the reasons in support of his findings under the dumping statute. The Tariff Commission has pursued no uniform course in this respect, but in several cases has published a report limited to its conclusion whether injury did or did not exist. These practices by the Secretary and the Commission leave all interested parties completely in the dark as to the facts upon which action was based, fail completely to establish any

connected or continuous line of consistent action and afford no basis for adequate judicial review.

The bill, H. R. 6006, in the form as passed by the House of Representatives, provides on page 2, lines 1 to 8, that the Secretary and the Tariff Commission shall each publish determinations in the Federal Register "with a statement of the reasons therefor, whether such determination is in the affirmative or in the negative."

Adoption of this amendment to the bill would go far to meet the specific objections of the bar association in this regard. It is suggested, however, that a specific requirement should be added that not only a statement of the reasons be published, but also that such statement include the basis of findings of both the Secretary and the Tariff Commission. The amendment proposed by the American Bar Association to accomplish these results is as follows:

> B. Further amend H. R. 6006 by inserting after line 4, page 1, and after amendment A above, the following:
>
> "By adding at the end of subsection (a) thereof the following: 'Determinations of the Secretary of the Treasury and of the Commission shall include a full statement of the basis thereof and reasons therefor, and shall immediately be made public'."

The existing dumping statute (sec. 169) provides for judicial review by the United States Customs Court of determinations of the appraiser and actions of the collectors of customs in cases where a finding of dumping has been issued. Some doubt exists whether such judicial review extends to a finding of dumping by the Secretary or a determination of injury by the Tariff Commission.

An example of the need for express judicial review of determinations of injury by the Commission is found in the recent decision by that body involving cast-iron soil pipe. A finding of injury, under the statute, is required to be based upon the effects of imports upon "an industry in the United States." The Tariff Commission, in its findings in that case, reported injury to a domestic industry did exist, but seemingly found the industry concerned to consist only of producers of the involved commodity in the State of California, omitting from consideration thereof many producers in other parts of the country. An attempt to review the Commission's action in this regard and to enjoin further proceedings was dismissed by the United States District Court for the District of Columbia following a hearing and decision by a special statutory three-judge court. (*Horton et al.* v. *George M. Humphrey, Secretary of the Treasury, and the United States Tariff Commission*, Civil Action No. 1038–56). Affirmed by United States Supreme Court, per curiam, December 3, 1956 (1 L. Ed. 2d, 157).

The matter of what constitutes an "industry" for the purposes of the statute would clearly seem to be a question of law, and as such, to be properly justiciable. Administrative construction of the statute on similar questions which will doubtless arise in the future should likewise be governed and controlled by the right of judicial review.

An anomalous situation seems to exist where the operation and application of a dumping order may be judicially reviewed and tested, but the order itself and factors entering thereinto may be without the scope of judicial action. No possible doubt should be permitted to exist as to the existence of full court review of the legal basis of the original findings of the Secretary and the Tariff Commission, as

well as determination of values and assessment and collection of duties under such findings.

The full and complete judicial review would be clearly and effectively provided if the following amendment proposed by the American Bar Association be adopted:

C. Further amend H. R. 6006 by inserting at page 8, following line 16, a new section to read as follows:

"Section 210 of the Antidumping Act, 1921 (19 U. S. C. 169), as amended, is further amended by inserting after the words 'sections 160 to 171 of this title' the following: 'determinations by the Secretary of the Treasury and by the United States Tariff Commission under this title' so as to make the section read as follows: 'For the purpose of sections 160 to 171 of this title, determinations by the Secretary of the Treasury and by the United States Tariff Commission under this title, the determinations of the appraiser or person acting as appraiser as to the foreign market value or the cost of production, as the case may be, the purchase price, and the exporter's sales price, and the action of the collector in assessing special dumping duty, shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; and the United States Customs Court, and the Court of Customs and Patent Appeals shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of appeals and protests relating to customs duties under existing law'."

That concludes my statement, Mr. Chairman, and I would like to thank the committee for the opportunity to present it.

Senator FREAR. Thank you for appearing.

The next witness is Mr. James R. Sharp.

STATEMENT OF JAMES R. SHARP, REPRESENTING IMPORTERS OF HARDBOARD AND IMPORTERS OF CAST-IRON SOIL PIPE

Mr. SHARP. Mr. Chairman and members of the committee, may I say first that I found errors on three pages of my mimeographed statement, and I have corrected statements which will be delivered here shortly, and they will be ready for distribution, I am sure, within a half hour.

I should like to say one other thing. I notice that immediately following me appears Mr. Robert L. Brightman. Mr. Brightman was here yesterday. Unfortunately, not knowing the hearing was going over, he had to leave. If the hearings are continued tomorrow he would like to appear tomorrow.

Senator FREAR. May I say to you, Mr. Sharp, that as acting chairman, should the hearings conclude today, that Brightman certainly will have the privilege of giving his testimony to the reporter, and it will be inserted in full.

Mr. SHARP. Thank you, Mr. Chairman.

My name is James R. Sharp of the Washington law firm of Sharp & Bogan. We represent numerous clients engaged in various phases of international trade, including many importers and associations of importers.

We represent importers of hardboard from Sweden, cast iron fittings from Japan, cast iron soil pipe from Scotland and England, hardwood plywood from various countries, and rayon staple fiber from Sweden. All of these products have been investigated by the Treasury Department under the Anti-Dumping Act. Two of them, namely, hardboard from Sweden and cast iron soil pipe from Great Britain, are now the subjects of outstanding dumping findings.

I am opposed to the legislation before you and recommend that it be tabled. While it may well make easier the Treasury Department's job of determining how to arrive at the amount of dumping duties, it leaves a mass of shoals on which the importer and the foreign supplier may well flounder.

From the testimony I heard here on Wednesday and today it appears the shoals seem equally dangerous to the domestic industries. Furthermore, it leaves the act devoid, except for small concessions, of fair administrative procedures.

Now, dumping is a bad word. I believe that almost everyone gives it that connotation. To be against dumping is politically and morally right. To be for dumping is political suicide, and is recklessly wrong. With this thesis I am sure most of you will agree. But in using the term "dumping" each of us is thinking in terms of an unfair trade practice, of selling goods in a market by unfairly pricing the goods, that is, by placing a price on the goods which is substantially below the "going competitive price" or the "fair market price." I believe Assistant Secretary of Treasury Flues spoke of it as a "price raid."

It seems to me that it is very clear from the legislative history of the Antidumping Act that this concept of dumping was what was intended by the Congress in adopting the legislation. The Congress wished to establish in a limited way in the field of foreign commerce a concept not unlike the Robinson-Patman concept.

There is not one word in the legislative history that indicates the act was intended purely as another restrictive trade device. Customs duties marking regulations and other restrictions were provided by law and regulations to keep to certain limits the flow of imports into the United States. The Antidumping Act was neither designed nor fitted for this purpose.

One of the keys to the entire structure of this act is this term "fair value." Although the term "foreign market value," if you will examine the act, you will find that it is used with great frequency. I believe it is 15 or 20 times, in the act, yet the term "fair value" is used but once, and that is in section 201. And the only connection in which it is used is the reference to the function to be performed by the Secretary of the Treasury. In other words, as the act now stands, he is to determine whether there are sales or are likely to be sales at less than fair value, and if he so finds, he is to report the matter to the Tariff Commission and the Tariff Commission thereupon becomes bound by the law to make a determination as to whether those sales at less than fair value are injuring or are likely to injure a domestic industry.

That is the way the act works at the present time. I, like Mr. Radcliff, find it most difficult to believe that the Congress intended to place a responsibility upon a cabinet officer to determine what is called "fair value," the only case that that is used in the entire act, and that his whole and entire responsibility is to merely compare the f. o. b. mill price in Sweden or Japan or wherever it may be, of the goods being sold to the United States with the f. o. b. mill price of the goods being sold in the local market.

Now, the Treasury Department, in my opinion, has disregarded the legislative history in interpreting the term "fair value." Instead, it seems to me that it has taken the easy route, that is, it has interpreted

the terms of the act in such manner as suited its purposes. The principal purpose seems to me to have been simplicity and ease of administration. Its wish to ease its administrative burden has caused it to warp the act to cover situations never encompassed by the original congressional intent.

Those protectionists who, without regard to national or international consequences favor all measures which tend to restrict imports of every kind, have urged the Treasury on. The Treasury is now urging the adoption of these amendments which would place the stamp of congressional approval upon its present interpretation of the term "fair value," which meaning, in my opinion, is foreign to any meaning of the term used elsewhere in our language.

I will make my point clear. In April of 1955, the Treasury adopted a new meaning of the term "fair value." The substance of it is that Treasury said that goods would be regarded as sold at less than fair value (i. e., would be regarded as dumped goods) if sold to the United States at less than sold for consumption to the country of origin. Now this concept completely disregards the law of supply and demand as well as other important factors which normally enter into the setting of fair, competitive prices. It completely disregards a basic fact of commercial life. That fact is that the world price for products is frequently below that prevailing in a producing country.

The United States has found this to be true as to its products, as have other countries with theirs. But, so far as I know, no one regards the "world price" for commodities as *per se* "unfair." Like prices generally, it is normally dictated by supply and demand, although on occasion by governmental or international controls.

In any event, it seems to me to be unwise to adopt amendments such as are proposed here which will authorize the Treasury Department to continue to ignore the original purpose and intent of the statute. If Congress wishes to change the law, if it wishes to state clearly and unequivocally that we in the United States regard it as unfair for goods to be sold to the United States at prices less than prices at which the same goods are sold in the country of origin, it should do so directly and openly.

Senator DOUGLAS. May I interrupt, Mr. Sharp?

Is it not true that in our sale of cotton and other prime products, we are selling these goods for, that the world price——

Mr. SHARP. That is my understanding.

Senator DOUGLAS. And that the world prices are less than the prices which the producers are paying in this country?

Mr. SHARP. That is true, with respect to cotton and other commodities which we sell.

Senator DOUGLAS. Now, then, if we pass this present bill with its administrative definition contained within it, could not other countries pass identical bills and declare that our sales of farm products were dumping, and therefore would be excluded?

Mr. SHARP. I think unquestionably so, Senator, and I may say that, when this act was first passed in 1921, anyone who reviews the legislative history will find that our marketing of steel in various foreign countries was one of the major subjects of consideration.

If the Congress by these amendments permitted the Treasury Department to continue to ignore the real legislative purpose of this act,

it seems to me it would be doing by indirection something which would go unnoticed to most of the Congress and certainly to most of the public.

I oppose the amendments for another reason. In 1921, when this act was passed, it failed to contain legislative standards to guide administrative interpretation of the vague and broad terms of "injury," "fair value," and "industry."

I may say, gentlemen, I have with me something that was put in the record, and I refer you—I think it would be well for all of you to refer to page 3 of the statement which Mr. Barnhard left with you yesterday, which quotes Prof. John Miller, of the Treasury Department, and his report to the Treasury Department recently on dumping, it quotes Prof. Jacob Viner, and the Tariff Commission report in 1919, and in each instance it shows clearly that everyone recognizes that the mere fact that there is a sale at less than the price at which goods are sold in the home country is not in and of itself unfair practice at all, it is a normal commercial practice. I won't read these, but I think it establishes that practice fairly.

I oppose this for another reason. In 1921 when this act was passed it failed to contain legislative standards to provide administrative interpretation of the vague and broad terms of "injury," "fair value," and "industry." This left the Treasury in a position where it could adopt such standards as it wished. If it wished to do so, it could have defined all three terms by public regulation so that the importer, foreign manufacturer, domestic manufacturer, and the public all would know by what standards these matters were to be tested.

It might have at least issued opinions or reports in connection with its dumping findings in order to shed some light on how it was interpreting the act. But, instead, what did it do? It never defined injury or industry by any regulation or ruling. It never held or offered to hold a public hearing. It never announced in the Federal Register that it was proposing to issue a dumping finding. It completely ignored the Administrative Procedure Act and in fact issued a written opinion saying it believed it did not apply. It never issued a report or opinion on any of its dumping findings which disclosed its interpretation of the act.

As a result no one outside of the Treasury Department has ever known how it interpreted most of these vague concepts. It did define "fair value" as meaning the same as foreign market value and actually put this definition in its regulations. The definition remained there for quite a few years until 1955.

By a new regulation adopted in 1955, Treasury completely changed the definition of fair value. Did it do so because it thought the new definition was more in line with the legislative purpose of the act? Did it cite any legislative history in doing so? No; because the truth is it did so solely as a matter of convenience. It did so to make its administrative functions under the act easier to perform and in order that "fair value" determinations could be made more rapidly. Now, is this a valid basis for changing the meaning of terms? What would the Congress do if it found that administrative agencies generally adopted definitions of terms in congressional enactments with principal consideration being given to administrative convenience rather than congressional intent?

What is Treasury doing now? Having adopted a new definition of "fair value" in 1955 to meet the demands that Treasury speed up its fair value determinations, it now says it has an anomaly on its hands, one which it failed to explain is a self-created one. But it now asks the Congress to eliminate the anomaly by giving the same meaning to "foreign market value" as the Treasury gave in 1955 to "fair value."

Senator DOUGLAS. May I ask a question? This 1955 definition would primarily compare with f. o. b. prices; is that true?

Mr. SHARP. It changed it, yes, to eliminate the requirement before that there be no restriction on marketing within the particular country. In other words, now there could be restrictions on the market—Senator, there are many foreign countries in which they have the practice of a manufacturer picking out exclusive dealers in each of the countries or territories. Not everyone can come in and buy the goods. Now that is the general marketing practice, and it was not adopted to circumvent the Antidumping Act. I wouldn't say that there may not be instances in which that sort of thing was done to avoid the act, but it is not general, it is a normal practice.

The Treasury now wishes the Congress, in my opinion, to compound the felony. It asks the Congress to do so without examining into the propriety or correctness of the Treasury's definition of "fair value." It believes this is too complex a subject to take up at this time.

Gentlemen, to adopt legislation to conform one part of the law (sec. 205) to a recently changed administrative interpretation of a term in another part (sec. 201), an administrative interpretation adopted as a matter of convenience, is not good legislative practice.

The lack of legislative standards for defining terms used in the act is now also a plague to the Tariff Commission which lately has had the responsibility for interpreting the terms "injury" and "industry." The first finding of injury made by the Tariff Commission after assuming part of the responsibility for administration of the Antidumping Act was its finding in the soil pipe case, a product imported from Great Britain. I cannot give you the reasons behind the logic of the Commission in arriving at its decision for it, like the Treasury Department before it, made no explanation of its action.

Since we represented the importers in the case, I can say, however, that the facts presented to the Commission showed that the total amount of soil pipe imported per annum during the period involved amounted to less than four-tenths of 1 percent of the United States production of the product. Despite this, and despite the fact that the evidence showed that in certain areas there was a substantial shortage of soil pipe due to the building boom which was underway during the period of importation, the Tariff Commission found that a "domestic industry" was being injured by the importation. Such a finding seems startling on its face.

But, worse yet, the Tariff Commission adopted a new interpretation of the term "industry," one which is foreign to any definition of the term "industry" ever heretofore known in proceedings before the Tariff Commission or in congressional enactments.

Although evidence showed that there were in excess of 50 manufacturers of soil pipe located throughout the United States, the Commission found that the 6 manufacturers of soil pipe in the State of California were the "industry" which was being injured by the impor-

tation. The Commission might just as easily have found that there were 48 separate soil pipe industries—1 in each State.

The evidence further showed that the soil pipe imported from Great Britain came into Los Angeles, San Francisco, Philadelphia, and possibly one other east coast port. All of the soil pipe imported on the east coast was imported by a firm in Philadelphia, Pa. As the statute requires, the Secretary of the Treasury issued the finding of dumping under section 201 of the act after receiving the certification by the Tariff Commission of its finding of injury. As a result, the Cuctoms Bureau is now, and has been for some time, in the process of assessing dumping duties on all shipments of soil pipe which came into the United States and which was subject to the dumping order.

The Tariff Commission's finding would justify a finding that the industry referred to by Congress in section 201 could consist of a sole manufacturer in one State, or perhaps in one county.

Gentlemen, when you begin to segregate or separate industry on a geographical or other basis, there appears to be no limitation and no stopping point. Let us see what a ridiculous result this first attempt has had. The Commission determined that only the 6 manufacturers located in the State of California constituted the industry and that these 6 were being injured. I will take only a minor——

——Senator FREAR. You recognize that we are trying to limit the witnesses to 10 minutes.

Mr. SHARP. I will finish in 1 minute. I merely want to point out what a ridiculous result that this soil pipe thing leads to. The assessments are now being made, yet this importer located in Philadelphia who imported solely in Philadelphia, and one small shipment in Norfolk, has now been assessed dumping duty on pipe that he imported on the east coast, largely in Philadelphia, and sold largely for installation in homes, buildings, or industrial buildings within a few miles of the port of entry. That is obviously a ridiculous result, but that is what this interpretation of the term by the Tariff Commission has led to.

This is the result of the failure of Congress to adopt reasonable legislative standards by which the executive branch can be guided in its interpretation of the loose terms used in the act. That is the reason I am here. I think the Congress could give more guidance to the Treasury Department. I think they have done a good job. I have said some harsh words. I don't mean them as they sound. There are very loose concepts in a very difficult but a very important act. It is important to the domestic industry that we have this act; it is important that it be administered right. I only ask that this bill be tabled, that it be sent back, that a careful study be made in order that the administration have the help that they need in this difficult job, so that people like myself and the domestic industry who have been picking on them pretty hotly will not have the reason or excuse to do so. They should have some guidance in what the Congress wants done, and I would like to see the bill tabled for that reason.

Senator FREAR. Thank you. I understand you have a statement you would like to file for the record.

Mr. SHARP. I will, Mr. Chairman.

Senator FREAR. Thank you very much.

I believe you say that Mr. Brightman is not here?

Mr. SHARP. That is correct, he had to go to Atlanta. He will be here tomorrow morning in the event the hearings carry over.

Senator FREAR. If not, it will be written in.

Mr. SHARP. That is correct.

(The prepared statement of Mr. Robert L. Brightman, as subsequently submitted, follows:)

STATEMENT OF ROBERT L. BRIGHTMAN OF JOHANESON, WALES & SPARRE, INC., NEW YORK IN OPPOSITION TO H. R. 6006

Mr. Chairman and members of the committee, my name is Robert L. Brightman. I am vice president and general manager of Johaneson, Wales & Sparre, Inc., 250 Park Avenue, New York City.

The legislation under consideration here is admittedly very technical. From the testimony here, as well as the testimony last July before the House Ways and Means Committee, it is obvious that many hours of fine legal talent have gone into the study of the problems involved. I am not a lawyer, but I am a businessman representing a firm which has probably been more seriously affected by the workings of the Antidumping Act than any other individual export-import company.

We have been involved in both the hardboard case, which resulted in a finding of dumping, and the rayon staple fiber case, which resulted in a finding of no dumping. Strangely enough, from the standpoint of continued operations, we were penalized just as much in the rayon case, where we were not guilty of dumping, as we were in the hardboard case, where dumping was found. This is illustrative of one of the basic inequities of present antidumping administration, where the mere launching of an investigation can put an importer out of busness, whether or not any dumping actually exists.

The record of the prior hearings is replete with example of this and many other inequities in the administration of our antidumping policy. These inequities, and most of the difficulties in enforcement of the act, arise from the basic failure of the administrators to apply this act only to real dumping situations. As interpreted, this legislation is not an Antidumping Act, but an Antiimport act. Correction of this basic defect, as the House committee report points out, will require "careful and detailed study" and a "reexamination of the basic policy issues involved in antidumping legislation." With this conclusion of the House committee we emphatically agree. Where we disagree is in the committee's statement that this current proposal, H. R. 6006, does not involve any change in the basic policy of the act.

The basic purpose of the act according to its legislative history and its clear language, was to prevent unfair trade practice known as dumping—that is, to prevent sales in the United States at less than a fair price. To me it seems obvious that any determination of "fairness" in a price involves considerations of equity. To the Treasury Department, these equitable considerations are meaningless and have been discarded in favor of "a simple exercise in arithmetic." This not only perverts the purpose and language of the Congress, which used the term "fair value" rather than "arithmetical difference," but it also imputes to Congress an intent to delegate to a Cabinet-level officer the power to do no more than verify the arithmetic of his subordinates.

Let me state to this committee that I am strongly in favor of an effective Antidumping Act. Indeed, I would favor even heavier penalties than are now imposed, so long as the act was applied only to cases of unfair price discrimination. What bothers me most about H. R. 6006 is that it could be interpreted as giving legislative sanction to Treasury's determination that dumping can be found in situations where prices are not unfair.

I therefore implore the committee to reject this patchwork amendment in favor of a long-overdue revamping of this 1921 law, after the "careful and detailed study" suggested in the House committee report.

Thank you, Mr. Chairman.

Senator FREAR. Mr. Albert A. Carretta.

STATEMENT OF ALBERT A. CARRETTA, REPRESENTING CARRETTA & COUNIHAN, WASHINGTON, D. C.

Mr. CARRETTA. Mr. Chairman and Senators, my name is Albert A. Carretta, of the law firm of Carretta & Counihan, Washington, D. C. It is a pleasure for me to appear before your committee in connection with your inquiry into the extent to which the Antidumping Act of 1921 should be amended.

So that the committee may properly appraise my testimony, I should like to point out that my testimony is not based upon mere academic thinking. For a number of years, I had the privilege of serving as a member of the Federal Trade Commission, which agency polices American industry insofar as unfair trade practices in interstate commerce are concerned.

Senator DOUGLAS. When did you serve as a member of the Federal Trade Commission?

Mr. CARRETTA. From June 1952 to September 1954.

Further, since my term as a Commissioner expired, I have represented various clients before the United States Tariff Commission and the Treasury Department in connection with the Antidumping Act of 1921 and the Trade Agreements Extension Act of 1951. These clients are American manufacturers who are being injured in their businesses because of "unfair trade practices in international trade."

I believe very strongly in the provisions of the Antidumping Act of 1921 and sincerely urge this committee to recommend amendments therein so that it may afford greater protection to American businessmen. Many years ago, the Congress of the United States enacted legislation for the purpose of protecting American businessmen against unfair trade practices in interstate commerce. This was done through the medium of the Federal Trade Commission Act, the Clayton Act, and the Robinson-Patman Act. The Antidumping Act of 1921, in my opinion, is very similar to the Robinson-Patman Act with the distinction that the Robinson-Patman Act operates in "interstate commerce" and the Antidumping Act operates in "international trade."

My first recommendation to the committee is that section 212 of the Antidumping Act be amended to include a definition of the word "industry" as used in the statute. I am very happy to have followed my good friend, Mr. Sharp, because he criticized the findings of the Tariff Commission with regard to that word "industry." I hope that before I finish this morning I will convince this committee that the Tariff Commission was not so illogical in making the decision which it did.

This definition is important, because section 201 of the Antidumping Act requires the United States Tariff Commission, following a finding as to sales at less than fair value by the Secretary of the Treasury, to determine whether "an industry in the United States is being or is likely to be injured"—and I would like to emphasize those words, they are from the statute—"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 certain merchandise into the United States.

Although the Tariff Commission, in the Cast Iron Soil Pipe case, properly, in my opinion, interpreted the word "industry," there are many importers, free traders, and others who would like to see the Tariff Commission's interpretation in that case reversed. Without clarifying language from the Congress of the United States, there may come the day when a majority of the Commissioners of the Tariff Commission may alter the present definition of the term. If this happens, American businessmen, and especially small-business men, will be greatly disadvantaged.

The Treasury Department, on October 27, 1955, announced a finding of dumping with respect to importations of cast iron soil pipe from the United Kingdom.

This finding was issued by the Treasury Department following notification received from the United States Tariff Commission that after a hearing conducted by the Commissioners on October 21, 1955, the Commission was of the opinion that the producers of cast-iron soil pipe in the State of California were being, or were likely to be, injured by reason of the importation of cast-iron soil pipe other than "American pattern" cast-iron soil pipe from the United Kingdom at less than fair value.

By reason of that decision, domestic producers of cast-iron soil pipe will be protected to the extent that a special duty will be levied hereafter on importations of cast-iron soil pipe other than "American pattern" cast-iron soil pipe from the United Kingdom which are sold at less than foreign market value as defined by the Antidumping Act. I am told that this decision has effectively stopped the dumping of cast-iron soil pipe into this country.

I am not like the gentleman who represented the hardboard manufacturers. In that case, the importations quadrupled after the decision; in my case, they absolutely stopped, so my clients are perfectly happy as of today.

The decision of the Commissioners of the United States Tariff Commission in the Cast Iron Soil Pipe case set two new precedents. First, of the five cases decided by the Commission up to that time, pursuant to the provisions of section 201 (a) of the Antidumping Act, that was the first case in which the Commission found that an industry in the United States was being, or was likely to be, injured by reason of the importation of foreign goods. In all preceding cases, no injury or likelihood of injury was found by the Commission. Second, accepting the argument presented by me as counsel for the domestic producers involved, the Commission in effect held that "an industry in the United States," as those words are used in the Antidumping Act, should be interpreted to mean: "An industry in the United States or in any section thereof in which industry members may be concentrated." This holding is of extreme importance and significance to all domestic producers of commodities which may be subject to the unfair competition of foreign producers.

This proceeding was initiated by the filing of a complaint with the Treasury Department by California producer of cast-iron soil pipe.

Following an investigation by the Treasury Department, a finding was announced that cast-iron soil pipe from the United Kingdom was being, or was likely to be, sold in the United States at less than its fair value. This finding was transmitted to the United States Tariff Commission on July 27, 1955.

The Commission then proceeded to conduct a further investigation, and ordered a hearing to be held in connection therewith solely for the purpose of determining whether such sales of cast-iron soil pipe at less than fair value were injuring or were likely to injure "an industry in the United States."

Thus, the burden was imposed upon the California producers of cast-iron soil pipe to satisfy the United States Tariff Commission (1) that the importations of the subject commodity from the United Kingdom at less than fair value were injuring or were likely to injure them and (2) that although they, the California producers, represented only a segment of the cast-iron soil pipe industry in the United States, they, nevertheless, were entitled to relief under the provisions of the Antidumping Act.

As to the question of "injury," counsel for the British Ironfounders Association of London, England, argued that the "injury" referred to in the statute was a "material injury" or a "substantial injury."

On the other hand, I argued that the showing of any injury was sufficient under the statute, and that even a "likelihood of injury" was sufficient to warrant corrective action in behalf of the domestic producers.

If Congress intended to require a finding of "substantial injury," the legislators would have inserted such adjective in the statute. For example, the Robinson-Patman Act specifically uses the word "substantial" in referring to the effect required to be produced upon competition in order to constitute a prohibited discriminatory pricing practice under that act.

As to the question of interpreting the statutory language, "an industry in the United States," counsel for the British Ironfoun 'ers maintained that this means a single industry and an entire industry. He stated that it does not mean several industries, nor does it mean a portion of one industry. He emphasized the fact that the cast-iron soil pipe industry is an industry in the United States consisting of some 50 to 60 individual producing companies, and that, consequently, the injury or likelihood of injury could not be measured by the impact which imports might have only upon a portion of the industry.

I argued that the words, "an industry in the United States," should be interpreted to mean "an industry in the United States or in any section thereof in which industry members may be concentrated."

Consequently, injury or likelihood of injury to the producers in any such section would be sufficient to warrant corrective action under the statute. Of the 55 producers of cast-iron soil pipe in the United States, 43 are located in States east of the Mississippi and 12 in States west of the Mississippi.

Of the latter 12, 7 are located on the west coast. Of all of the British cast-iron soil pipe imported into the United States during the first 6 months of 1955, approximately 99 percent was imported into Pacific-coast ports. Incidentally, I will divert for just a moment to say that the testimony in this case before the Tariff Commission shows that one of the importers on the east coast attempted for a number of years to import this product into the Philadelphia area, but he went out of business because he could not compete with the well-established east-coast producers of cast-iron soil pipe; they tried to dump on the east-coast market; they weren't successful; therefore, they went to the west-coast market and attacked a nascent industry on our west

coast, and they were successful in doing it, because the cast-iron soil pipe industry had long been established in Alabama and Mississippi, but on the west coast it is new.

Obviously, therefore, the impact of the selling of such imports at less than fair value was felt only by the west-coast producers whose market was being used as a "dumping ground." If the strict interpretation of "an industry in the Uinted States" was to be adopted, then foreign producers would be free to attack and to injure the domestic market "piece by piece." I would like to emphasize this, if I emphasize nothing else this morning. The dumping of foreign goods at less than fair value could be used to ruin the domestic producers, first in the Northwest, then in the Southwest, then in the Northeast, and then in the Southeast. Never would the foreign producers be injuring the industry in the entire United States at the same time, but the result would be the same—the destruction of American industry through unfair tactics.

The United States Tariff Commission apparently adopted the interpretation suggested by me because in its letter to the Treasury Department in this matter, the Commission stated:

> The domestic industry in which the Commission's determination of injury relates was held to consist of the producers of cast iron soil pipe in the State of California.

Other industries which are injured or likely to be injured by the sale of foreign goods in the United States at less than fair value should find much encouragement in this precedent-making decision of the United States Tariff Commission.

For the foregoing reasons, I urge this committee to consider amending section 212 of the Antidumping Act of 1921 so as to define "an industry in the United States" in line with the Tariff Commission's decision in the cast iron soil pipe case.

The second recommendation which I have concerns the definition of the term "such or similar merchandise" which is presently included as an amendment to section 212 of the Antidumping Act of 1921. I have specific reference to section 212 (3) (E). The wording of this subsection in H. R. 6006 is as follows:

> (E) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his delegate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.

This definition is necessary in order to preclude the possibility of relief being denied to an American manufacturer solely because he does not produce exactly the same item which is being allegedly dumped into the United States. In support of this definition, I should like to call the committee's attention to an application which was recently filed with the Treasury Department requesting an investigation for the purpose of determining whether pipe fittings were being exported from Japan into the United States in violation of the Antidumping Act of 1921.

The application was filed by me in behalf of the Pipe Fittings Manufacturers' Association, a national trade association made up of approximately 30 manufacturers of pipe fittings.

Pipe fittings from Japan are entering the United States at the present time through approximately 12 continental ports. The total

volume of malleable iron pipe fittings from Japan has increased from 161,740 pounds in 1953, to 6,211,765 pounds during the year 1957.

The foreign pipe fittings which are imported into this country are sold at prices varying from 24 to 37 percent lower than similar fittings are sold in the country of origin. It is quite obvious that pipe fittings are being exported by Japanese manufacturers to the United States at prices substantially below the prices at which similar fittings are being sold in Japan for home consumption.

The pipe fittings which are sold for home consumption and the pipe fittings which are exported to the United States are identical except that in Japan, they use British threads as their standard, while in the United States, we use the American standard threads. The two thread standards are interchangeable in the field in fittings in sizes three-fourth-inch and smaller. A satisfactory joint is also obtainable in the 1-inch size. Approximately 75 percent of the pipe fittings imported into the United States from Japan are in sizes in which the threads are interchangeable with American fittings (1-inch and smaller). The total imports of pipe fittings into the United States from Japan have been increasing substantially during the past few years. Whereas in 1953 the imports of pipe fittings 1 inch and smaller amounted to less than one-fifth of 1 percent of the total domestic shipments of the same sizes, the volume of imports has increased gradually until today it represents approximately 6 percent of total domestic shipments. This trend cannot continue if American industry in this field is to survive.

The application requesting an investigation was denied by the Treasury Department and one of the reasons stated was that the goods imported were not "similar" to the goods produced by competing manufacturers in the United States. This is unfortunate because during World War II, American producers supplied a large portion of the malleable cast iron pipe fittings ordinarily supplied to our allies for their own use as well as for their foreign customers. In supplying these fittings, American standard threads were shipped in sizes three-fourth-inch and smaller, because the British especially recognized the fact that the threads for these fittings are interchangeable.

Under the existing statute, the Treasury Department has seen fit to deny this application for an investigation to determine whether goods are being dumped into this country in violation of the Anti-Dumping Act of 1921. However, with a more liberal definition of the term "such or similar merchandise," the Treasury Department would undoubtdely feel free to conduct an investigation so as to prevent the continuing injury to American producers of malleable iron pipe fittings.

It is sincerely hoped that this committee will see fit to approve this definition so that future investigations of the Treasury Department would not be limited to merchandise which is identical to that sold in foreign countries.

I should like to close by expressing my opinion relative to "dumping" in general. There is no doubt in my mind that such a practice is immoral—whether it is engaged in by foreign producers or by American manufacturers who are anxious to liquidate surplus supplies in foreign countries. While I realize that international trade problems are somewhat connected with the maintenance of interna-

tional good will, I cannot see any justification for permitting immoral acts to support international good will. Dumping of goods into the United States must be stopped and American manufacturers should be encouraged to abide by the Golden Rule: "Do unto others as you would have others do unto you."

The two examples which I have cited during my testimony are merely indicative of many others which have come to my attention and which indicate to me a crying need for congressional support. I say this because I am particularly cognizant of the tremendous activity among importers who are seeking a softening of the governmental attitude toward imports from foreign nations. Our alarming unemployment situation is another reason why the Congress of the United States, particularly at this time, should take all reasonable steps to protect American businessmen against unfair trade practices engaged in by foreign producers.

Thank you very much, Senator.

Senator FREAR. Are there any questions?

Senator DOUGLAS. I would like to ask the witness, if I understand him correctly, if he thinks that the Congress should amend the Antidumping Act to get a closer definition of the term "industry"?

Mr. CARRETTA. Yes, sir.

Senator DOUGLAS. Naturally, you favor the definition which you expounded so ably before the committee. And I take it that you also think that Congress should further define——

Mr. CARRETTA. At the bottom of page 6 and the top of page 7, is that it?

Senator DOUGLAS. Would you have a better definition of the term "such or similar merchandise"?

Mr. CARRETTA. That is correct, Senator.

Senator DOUGLAS. This would require further hearings, naturally, wouldn't it?

Mr. CARRETTA. Not with regard to the second recommendation of mine, I am only supporting the bill as written at the present time, but with regard to the first suggestion, that is, a definition of the words "industry in the United States," it would require an amendment to the present law.

Senator DOUGLAS. Your opinion would be that we not proceed with the present bill, but prolong the hearings until we can go into the definition more thoroughly?

Mr. CARRETTA. If I were to make a suggestion, I would prefer that the bill proceed without the definition rather than hold up the bill.

Senator DOUGLAS. I know, but you have raised some very important points here which I think deserve consideration, and you know that once the pressure of work is such that it must be passed over, it is hard to return to them. I find your argument quite persuasive, I will not say compelling, but quite persuasive, that we should not act on this bill at the present time, but should prolong the hearings so that we can go into the matter thoroughly.

Mr. CARRETTA. May I inform the Senator that the decision regarding the industry in the United States was made by the Tariff Commission on a vote of 5 to 1, so that as of today neither the Congress nor American manufacturers have too much to fear, but when the terms of those Commissioners expire, those who voted with the 5, then American manufacturers must begin to worry.

Senator DOUGLAS. Are you afraid of the elections in 1960?

Mr. CARRETTA. I personally am not afraid of them.

Senator DOUGLAS. Mr. Radcliffe objected to the bill because it failed to define the term "fair value," and he suggested that there should be hearings to get the congressional intent made clear. I find that quite compelling, too, Senator.

Mr. CARRETTA. If I may comment on that, the regulation which was promulgated by the Treasury Department on this particular subject is quite lengthy, and it would appear to me that if Congress were to legislate what "fair value" meant, it would have an act that would be as big as the entire Federal Trade Commission Act.

The Congress has seen fit in the past, for example, in the Robinson-Patman Act, or in the Federal Trade Commission Act, not to determine what the unfair trade practices are. Congress could have defined that, too, but they left it to an administrative body.

Senator DOUGLAS. What is happening is that administrative bodies agree with the interpretations given by regulatory commissions of organic acts, and they are increasingly appealing to Congress to define those terms more precisely in favor of the particular definitions which they wish to give.

Now, you have urged that we get a better definition of these terms which you suggest, namely, better definitions of the term "such or similar merchandise," and a better definition of the term "industry."

Mr. Radcliffe urges with equal cogency a better definition of "fair value." What is the use in passing at this time an act which is incomplete in its fundamental definitions and which leaves the basis for the administrative determination completely up in the air? Why not clear the whole matter up before we proceed?

Mr. CARRETTA. It would be preferable, Senator, but my own opinion is that if a person is sick, and can be partially relieved by a pill, and fully cured by an operation, that if you can give him the pill and relieve the ills temporarily, you may give him the operation later. I urge the passage——

Senator DOUGLAS. It is all according to what kind of a pill you give him, it might be a "Mickey Finn" pill, or a knockout pill.

Thank you very much.

Mr. CARRETTA. Thank you.

Senator DOUGLAS. I am very glad to have this eloquent testimony in favor of a further definition of the term.

Mr. CARRETTA. Thank you.

The CHAIRMAN. The next witness is Dr. W. M. Chapman, American Tunaboat Association.

Will you come forward, please, Dr. Chapman.

STATEMENT OF W. M. CHAPMAN, DIRECTOR OF RESEARCH FOR THE AMERICAN TUNABOAT ASSOCIATION OF SAN DIEGO, CALIF.

Mr. CHAPMAN. My name is W. M. Chapman. I am director of research for the American Tunaboat Association of San Diego, Calif. We are an association of vessels fishing for tuna by the live-bait method, organized as a fishing cooperative under California law. Our members produce more than half the tuna landed by domestic fishermen.

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We wish to illustrate the changes we think would be desirable in the Antidumping Act by reference to a dumping case we experienced in 1956 and 1957. To save time, I would like to submit for the record the documentary evidence to substantiate the statements I will make.

The CHAIRMAN. Without objection your substantiating data will be printed following your testimony.

Mr. CHAPMAN. The summer catch of albacore in Japan in June 1956 was larger than expected. The Japanese frozen tuna cartel misjudged the market and its members bought the catch from the Japanese tuna fishermen at a cost which was higher than they could sell it for. The rather complicated economics of this situation are explained in some detail in the exhibits submitted for the record.

The result was that by mid-July 1956 the Japanese frozen tuna cartel had in frozen warehouse inventory in Japan about 14,000 tons of albacore tuna on which they were bound to lose about $100 per ton, and on which they actually in the end came closer to losing $125 per ton.

This news did not become available in our tuna trade until late September, 1956. At that time the ex-vessel price of albacore in west coast ports was $375 per ton. In the first week of October that price dropped to $300 in response to this news and this effectively closed the American production season.

I might add that that price never recovered during the 1957 American season. Most of the 1957 American catch was bought for $280 per ton, which was about $80 per ton under the average 1956 price and was in fact the lowest price received for albacore in America since before World War II.

The dumping of this 14,000 tons of frozen albacore tuna on the American market at more than $100 per ton less than its cost to the exporter caused serious injury to the tuna fishing industry of the United States. It is still causing such injury and it is doubtful that the effect of this dumping will be worn off before the end of the current year 1958.

On October 17, 1956, we instituted a complaint over this dumping with the Secretary of the Treasury. We supplied him with a volume of documentation, copies of which are attached.

The Department of the Treasury regarded this as a matter of substance and accordingly instructed its field officers to withhold appraisement of the merchandise in question.

In a letter dated March 14, 1957 (5 months after the matter was referred to the Secretary) the Department of the Treasury decided "that the purchase price of the imported frozen albacore was not less than the cost of the production thereof."

In making this decision, the Department of the Treasury determined, as an example, that the cost of production of the particular merchandise was the ex-vessel price of a small amount of albacore sold by fishing boats in Japan 4 or 5 days previous to 1 week before shipment of this summer albacore and not its original cost to the exporter.

The ex-vessel price in November was determined to be $207.65 per ton—sale of it at $270 f. o. b. Japan after freezing and storage was not considered dumping or sale at less than fair value (in this case, cost of production was considered to be fair value.)

Our position was and is, that this summer albacore was particular, separable, identifiable merchandise, that it cost the exporters at least $300 per ton when originally bought from the boats, that this cost was appreciably increased by handling, freezing, storage, commissions, interest, and other costs to a total much higher than $300 per ton, and that to determine that its cost of production should be based on the ex-vessel price of a few tons of albacore, landed in the off-season after the price had been broken by the threatened dumping itself, was without logic and did not carry out the intent of the Antidumping Act. All of these facts were readily and publicly admitted by the Japanese as is set forth in the attached exhibits.

We are not experts in antidumping law. We believe, however, that it is intended to prevent sales of commodities in this country at less than fair value or cost of production. Our experience has shown that this can and did happen. A particular, identifiable tonnage of albacore was sold in the United States at far below its original cost of production in Japan. This act did cause and is causing injury to us.

As a result of this experience we can bring to the attention of the committee the need for a study of the language of the Antidumping Act dealing with foreign market value (sec. 205) and with cost of production (sec. 206) to the end that it be made clear that when the original cost of an item in commerce can be obtained, this should be used as its cost of production after adding thereto the costs incidental to preparing it for shipment.

We further believe that the act should provide for public hearings open to all interested parties to develop information on whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value. We felt very keenly our lack of right to hear and critically examine the opposing evidence, confronting the opposing witnesses, and examine the validity of the criticisms brought against our evidence. We are dealing in a void.

Additionally we believe that a published report of the findings in such case should be made within a reasonable time after the complaint is brought, a time not to exceed 90 days.

Furthermore, we most deeply feel that the act should provide a right of appeal to an interested party that has reasonable grounds to disagree with the findings of the Secretary of the Treasury—whether there was a finding of dumping or a finding of no dumping.

Finally, we see no reason whatever for a second action to prove injury after a determination that merchandise has been shipped into this country at less than its fair value. We do not believe that it is possible to dump any commodity on this market at less than its fair value or its cost of production without causing injury to the domestic industry producing a like or similar commodity. A determination of importation at below fair value should be, in our view, considered to be prima facie evidence of injury.

In conclusion I would like to say that this is the second dumping case on which we have brought complaint. In the other previous one on canned tuna we got even shorter shrift. We quite plainly believe that this act, as it is presently administered, gives us no useful protection against the two Japanese tuna cartels manipulating this market to their advantage and to our serious injury.

A clear example of this is provided in the tie-in sales between frozen yellow fin and albacore which went on during the last 6 months of 1957. Frozen yellow fin has been exported regularly to the United States at less than the price it sells for in Japan. While this seems to be a clear matter of dumping, we have not yet brought a charge because of the disappointing results we have had in the administration of this act.

However, in the last 6 months of 1957, frozen yellow fin was deliberately and purposefully sold to the United States by the frozen tuna cartel at less than its cost of production by means of tie-in sales. For instance, if you would buy 500 tons of albacore at $270 per ton f. o. b. Japan, you could have 500 tons of yellow fin at $220 per ton. The cost of production of the yellow fin was about $270 per ton so the cartel was losing about $50 per ton on it. But the cartel had been able to depress the ex-vessel price of albacore in Japan during June of 1957 to such a low level that it was making about $100 per ton on frozen albacore at $270 per ton f. o. b. Japan. Therefore on this entire deal it would clear about $50 per ton profit.

The effect of this was quite naturally injurious to American tuna producers, but our experiences with the Antidumping Act have been so bad that we did not even make a complaint under it. Instead we have asked the Secretary of State to invoke article XVIII of the Treaty of Friendship, Commerce, and Navigation with Japan in an effort to mitigate the total injurious effect of the manipulation of our market by these two cartels. I might add that we do not appear to be having much success there either and we are now contemplating methods of redress under United States municipal, as contrasted with treaty, law.

(The documentation referred to by Mr. Chapman is as follows:)

AMERICAN TUNABOAT ASSOCIATION,
San Diego, Calif., May 27, 1957.

Hon. JERE COOPER,
Chairman, Committee on Ways and Means,
House Office Building, Washington, D. C.

DEAR CONGRESSMAN COOPER: Your committee is in the process of studying the effectiveness of the Antidumping Act of 1921, as amended, and has before it a report of the Secretary of the Treasury on the operation and effectiveness of the act with suggested amendments to it which the administration considers to be desirable or necessary. There are also pending before your committee a number of bills designed to amend the Antidumping Act, such as H. R. 5102, H. R. 5120, H. R. 5138, H. R. 5202, and your own bill, H. R. 6006.

For the last several months our market has been subjected to extensive dumping of frozen tuna from Japan which has had the effect of seriously injuring us. We initiated a complaint with respect to frozen albacore under the Antidumping Act on October 17, 1956. It was dismissed and apparently concluded on March 1, 1957. A recounting of this case and its treatment in the Department of the Treasury may be of assistance to you and your committee in evaluating the report of the Secretary to you on the operation and effectiveness of the Antidumping Act and the amendments to it which your committee may consider to be desirable or necessary.

DUMPING

We consider dumping in the economic sense to be the sale of a commodity produced in a foreign country and sold in this country for a lesser price than it would bring in the foreign market area of origin, or at less than its cost of production in the foreign market area of origin, in a volume sufficient to injure the business of a domestic producer of a like or similar product. We understand that the legislative intent of the Antidumping Act, when all administrative regulations, actions and interpretations are stripped away, was to prevent dumping when defined more or less in this manner.

THE JAPANESE ALBACORE FISHERY

In order to understand the origins and reasons behind albacore dumping, it is necessary to understand some of the basic facts of the Japanese albacore fishery, including its seasonality. The monthly landings of albacore in tons in Japan for the past 5 years (which are typical), as given by the monthly statistical report of the Japanese fishery agency of the Ministry of Agriculture, are as follows:

	1952	1953	1954	1955	1956	1957
January	3,719	5,558	6,872	4,645	3,890	5,057
February	3,983	4,831	5,574	5,132	3,019	5,012
March	4,608	4,074	6,417	4,198	3,465	5,072
April	2,868	2,694	3,822	4,694	3,647	3,892
May	4,430	6,017	3,657	7,880	8,923	11,000
June	36,760	24,070	9,942	10,909	25,699	31,268
July	6,562	4,851	10,437	2,438	10,387	......
August	120	157	1,802	314	935	......
September	66	145	934	326	380	......
October	128	215	1,211	715	591	......
November	289	471	1,583	901	877	......
December	2,077	3,819	4,761	2,512	2,824	......
Mother ship					4,093	......
Fishery	79	322	3,917	5,409	(1)	......

[1] Not available.

In the parlance of the trade, these landings are divided into the winter season and the summer season. The winter season begins in late November or early December, and proceeds at a reasonably even and stable rate through March into April. Most of the catch is made by long line quite a long distance from the home islands out in the Central North Pacific. A substantial part of the catch ordinarily comes from the area northwest of Midway Islands. These winter fish are of a different quality, on the average, than the summer fish by reason of being larger in average size and of lesser quality by reason of having been on board vessels in ice a longer time.

The summer fishery begins in April, grows substantially in May, reaches a sharp peak in June, and then in the first or second week of July catches drop off abruptly and the season is over. These are smaller fish, on the average, and of fresher quality because the fishery is close to the home islands and catches can be landed quickly. The fishery starts in the latitude of the Bonins and slowly moves during May and June up by the home islands until the latitude of northern Honshu is reached, at which time the schools start dispersing, moving southward or eastward, and quickly disappear from the fishery. The albacore boats shift to other fisheries, such as skipjack or saury, which are coming in at this time.

A third source of albacore has developed in Japan during the past 3 years which is not definitely seasonal and which does not yet exceed more than 10 or 15 percent of the total annual income of albacore in Japan. It is the albacore from the Southern Hemisphere (the Samoa-Fiji-Tonga area of the Pacific and the Southeastern Indian Ocean) that is caught by long line incidental to the long-line fishery for yellowfin and bigeye tuna. Part of this is landed in Japan by mother ship (5,409 tons in 1955) the rest by long-line boats operating independently out of ports in Japan. This albacore is clearly distinguishable from both the winter and summer albacore by reason of its much larger average size and its difference in quality. Coming from such much longer distances, its freshness is less and most of it is actually landed in the frozen condition.

THE AMERICAN ALBACORE FISHERY

The American albacore fishery bears closest resemblance to the Japanese summer albacore fishery, and there are no American albacore fisheries that correspond to the Japanese winter fishery or the Southern Hemisphere fishery. Like the Japanese summer fishery, the American albacore fishery is prosecuted by small vessels working close to shore, operates on small fish, is strictly seasonal, and progresses from south to north as the season advances. Recent tagging results even suggest that the two fisheries are operating on the same stock of fish, which migrates rather freely across the whole of the North Pacific.

However, the American albacore season is later than the Japanese summer season. Albacore fishing starts off Baja California and southern California in June, usually toward its latter part. Heavy landings start coming in July, ordinarily by the second week of July, and continue through August into September. In August, the center of catching ordinarily shifts on up the coast of California, and the September landings are normally heaviest in the area of Monterey Bay, San Francisco Bay, and northern California. In intermittent years, there is some catch farther north off the mouth of the Columbia River and to southern British Columbia in late August and September and even well into October. Ordinarily, the fish disappear out to sea up north in October concurrently with the approach of heavy weather, which drives these small craft out of the fishery. Then, for the remainder of the year, and occasionally into February, light landings continue from the southern part of the fishery off Baja California.

For the purposes of this exposition, the essential point to this is that 90 percent of the landings of albacore for the year in Japan are made before substantial albacore landings start in the United States. Thus, the price which the American fishermen are to get is largely established by what has already happened in Japan.

COMPARISON BETWEEN YIELD OF THE AMERICAN AND JAPANESE ALBACORE FISHERIES

The total annual yield of the albacore fishery of the two nations as given, respectively, by the official figures of the Japanese and United States Government are shown for recent years in the following table:

[Tons]

	Total	Japan	United States		Total	Japan	United States
1950	73,850	37,623	36,227	1954	70,639	57,150	13,489
1951	45,314	28,069	17,245	1955	59,593	44,724	14,809
1952	92,035	65,756	26,279	1956	84,633	64,676	19,957
1953	73,350	56,000	17,350	1957			20,000

These figures illustrate the variability in the annual production of albacore in the Pacific and the fact that since the Japanese fishery recovered its prewar ability to produce in 1950 the American fishery has been steadily suppressed by a variety of economic actions which were an outgrowth of Japanese expansion until the American fishery has become much the smaller of the two.

THE MARKET FOR ALBACORE

Substantially all of the albacore caught by Americans is canned and consumed in that form in the United States. Only in bad market periods which produced definite gluts have a few hundred pounds been accepted on the fresh fish market.

The albacore caught in Japan is also mostly consumed in the canned form in the United States. Part is exported to the United States for canning here; part is canned in Japan and exported to the United States in the canned form. The exports of albacore from Japan in both forms in recent years, according to the Japanese Fishery Agency, is given in the following table. The canned tuna has been converted to equivalent tons of raw fish for comparative purposes at the rate of 50 cases of 48-one-half-pound cans to the ton, which may be a little low. These figures cannot be strictly compared with landings year by year because of the variable size of both canned and frozen inventory held at year end in Japan.

[In tons]

	Frozen	Canned	Total
1950	13,663	12,250	25,913
1951	16,313	6,430	22,743
1952	22,781	15,180	37,361
1953	25,611	18,400	44,017
1954	33,061	15,550	48,611
1955	33,118	20,145	53,263
1956	21,980	20,569	42,549

Thus over this 7-year period somewhat more than 80 percent of the albacore landed in Japan has been exported either in the canned or the frozen form. Of the frozen albacore less than 10 percent goes to Canada; of the canned albacore less than a quarter goes to other countries than the United States. All the rest is imported into the United States and consumed here in the canned form. In each of the last 4 years the amount of albacore imported from Japan into the United States has been between 2 and 3 times the amount caught by American fishermen.

COMPETITIVE RELATION BETWEEN FROZEN ALBACORE AND FROZEN YELLOWFIN OR SKIPJACK IN THE CANNED TUNA MARKET

Two primary grades of canned tuna are sold in the United States; white meat tuna and light meat tuna. By Government regulation only albacore can be canned and sold as white meat tuna, whereas all kinds of tuna including albacore can be canned and sold as light meat tuna. Thus albacore is canned and sold as white meat tuna or as light meat tuna in accordance with whether the inventory situation of white meat requires some to be shifted into the light meat category and whether the price at which the raw albacore was purchased permits the canned product to be sold at profit as light meat tuna.

Ordinarily white meat canned tuna sells for $1 to $1.75 per case, at the wholesale level, more than light meat tuna. Thus so long as it is possible to sell all of the albacore on hand as white meat tuna that is the most profitable thing to do. But when more than a definite amount of white meat tuna is available to the United States market the white meat market is full and it is advantageous to sell the remainder as light meat canned tuna if the price of the raw material in the case permits this.

Domestic albacore tuna packs out at about 50 cases per ton. At $375 per ton this makes the raw material cost per case about $7.50. At $300 per ton the raw material cost per case is $6. Domestic yellowfin and skipjack tuna put together half and half in the catch average a packout of about 42 cases to the ton. The exvessel price to domestic vessels is $270 per ton for yellowfin tuna and $230 per ton for skipjack tuna. The catch runs about half and half for both species over the full year. Thus the average cost per case of raw material in light meat tuna from domestically produced yellowfin and skipjack is about $6 per case. As a matter of fact, albacore at $300 per ton is a little better buy for light meat tuna than yellowfin at $270 and skipjack at $230 per ton because, aside from the different yield factor, the canning cost of the albacore is somewhat less than for yellowfin and skipjack because somewhat less labor is necessary to clean the fish and prepare it for canning.

The cost situation is a little different with imported Japanese albacore because it packs out about 55 cases to the ton in the United States canneries as against 50 cases per ton for domestic albacore. It will be noted that this is 5 cases per ton higher than the conversion ratio used in the computation of albacore canned in Japan. There are two principal reasons for this. (1) Albacore is graded as to size in Japan for export and only the larger sizes are shipped frozen to the United States for canning here whereas the smaller sizes are canned there. The larger the albacore the more cases per ton packout. (2) Japanese albacore which have been frozen and warehoused for a month or two between catching and canning dries out somewhat. While this detracts from the taste and succulence of the pack it increases the cases packed per ton, and white meat tuna is sold on color rather than taste. This is the case with Japanese albacore canned in the United States but not with that canned in Japan which is normally canned quickly after landing and usually without having been frozen.

Accordingly, Japanese albacore canning out at 55 cases per ton yields a raw material cost per case of about $7.80 at $430 per ton, $6.25 at $350 per ton, and $5.50 at $300 per ton.

THE 1956 JAPANESE ALBACORE SEASON

The catch of albacore month by month from the Japanese winter season in 1956 was somewhat less than it had been during the same months of the 1955 season, and by about the same degree as the winter catch in 1955 had been less than that in 1954 (see the above table). While the winter catch is substantially less than the summer catch it nevertheless is large enough to have effect of setting the tone of the coming summer market. Inventories of white meat tuna in canners hands both in Japan and the United States were light. Accordingly, the lighter supply and the heavier demand generated a higher initial

price than had obtained at the start of the 1955 winter season. Spirited competition at the auction docks between the buyers for the Japanese canners and the buyers for the frozen albacore exporters kept the price high and drove it continually up as the season progressed.

In the second week of April (April 14) the major companies buying tuna for export in the frozen form combined their efforts in a new joint company, the Frozen Tuna Mutual Sales Co. The new company had a fixed quota of albacore to buy which was intended to be adequate to control the marketing of frozen albacore to the United States. Within this overal quota each of the parent companies had a definite quota of its own.

This timing coincided with a very sharp increase in the sale of canned tuna in the United States occasioned by California canners finally reflecting our price drops in yellowfin and skipjack during 1955 by means of a drop in the wholesale price of light meat canned tuna which ranged as high as $2 per case. Some of the exuberance of this active market spread to the white meat canned tuna market.

Adequate capital was available to the new joint cartel; the market for frozen albacore to American canners was brisk; prices seemed to be firm and demand was expected to remain strong. Under this impetus and the continued strong demand from Japanese canners the exvessel price of albacore at the auction docks in Japan continued to rise even though the May and early June catches were behavier than those of either the preceding year or 1954. The exvessel price reached as high as $335 per ton. By the last week of June almost all of the producers in the new Frozen Tuna Mutual Sales Co. had filled their quotas. Japanese canners had also filled their production quotas pretty well. As a result of these factors and continued heavy landings of albacore the exvessel price of albacore in Japan declined rather quickly to $265 to $270 per ton.

At this time (about the third week in June) there came a pause in the heavy rate of albacore landing. Since the summer albacore season in Japan customarily stops abruptly when it does stop, and this abrupt stop may come any time from the last week of June to the middle of July, some Japanese buyers thought that this drop in landings might be a signal that the season was about at an end.

At this time another most important event happened. There had been considerable argument inside the Frozen Tuna Mutual Sales Co. as to what the price should be that the exporters cartel should use in disposing of its holdings to American canners. This was settled in a quick and unexpected way on June 24 when it was found that Taiyo Gyogyo and Ichi Bussan, the 2 largest frozen albacore exporters and 2 of the principal members of the Mutual Sales Co., had jointly sold 5,000 tons of frozen albacore to the Columbia River Packer's Association of Astoria, Oreg., at $355 f. o. b. or $415 c. and f. Thus this fait accompli established the export price at $355 per ton f. o. b. Tokyo.

The other freezers in the sales company were considerably dissatisfied at this move because of the general belief that this was at least $10 per ton less than a fair price when considered in the light of the exvessel price they had been paying for albacore. However, the deed was done and the market price set.

The pause in landings turned out to be only temporary. They became heavy again before June was at an end. The freezers, disregarding their quotas under the Frozen Tuna Mutual Sales Co. and spurred on by the 5,000-ton sale to CRPA by Taiyo and Ichi Bussan and the fact that the exvessel price had receded, started to buy albacore heavily again in order to reduce the average base cost of their albacore holdings. In this manner they greatly increased their stocks above their quotas, because the landings continued heavy well through the first 10 days of July.

Thus at the end of the season the Frozen Tuna Mutual Sales Co., created by the Japanese in the midst of this situation for the purpose of regulating the American market by joint action, found itself saddled with its full anticipated maximum stock of 6,500 tons of frozen albacore on hand at a higher cost per ton than it could be sold for. In addition to this its own members held an additional 7,000 to 8,000 tons of stock in frozen warehouse that was not covered by the agreements under which the sales company had been formed.

Reliable estimates by the Japanese, based on average dockside prices during June and July, checked by us and verified by the statistics published by the Japanese Ministry of Agriculture and Forestry and the Ministry of International Trade and Industry indicate that at this time (mid-July) the approximate 14,000 tons of albacore then in frozen warehouse in the hands of Japanese frozen tuna exporters was there at an out-of-pocket cost of between $310 and $320 per ton.

The bare cost of getting the merchandise from their freezer in Japan to dockside in the United States was $75 per ton. Thus on the average, at this point, $395 per ton had to be realized at dockside in the United States in order simply to break even in cost. And the cost was going up at the rate of $8 per ton per month, the cost of storage, for every month it stayed in frozen warehouses.

Now, however, two other factors came to bear on the matter: (1) The American albacore fishermen had established a contract price of $350 per ton exvessel for albacore in southern California and catches were coming in good. Accordingly, no California canner would pay $395 per ton for frozen albacore which had been dried out in warehouses for sometime when he could get all the fresh albacore he could use at $350 per ton. Furthermore, (2) it was not discovered that the contract under which Taiyo and Ichi Bussan had sold the 5,000 tons of albacore to Columbia River Packers Association in late June had what came to be called in the trade the "fall closure clause." This clause stipulated that should the export price decline within 3 months of the date of the contract (June 24) Columbia River Packers Association would be refunded an amount per ton on this 5,000 tons purchase equal to the amount of the decrease.

Thus the Japanese in mid-July were faced with 14,000 tons of inventory which they could not dispose of except at a loss, and if they did dispose of it at a loss they would have to pay a large penalty refund to CRPA on the 5,000 tons it had bought on June 24. The prospective losses represented a respectable amount of money whichever way they moved. Accordingly, they did not move. No sales were made to the United States. Sales of canned tuna in the United States were experiencing a rapid upsurge under the twin pressures of normal summer season buying plus the price cut in case goods in April. If the United States albacore fishery turned out to be average or a little less in production then there was a chance that by the end of September after the end of the "fall closure clause," they would get a good enough price to break even or at least mitigate their losses.

At first events seemed to favor this. While the albacore landings in July and August in California were good, and a little above the previous year, they were not sensational. As the landings moved north from southern California to central and northern California the price advanced to $375 per ton to the American fishermen. This is a normal feature of the American fishery whereby the fishermen and canners split the cost of freighting the albacore from the northern ports to the canneries.

But the American albacore catches held good right straight through September and in early October the fish were still biting good off the Oregon coast and it looked like it might be an exceptionally productive season.

An air of uneasiness which had been growing in the Japanese exporting industry through late July and August deepened into sharp dismay in early September and degenerated very nearly into panic in late September. On September 21 just before the end of CRPA's fall closure clause the Japanese Frozen Food Exporters Association, at a meeting of its steering committee, delegated to Mr. Kenkichi Nakabe, chairman of its board of directors and president of Taiyo Gyogo (the largest frozen tuna exporter) full responsibility for future price negotiations with American canners. The National Freezers Association (Japan) took similar action at its meeting on September 26. Thus for the first time not only was it possible to consider a cut in the $355 per ton f. o. b. price maintained by the Frozen Tuna Mutual Sales Co., but virtual approval had been given to one man to make whatever cut was found to be necessary to move the merchandise.

Up until this time the Japanese had pretty well concealed from the American eyes the amount of their distress. It was known that there was a fair amount of frozen albacore in storage in Japan but there was not much outward evidence of distress. The near panic of mid-September in the Japanese industry was reflected in the Japanese fishery press and in trade circle rumors. By September 20 the first actual break came when Taiyo offered F. E. Booth 100 tons at $350 c. and f., $65 per ton below the last purchase by CRPA. The price kept softening every day and still nobody in California bought. Nobody buys on a declining price.

In order to stop this wild decline Mr. Nakabe turned again to Columbia River Packers Association and finally on October 10 tentatively agreed to a plan. CRPA would buy 4,000 tons of frozen albacore (of which 1,000 tons was to be mothership albacore for British Columbia Packing Co., Ltd.) at $315 per ton c. and f. Astoria. Also, it would be given a refund of $29.40 per ton on the 5,000 tons which it had purchased at $415 per ton c. and f. on June 24.

There was great anguish in Japan. The dollar out-of-pocket loss was terrific for business of this size. Conflict grew because Nakabe had sold 1,000 tons of Taiyo's mothership tuna in the deal so that only 3,000 tons of the order came out of the Mutual Sales Co. stocks. Ichi Bussan fell into conflict with Nakabe because it had been dickering on the side with B. C. Packers for that 1,000-ton order itself, which Taiyo got.

But all conflict aside, the block to the logjam of frozen albacore had been removed and exports could be resumed. This had to be done to prevent utter chaos and financial ruin among the smaller exporters. By this time because of added storage costs, interest on money, glazing of the fish, fees for putting in and taking out the fish from storage, stevedoring, etc., the Japanese frozen tuna exporters had, at a minimum, $375 per ton cash or credit invested in about 14,000 tons of albacore, of which 6,500 tons was in the hands of the Frozen Tuna Mutual Sales Co. and the remainder was in the hands of the individual companies belonging to that joint cartel.

The loss on this inventory would be conservatively $105 per ton. It would be distributed in this approximate manner:

Mutual Sales Co	$676,000
Individual companies	787,500
Refund to CRPA ($20.40 per ton) plus original loss of $10 per ton on that 5,000 lot) plus similar loss on 600 tons sold similarly otherwise	218,500
Making a total out-of-pocket loss of	1,682,000

However, there was better than $5,250,000 tied up in inventory in Japan. Banks were pressing for its liquidation and the repayment of loans. Warehousing and interest costs were going on at the rate of $8 per ton per month. The product was deteriorating as the weeks went by and some of it already at a quality level too low for export. Losses had to be swallowed with the best face possible. Squabbling quieted down. Mr. Nakabe's deal was ratified. A firm bottom was put under the market by the Japanese Government affirming an export check price for albacore at $270 per ton f. o. b. Tokyo.

One other step was needed. The Pacific Conference freight rate for frozen tuna from Japan to the west coast of the United States had been established at $6.75 per ton. In view of the difficulties being experienced by the Japanese tuna exporters they had been able to get a special rate of $55 per ton for frozen albacore for 2 months. But this was not enough. Between the Japanese Government's new check price of $270 per ton f. o. b. Tokyo and the CRPA purchase price of $315 c. and f. Astoria there was only $45 per ton.

Again Mr. Nakabe showed his worth by putting up the proposition to the freight conference that either the exporters would be granted a $45 a ton freight rate until this summar albacore could be moved to the United States, or his company, Taiyo Gyogyo, and 1 or 2 of the other large companies who had the vessels available would transfer their motherships from the fisheries to this run, and they would haul the fish themselves and swallow the additional loss of dry runs one way. Since the freight conference members would lose a considerable business, and the tuna companies were obviously able to make good on Dr. Nakabe's threat, the conference once more lowered the rate on frozen albacore. Perhaps the Japanese Government put in a quiet word with the conference board. We are unable to say.

With all of this out of the way, the albacore began to sell to the United States, and it continued to do so until the last of the summer albacore from the May, June, and July fishery of 1956 finally reached canneries in the United States in March and early April 1957. This operation having been concluded, the ocean freight rate on frozen albacore from Japan to west coast United States ports reverted from $45 per ton to $61.75 on May 1.

All of the statements made above with respect to the 1956 Japanese albacore season are documented by quotations from Japanese periodicals appended hereto. We have a considerable additional mass of such documentation which could be furnished to the committee.

EFFECT ON UNITED STATES ALBACORE PRICES

As noted above, the albacore fishermen and the California canneries settled the season albacore price at $350 per ton under contract in late June. This price held until the fish moved up the coast in late August, at which time the price advanced to $375 per ton. This price held through September. But in the middle

of September the fish had moved up along the Oregon coast, and fair landings began entering Astoria. The price there dropped to $325 with little fish landed.

At about this same time word reached the west coast that there was 6,500 tons of distressed albacore in Japan looking for a market at almost any price. Then the word began to leak out in press reports from Tokyo that not only was there this 6,500 tons in the hands of the Frozen Tuna Mutual Sales Co., but there was another 7,000–8,000 tons—nobody knew exactly how much—additional frozen albacore there in the hands of independent companies. Some of these hands were considerably weaker than the Sales Co. and were offering rebates and allowances even under the Sales Co. prices.

The effect of all this on the albacore price in west-coast ports was almost instantaneous. Canners gave notice that on October 2, the first date available under their contracts with the fishermen, the ex-vessel albacore price would drop from $375 to $300 per ton. It did so drop under the pressure of the trade rumors from Japan even before the news from Japan was certain or was well understood on this coast or, in fact, before Mr. Nakabe's deal with Columbia River Packer's Association and British Columbia Packing Co., Ltd., was concluded or accepted by his confreres in Japan.

At that level the price stabilized and held for the remainder of the American albacore season. As a matter of fact, that price still obtains now a month ahead of the beginning of the new season.

The reason for the stabilization at $300 per ton is that the floor was placed there by the price of yellowfin and skipjack in southern California. As set forth above, Japanese albacore tuna at $300 per ton makes about a 50-cents per case less cost of raw material than yellowfin and skipjack in equal portions at $270 and $230 per ton, respectively. The albacore canned at those prices can be sold by the canners profitably either as white meat canned tuna or light meat canned tuna.

THE EFFECT UPON OUR MARKET FOR FROZEN YELLOWFIN AND SKIPJACK

The tuna clippers that fish out of San Diego catch little or no albacore. They catch yellowfin, bigeye, and skipjack tuna exclusively, except occasionally during the height of the albacore season when a few of the smaller clippers may bring in a few dozen tons of albacore. This association is composed of the owners of these tuna clippers, and ordinarily we take little direct interest in albacore matters. We have been having so much direct injury from dumped frozen yellowfin and bigeye tuna that we have not heretofore concerned ourselves in what were strictly albacore matters.

This was the case with us in the summer and fall of 1956. After a good spring during which our marketing opportunity had improved as a result of our cutting our prices by 23 percent during the preceding summer and fall we had again begun to suffer from long enforced lay-ups in between trips because the inventories of our canner customers were so high that they could not accept our catches. Symptomatic of our direct troubles, the imports of frozen yellowfin from Japan to the United States increased from 22,005 tons in 1955 to 29,356 tons in 1956. As a consequence we were snowed under by our own direct problems.

However, when in late September the price of albacore on this broke so quickly from $375 per ton to $300 we knew we were in for further trouble. At $375 per ton albacore tuna cannot be canned and sold at a profit as light-meat tuna against yellowfin and skipjack tuna at $270 and $230 per ton, respectively; at $300 per ton it can. The drop from $375 to $300 was a signal that our canners had all of the albacore in cans that they needed to fill the white meat tuna market until albacore started running in the summer of 1957, or that they could get it otherwise, and that the rest of the albacore for 1956 would be canned as possible overflow for the light-meat market which would be directly subtracted from our market. When we found that we not only had the remainder of the American 1956 albacore production to absorb into our market but also 14,000 tons extra Japanese albacore we had accurate visions of what would happen to our market. Some of these things have already transpired; some are still in the process of happening; some we still have in prospect before us.

What has happened can be summed up in these points:

(1) There has been direct pressure on the volume of sales of yellowfin and skipjack we have been able to sell this year.

(2) There has been, as a consequence, direct pressure on our yellowfin and skipjack prices which we have avoided to this time by a bare margin.

(3) There has been a maintenance in the hands of our canner customers of an abnormally high white-meat inventory which has kept their whole inventory structure abnormally high.

(4) There has been direct pressure upon both the volume and price of light meat canned tuna prices in the American market which is reflecting back on us already.

We are prepared to substantiate these statements statistically to the committee if that is wanted.

The prices of canned tuna in brine, both white meat and light meat, nearly all of which comes from Japan, have been driven down. This further depresses the whole canned tuna market as Japanese canners unload in order to take the first loss on inventory. This situation has gotten so bad in the New York and New England market that one group of Japanese canners for a month has been claiming bitterly in the Tokyo fisheries press that another group of Japanese canners is dumping canned tuna in those markets at below fair value and they are pressing the Japanese Government to step in and regulate the sale of Japanese canned tuna here so that those unfair trade practices could be stopped.

OUR ANTIDUMPING COMPLAINT

Our first news as to what was going on in Japan last summer came to us through trade channels in late September and were little more than rumors. The Department of State cut out the post of fishery attaché at the Tokyo Embassy in 1953 and since that time we have had practically no official reporting of essential information on what is going on in Japan soon enough to understand it.

During the first 2 weeks of October documentary evidence reached us from Tokyo indicating that 14,000 tons of summer albacore was going to be dumped on this market by Japanese frozen tuna exporters at more than $100 per ton less than it cost them.

Having knowledge that this would cause us the injury that it has in fact caused us, and is going still to cause us, we notified these facts to the Secretary of the Treasury on October 17, 1956, and asked him to take such actions as were appropriate under law to prevent this from happening. A copy of the letter is attached (appendix 1).

On the next day we received specific information with respect to the sale of 3,500 tons of this summer albacore on this coast at a price of $315 per ton C. and F. We notified this to the Secretary of the Treasury by letter of October 18, of which a copy is attached (appendix 2). We asked for action to be taken swiftly.

Under date of October 26 we received the attached letter (appendix 3) from David Kendall, Assistant Secretary, saying that action had been taken by the Bureau of Customs to see that all shipments of frozen albacore would be immediately reported to it and that it would take appropriate action immediately upon the receipt of information indicating that any shipment had been received at what appeared to be a dumping price.

By this time we had established better lines of intelligence with Tokyo. On October 29 we were able to cite to Mr. Kendall in the attached letter of that date (appendix 4) nine translated articles that had appeared in the Tokyo fisheries press between October 8 and 16 which quite well outlined what was going on in Japan. On the basis of this and other reports received we notified him further that—

(*a*) we were suspicious that the Japanese Government was preparing to bail out these exporters for their losses, or part thereof;

(*b*) that there had been a rebate given to CRPA on the 5,000 tons sold to it on June 24 during the first part of October which in our view made that sale fall within the purview of our complaint of October 17; and

(*c*) that we had quite complete records of the ex-vessel prices paid for albacore during 1956 in our files which his agents were welcome to examine. Incidentally we have not had any approach for that information, although there is a collector of customs in this port.

Under date of November 6 we received the attached letter (appendix 5) from Mr. Kendall acknowledging our letter of October 29 and saying that the Bureau of Customs was keeping in close contact with the situation.

In the meantime we had received as a trade rumor a purported plan by which the Japanese Government would mitigate the losses of these exporters from Japanese public funds. We notified this to Mr. Kendall in the attached letter

of November 6 (appendix 6) and asked him to investigate the authenticity of the report. The receipt of this letter was acknowledged by Mr. Robert D. Hartshorne, Jr., for Mr. Kendall on November 13 (appendix 7).

In pursuance of our objectives we had made a study of the price situation in Japan to check and recheck from official Japanese sources whether or not our understanding of the situation from the Japanese trade press was reasonably accurate. We sent Mr. Kendall the results of this study in the attached letter of November 15 (appendix 8). The result of our study was that the fair value of this albacore dockside in the United States by the end of October was $432 per ton as against the $315 for which it was being sold.

Under date of November 27 we received the attached acknowledgment of receipt of our letter of November 15 from Mr. Kendall (appendix 9).

Forty days had passed since we had filed our complaint and up to this date our information with respect to what the Department of the Treasury was doing was sparse. Accordingly, we requested our Congressman, Bob Wilson, to make inquiry. From him we learned that the Department was making investigations with respect to whether albacore was being imported at a less than $315 cost and freight price. Since this was the price at which it was actually being imported which, in our view was $117 below its cost of production, we wrote the attached letter of December 7 (appendix 10) in which we questioned the investigations and also requested investigations with respect to the cost of production of "mothership" landed frozen albacore.

In the meantime we had made inquiry of the local collector of customs as to whether he had received advices with respect to our dumping complaint. On the basis of his reply we dispatched under covering letters of December 5 and 6 copies of all of our correspondence with the Department up to that time to each of the collectors of customs in each of the ports of entry in the United States where frozen albacore was likely to be dumped.

In our rather naive condition of that date we thought it would speed matters up if the Tariff Commission were kept advised of our complaint and substantiating evidence so that when the request came to it from the Secretary of the Treasury to investigate whether injury was being done on American industry by this dumping they would be prepared to move along on their half of the investigations. Accordingly we sent Dr. Brossard, Chairman of the United States Tariff Commission, copies of our correspondence to date under a covering letter indicating in general terms where injury was developing, requesting a public hearing when the time was right, and requesting to be heard at such hearing. The Tariff Commission, in this same spirit of wishing to expedite the matter, took such preliminary steps as were appropriate.

This line of action was stillborn, however, because the Secretary of the Treasury never asked the Tariff Commission to study whether or not injury was being done by these frozen albacore imports.

At some time in this approximate interval before Christmas collectors of customs were advised to withhold appraisement of frozen albacore.

While we did not know it at the time, it was also at about this time that the Japanese Government and American importers of frozen albacore began to advise exporters that their understanding was that so long as frozen albacore did not arrive in the United States at a cost and freight price lower than $315 per ton there would be no antidumping tax levied. Also it was at this time that new sales for export of the summer albacore began to be consummated on a fair scale again in Tokyo. We did not know that at the time, however.

Under date of December 13 we received from Mr. Hendrick, assistant to the Secretary of Treasury, the attached letter (appendix 11) in which he made plain that not only had they not decided that $315 per ton cost and freight represented cost of production for this fish, but that they had reached no decision whatever as to what figure should be used for cost of production.

Our next correspondence on the subject was the attached copy of a letter (appendix 12) from Mr. Kendall under date of December 21. In this he made these points:

1. Cost of production was to be used as the measure of fair value, since there were no substantial sales of frozen albacore in Japan or third countries.

2. The cost of materials and fabrication to be used were going to be based on the price of fresh albacore during the week preceding 4 or 5 days prior to date of shipment of the particular shipment under consideration because of the fact that it ordinarily took 4 to 5 days to process fresh albacore into frozen albacore for shipment.

3. Under these criteria the statutory cost of production would be $257.80 on frozen albacore exported from Japan on or after November 27, because that week the cost of raw albacore had been $207.65 per ton at Yaizu, a principal port of landing.

4. Using this statutory cost plus $50.17 per ton for ocean freight and shipping expenses left the $315 per ton cost and freight price about $7 per ton higher than fair value.

Under this method of calculation our dumping complaint was obviously out the window. It was quite a shock to us and gave substance to the press reports we were now receiving steadily from Japan that our dumping complaint was going to be dismissed and that the business of continuing the dumping of the remainder of the summer albacore on this market was to go forward.

What was obviously being considered was this: Albacore were being taken as all one commodity and no consideration was being given to the economics of the situation. The weight of the tremendous inventory of June and July albacore in Japanese warehouses none of which had moved out as yet in December had knocked the ex-vessel price of albacore in Japan down from a high of $325 per ton in June to actually an average of a little less than $200 per ton in November and early December. This depressed price, driven down by the very thing we were trying to stop happening to us, was now being used against us.

As a consequence we sent the attached wires (appendixes 13 and 14) asking them to postpone action on withdrawing the withholding of appraisal until we could reanalyze our data in the light of these new developments. We received back the attached letter (appendix 15) under date of January 3 saying they would continue to withhold appraisal until they got our new study in a few days. Over the holidays we made this new study and forwarded it in the attached letter of January 2 (appendix 16) to Mr. Kendall.

In this study we set forward, with adequate proof, that merchandise which was in hand prior to August and at a cost to the Japanese exporters of more than $370 per ton had been sold during October at $270 per ton free on board which was under cost of production by $100 per ton. This was the particular merchandise under consideration. This particular merchandise could not have been manufactured during November because that amount of fresh albacore was not landed in Japan during the last 5½ months of 1956 put together, much less during November. We pointed out that the November price of $207.65 per ton had no pertinence with respect to the particular merchandise under consideration. We received an acknowledgment of the receipt of this letter in a letter of January 4, 1957, from Mr. Kendall (appendix 17).

In the attached letter of January 4 (appendix 18) we relayed information that had reached us which indicated that the Japanese were begining a subterfuge which would make it appear to the appraising officer that they were getting $350 per ton cost and freight whereas in fact they were charging $315 per ton or less.

In the attached letter of January 11 (appendix 19) we provided documentary evidence from the Japanese press substantiating the rumors and hypotheses that we had included in our letter of January 4.

Our news from Japan, such as it is, arrives about 3 to 4 weeks after its release in the Tokyo press. In the first part of January we got a series of articles from the Japanese fishery press which had appeared there in the second week of December. It was obvious to us that the Japanese Government and the Japanese tuna industry had a much clearer and detailed understanding of what action was being contemplated in our Department of the Treasury with respect to this dumping case than we had, and that they had come to the independent conclusion in early December that the complaint would be dismissed, while at the same time Treasury was informing us that no decision at all had been reached. The Japanese were so sure of their information that they had begun to do business again in a normal manner just as if we had not brought a dumping complaint. We provided these data to Treasury in the attached letter of January 12 (appendix 20).

Additionally, our director of research called upon Mr. Kendall, Mr. Hendrick, and other Treasury experts in Washington, D. C., on January 15. There he was told that no decision had as yet been made. The critical decision to be made was whether albacore was a fungible commodity. If it was, then, albacore bought at any time from any source would be freely substitutable for any other albacore bought at any other time. Under this condition the fresh albacore price in Japan (ex-vessel price) during the week 4 or 5 days prior to shipment

would be the governing price in determining the statutory cost of production and, consequently, whether or not $315 cost and freight was a dumping price. This talk was acknowledged to us by the attached letter of January 15 (appendix 21) from Mr. Kendall.

Under date of February 7 we received the attached letter (appendix 22) from Mr. Kendall in answer to our letter of January 11, in which he stated that their representative in Japan was gathering data to check out the information contained in our letter of January 2. In the meantime they were continuing to withhold appraisal.

On this same day our general manager and director of research called on Mr. Hendricks in Washington and had a long and interesting conversation with him and other Treasury experts with respect to this case. While they were told that no formal decision had yet been made by Treasury they carried away the definite personal impression that in fact a decision had been made, that it was to the effect that albacore was a fungible commodity, and that, therefore, there had been no dumping. That is, point A and point B had been determined; what was being done now was to build a careful bridge between these two points so that point B could not be successfully challenged.

In their discussions with these experts it was their impression that the experts believed without doubt that there was no way in which we could appeal the forthcoming decision into the courts.

Our next information on this case was when Mr. Hendricks called our general manager on March 1 to tell him that Treasury had announced that day the disposition of the case in the following press release:

"The Treasury Department has instructed customs field officers to appraise entries of Japanese frozen tuna without regard to any question of dumping.

"These instructions were issued after a determination under the Antidumping Act that sales of the tuna in the United States had not been made and were not likely to be made at less than fair value."

Under date of March 14 we received the attached letter (appendix 23) from Mr. Strubinger, Acting Commissioner of Customs, which gave the rationale of the Department of the Treasury's decision in this case. In brief, these points were made:

1. The price to the United States of the exported frozen albacore was compared with its cost of production, since sales for home consumption or to third countries were too meager to serve as the basis for such a comparison.

2. The Antidumping Act requires only that the actual additional expenses incident to bringing the merchandise to the United States be deducted. Accordingly, the artificial and temporary depression of the ocean freight rate from $61.75 per ton to $45 per ton for the specific purpose of moving this summer albacore glut to the United States could not be taken into consideration. Only the $45 per ton rate actually paid could be taken into account in the calculations.

3. None of the merchandise imported since the date of our complaint was found to have received the benefit of a rebate other than the price adjustment resulting from actual loss due to rejection by the Food and Drug Division of the United States Department of Agriculture.

4. Imported frozen albacore was considered to be in the nature of fungible goods. Accordingly, no distinction was made in the origins of the frozen albacore in their determination of the cost of production of the imported frozen albacore.

5. In accordance with this decision and statutory requirements the prices considered were the prices prevailing in the Japanese auction markets immediately prior to exportation of each of the shipments.

6. The formula followed in computing the statutory cost of production in each case was that set forward in Mr. Kendall's letter of December 21, 1956.

7. In each case it was found that the purchase price of the imported frozen albacore was not less than the cost of production thereof.

8. Therefore, it was determined that frozen albacore from Japan was not being, and was not likely to be, sold to the United States at less than fair value within the meaning of the Antidumping Act.

9. Accordingly appraising officers were instructed to proceed with appraisement of frozen albacore from Japan without regard to any question of dumping.

10. No subsidization of imported albacore from Japan by that Government had been found as a result of their inquiries.

11. Since frozen albacore is free of duty the countervailing duty provisions of the Tariff Act would not have been applicable had subsidization been found.

RECAPITULATION

In brief this albacore dumping condition can be summed up in these points:

1. About 36,000 tons of albacore were landed in Japan last year during June and the first 3 weeks of July. This was about 22,000 tons more than was landed in the same period of time in 1955, and 16,000 tons above landings in the same period of 1954. Such a sudden surge of albacore was not expected. It broke the market in Japan so that the ex-vessel price was depressed by about one-third.

2. About 14,000 tons of this identical albacore was disposed of by Japanese frozen tuna exporters in the United States at $100 per ton less than the actual out-of-pocket cost which they had invested in this identical fish.

3. This action broke the ex-vessel price of albacore in the United States from $375 to $300 per ton within 2 weeks of the time the news of this surplus reached the United States albacore fishery.

4. This action resulted in nearly an equivalent and abnormal increase in the canning of white-meat tuna in California.

5. This has restricted the market of producers of yellowfin and skipjack tuna in California by about 14,000 tons, and they have actually been able to sell to southern California canners 14,000 tons less of those 2 species in the first 4 months of 1957 than they did in the same period of 1956.

6. These things have caused substantial injury to the producers of albacore, yellowfin, and skipjack in Oregon, Washington, and California.

7. The Treasury Department after 4½ months of study found that frozen albacore was not being, and was not likely to be sold in the United States at less than fair value within the meaning of the Antidumping Act.

8. Semiofficial advice is to the effect that that decision cannot be appealed to a court in order to get a judicial determination as contrasted with an administrative decision.

9. As a result of this decision the United States Tariff Commission will not be requested by the Secretary of the Treasury to make an investigation of possible injury.

10. Consequently the appearance is given that serious injury is being suffered by an American industry, and will continue so to be suffered by reason of 14,000 tons of frozen albacore having been dumped on this market from Japan at $100 per ton (or nearly 30 percent) less than its cost of production, and that these American producers cannot expect any protection from this injury under the Antidumping Act of 1921, as amended.

In such a circumstance our only apparent recourse is to examine in what respects the law has been at fault in not preventing this act which it was framed to prevent and to recommend to you such changes in the law as may, in the future, prevent such occurrences.

The fact that you presently have this very law under review for such purposes is providential.

SUGGESTED CHANGES IN THE ANTIDUMPING ACT

Some changes could, in our view, be made in the law, both with respect to its administration and to its substance, which would go a long distance toward preventing a recurrence of this dumping. Among these are:

1. Public hearings: There is nothing we know of in this dumping case which needs to be kept secret. The essential information is of a public character and has, in fact, been the chief item of discussion in the fisheries press in Tokyo for the past six months. We are attaching hereto as appendix 24 one of the authoritative Japanese reviews of the situation and we have others to which you are welcome.

On the other hand we think that there is no greater safeguard that could be granted to us than to have had all of the evidence in this case presented in public where the witnesses could have been subjected to cross examination and where the evidence submitted could have been subjected to examination and cross examination as to its veracity, completeness, and accuracy.

We have put our evidence in the public record. We have not, on the other hand, been able as yet to obtain copies of any of the evidence submitted by the Japanese Government, the exporters, the importers, or that independently gathered by the United States Government.

There are few things that bring out truth more clearly or effectively than the confrontation of opposing witnesses. We have sorely felt the lack of this in this particular case.

Accordingly we recommend that the law be amended to require the Secretary, upon receiving a complaint, to hold a public hearing with respect to it.

2. Public report on complaint: There have been, according to the report of the Secretary to the Congress, 146 dumping cases disposed of between 1934 and 1954 yet one can search in vain for tendencies in either the pleading of cases or the reasons used in their decision. There is no body of evidence or jurisprudence available. We believe that the law should be amended to provide that within a reasonably short period of time after the above recommended public hearing the Secretary should be required to make a public report of his findings together with the evidence brought forward in the public hearings as well as other supporting evidence gathered and used in making the decision.

3. Judicial review: The administrative review of decisions made by the same administration is a notably imperfect way of carrying out law. This inevitably reduces itself to a government of men rather than a government of law. This is particularly the case at present in the United States where the executive branch of the Government is so out of step with the legislative branch on the subject of the control of foreign trade, authority for which constitutionally resides in the legislative branch of the Government.

In the carrying out of this particular dumping complaint we have felt keenly the need for a judicial review of both the evidence and the decisions made upon it. This has been felt all the more because we have not been able to get access to the other half of the evidence. We simply do not know whether or not we have had a fair decision in the light of the law because we have not seen the evidence nor heard the argument.

4. The Secretary should be able, if he is not now so empowered, to subpoena records of private companies, both those making the complaint or defending against it, insofar as such records have a bearing on the case. This should be equally applicable to foreign exporters under pain of not being able to continue exporting to this country if their records are not made available to the Secretary for this purpose.

5. It would appear that there needs to be some differentiation made with respect to commodities subject to wide seasonal fluctuations in abundance due to natural conditions and manufactured articles whose abundance varies because of economic conditions.

For instance, the cause of this albacore dumping was a production of albacore in Japan last June and July far above reasonable expectation and so large that it broke the market. This is not without precedent. The same thing happened in 1952 with the same result. What can happen twice in 5 years can be expected to happen again in the foreseeable future.

Yet "the particular merchandise under consideration" was interpreted to be albacore caught some months later when—

(*a*) The glut of albacore had already broken down the price structure of the market; and

(*b*) There was no possibility of the amount of albacore then being dealt in being produced at the time because albacore production was at its normally lowest seasonal point of production.

However the criterion used to define "the particular merchandise under consideration" was that the raw material could be bought at low price if in nominal volume, at that time, frozen, and shipped at that particular statutory cost of production. We were informed that such a decision was rendered necessary because of judicial rulings made some time since on the cashmere sweater case.

The situation of frozen albacore whose only "manufacturing" consists of purchase from the fishing vessel, freezing, tagging, and transportation to the freighter, is not, in our view, very comparable with a truly manufactured article.

We quite realize that this is a complicated question but we do feel that until the term "particular merchandise under consideration" is more specifically defined in the legislation the law will not be very effective as to commodities subject to seasonal fluctuations through natural causes and exported in a nearly unmanufactured condition. Certainly these conditions must apply to all frozen fish commodities and many perishable or semiperishable agricultural commodities.

6. Injury findings: We had not experience under this complaint with the injury part of the antidumping procedure because the Secretary of the Treasury did not ask the United States Tariff Commission to make such an investigation. The law did not require him to do so under the decision he made on fair value.

The investigation, as it was, ran 4½ months before a finding was made. Had the request been made for an investigation of injury at the end of the fair value investigation another 4 months would have passed, it is reasonable to assume,

before a finding of dumping could have been made and antidumping dues assessed.

For an exporting industry to be subjected to 8 or 9 months of such uncertainty is certainly not fair to it nor is it good for foreign trade. On the other hand in this particular case the actual importation of the merchandise was largely accomplished by the end of 4½ months and the injury had already been done to the domestic producing industry affected, or had proceeded beyond the stopping point. The objective of the domestic producers affected is not to extract punitive damages from the exporters which go to the Public Treasury, the objective is to prevent the injury from occurring.

To do this the time interval between complaint and decision requires to be shortened. One of the quickest ways to accomplish some part of this shortening is to make the investigatiton of injury go forward with the investigation of fair value and have them coterminous in a specified time, say 90 days after the complaint. We recommend that the Antidumping Act be amended to so provide.

7. We believe that the Tariff Commission should be required to hold public hearings and make public the full record of them as well as their decision and other supporting evidence at the same time the Secretary of the Treasury issues his public report.

8. Injury criteria: Criteria should be established in the law as to what constitutes injury to the domestic producer.

9. Countervailing duty: While it may not be strictly in place here, we believe that the Tariff Act should be amended to provide for countervailing duties on nondutiable as well as dutiable commodities when a finding of subsidy has been made. Furthermore we believe that that section of the Tariff Act could be improved by introducing criteria of subsidy, so that this term is not restricted to straight money grants but also is comprehensive as to indirect aids and benefits.

We hope that these experiences and suggestions will be of some value to your committee in its reconsideration of the Antidumping Act. Obviously an act under which there have been 146 complaints made and only 4 affirmative findings found is faulty either organically or in its administration and should be perfected or eliminated.

Sincerely yours,

JOSEPH J. MADRUGA, *President.*

APPENDIX 1

AMERICAN TUNABOAT ASSOCIATION,
San Diego, Calif., October 17, 1956.

Hon. GEORGE H. HUMPHREY,
Secretary of the Treasury,
Department of the Treasury,
Washington, D. C.

MY DEAR MR. SECRETARY: Commercial intelligence from Japan informs us that the Japanese exporters of frozen tuna are preparing to dump 10,000 to 12,000 tons of frozen albacore tuna into the United States at prices below cost. We would like to have you make a thorough and quick investigation of the facts in the case and, if the facts are as we understand them to be, take such steps as are permissible under United States law to prevent such dumping. The situation as it is understood by us is as follows:

There are two seasons of albacore production in Japan called the winter and the summer seasons. The winter season runs from December to April and the fish comes in fairly regularly during that time. The summer season runs from late April to mid-July and the catch peaks very sharply during the month of June. Considerably more than half of the albacore landed in Jaapn is exported ot the United States, some in the canned form and some in the frozen form.

This year the winter albacore season in Japan yielded a few thousand tons less fish than in 1955. As a consequence the price paid by the Japanese freezers, canners, and exporters to the albacore fishermen rose. By mid-June of the summer season the ex-vessel price had risen to an average $300 to $320 per ton. By this time the total landings for the year had just about caught up with 1955 and some surplus was developing. The ex-vessel price stayed at that high level through June and early July, however, because of spirited bidding between Japanese canners and Japanese exporters. The fishing stayed heavy until mid-July and by that time the total landings for the year had exceeded those for 1955 by 5 percent or so.

As you know all export of frozen albacore from Japan is handled by a Government-sponsored cartel, the Japanese Frozen Tuna Sales Co., under the presidency of Kenkichi Nakabe, president of Taiyo Fisheries—the largest fish company in Japan.

Published information in the Japanese press states that on or about June 24, Mr. Nakabe, on behalf of the Japanese Frozen Tuna Sales Co., contracted to sell 5,000 tons of frozen albacore to the Columbia River Packers Association, Inc., of Astoria, Oreg., at $355 per ton f. o. b. Tokyo with a guaranty that the Japanese Frozen Tuna Sales Co. would not sell any albacore to anyone in the United States for a less price than that for 90 days (or to September 24). This f. o. b. price would make the cost of the fish on the cannery floor in Astoria about $430 per ton, when the normal cost of $75 per ton for commission, insurance, freight, etc., are added.

In the meantime the domestic albacore production off southern California started off well in early July with an ex-vessel price of $350 per ton.

The domestic production was a few thousand tons greater than in 1955, and the domestic landings were composed of fish that averaged somewhat larger in size than those landed domestically in 1955, and therefore more valuable to the domestic canneries.

As the fish moved on up the west coast in late August and September the canners increased the price to $375 per ton. This kept the actual price to the fishermen about the same, because the fishermen absorb the freighting costs of the fish sent from Monterey and San Francisco to the canneries in southern California. The albacore kept coming in and the domestic production of albacore has now (at the end of the main season) reached about 6,000 tons higher than that for 1955. As of October 2 the canners abruptly dropped the ex-vessel price of albacore tuna to domestic vessels from $375 per ton to $300 per ton.

The reason why domestic canners dropped the price by that much was that they had built upon inventory of white meat canned tuna adequate to carry them over to the next season, or reasonably close thereto. Accordingly, they dropped the price to the level where it could be canned and marketed as light meat tuna.

Domestic albacore tuna packs out at about 50 cases per ton. At $375 per ton this makes the raw material cost per case about $7.50. At $300 per ton this makes the raw material cost per case $6. Domestic yellowfin and skipjack put together half and half in the catch average a pack out of about 42 cases to the ton. The ex-vessel price to domestic vessels is $270 per ton for yellowfin tuna and $230 per ton for skipjack tuna. The catch runs about half and half for both species over the full year. Thus the average cost per case of raw material in light meat tuna from domestically produced yellowfin and skipjack is about $6 per case. As a matter of fact, Albacore at $300 per ton is a little better buy for light meat tuna than yellowfin at $270 and skipjack at $230 per ton because, aside from the different yield factor, the canning cost of the albacore is somewhat less than for yellowfin or skipjack because somewhat less labor is necessary to clean the fish and prepare it for canning.

The wholesale price, f. o. b. cannery, in California is about $1.50 per case more for white meat tuna than for light meat tuna. Thus a canner is doing just about as well paying $7.50 per case for raw material in white meat tuna as he is paying $6 per case for raw material in light meat tuna. Albacore tuna can be, and is, labeled white meat or light meat at the canners' discretion. Yellow-skipjack tuna can be labelled and sold only as light meat tuna.

These facts are set forth to show that the drop in ex-vessel prices to domestic boats for albacore from $375 per ton to $300 on October 2 was to make it economically practical for all albacore tuna bought after that date to be canned and sold as light meat tuna.

The cost situation is somewhat different with Japanese albacore because Japanese albacore pack out about 55 cases to the ton as against 50 cases per ton for domestic albacore. There are two principal reasons for this. (1) alabacore is graded as to size in Japan for export, the smaller sizes are sold in Japan for canning and the larger sizes only are shipped frozen to the United States for canning here. The larger the albacore the more cases per ton pack out, and (2) Japanese albacore frozen and warehoused for a month or two between catching and canning dries out somewhat. While this detracts from the taste of the pack it increases the cases packed per ton, and white meat tuna is sold on color rather than taste.

According, Japanese albacore, canning out at 55 cans per ton yields a raw material cost per case of about $7.80 at $430 per ton, $6.25 at $350 per ton and $5.50 at $300 per ton.

These facts are set forth to show the relative values of Japanese albacore tuna, domestic albacore tuna and domestic yellowfin and skipjack tuna to the domestic canner of both white meat tuna and light meat tuna.

During the 90-day period from June 24 to September 24 in which the Japanese Frozen Tuna Sales cartel had agreed with Columbia River Packers Association, Inc., not to sell albacore in the United States for less than $355 per ton f. o. b. Tokyo, two things were happening: (1) albacore were being landed rapidly in Japan instead of tapering off, and (2) albacore were being landed rapidly in California ports and Astoria.

Because of the steady income of domestic albacore, first at $350 per ton and then $375 per ton, domestic canners would not buy Japanese albacore at $355 per ton f. o. b. Tokyo, which meant a price of $430 per ton on the cannery floor here. Because of the contract with Columbia River Packers the Japanese cartel could not drop their price below $355 f. o. b. until September 24. By this time the Japanese exporters had about 12,000 tons of albacore in frozen storage in Japan. And then the domestic canners dropped their albacore price to the domestic vessels to $300 per ton signifying that they wanted no more albacore for white meat prices either from here or Japan.

The albacore in frozen warehouses was substantially all purchased from the Japanese boats at $300 per ton or more. The cost of getting the albacore from the fishing vessel in Japan, frozen, and to the freighter bound for the United States is $45 per ton. The fish has been in refrigerated warehouses for 3 months at a cost of $8 per month, or a total of about $24. Thus the cheapest f. o. b. Tokyo price possible under normal circumstances is $369. In this cost estimate is a gross profit of $10 per ton for the freezer and $5 per ton net profit for the exporter. Thus the bare cost of this fish is at least $350 per ton. Actually its average cost is closer to $360 per ton at the f. o. b. point.

The albacore has to be moved. Freezer costs are being added on at the rate of $8 per ton and freezer space is in short supply because of its need for the mackerel-pike season now in swing.

This albacore is now being offered at $305 f. o. b. Tokyo. Only 100 tons has been sold at that price. Our expectation is that the whole lot cannot be moved at a higher price than $260 per ton, f. o. b. Tokyo. The normal cost of getting it from Tokyo to the cannery floor here is $75 per ton. The Japanese Frozen Tuna Sales Co. is reported to be making arrangements with Japanese tuna mother-ships to bring it to the United States. This would undercut the conference freight rate about $10 per ton This would put the fish on the cannery floor here at $325 which would make it comparable in value with our yellowfin and skipjack tuna at the average $250 per ton price now obtaining.

This would be about $100 per ton below cost for the Japanese exporter. It would be a crushing blow to us. Our fleet has lost about one-third of its fishing time this year already because of increased yellowfin imports.

This situation requires looking into rapidly. We would appreciate finding what you learn as soon as possible. If dumping is in prospect, as we believe, we hope you will stop it. If the Japanese Government is intending to subsidize part of the loss to the Japanese exporters in any manner, as we suspect, we hope that you will apply such countervailing duty as is appropriate.

Thanking you in advance for an early reply, I remain,

Sincerely yours,

EDWARD P. SILVA,
President.

APPENDIX 2

AMERICAN TUNABOAT ASSOCIATION,
San Diego, Calif., October 18, 1957.

Hon. GEORGE H. HUMPHREY,
Secretary of the Treasury,
Department of the Treasury, Washington, D. C.

MY DEAR MR. SECRETARY: Reference is made to our letter of October 17 re dumping of Japanese frozen albacore on this market.

Recent commercial intelligence from Japan is to this effect: Contracts have been concluded for the sale of 5,500 tons of the albacore in question as of October 18. A group of Japanese representatives are on the west coast at this time dealing with this matter. The sales of which we are informed are: 4,000 tons to Columbia River Packer's Association, Astoria, Oreg., 1,000 tons to British

Columbia Packers, Vancouver, British Columbia (which of course is of concern to you and us only if that company proposed to reship to the United States, which we doubt will be the case) 350 tons to California Marine Curing & Packing Co., Terminal Island, Calif., 150 tons to Franco-Italian Packing Co., Terminal Island Packing Co.

The price on all of these sales we are informed was $315 commission and freight paid to the west coast. This is equivalent to about $330 per ton on the cannery floor on the west coast and about $265 per ton f. o. b., Tokyo. This is about $100 per ton less than the cost of the albacore to the Japanese exporter.

We hope that you will act on this matter with sufficient rapidity that such actions as the United States Government deems to be appropriate to the situation can be taken before this fish leaves Japan.

Sincerely yours,

EDWARD P. SILVA,
President.

APPENDIX 3

OCTOBER 26, 1956.

Mr. EDWARD P. SILVA,
President, American Tunaboat Association,
San Diego, Calif.

DEAR MR. SILVA: Your letters of October 17 and October 18, 1956, addressed to the Secretary of the Treasury, in which you express concern over the possibility that Japanese exporters of frozen tuna are preparing to dump 10,000 to 12,000 tons of frozen albacore tuna into the United States at prices below cost, and in which you advise as to specific contracts which have been concluded were referred to me for reply.

Action has been taken whereby all shipmets of frozen albacore from Japan will be immediately reported to the Bureau of Customs. Appraising officers have also been advised of the specific sales mentioned in your letter of October 18, 1956.

Appropriate action will be taken by the Bureau immediately upon receipt of information indicating that any shipment has been received at what appears to be a dumping price.

Very truly yours,

DAVID W. KENDALL,
Assistant Secretary of the Treasury.

APPENDIX 4

AMERICAN TUNABOAT ASSOCIATION,
San Diego, Calif., October 29, 1956.

Hon. DAVID W. KENDALL,
Assistant Secretary of the Treasury,
Department of the Treasury, Washington, D. C.

MY DEAR MR. KENDALL: Reference is made to your letter of October 26 in which your report that action has been taken whereby all shipments of frozen albacore from Japan will be immediately reported to the Bureau of Customs. You say appraising officers have also been advised of the specific sales mentioned in our letter of October 19, 1956. You also state that appropriate action will be taken by the Bureau immediately upon receipt of information indicating that any shipment has been received that appears to be at a dumping price.

Pertinent to this subject are a number of articles which have appeared in recent weeks in the Japanese fisheries press. Some of these follow. In the course of these articles reference is sometimes made to 6,500 tons of stored tuna. This actually refers to somewhere between 10,000 and 14,000 tons of frozen albacore. The Japanese have attempted, until recently, to keep quiet the fact that the larger amount of tuna was on hand. The reason for this appeared in the first article to be quoted:

1. Under dateline of October 8 there appeared in the Nihon Suisan Shinbun the following artcile:

"Recently the frozen tuna industry intrusted sales of the 6,500 tons of stored tuna in the hands of Mr. Nakabe, president of the Frozen Food Exporters Association. Since that time, inquiries from the United States have been steadily

mounting with a belief that 6,000 tons may be exported. The difficulties arises, however, in the price and how much the loss will amount to.

"A recent inquiry was from the British Columbia Packers. It is expected that a considerable loss will arise because the inquiries indicate that the buyer is aware of the quantity of the stock of tuna. The problem is, how can we alter this disadvantage into an advantage? From the standpoint of transportation, a plan is being drawn to transport the tuna by the large refrigeration vessels of the large companies which will cut down the freight from $55 to $44 per ton. If the export price is $330 a ton f. o. b., adding insurance and other expenditures will make it $390 a ton. It is said that the United States will not buy a large amount at this price, so the price will have to be fixed at $310 or $320 a ton. If the price is fixed at $310 a ton, the loss of the Japanese industry will be about $80 or $90 a ton. Some producers are hoping to ask the aid of the Government for financial assistance."

2. Under dateline of October 8, the following article appeared in the Nikkan Suisan Tsushin:

"By the efforts of Mr. Nakabe, who is handling the negotiations for the sale of frozen albacore in stock, the way is being paved for the resumed exportation of frozen tuna to the United States. The problem arises, however, how to handle the losses of two to three hundred million yen ($555,000 to $833,000). The movement on how to solve the loss has become active. The following is some countermeasures for the loss:

"1. To shelve the loss by a long-term loan. According to the law on the promotion of the exports of fish they hope to receive a long-term loan. But who will receive the loans? Each individual producer or all the freezing producers? No decisions were reached.

"2. By asking the Government for the loan and then receiving an interest by reloan, thus making the burden a minimum one. This was turned down too, because it is not permitted under existing regulations.

"3. How to make up for the losses incurred: They intend to manage other businesses besides frozen tuna, but it is very difficult to adjust into other industries."

3. Under date of October 10, the following article appeared in the Nikkan Suisan Tsushin:

"Mr. Okai, the governor of the fisheries agency, made the following comment on the loss of the exportation of frozen albacore:

"1. Since the loss occurred from the miscalculations of the producers concerned, I don't intend to extend a loan or give national compensation.

"2. According to the law on the promotion of the exports of the fishing industry, members of the union of fisheries for export must register. However, there are some inadequate producers who, contrary to commercial morals, raise ex-vessel prices and hinder the normal managment which results in losses.

"3. Therefore, it is necessary to revise the law, to establish a licensing systèm, and to get inadequate producers out."

4. Under date of October 13 the following article appeared in the Nikkan Suisan Tsushin:

"Recent negotiations with the Columbia River Packers Association (CRPA) for 3,000 tons of albacore appear successful with prospects looming that the 6,000 tons of albacore held by the cooperative sales company in storage may be sold. Heads of the cooperative sales company are thinking of avoiding the establishment of a set price of $270, a ton f. o. b. They are thinking of establishing prices according to quantity. The following is the plan for the three-step price system.

"1. More than 3,000 tons, $270 a ton f. o. b.

"2. 500 to 3,000 tons, $275 a ton f. o. b.

"3. Less than 500 tons, $280 a ton f. o. b."

5. Under date of October 14 the following article appeared in Nippon Suisan Keizai Shinbun:

"Recent negotiations on the sales of frozen albacore by Mr. Nakabe made it possible to establish a contract with the Columbia River Packers Association (CRPA) through Mr. Gisdawich for 3,000 tons. The Japanese Export Frozen Albacore Co. held an urgent officer's assembly ont the 11th of October to discuss the coming contract with CRPA. They all agreed that a contract should be made. However, the present attitude of CRPA is not concrete, and therefore may take a few days before the contract is concluded. Prospects to negotiate contracts with packers in the United States and Canada is looming.

At this time the contract price is identical to the Japanese check prices. The cheap purchases of American buyers may make it difficult to maintain that check price. The view is pessimistic on the above matter."

6. October 15, 1956 Nikkan Tsushin Suisan:

"The All Japan Frozen Food Association will hold a board of directors meeting today to discuss the frozen albacore sales problem. The interest of the producers rests on the problem of how to cover the frozen albacore deficit of $833,833. It is supposed that the discussions will center around:

"1. Whether or not to cut the intrusted price of albacore.

"2. Reception of a long run loan.

"3. Promotion of a substitute undertaking.

"The special point in the countermeasure proposal is whether the cooperative sales company should be responsible for the deficit or whether the individual producers should be responsible. Also an important point that will be covered, is the substitution undertaking plan."

7. October 15, 1956, Nihon Suisan Shinbun:

"Previously the Frozen Food Export Association and the All Japan Frozen Food Export Fishery Association left the sales of frozen albacore in the hands of Mr. Nakabe. Recently he negotiated with the Columbia River Packers Association, through Mr. Gisdawich in Japan, to sell 3,000 tons of albacore at the check price of $270 a ton f. o. b. Because of this check price, the Japanese cannot increase prices. About half of the stock of about 6,000 tons was contracted for, but if interest and storage is taken into account, the original price of the albacore would come to $420 a ton. This would mean a deficit of $150 a ton. Although prospects for increased sales is getting better, the problem of how to cope with the deficit is receiving wide attention."

8. October 15, 1956, Nihon Suisan Shinbun:

"The cause of the bad business of the Japanese summer albacore is supposed to be attributed to:

"1. Favorable catches of summer albacore in the United States.

"2. The high ex-vessel price of albacore in Japan.

"3. The sales method of the priority of goods with the exclusion of advanced sales.

"The sales method of summer albacore as employed by the cooperative sales company includes two agreements: (1) A minimum price; (2) a priority of goods.

"The problem now is how to change this agreement on the sales method. It is believed that the sales method will be changed in December which is receiving attention now."

9. October 16, 1956, Nikkan Tsushin Suisan:

"The All Japan Frozen Food Export Association held a board of directors meeting on October 15 at the Grand Hotel with the chief director, Mr. Nakabe, reporting on the sales negotiations with Columbia River Packers Association and others. The directors agreed with Mr. Nakabe's negotiations.

"The directors also agreed to reelect the present albacore countermeasure committee as composed by seven companies, and to examine the concrete plan of cutting down the intrusted price by the countermeasure committee. They left the election of the countermeasure committeemen in the hands of the chief and vice chief director."

Aside from the matters discussed in these fisheries quotes from the Japanese press, there is the following additional information:

1. The loss to Japanese frozen tuna exporters under the contemplated sales is likely to be closer to a million and half dollars than to $833,000. This will cause great financial distress amongst the exporters who are banded together in the sales cooperative known as the Japanese Frozen Tuna Exporters Association. This association was formed at the suggestion of or in reaction to some such suggestion from the official agencies of the Japanese Government involved in these matters, to wit: The Ministry of International Trade and Industry, the Foreign Office, and the Japanese Fishery Agency of the Ministry of Agriculture and Forestry. Therefore, although Okai of the Japanese Fisheries Agency at first reacted strongly against bailing out these operators with Government funds, we think it quite likely that because of the depth of reaction there will be from these losses in the Japanese frozen tuna industry that some more representation will be made and that the several agencies of the government will likely devise some way in which a portion of this loss can be borne by the Japanese treasury. In that event, we shall expect your department to employ such countervailing duties as may be appropriate.

2. You will remember that in a former letter we referred to the purchase by the Columbia River Packers Association of 5,000 tons of frozen albacore in June at $350 or $355 per ton f. o. b. plus the agreement by the Japanese Frozen Tuna Exporters Association not to sell frozen albacore to anyone else in the United States for 90 days thereafter as having been one of the sources of this difficulty. This albacore cost Columbia River Packers Association about $415 per ton when laid on the cannery floor in Astoria. This turned out to be above the price for albacore from domestic producers. We are now informed that as a part of the deal recently concluded by the Columbia River Packers Association for the purchase of several thousand tons of albacore at a price of $270 a ton f. o. b., that firm obtained a rebate of $29.37 per ton on the 5,000 tons which it had purchased on or about June 24. Our present information is that the $350 or $355 per ton f. o. b. price on the original 5,000 tons amounts to just about the cost which the Frozen Tuna Exporters Association then had in that fish. Accordingly, this rebate means that the whole original 5,000 ton load was dumped in this country at approximately $30 per ton below the cost of production.

3. We keep records here of the ex-vessel price received by vessels in Japan at the principal ports on a day-to-day basis. These records show the price for which albacore was purchased in Japan during the course of this year. Accordingly, we are able to document our statement that the above lots of fish have been sold by the Japanese at prices less than the cost of production. These prices are published in Japan as the public record of the daily activity of the public auctions under which albacore are bought in Japan. Your agents are welcome to examine the translations which we have available in our office here or can consult the original source. We get most of our information from the following daily newspaper, Nikkon Suisan Keizai Shinbun, published in Tokyo.

Thanking you for your continuous interest, I remain,

Sincerely yours,

EDWARD P. SILVA, *President.*

APPENDIX 5

NOVEMBER 6, 1956.

Mr. EDWARD P. SILVA,
President, American Tunaboat Association, San Diego, Calif.

DEAR MR. SILVA: The receipt is acknowledged of your letter of October 29, 1956, in which you furnish quotations from the Japanese fisheries press relating to the frozen albacore situation, and in which you present certain additional comments relating to the financial position of the Japanese Frozen Tuna Exporters Association. You also state that you are informed that a rebate was given with respect to one of the transactions mentioned in your previous letters on this subject.

The Bureau of Customs is keeping in close contact with the situation, and all the information you have furnished will be given full consideration in our study of this case.

Very truly yours,

DAVID W. KENDALL,
Assistant Secretary of the Treasury.

APPENDIX 6

AMERICAN TUNABOAT ASSOCIATION,
San Diego, Calif., November 6, 1956.

Hon. DAVID W. KENDALL,
Assistant Secretary of the Treasury,
Department of the Treasury, Washington, D. C.

DEAR MR. KENDALL. Reference is made to our letter of October 17 to Secretary Humphrey and our letter of October 29 to you relative to the purported dumping of frozen albacore on this market from Japan.

In view of the fact that frozen tuna from Japan is sold in this market through a cartel that has quasi-support or at least the good wishes of the Japanese Government and that it becomes apparent that the cartel, or the members thereof, will lose a substantial amount of money in its dealings in frozen albacore this year, we have assumed that, in spite of Mr. Okai's protestations to the contrary (previously reported to you), the Japanese Government would come to the fi-

nancial relief of the cartel or its members in a direct or indirect way, but until recently we did not know how this might be done.

We have now heard through trade sources that such a scheme has been devised and is now in operation. The scheme as it reaches us is as follows:

The cartel will act as the clearing office between its members and the Government. Any member of the cartel who has exported frozen albacore to the United States this year may execute documents demonstrating the volume of his business and the loss involved. The cartel will certify this statement to the Government. Upon such certification the Government will pay to the member $60 per ton in outright grant to cover that much of his loss and, additionally, will guarantee the interest-free loan from a commercial bank to the member in the amount of $40 per ton on the amount of business he had done.

We wish to emphasize that this comes to us as a rumor through trade sources and that, although these sources have proven to be reliable in the past, we cannot vouch for the authenticity of this information or the details of the scheme.

We do hope, however, that the United States Government will make such investigation as is necessary to determine the authenticity of the information, or to learn in what other manner the Japanese Government may be subsidizing these losses, and that your Department will assess such countervailing duties as may be appropriate.

With much appreciation for the expeditious manner in which you are handling this matter, I remain,

Sincerely yours,

EDWARD P. SILVA, *President.*

APPENDIX 7

NOVEMBER 13, 1956.

Mr. EDWARD P. SILVA,
President, American Tunaboat Association,
San Diego, Calif.

DEAR MR. SILVA: Mr. Kendall has asked me to thank you for your letter of November 6 containing additional information with regard to exports from Japan of frozen albacore.

You may be sure that this information will be given most careful consideration.

Very truly yours,

ROBERT D. HARTSHORNE, Jr.,
Assistant to the Assistant Secretary.

APPENDIX 8

AMERICAN TUNABOAT ASSOCIATION,
San Diego, Calif., November 15, 1956.

Hon. DAVID W. KENDALL,
Assistant Secretary,
Department of the Treasury,
Washington, D. C.

MY DEAR MR. KENDALL: In the course of your present investigation of frozen albacore dumping in the United States the question will arise as to what was the fair market value of the commodity in Japan. The following information is designed to aid you in that determination.

Albacore landed in Japan come from two major sources. That caught in the Northern Hemisphere is all taken by small vessels fishing independently out of Japanese ports. This albacore is all sold at auction in the individual port of landing upon arrival. This is done according to Japanese law as well as custom. This is the primary source of albacore in Japan and until the last 3 or 4 years was the only source.

In the last 3 or 4 years growing quantities of albacore have been landed in Japan from the Southern Hemisphere. This is landed in Japan by motherships that have had squadrons of smaller vessels fishing for them in the southern waters. This produce is not necessarily sold at public auction in the Japanese port of landing. Title to the fish rest in the company owning the mothership. That company may sell directly to an exporter or freezer, or may freeze and export the product itself.

The company landing the bulk of this Southern Hemisphere mothership albacore is Taiyo Gyogo whose president is Mr. Kenkichi Nakabe. This company owns a considerable fleet of catcher boats itself, operates more mothership

capacity in the Southern Hemisphere than any other, operates freezing plants in Japan, is a major exporter of frozen tuna to the United States, and maintains sales relations independently in this country. It has a quite fully integrated operation.

Southern Hemisphere mothership is easily distinguished from the Northern Hemisphere small boat albacore because it is so much larger in size. For this reason it packs out more cases per ton, although its color and texture is not as fine as in the smaller fish, nor is its quality because of the long time it is in storage. Because of the increased yield it is often specifically ordered by off-brand canners who are not primarily interested in quality.

Both sorts of albacore are included in the transactions we have formerly notified to you. In the Nikkan Tsushin Suisan of October 20 occurs this article, which we believe is substantially accurate:

"The Frozen Food Export Association held an operational committee meeting on the 19th of October to discuss the 2 conditions offered by CRPA as the sales conditions for the purchase of 4,000 tons of albacore.

"1. Shipment for the time being to be limited to 3,000 tons, out of which 1,000 tons must be mother-ship tuna.

"2. The remaining 1,000 tons must be mother-ship tuna shipped between December and January.

"The association approved the conditions, but traders are doubtful on the following points which will have an effect on the operations of the Cooperative Sales Co. in the future. The doubtful points are:

"1. Since sales negotiations was left entirely in the hands of Mr. Nakabe, business was conducted solely for the benefit of his company (Taiyo Gyogo is the only company that has mother-ship tuna, and Mr. Nakabe is president of that company).

"2. The contracted goods outside of the goods intrusted to the Cooperative Sales organization (mother-ship tuna).

"3. Taiyo Gyogo received a 2,000-ton assignment, which covered its present limit."

Again on October 24 appeared this article in Nikkan Tsushin Suisan:

"As was reported, CRPA contracted for 4,000 tons on 3 conditions in buying frozen tuna from Japan. Two of the three conditions were:

"1. One thousand tons out of the present 3,000 tons to be shipped should be Taiyo Fisheries mother-ship albacore.

"2. CRPA will purchase another 1,000 tons of mother-ship albacore at the end of the year.

"As a result, many traders felt that the contract was profitable for Taiyo Fisheries only. In answer to the accusations, Taiyo explained that:

"1. The 2 conditions were utterly necessary to sell 2,000 tons of North Pacific Tuna to CRPA, which had not intended to purchase any North Pacific albacore.

"2. Mother-ship albacore is much better than North Pacific albacore in quality and yield, but Taiyo sold mother-ship albacore at the same price as North Pacific albacore. Conditions were, therefore, not profitable to Taiyo, since it could not sell its North Pacific albacore.

"3. The 1,000 tons which is to be shipped at the end of the year is so-called reserve sales, so that Taiyo will not be able to contract sales before the trusted goods of the Cooperative Sales Co. are sold out."

As we have previously informed you, the 1,000 tons of mother-ship albacore referred to above is fish bought by Columbia River Packer's Association for the account of British Columbia Packers, a Canadian concern. Our understanding is that it will be shipped directly to Vancouver, British Columbia, and will not pass through United States customs. Accordingly, we are dealing in this dumping investigation primarily, in not entirely, with that albacore which was caught in the North Pacific by independent vessels and sold by them through public auction in Japan.

Persons bidding for albacore in the public auctions in Japanese ports fall into three primary groups: (1) Those buying for the account of freezers or exporters of frozen albacore; (2) those buying for the account of canners in Japan; and (3) those buying for the account of persons selling directly in Japan, either fresh or in the form of namari bushi (half-dried, smoked sticks). There is, of course, selling among these three groups after the original purchase, if there has been injudicious original purchasing. It is not unusual for Japanese canners to buy and can albacore held by freezers or exporters if the latter cannot market advantageously the quantities they have bought and placed in storage. If the

freezers, exporters, and canners have more albacore bought than they can dispose of advantageously through their channels, then they sell their surpluses to the wholesale market in Japan for fresh or namari bushi consumption. In 1952, when the record catch of albacore occurred in Japan, upward of 25 percent of the catch was sold in Japan as namari bushi.

According to the official figures of the Japanese fishery agency of the Ministry of Agriculture and Forestry, the catch of albacore for the past few years has been:

	Tons		Tons
1950	37, 623	1954	57, 150
1951	28, 069	1955	44, 300
1952	65, 756	1956	[1] 46, 000–50, 000
1953	56, 000		

[1] Estimated.

We presume these figures to be in metric tons, although this is not stated. The total for 1956 is not complete, and the figures, 46,000 to 50,000, is the best presently available trade estimate.

The export of frozen albacore from Japan in recent years has been, according to the Ministry of International Trade and Industry:

	Tons		Tons
1950	13, 663	1953	25, 611
1951	16, 313	1954	33, 061
1952	22, 181	1955	33, 118.

The figure for 1950 includes some yellowfin tuna and broadbill swordfish, which were not kept separate in Japanese Government statistics prior to 1951. Figures for 1956 are not yet available. Most of this albacore was exported to the United States for canning here. In 1952, 2,868 tons of it was exported elsewhere; in 1953, 1,170 tons; in 1954, 1,264 tons; and in 1955, 1,534 tons. Most of this albacore that was exported elsewhere in the frozen form went to Canada.

According to the Japanese Canned Tuna Packer's Association, as given in the Suisan Tsushin, supplement No. 4, of August-September 1956, the port of albacore in the canned form from Japan in recent years has been:

1950, 612,500 cases, or 12,250 tons.
1951, 321,813 cases, or 6,430 tons.
1952, 759,123 cases, or 15,180 tons.
1953, 920,078 cases, or 18,400 tons.
1954, 766,593 cases, or 15,330 tons.
1955, 1,002,597 cases, or 20,145 tons.

In these figures we have supplied the tonnages by dividing the case figures by 50. Fifty-cases-per-ton yield of North Pacific albacore is a reasonably good average. We do not have readily available the percentage of the white-meat (albacore) canned tuna exported to countries other than the United States for recent years, although this has been growing in a substantial manner.

For all canned tuna exported by Japan, the percentage going to other countries than the United States in recent years has been:

	Percent		Percent
1950	6. 8	1953	8. 9
1951	15. 9	1954	15. 4
1952	12. 8	1955	25. 8

Full 1956 figures are not yet available, but for the first 6 months of this year 21.8 percent of the tuna exported from Japan went to other countries (over 20) in the world other than the United States. Trade expectation is that this proportion will increase during the last 6 months to the extent that the total years' figure will show something over 25 percent, and perhaps as much as 30 percent went to other countries. Most of this growth in sales of canned tuna to other countries in the past 3½ years has been white-meat tuna, which is albacore.

If these three sets of figures are put together (albacore landings, albacore exported in the frozen form, and albacore exported in the canned form) there is this result:

In 1950 there was a surplus of 11,710 tons.
In 1951 there was a surplus of 5,326 tons.
In 1952 there was a surplus of 27,395 tons.

In 1953 there was a surplus of 11,989 tons.

In 1954 there was a surplus of 8,537 tons.

In 1955 there was exported 8,963 tons of albacore more than was caught. These figures include two factors: Japanese domestic consumption and inventory held in Japan at year end.

With respect to inventory, we are able to break this down somewhat further. The Japanese Canned Tuna Packer's Association figures cited above contain another column which is entitled "Balance" and which is composed of year-end inventory plus the year's domestic Japanese consumption of canned tuna. For recent years, this has been as follows for white-meat (albacore) tuna (again, the tonnages are our interpolations based on a yield of 50 cases per ton):

1950, 73,985 cases, or 1,480 tons.

1951, 90,945 cases, or 1,820 tons.

1952, 339,062 cases, or 6,720 tons.

1953, 105,846 cases, or 2,120 tons.

1954, 831,637 cases, or 16,630 tons.

1955, —222,048 cases, —4,440 tons.

Thus we have this situation: In 1950, 10,230 more tons of albacore was caught than was exported frozen, exported canned, or was in canned inventory, or had been eaten in the canned form domestically in Japan. This, obviously, was either eaten in Japan other than in the canned form or was in frozen warehouses at year end. In 1951, this figure was 3,506 tons. In 1952, it was 20,675 tons. In 1953, it was 9,869 tons. But, in 1954, 8,091 tons more showed up in the canned inventory or eaten in Japan in the canned form column than was caught. In 1955, 8,963 tons of albacore were exported in the frozen and canned form from Japan more than were caught and this included 4,443 tons more in the canned form than was in inventory in the canned form at year's end 1954 plus what was canned in 1955. Accordingly, if the canned inventory and frozen inventory at year's end were both zero, this would mean that 4,520 tons of the 1953 surplus had been finally expected from Japan in 1955.

All of this means that 39,760 tons of albacore which had been landed in Japan from 1950 through 1955 had not been exported from Japan in the frozen form or in the canned form and was not in Japan in canned inventory. It either had been eaten in Japan or was in frozen warehouse in inventory. I am uable to tell you with exactess what the frozen inventory was at year's end 1955, but it was not more than 3,000 tons. Therefore about 36,000 tons of albacore had been eaten in Japan (aside from in the canned form) in the 6 years 1950 through 1955, or about 12½ percent of all of the albacore landed in Japan.

The purpose of this detailed analysis of catch of albacore in Japan and where it has gone is to indicate to you that the auction market price at the port of landing in Japan is a fair market value for that fish. It presents the free interplay of several important markets and their evaluation as to what that raw fish is worth on their particular markets. We wish to point out clearly that this total market is not dependent upon ultimate sale in the United States. Historically as much as an eighth of the total albacore catch is eaten in Japan under an entirely different price structure and demand situation than in the United States. Of the albacore canned in Japan as much as a quarter is destined for sale in other countries than the United States. Even the frozen albacore market is not solely restricted to the United States. Accordingly, we believe that it is fair to say that the auction price for albacore in the landing ports of Japan represents a fair market value on the world market at the time it is paid.

As we have informed you in a former letter, the public-auction prices in the principal landing ports in Japan are published daily in the Japanese press. They are published in the form of individual vessel landings together with the high price and the low price paid for individual lots of fish sold from that load. For instance, on January 21, 1956, the vessel *Maru* unloaded 22 tons at Tokyo and the highest price it got for any part of its load was $262 per ton, and the lowest it got for any part of its load was $248 per ton. The reason for this spread in price is that the individual vessel load is graded by the auction dock personnel into several different lots based on size and quality, and each lot is auctioned off individually. As a consequence the prices at any day in any port are variable within a load, and as between loads, and as between the prices in different ports on the same day. They are composed of the prices which 25 or 30 individual bidders in each port think each lot of fish in each load was worth on that day on the market he was buying for—whether that is frozen for export to the United States or Canada, whether that is canned for consumption in Japan, the United States, or any 1 of twenty-odd other countries, or whether

it is for consumption fresh or as namari bushi in Tokyo, Osaka, or other centers of population in Japan where wholesale markets for these commodities exist.

As we have told you, these prices are available to you either in the original Japanese through the Embassy, or we have them here in translated form which you are welcome to use. For our own purposes, however, we group these together in weighted averages so that we can follow price trends more adequately. Since this treatment compresses a large volume of data into comprehensible scope it may be of value to you also and is put down here for that purpose. The grouping and weighting is done as follows:

Our data show that on January 21, a vessel sold 22 tons of albacore in the auction and received a high of $262 per ton for its best fish and $248 per ton for its worst fish. We multiply the $262 by 22 and put it in a column called "highs." We multiply the $248 by 22 and put it in another column, "lows." In the weekly report period of January 18 through 24 there were 21 such loads of albacore sold in the principal ports of Tokyo, Shimizu, Yaizu, Nakaminato, Kesennuma, and Misaki. The highest high of the week was $301 per ton, and the lowest low of the week was $201 per ton. These 21 loads amounted to 554.4 tons. This was not all the albacore landed in Japan that week but it was considerably more than two-thirds, because these are the principal ports. We then add up our column of "highs" and divide by 554.4. This gives us the average weekly high. We do the same thing for the column of "lows," which gives us the average weekly low. We then take the simple arithmetic average of the weekly average high and average low to get an approximation of the weekly average ex-vessel price for albacore in Japan. We realize that this is a rather crude analysis but it is the best we can do with the data in the form they reach us—and, so far as we know, they are not available in any other verifiable form either in Japan or the United States.

Working in this manner, we set the following tabulation for 1956:

Period	Number of tons involved	Average weekly high	Average weekly low	Weekly average
Jan. 3 to 12	560.2	$260.4	$216.8	$238.6
Jan. 11 to 19	418.4	262.3	231.0	246.7
Jan. 18 to 26	554.4	247.4	218.4	232.7
Jan. 25 to Feb. 2	321.3	307.3	277.2	292.2
Feb. 1 to 9	448.2	343.8	286.1	315.0
Feb. 8 to 16	470.6	351.6	316.2	333.9
Feb. 15 to 23	264.5	350.3	308.7	329.5
Feb. 23 to Mar. 1	276.2	355.7	292.9	324.3
Feb. 29 to Mar. 8	141.9	336.2	249.2	292.7
Mar. 7 to 15	386.8	361.0	273.1	317.0
Mar. 14 to 22	489.5	354.8	301.3	328.0
Mar. 21 to 29	257.2	336.3	292.3	314.3
Mar. 28 to Apr. 5	351.5	330.5	246.5	288.5
Apr. 4 to 12	466.5	332.0	268.0	300.0
Apr. 11 to 19	423.7	327.7	227.0	277.4
Apr. 25 to May 3	315.8	323.1	309.0	321.2
May 3 to 10	620.9	310.7	276.7	293.7
May 10 to 17	418.7	337.5	311.2	324.4
May 16 to 24	2,247.0	336.6	310.8	323.7
May 23 to 31	2,647.0	327.4	299.2	313.3
May 30 to June 7	3,458.5	336.3	329.7	333.0
June 6 to 14	5,258.7	332.4	297.0	314.7
June 13 to 21	4,528.1	328.9	303.9	316.4
June 20 to 28	5,359.5	311.4	385.6	298.5
June 27 to July 5	4,810.8	289.5	260.4	275.0
July 4 to 12	2,714.2	284.0	256.1	270.1
July 13 to 19	2,109.1	265.6	238.7	252.2
July 18 to 26	262.5	266.7	256.0	261.3
July 25 to Aug. 2	56.3	219.7	161.7	190.7
Aug. 3 to 9	24.7	245.6	190.2	217.9
Aug. 15 to 23	67.6	256.4	202.9	229.8
Aug. 22 to 30	41.4	243.6	174.5	209.0
Aug. 29 to Sept. 6	47.9	250.7	238.1	244.0
Sept. 5 to 13	4.1	255.0	250.9	253.0
Sept. 13 to 20	6.2	230.0	226.0	228.0
Sept. 19 to 27	18.7	279.9	227.5	253.7
Sept. 29 to Oct. 4	8.2	243.0	214.0	228.5

Since these figures encompass landings of 40,856.8 tons of albacore and there were only about 47,000 tons of albacore landed totally during the period in Japan we have some confidence in drawing conclusions from the data. To say

that two-thirds of the albacore bought in Japan this year was purchased at an ex-vessel cost in excess of $310 per ton is not far out of the way. This is the base cost the frozen tuna exporter has, but it is not all the cost.

During June of 1955 we had to make a careful study of the cost a freezer of tuna had to bear between the ex-vessel price he paid at the auction dock and the point of reshipment in Japan on an outgoing freighter. The results of this study are:

	Cost per ton
Allowance for unexportable fish (1 percent)	$1.57
Agent (buyer at the dock) (2 percent)	3.14
Auction dock charge (3 percent)	4.71
Interest on money	1.57
Freezing cost	10.50
Gross profit to freezer	10.00
Drayage from dock to plant (varies in different ports)	3.40
Drayage from plant to export dock	2.78
Inspection at export dock	1.00
Profit (subject to rejects in the United States)	5.00
Total cost per ton from ex-vessel price to freighter	43.67

During this period the actual working figures used by exporters as a rule of thumb for what they had to get as an f. o. b. Tokyo price was the ex-vessel price plus $43 per ton for fish bought at Shimizu, plus $44 for fish bought at Yaizu, and $45 for fish bought at Misaki. The differences are accounted for by different drayage cost at the different ports.

For our rule-of-thumb cost (keeping in mind the repayment the exporter has to make for rejects upon receipt in the United States and the shrinkage and damage en route for which the exporter is liable) we have used $45 as the bare, irreducible cost that the exporter has to have above his ex-vessel purchase price to break even at the f. o. b. level. In additional confirmation of these conclusions, we note that in mid-June this year Mr. Nakabe contracted the sale of 5,000 tons of albacore at $355 per ton f. o. b. to Columbia River Packers' Association, and the Japanese press carried statements at the time that this was a bare cost price which could not be beaten and was only offered because of unusually high landings.

We note also that in October the Japanese say that sale of these fish at $270 per ton will result in a loss of as much as $120 per ton to the exporter. Our calculations are that the loss will be closer to $110 per ton. This is composed of an average ex-vessel price of $310 per ton, exporter's cost of $45 per ton, plus refrigerated storage at $8 per ton for 3 months, or $379 per ton cost as of October 1. However, the Japanese estimate of loss (cost) maybe more accurate than ours because they have undoubtedly added in the interest cost (at 12 percent per year) on the money they have had tied up in inventory.

It is our contention that the auction price at the ex-vessel level in the Japanese port of landing plus the exporter's (producer's) cost of getting the albacore processed and ready for shipment represents the fair value of the albacore under discussion within the terms of section 14.7, customs regulations, that this is the price Mr. Nakabe as representative of the sales agency (sec. 14.7.b.3) should have charged as an f. o. b. Tokyo price, that this fair value is now between $379 and $390 per ton for the albacore price and that Mr. Makabe on behalf of the sales agency has, in fact, contracted for the sale of this albacore in the United States at $270 per ton f. o. b. Tokyo. Accordingly, we contend that all shipments made under such terms of sale are within the purview of the Antidumping Act of 1921, as amended, and should be subjected to such penalties as are provided therein.

Furthermore, we wish to call to your attention that the conference rate on such shipments until recently has been $55 per ton, which represents a reduction from the regular rate of $61 per ton. The terms of the sales we have reported to you are $270 per ton f. o. b. Tokyo and $315 per ton dockside west coast port, which represented an insurance and freight cost of $45 per ton, or $10 per ton below the reduced conference rate obtaining at the time of sale. Shipments were to be made in mother ships of three fishing companies, including Taiyo. This would have meant that the sales agency or the sellers were preparing to absorb an additional $10 per ton loss.

However, under this pressure the conference, after repeated conferences, gave in and reduced the rate to $45 per ton. In its issue of October 21, Nippon Suisan Keizai Shinbun reports:

"The freight union held a fisheries department assembly on the 19th of October and decided to reduce the freight of frozen tuna from the present $55 per ton to $45 per ton by the end of November as requested by the All Japan Frozen Food Export Association. As a result it becomes unnecessary to use the ships of the association (freezing ships of three mother-ship companies) for exports to the United States. It is expected that the 3,000 tons contracted with CRPA will be shipped in the union's ships in the near future.

However since the date of that dispatch and agreement the sales agency, which maintains offices in Los Angeles, has been offering this albacore to southern California canners at $270 f. o. b. plus insurance and freight at $32 per ton, which would bring the delivered price to $302 per ton. We would expect that this represents a move we have discovered before in such cases. The Japanese Government informally suggested to the trade the floor price it should offer goods for f. o. b. Tokyo. If the trade cannot move the merchandise at that level it does so by maintaining the suggested f. o. b. price officially and publicly, but cuts to the real price it can get by rebates on rejects, absorption of freight rates, etc.

In order to counteract these various devises and subterfuges we request that you use, in the computation of penalties, the delivered price in the United States and allow no more than 5 percent for rejects. We suggest that the following prices are the proper ones to use for such calculations:

	Per ton
Ex-vessel price of fish	$310
Cost of exporter to point of shipping	45
Freight and insurance	45
$8 per ton storage for July, August, September and October	32
Fair value price at dockside, United States	432

With much appreciation for your prompt attention to this matter, we ramin,

Sincerely yours,

EDWARD P. SILVA, *President.*

APPENDIX 9

NOVEMBER 27, 1956.

Mr. EDWARD P. SILVA,
President, American Tunaboat Association, San Diego, Calif.

DEAR MR. SILVA: Thank you for your letter of November 15, 1956, in regard to prices of Japanese tuna. This will be carefully studied by us.

Sincerely yours,

DAVID W. KENDALL,
Assistant Secretary of the Treasury.

APPENDIX 10

AMERICAN TUNABOAT ASSOCIATION,
San Diego, Calif., December 7, 1956.

Hon. DAVID W. KENDALL,
Assistant Secretary of the Treasury,
Department of the Treasury,
Washington, D. C.

DEAR MR. KENDALL: This will continue the series of letters dealing with the dumping of albacore initiated with our letter to Secretary Humphrey of October 17, and continuing through our letter of November 15 to you.

There recently appeared in a Japanese trade publication the following item:

"For the 3,000 tons of albacore sold to CRPA, Taiyo's 1,000 tons of mothership tuna and 1,175 tons of other have been shipped, and a request has been made by CRPA to hold the remainder until December. As a result of talks, the exporter's association is reported to have succeeded in getting CRPA's agreement to ship 825 tons, the remainder, by the end of November to complete the shipment as originally expected.

"The allocation of the shipment has been decided as follows:

	Tons
Taiyo Gyogyo	1,000
Abe Koeki	610
Nozaki Sangyo	425
Nippon Reizo	270
Daiichi Bussan	248
Tokyo Shokuhin	142
Yayoi Koeki	125
Kanematsu	50
Tobu Bussan	50
Marubeni	50
Mitsubishi Shoji	30
Total	3,000

We have also been informed that the motorship *Saipan Maru* has arrived in Astoria with a cargo of about 1,100 tons of Japanese albacore which it has been discharging this week. We do not know whether this is mothership or summer albacore. We suspect that it is all or substantially all mothership albacore, in which event it would not come within the purview of the complaint we filed with you on October 17. Your investigators can determine with little difficulty what part of the load is mothership albacore and what part is summer albacore. One method of differentiating the two is the greater size of the mothership albacore. But any competent, trained fish inspector can differentiate the two for you. The State of California Bureau of Cannery Inspection has such inspectors and so do we in the event there is any question in Oregon.

MOTHERSHIP ALBACORE CLAIM

Heretofore we have not complained that the Japanese were selling mothership albacore in the United States at below their cost of production, or asked you to investigate the matter. We do so now.

The reason why we have not done so formerly is because our knowledge of the cost per ton of albacore production in Japan is too skimpy for us to found a solid case upon the basis of our own available knowledge.

We suspect, particularly with Taiyo Gyogo, that they have been operating their tuna motherships at an overall loss this year and that they are selling the albacore part of those landings in the United States at well below the average cost per ton that those motherships had for the tuna they landed, when the cost of handling the albacore in Japan and the cost of getting that albacore from Japan to Astoria is added in.

There have been consistent rumblings in the Japanese fisheries press for a year or more that tuna mothership operations were loss operations. There was strong rumors of this method being given up entirely due to its unprofitableness as compared with large independent boats. Then the Japanese-Russian fisheries negotiations this spring gave this method a new lease on life by making it necessary for the motherships to engage in the northern salmon fishery to extend their fishing time into tuna in order to operate profitably for the year. We suspect that the tuna operation of these vessels is a loss operation designed to average out from the profitable salmon fisheries.

While this represents the general situation, the specific situation with respect to Taiyo's mothership albacore is worse. It was reported that Taiyo's 12th tuna expedition this summer (in the Fiji area) with the *Tenyo Maru* extended its stay a month later than was intended, because of slow fishing, and still returned with a short load. The trip was reported to be unsatisfactory. It returned in late August and some of its fish is in the *Saipan Maru* load now in Astoria. Then Taiyo's 13th tuna expedition led by the *Tenyo Maru* which began operation in mid-August in the Fiji area with 50 catcher boats found the fishing fair at first but as of October 18 it was bad and a number of catcher boats as a result are reported to have left the expedition and returned to Japan. This sounds, also like a loss operation and its load is reported to be half albacore.

On October 10 the following article appeared in the Nihon Suisan Shimbun:

"As previously reported, the fisheries agency discussed the problem of the management at a tuna production department conference. At this meeting many committeemen were of the opinion to abolish the tuna mothership operations which is basically different from the salmon and cod mothership system which is used in northern waters. After the last war independent boatowners joined

with large companies in mothership operations because of the lack of capital and the losses sustained by independent operations. By joining, independent owners were assured of receiving $4,167 before operations. The opinion is to abolish this type of system because the companies that adopted this system cannot make ends meet."

The reason we have not raised this question heretofore with respect to mothership albacore is that we do not have the resources or ability to investigate the cost per ton of producing albacore by that system. However, you do have and we would appreciate having you do so.

SUMMER ALBACORE CLAIM

Because we had not heard from you as to how your studies were proceeding we asked Congressman Wilson to inquire. He reported that you were using $315 f. o. b. Astoria as the cost of production of the exporter as the basis for your inquiries as to whether Japanese were selling albacore in the United States below their cost of production.

We cannot understand how such a figure could have arisen. This is the dockside delivered price that Columbia River Packing Corp. paid for fish, not the cost of production by the exporter, which we estimate to be $432 as of mid-November. This $315 f. o. b. Astoria price is the source of our complaint, not the level at which we expect sales to go below.

In anticipation of a request by the secretary to the Tariff Commission to investigate injury we have addressed the attached preliminary letter to Dr. Brossard.

Sincerely yours,

EDWARD P. SILVA, *President.*

APPENDIX 11

DECEMBER 13, 1956.

Mr. EDWARD P. SILVA,
President, American Tunaboat Association,
San Diego, Calif.

DEAR MR. SILVA: In Mr. Kendall's absence I am answering your letter of December 7 relative to Japanese shipments of albacore. The information therein contained will be carefully studied by us.

Although you had not complained that mothership albacore was being sold at less than fair value within the meaning of the Antidumping Act we nevertheless withheld appraisement of the Astoria shipment to which you refer, and we are presently investigating the question whether this shipment comes within the purview of the Antidumping Act.

With reference to the last page of your letter, dealing with summer albacore, there has been a misunderstanding. We have been in touch with Mr. Terrar of Congressman Wilson's office and he advises us he has in turn been in touch with you, and that the misunderstanding has been cleared up.

We have perfectly well understood your explicit complaint that summer albacore sold at $315 a ton is sold below cost of production, and we are investigating shipments made at this price. Appraisement has been withheld on the recently arrived shipments which came in at this price. Enclosed is a copy of a press release relative to withholding of appraisement.

We trust the above statement will make it quite clear that we have not—as you apparently believed we had—decided that $315 represents cost of production. The fact is that we have not yet reached a decision as to what figure should be used for cost of production; the question is under study, and in that study we are carefully considering the data supplied by you. Please let Mr. Kendall (who will be back in Washington the end of this week) know if you have any further uestions in regard to this matter.

Sincerely yours,

JAMES POMEROY HENDRICK, *Assistant to the Secretary.*

APPENDIX 12

TREASURY DEPARTMENT,
Washington, December 21, 1956.

Mr. EDWARD P. SILVA,
President, American Tunaboat Association,
San Diego, Calif.

DEAR MR. SILVA: Further reference is made to your letters of October 17 and 18, 1956, addressed to the Secretary of the Treasury, and the subsequent correspondence, concerning the possibility that frozen albacore from Japan is being sold to the United States at dumping prices.

Information available to the Bureau of Customs indicated that sales of frozen albacore by Japan during the period under consideration either for home consumption or for exportation otherwise than to the United States were minimal as compared with sales to the United States. Accordingly, for the purpose of determining as to whether sales to the United States were at less than fair value under the Antidumping Act and Customs Regulation 14.7 issued pursuant thereto, the price to the United States was compared with the cost of production of frozen albacore as defined in the Antidumping Act.

Under the cost of production provision of the Antidumping Act, the cost of materials and fabrication must be determined as of the time preceding the date of shipment of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business. The Bureau of Customs is informed that the normal period involved in processing fresh albacore into frozen albacore is 4 to 5 days. Therefore the computation of the cost of materials and fabrication is based on the price of fresh albacore for a period of 1 week ending 4 to 5 days prior to the date of shipment of the particular shipment under consideration. Information furnished to the Bureau, which was verified by our Treasury representative at Tokyo, indicates that the following fresh albacore prices, based on the weighted average of total value of sales and total quantity sold, during each of the weeks noted below, were in effect in the principal markets of Japan shown below:

	Tokyo	Misaki	Yaizu	Shimizu
Week:				
Nov. 17, 1956 to Nov. 23, 1956:				
Yen per kin	273	268	309	298
Dollars per ton	183.46	180.10	207.65	200.26
Nov. 24, 1956 to Nov. 30, 1956:				
Yen per kin	268	260	302	293
Dollars per ton	180.10	174.72	202.94	196.90

Information as to general expenses indicates that the total general expenses of the freezer operators, which includes a normal storage period of 15 days, usually do not equal the 10-percent minimum specified in the Antidumping Act. Therefore, in our computation we have added a full 10 percent to cover general expenses.

If the price at which frozen albacore is sold to the United States, after deduction of ocean freight and shipping expenses is greater by at least 8 percent than the total cost of materials, fabrication, and general expenses, the minimum addition for profit specified in the Antidumping Act is met. Therefore an 8-percent addition for profit is made in our calculations.

Based on the above considerations, a typical computation of cost of production starting from the highest fresh fish price in effect during the periods noted above, is shown below:

Cost of fresh fish	$207.65
(1) Freezing cost per ton	8.50
Allowance for unexportable fish, 0.2 percent	.43
	216.58
(2) General expenses, 10 percent	21.66
	238.24
(3) Tags and tagging	.50
(4) Profit, 8 percent of the sum of (1) and (2)	19.06
Statutory cost of production	257.80

The purchase price computation, based on a C. and F. price of $315 per ton which has been typical for recent shipments, is as follows:

Invoiced price (per ton C. and F.)		$315.00
Less:		
Ocean freight per ton	$45.00	
Shipping expenses per ton	5.17	
		50.17
Purchase price per ton		264.83

Based on the foregoing information, and on the present indications that the market price of fresh albacore in Japan is not likely to rise substantially in the near future, it would appear that frozen albacore from Japan exported on or after November 27, 1956, and invoiced at the above price is not being sold at less than fair value.

The question whether shipments exported prior to November 27, 1956, have been sold at less than fair value is receiving our continued attention, and we shall communicate further with you when we have reached preliminary conclusions in respect thereto. Appraisement of these shipments has, as you know, been withheld, and it is still being withheld.

The reason we are writing at once with reference to shipments exported and to be exported after November 27 is this: With a commodity such as frozen tuna it is essential for the equitable administration of the Antidumping Act to let potential exporters know at the earliest possible moment what can and what cannot be considered a price which under all the circumstances will not be construed to indicate dumping.

If our computations as above outlined are correct, then we are in a position to advise exporters at once. On the other hand if they are incorrect, the sooner we can find where the error lies, and what corrections should be made, and advise all concerned, the more effectively have we performed our duty under the law.

Your letters to us have indicated a clear comprehension of the Antidumping Act, and it is our hope that you will be willing to give us your comments on our calculations for shipments made after November 27, 1956, at the very earliest possible time, whether by telephone, telegram, or airmail letter.

Sincerely yours,

DAVID W. KENDALL,
Assistant Secretary of the Treasury.

APPENDIX 13

SAN DIEGO, CALIF., *December 29, 1956.*

DAVID W. KENDALL,
Assistant Secretary of the Treasury,
Department of the Treasury, Washington, D. C.

Analysis your letter December 21 re albacore dumping demonstrates necessity our reworking our data on basis summer, southern hemisphere and winter albacore economics for your further assistance. Dealing with three albacore commodities sufficiently complicated we wish to have counsel check analysis before mailing. Expect to complete this January 2 and to have analysis in mail to you on third or fourth. For example, our analysis does not support use $207.65 as fresh fish cost in this case. Accordingly request withholding appraisal albacore shipments pending your evaluation of our forthcoming analysis.

AMERICAN TUNABOAT ASSOCIATION.
EDWARD P. SILVA.

APPENDIX 14

SAN DIEGO, CALIF., *January 2, 1957.*

DAVID W. KENDALL,
Assistant Secretary of the Treasury,
Department of the Treasury, Washington, D. C.

Promised analysis albacore price in mail to you special delivery.

AMERICAN TUNABOAT ASSOCIATION.
EDWARD P. SILVA.

APPENDIX 15

JANUARY 3, 1957.

Mr. EDWARD P. SILVA,
President, American Tunaboat Association,
San Diego, Calif.

DEAR MR. SILVA: Thank you for your telegrams of December 26 and December 29 in regard to the Japanese albacore dumping case. We are continuing to withhold appraisement and we look forward to receiving information and analysis from you within the next few days.

Sincerely yours,

DAVID W. KENDALL,
Assistant Secretary of the Treasury.

APPENDIX 16

JANUARY 2, 1957.

Hon. DAVID W. KENDALL,
Assistant Secretary of the Treasury,
Department of the Treasury, Washington, D. C.

MY DEAR MR. KENDALL: Your letter of December 21 referring to the albacore dumping complaint which we originated has been received with real appreciation. We replied by interim wires on its receipt December 26 and again after further study on December 29. In both instances we promised you a reexamination, in the light of your letter, of the pertinent data available to us and requested you to continue to withhold appraisal of albacore shipments until you had an opportunity to evaluate the new data and our updated analysis of the problem. That analysis follows.

We agree with you that a fair implementation of the Antidumping Act is the objective in this case and that the sooner you can inform the trade as to what can and what cannot be considered a price which under all circumstances will not be construed to indicate dumping, the sooner commercial transactions in this commodity can be normalized.

It is the purpose of this analysis to separate into its several components this problem which has assumed in its development a high degree of complexity deriving from the facts that the albacore trade in itself is complex, that it is an integral part of the even more complex general trade in tuna and affects all the parts of that, and that the customs laws in themselves are not simple.

ORIGIN OF ALBACORE IN JAPAN

There are three quite different sources of origin of albacore in Japan. The albacore which come from these different origins are different commodities in that both buyer and seller can differentiate the origin by an inspection of the fish in the fresh or frozen state and different price structures attached to the three different commodities even when some are bought at the same place on the same day. You will remember that British Columbia Packing Co. (in references we have already cited to you) stipulated that their 1,000 tons of albacore should be mothership albacore. In references which will be cited below you will see the Japanese trade referring to winter albacore and paying different prices for it than for southern sea mothership albacore. Our original complaint was directed against summer albacore, the third commodity, and we did not realize originally that the workings of the customs law might confuse these three clearly different commodities. A brief description of these three commodities by origin follows:

WINTER ALBACORE

Winter albacore fishing starts in late November and first landings are ordinarily in the first or second week in December. Landings reach normal level in late December and continue into March. Most of the production is caught by long line gear and the fishing area is in the mid-North Pacific. Typically it starts in the mid-Pacific northwest of Midway Island and as the season progresses the area of fishing ordinarily shifts to the south and west following the Western Gyral and moves toward the Bonins.

It is a distant water fishery. The boats are small and are poorly, if at all, refrigerated. Accordingly, the product is typically not of the best quality. The

fish average larger in size than the summer albacore but not as large as the mothership albacore. Ordinarily the quality and price is also intermediate between those two kinds of albacore.

Three recent dispatches in the Japanese fisheries press typify the trade view of this commodity and make clear that winter albacore is a distinctly separate commodity from the others.

(1) "The outlook for *winter* albacore this year will not be favorable. Packers have already hit their production limit for April 1956 to March 1957 so purchases of large quantities cannot be expected. The ex-vessel price of *winter* albacore is expected to be under $202 per ton. Added to this freezers have about 3,000 registered tons in stock and 5,000 tons of unregistered tuna in stock. Due to the favorable tuna catches in the United States they intended to sell the stock domestically for canned production. However, since production limits [of canned tuna] have already been met sales will be difficult because *winter* albacore will probably be purchased for next year's production limit [for canned tuna]. *Ordinarily winter albacore is exported to Europe (no limits) as tuna oil at cheap prices.*" (Italic and brackets supplied. (December 7, Nihon Suisan Shinbun.)

(2) "Japanese frozen business circles have about 12,000 tons of summer albacore in stock (3,200 tons of Co-Sales Co. and 9,000 of others). It is reported that the American tuna fishery landings were very favorable and that packers have finished packing tuna and are now canning sardines.

"In order to break the deadlock of exports to the United States an operational committee (4 traders, 4 producers, and 2 from Co-Sales Co.) was established to improve the operational method of the Co-Sales Co. The committee is studying the following plan:

"1. Improve the sales method which was left in the hands of Mr. Nakabe and decide a sales method.

"2. Dispose of summer albacore by using it in domestic canned production.

"Since the landing price of *winter* albacore is very cheap at present, it may be difficult to use *summer* albacore for canning purposes. *Measures for winter albacore will not be able to be decided upon until the summer albacore is decided or disposed of.*" (December 13, Nippo Suisan Keizai Shinbun.) (Italic supplied by us.)

(3) "The first batch of *winter* albacore was landed at Yaizu on December 11. The quantity was some 50 tons, most of which was 12.5 to 17 pounds. *The freshness was not the best because of distant fishing grounds at present.*

The prices were as follows:	*Per ton*
1. For fresh consumption	$262–268
2. 25 to 33 pounds first grade	258
3. 25 to 33 pounds second grade	211–218
4. 17 to 23 pounds	211–225
5. 13 pounds first grade	214–221
6. 13 pounds second grade	201–214

Because of little demand of the freezer, the prices were cheaper than those of summer albacore." (December 13, Trade Publication.) (*Italic supplied by us.*)

MOTHERSHIP ALBACORE

Mothership is an imperfect designation to apply to this sort of albacore but that is the one most frequently used by the trade. It applies to albacore caught in the equatorial region (few in number) or south of the equator from the Tuomotu Islands, on the east to Madagascar, on the west by long line vessels in the course of their fishery for yellowfin and bigeye tuna.

The bulk of this albacore is brought to port by motherships who have received it at sea from catcher boats. Mostly this originates in the Solomons, Fiji, Samoa area, and vicinity of the South Pacific. Most of the volume is landed by motherships owned by Taiyo Gyogo, whose president is Kenkichi Nakabe. This particular mothership production does not go across the auction dock when it arrives in Japan and, therefore, the prices paid for it do not appear in the public records which we and your Treasury representative in Tokyo have provided.

A considerable scattering of mothership albacore comes in continually to Misaki, Yaizu, and, to a lesser extent, Tokyo and Shimizu, aboard independent long-range tuna long liners that operate in southern seas primarily for yellowfin and bigeye tuna. These landings are sold through the auction docks and do appear in the public records.

As we advised you previously, Taiyo's 13th tuna mothership expedition turned out to be something of a failure (as had the 12th) and the catcher boats abandoned the expedition and returned home independently with what catches they had and sold them on the auction docks at their home ports. The same is reported to have been the case with Nippon Suisan's Kaiko Maru tuna fleet that had been operating in the South Pacific since October and returned recently with some 1,831 tons of catch, which failed to reach last year's 2,150 tons. It was the catches of these returning catcher boats that comprised most of the small volume in the albacore transactions reported by your man during the last 2 weeks of November.

These so-called mothership albacore are much larger than either the winter or summer albacore on the average. Because of the distances and times involved and the warmth of the southern seas, the freshness is generally considerably inferior to the winter or summer albacore. For these reasons the ex-vessel price is generally substantially lower than for summer albacore and somewhat lower than for winter albacore.

The total volume of this albacore is not great. In a 50,000-ton year it may comprise no more than 5,000 to 6,000 tons. It comes in rather continuously the year around to the auction docks, but the true mother-ship part of it arrives principally in the fall and later summer because generally the mother ships are not primarily tuna vessels but make a summer trip on tuna in between the spring salmon fishing of the North Pacific and the winter whaling in the Antarctic.

This mother-ship albacore is sought particularly by canners without advertised brands or those selling in less particular markets. The low price per ton of the raw material and the large case yield per ton from these big fish overcome the handicap of lower quality in those markets where the criterion is more price than quality.

That there is a distinctly separate commodity known as winter albacore is evident from these facts and from the fact that mother-ship albacore is specifically known and designated by purchasers.

SUMMER ALBACORE

Summer albacore starts coming into Japanese ports in early April and continues until early August, but the catch peaks quite sharply between late May and early July. Ordinarily the catches drop off very quickly in the first or second week of July and the season is quite suddenly ended.

This fish is caught close into the home islands of Japan, a good deal of it within sight of land and most of it within a day or two run from port. Accordingly its freshness is of the best. While smaller in average size than even the winter albacore, it brings year after year the best prices because of its high quality. It provides the bulk of the fish for frozen export, and a considerable proportion of the high quality white meat canned tuna exported to the United States. In the 60 days between May 15 and July 15 as much as two-thirds of the total albacore landings in Japan are made, as was the case this year. This is a definite commodity by itself. When the trade orders summer albacore, and pays summer albacore prices, it expects to get summer albacore and every cannery production man knows clearly whether his shipment from Japan is summer, winter, or mother-ship albacore.

A first requirement in assigning a value as is done in your December 21 letter is to analyze each shipment to determine the composition as to summer, winter, or mother-ship albacore.

RECENT ALBACORE LANDINGS AND EX-VESSEL PRICES IN JAPAN

On pages 6 and 7 of our letter of November 17 to you we provided an analysis of the ex-vessel prices received on 40,857 tons of albacore landed at the principal ports of Japan from January to October 1956 grouped in weekly intervals. This analysis covered just less than 90 percent of the albacore landed in Japan during the first 9 months of 1956. The figures we used were those reported daily in the fisheries press in Japan from the public record of the auction dock. These are published in the Nippo Suisan Keizai Shinbun and the Nikkan Suisan Tsushin. They do not purport to be complete but they are what the trade uses and they are an adequate sample of the whole from which to derive price trends.

Attached hereto are the records of individual landings and sales we have recorded from these two sources from October 5 to December 10. Since both

sources sometimes report the same data, we have eliminated duplications. We have a private source reporting both of these sources and occasionally reporting a landing that those two sources miss. For completeness we have included them also and they are the few landings in the table that are not attributed to a source. In some cases where tonnage is not given, or if given in number of fish, or is given jointly for yellow-fin, bigeye, and albacore we have given our best estimate of tonnage and placed a question mark behind the figure. These figures, of course, do not cover mother-ship landings.

This analysis of substantially a full year's albacore landings in Japan indicates several things we think to be pertinent to your present investigations:

1. About two-thirds of the total year's landings were made between May 15 and July 15.

2. In the succeeding period of the same length, August 1 to October 1, a total of a little less than 300 tons was landed or about one-eleventh the amount landed in the 60-day period May 15 to July 15.

3. In the following 60-day period the total landings were about 600 tons, as compared with the 33,000 landed between May 15 and July 15.

You will find that this has been quite a normal fishing season in these respects.

These data have this pertinence: If frozen albacore were a single commodity, and if it were reasonably constant in production, an albacore dealer might work on futures. That is, in September he could sell a thousand tons of tuna for early December shipment knowing that he could buy the albacore in late November and make the shipment. But the Japanese albacore dealer in fact knows that for 120 days after the middle of July there will be, aside from mother-ship albacore, relatively small tonnage of albacore being landed, that he cannot sell mother-ship albacore to fill a summer albacore order, and that after mid-December he will be getting winter albacore, which, again, he cannot sell to his customers to fill a summer albacore order. We do not mean to imply that a Japanese albacore dealer would attempt to make such a substitution; they have, in fact, a good reputation in the trade for upright dealings.

Another thing is illustrated by these data from late November and early December. The ex-vessel prices of mother-ship albacore this winter have sunk to a low level; $175 per ton is not far away from a good average. Then on November 30, 5 tons of winter albacore are landed at Kesenumma which brought a low of $215 and a high of $238 per ton. Kesenumma landings are from the eastern waters (winter albacore). On December 1, 12 tons of winter albacore are unloaded at Yaizu which bring a low of $212 and a high of $245 per ton. (These are labeled as being from eastern waters). Then in the news item cited above 50 tons of winter albacore are landed at Yaizu on December 11 and bring a low of $211 and a high of $268 per ton although "the freshness was not the best * * *." This indicates the sharp distinction in the trade as to price between southern water (mother-ship) albacore and eastern water (winter) albacore.

A third thing is illustrated by the December 11 landing of 50 tons at Yaizu. It is a popular misconception in the United States that Japanese will not eat fresh albacore. Yet the highest prices in this lot—$262-$268 per ton—were paid by the buyer for fresh consumption. An examination of past auction records would find this to be by no means an unusual occurrence.

A fourth thing is illustrated by these figures. The prices brought by albacore on the auction dock between mid-July and mid-December is highly variable—from day to day, and is spread between quality in individual loads. This is not the albacore season. Landings are so light and variable that firm albacore prices do not develop. This is the mackerel-pike season, and the season for other great fisheries that concentrate the energies of the trade to themselves and the albacore price dangles around loosely without enough volume to keep it steady or make it mean much in the year's albacore market. Prices are therefore rather clearly distinctive once the albacore is classified as summer, winter, or mothership.

FREIGHT COSTS

We find your purchase price computations based on a c. and f. price of $315 per ton to be typical of recent shipments.

We call to your attention, however, that the freight cost of $45 per ton is an abnormal and temporary cost obtained by the Japanese Frozen Tuna Export Association from the Trans-Pacific Freight Conference under threat of using tuna motherships for the freighting if they could not get the $45 per ton trade.

We have provided you in previous letters with dispatches from the Japanese press indicating the heavy pressure put upon the freight conference by the Japanese to obtain these temporary cuts in freight rates and we are prepared to provide you with further such items should that be necessary. We note further that the first large shipment was, in fact, made in a tuna mothership, the *Saipan Maru*, which unloaded at Astoria in early December.

The normal conference ocean freight rate on frozen tuna from Japan to the west coast of the United States is $61.75 per ton. On July 31 the Nippon Suison Tsushin reported that the conference, following a course already set, rejected a proposal for $55 per ton and approved a rate of $61.75 per ton. In September the conference was prevailed upon to establish temporarily a $55 per ton rate. In October (as we have formerly advised you) the conference was pressured into a rate of $45 per ton for albacore, while retaining the $55 rate for yellowfin. Of course, the cost of handling frozen tuna to a freighter is the same whether it be albacore, yellowfin, or other.

Our reading of the Antidumping Act and regulations does not leave us perfectly clear at this juncture whether the normal freight rate of $61.75 per ton, the temporary seasonal freight rate of $55 per ton, or the duress freight ate of $45 per ton is the proper one for you to use in these calculations. We invite your reexamination of this question in the light of the considerable pressure brought by the Japanese on the conference and the fragmentary and inexact information we have on such practices as refunds, etc., in this trade.

We are also informed that the present conference rate on albacore is due to rise back to normal in January. This factor, we believe, should be kept in mind in your calculations of purchase price.

DATE OF PURCHASE OR SALE

We understand that, in the first instance, the inquiry must be made as to whether the purchase price, or the exporter's sale price is less or is likely to be less than the foreign market value or, in the absence of such value, than the cost of production. In the definition of both the purchase price and the exporter's sale price, which follow in the law, it is emphasized that the price agreed upon prior to the time of exportation is what is under consideration. Thus the element of timing is important in this complaint.

Mr. Nakabe has been the exclusive selling agent of the Japanese Frozen Tuna Export Association at least from June to this date. He has made the sales and in each case, although there have been complaints in Japan in recent months, he has been backed up and his actions confirmed by the association. Sales by the association have been controlling in the entire frozen albacore trade between Japan and the United States since its formation this spring.

In the first week of October, or at the latest during the second week of that month, Mr. Nakabe established the sale price of $270 per ton f. o. b. Tokyo or $315 c. and f. west coast of the United States for albacore. He established this in a sale made at that time to the Columbia River Packer's Association. His action in doing so was ratified by the board of directors of the association in a meeting held in Tokyo on October 16. These things and others were notified to you in our letter of October 29. The following article appeared in the November 21 issue of Nikkan Suisan Tsushin:

"As was reported recently, 3,000 tons of frozen tuna was sold to CRPA and B. C. Packers. Japan shipped 1,000 tons of Taiyo's *mothership* tuna and 1,175 tons of warehoused *summer* tuna. CRPA recently requested that shipment of the remainder of 825 be postponed until December. As a result the 825 tons will be shipped at the end of November. Ships that will carry the tuna will be the *Christinbac*, *Vaigan*, and *Oregon*. Breakdown of the 3,000 tons sold for CRPA by dealers is * * *." [Italic supplied by us].

On November 24 the same journal carried the following article:

"Since the sales of 3,000 tons of tuna to CRPA and B. C. Packers, Japan has concluded numerous small contracts with California packers with a result that Japanese exports between October and November 24 recorded 4,049 tons. Con-

tract prices have been $270 a ton f. o. b. for CRPA and $315 per ton c. i. f. for others. Following is a breakdown of the sales:

"Purchaser	Exporter	Tons
F. E. Booth	Taiyo & Mitsubishi	200
CRPA	Taiyo and others	3,000
California Marine Curing & Packing	Yayoi	200
South Coast Packing Co.	Toshoku	100
Sea Products (Star-Kist)	Toshoku, Kurita	216
National Packers (Van Camps)	Toshoku	230
Washington Fish & Oyster	Ichibutsu	103
The following has been decided informally:		
California Marine C & P		300
Pan Pacific Packing Co.		200
CRPA		1,000"

On December 8 the same Journal carried the following article:

"Two shipments of albacore have passed the customs officials and been received by the companies concerned. The first was 100 tons received by the South Coast Co. and sent by Tosho. The second was 103 tons for the Washington Fish & Oyster Co. through Ichibutsu and passing through the San Francisco customs officials."

Following is the schedule for future shipments:

Destination	Tons	Ship	Date	Port
Point Adams Packing	50	Oregon Mail	Dec. 15	Astoria.
Pan Pacific	100	President Johnson	Dec. 16	Los Angeles.
Star-Kist Foods	50	Amajisan Maru	Dec. 12	Do.
Van Camps (National Packers)	230	Mangaroa	Dec. 25	Ponce, P. R.

On December 12, Nippo Suisan Keizai Shimbun carried the following article:

"As was previously reported, the Japanese Embassy requested Japanese traders to suspend shipments of frozen albacore to the United States until the antidumping problem is settled in negotiations between the Japanese and American Governments. Dealing in frozen albacore was stopped for a few days, but Japan finished the customs clearance which was given warning by the United States customs officials. Shipment of 100 tons to South Coast Co. by Tosho on the *Elenbach* shows that circumstances are not so unfavorable. The Co-Sales Co. is intending to sell 3,200 tons of albacore in stock this year so they requested the Foreign and Agricultural Ministry to approve their exports before the negotiations of the antidumping problem is settled. The Government, however, cannot give a definite answer to this request before it received an official report from its Embassy in the United States. A conclusion must be reached within a few days. The reason why Japan must export in a hurry is as follows:

"1. The rate on albacore decided upon by the Pacific Freight Conference will rise beginning in January.

"2. There are inquiries for some 1,200 tons from the United States."

Several pertinent conclusions can be drawn from this information among which are:

1. Sales of four-thousand-odd tons of albacore delivered to or on the way to the United States since September were contracted with respect to purchase price and exporters' sales price prior to November 17, and probably a full 6 weeks prior thereto. Accordingly, a statutory cost of production based on auction prices after that date would have no pertinence whatever with respect to the fish in those shipments.

2. Excepting for about 1,000 tons of mothership tuna those 4,000 tons of albacore are summer albacore and are not the commodity for which a price could be established in late November. That tuna was purchased by the exporter, and paid for by him at prices already notified to you previously, prior to mid-July.

3. The six-thousand-five-hundred-odd tons held in trust for sale by the Japanese Frozen Tuna Export Association at the end of July have been reduced

to about 3,200 tons by these sales—further indicating that these three-thousand-odd tons have been withdrawn from inventory of summer albacore.

4. The association still retains about 3,200 tons of summer albacore in trust which it intends to dispose of to this country at $270 per ton f. o. b. or less. In addition to this albacore, which is referred to in the Japanese press as "intrusted" albacore, there is an amount of summer albacore between 5,000 and 9,000 tons still in exporters' hands in Japan which is not "intrusted" to the association, which was purchased by the exporters at the prevailing summer prices, and which the exporters hope to dispose of to the United States. Trade rumors indicate offerings at $240 per ton f. o. b. after this antidumping action is dismissed, which the Japanese dealers assume, with some confidence, will happen. It is clear that all shipments made thus far are distinguishable as to origin and, therefore, as to cost of production. Shipments of summer albacore could in no case, based upon price information published contemporaneously with production and readily admitted by the Japanese, have originated from albacore with an ex-vessel price as low as $207.65 per ton.

COST OF PRODUCTION

Your method of calculating the cost of processing and handling of albacore is on a different basis than that we provided to you on page 7 of our letter of November 15 but since the result is substantially the same we can see no reason why your system is not a fair one to use.

We agree that the cost to the exporter for producing the frozen albacore in question is the most convenient and perhaps the most proper unit to use in the case of summer albacore. The same may also be said of the mothership tuna.

We are not entirely sure that cost of production is equally the best unit to use with respect to winter albacore this coming season. For instance, from the report of the 50-ton landing at Yaizu on December 11, cited above, it appears that the controlling price on winter albacore this season may be the purchases for fresh consumption in Japan. In that case it would probably be feasible to determine fair value on the basis of sales for consumption in Japan. The winter albacore season is not yet sufficiently far advanced for us to be able to make such a decision yet. We do invite your attention to this matter however.

PARTICULAR MERCHANDISE

In the section of the law under which you are proceeding in the determination of statutory cost of production there is reference rather exclusively to "particular merchandise under consideration."

In our original complaint, and what remains by far our largest worry and threat, the particular merchandise under consideration was summer albacore. The time precedent to the date of shipment which would ordinarily permit the manufacture or production of it, at the most liberal estimate, was July 20. Accordingly, a statutory cost of production based on ex-vessel prices for albacore received in Japan in the last half of November would have no pertinence whatever with respect to this original complaint.

We call to your attention that the Japanese apparently have made no attempt to dissemble as between summer, mothership, and winter albacore. It is freely admitted by them that their primary problem is the disposal of surplus catches of summer albacore and that this quite evidently will have to be done at losses to the exporter of up to $150 per ton.

It seems to us that this case is almost a classic case in its directness of falling within the purview of the Antidumping Act. The intent of that act appears to be, without any dispute, the prevention of loss sales of such merchandise in exactly these circumstances in the United States where such loss sales here would produce injury to a domestic industry.

We have, since our original complaint, filed an additional complaint with respect to mothership albacore. In that complaint it is our contention that Taiyo (and possibly also Nippon Suisan) have operated mothership tuna operations this summer in the South Pacific at a loss, that they knew before the start of the voyages they would be loss operations, and that they have turned out to be worse losses than were envisioned. We further contend that the sale of mothership albacore by Taiyo at $270 f. o. b. Tokyo this winter in the United States is producing, and will produce, injury to the tuna fishing industry of the United States.

It is our understanding that the reason for this deliberate use of these vessels in a loss operation is as follows: The vessels engage in the highly lucrative north Pacific salmon fisheries in the spring. They are then used in the profitable Antarctic whale fishing in the northern winter. In between these two fisheries there is the choice of using them in another fishery such as tuna, or tying them up. Vessels of this nature deteriorate so rapidly tied up at the dock that Taiyo can reasonably expect to lose less by employing them in the tuna fishery than by leaving them idle for a few months. Also there is the definite factor of dispersal of trained crews if the vessel is laid up, and this is important financially in the entire year's operation of the mothership fleets.

As operators of highly mechanized vessels engaged in the tuna trade we quite recognize the economic validity of acting in this manner. It represents good business judgment by Mr. Nakabe. However, the low value of the resultant product in this market causes injury to the tuna fishery of this country, and to us specifically. Accordingly, we seek such redress as may be available to us under law.

We have not provided you with much detail to substantiate our contentions with respect to mothership operations. We notice that the pertinent customs regulations (pt. 14—appraisment) recognize that complainants in our situation will seldom have details of foreign operation adequate to the proof of such contentions and that the Commissioner of Customs accepts the responsibility of obtaining the data requisite to making such a determination. Certainly such data could be made available by Taiyo Gyogyo to the Commissioner of Customs upon request.

The relatively small tonnage of mothership tuna delivered by independent long line vessels at Tokyo, Misaki, Yaizu, and Shimizu during October, November, and December we are not disposed to quibble about. The volume is not sufficient to cause substantial injury in the United States. There is no difficulty whatever in the trade connected with the identification of origin of such albacore to the collector of customs. We do have a considerable amount of data bearing on the cost per ton of production by such vessels which we could provide to you if you wish it.

The winter albacore fishery has not yet developed to a point where we can validly consider what price is going to be established for its product in this market, whether that will be below fair value, and whether the volume and price will be such as to cause injury here.

SUMMER SALES OF SUMMER ALBACORE

We note that the Antidumping Act provides for the possibility of a special dumping duty being placed on merchandise entered or withdrawn from warehouses 120 days before the question of dumping was raised or presented to the Secretary.

It was with reference to this aspect that we drew your attention, on page 4 of our letter of October 29 to you, to the rumor we had received through the trade that as a part of the deal concluded by CRPA in October for 3,000 tons of tuna, it was granted a rebate of $29.37 per ton on the 5,000 tons of albacore it had bought earlier in the summer for $355 per ton f. o. b., and that this would result in that 5,000 tons having been dumped here at about $30 per ton under the cost of production.

We have had no report from you with respect to this aspect of the requested investigation. We wish to call to your attention some pertinent points in the above cited dispatches which may be useful in this branch of your investigation.

1. The sale of CRPA of 3,000 tons of albacore was made at $270 per ton f. o. b. Tokyo, whereas the other sales have been made at $315 per ton C. and F. There must be some valid reason for differentiating these two bases of price in these dispatches.

2. The 1,000 tons of mothership tuna sent to CRPA was sent in a tuna mothership, the *Saipan Maru* whose operations and financial responsibilities are within Mr. Nakabe's competence, whereas other shipments are being made by common carrier. This may have a valid connection with this differentiation in stated basis of sale price.

3. Purportedly summer and mothership albacore have been sold at the same price $270 f. o. b. or $315 C. and F., whereas the latter is not as valuable to canners of high quality advertised brand white meat tuna as the former. This

raises the question in our mind as to whether $270 f. o. b. Tokyo and $315 C. and F. west coast are equivalent prices within the meaning of the Antidumping Act.

4. The storm of controversy originally raised in Japan against Mr. Nakabe for having disposed of a large quantity of mothership albacore, which only his company had in stock, when he had accepted the sole responsibility for selling the summer albacore of other firms, quickly died away when Mr. Nakabe got back to Japan and could make private explanations. This leads us to wonder whether Mr. Nakabe was able to rationalize his activities to his peers on the basis of his company having made a greater sacrifice than the others through freight rebate on mothership tuna, or otherwise.

In our view these points are auxiliary evidence leading in the direction of a reasonable question of substantial refunds which would be contrary to the antidumping or other acts, and that these rumors warrant your continued investigation of them. We further point out that there were sales in the same period to other canners which we believe would warrant similar investigations by you.

SUBSIDY BY JAPANESE GOVERNMENT

In our letter of November 6 to you we alluded to a trade rumor specifying a particular method that the Japanese Government was purported to be using to mitigate the losses of the exporters on summer albacore. We have had no report on this branch of your investigation, but we hope that it is being actively pursued.

We rather expect a substantial volume of this summer albacore to be canned in Japan with the Japanese Government mitigating the loss to exporters or canners by direct or indirect subsidy which would bring the merchandise within the purview of the countervailing (antisubsidy) duties section of the Tariff Act. The relations between the Japanese Government through the Ministry of Agriculture and Forestry, through the Ministry of International Trade and Industry and through other related ministries on the one hand and the tuna export traders and canners through the Tokyo Canned Tuna Co-Sales Co., Daiichi Bussan, Mitsubishi, Mitsui, etc., on the other hand is getting too intricate for us to follow them with accuracy, but we hope that you will bend every effort to do so. We are attempting to gather further data on this subject.

DECLARED VALUE OF ALBACORE IMPORTS

In quite another context we instituted inquiry some months ago relative to the value shown by the Bureau of Customs for frozen albacore this summer. We have had some communication from Mr. Ely of the Bureau of the Census on this subject. You may wish to examine this correspondence for a possible bearing upon your present antidumping investigations.

One of the interesting results is found in paragraph 2 of the December 5 letter attached:

"An examination of a large sample of the import entries (the basic source of the statistics) filed during July 1956 covering imports from Japan of merchandise classified under schedule A commodity Nos. 0058100 and 0058500, has revealed that the statistics are substantially correct."

Foreign Trade Report 5005 for July 1956 shows 4,091,105 pounds of albacore (schedule $$58100) imported from Japan at a value of $760,397. This is an average import value of 18.58 cents per pound or $371.60 per ton. Assuming values are correct for succeeding months these are the amounts, values, cost per pound and per ton:

	Pounds	Value	Per pound	Per ton
August	9,421,819	$1,639,059	$0.1738	$347.60
September	40,000	5,400	.135	270.00
October	240,200	34,643	.1442	288.40

At the risk of oversimplification of this complex problem and based on the information in this letter, our position with respect to your letter of December 21 and our objection to the use of the value $207.65 as raw fish cost in the purported statutory cost of production may be summarized as follows:

1. The shipments made on which appraisement has been withheld consisted of quantities of albacore readily identifiable as summer albacore or mother-ship albacore.

2. It is possible to distinguish shipments and differentiate between parts of shipments as to origin and source to determine whether the particular merchandise is summer, mother-ship, or winter albacore. The use of a single value indicates this has not been done. Information from Japan indicates this can be done.

3. Once determination has been made as to whether or not a shipment, or parts of it, consist of summer, mother ship, or winter albacore, auction records can be used to determine fairly exact costs of the raw fish.

4. The summer albacore in question cost the exporter a raw-fish price far in excess of $207.65.

5. The Japanese have publicly admitted that they are sustaining consequential losses in the sale of summer albacore at a price of $270 per ton f. o. b. Japan or $315 per ton, C. and F. United States.

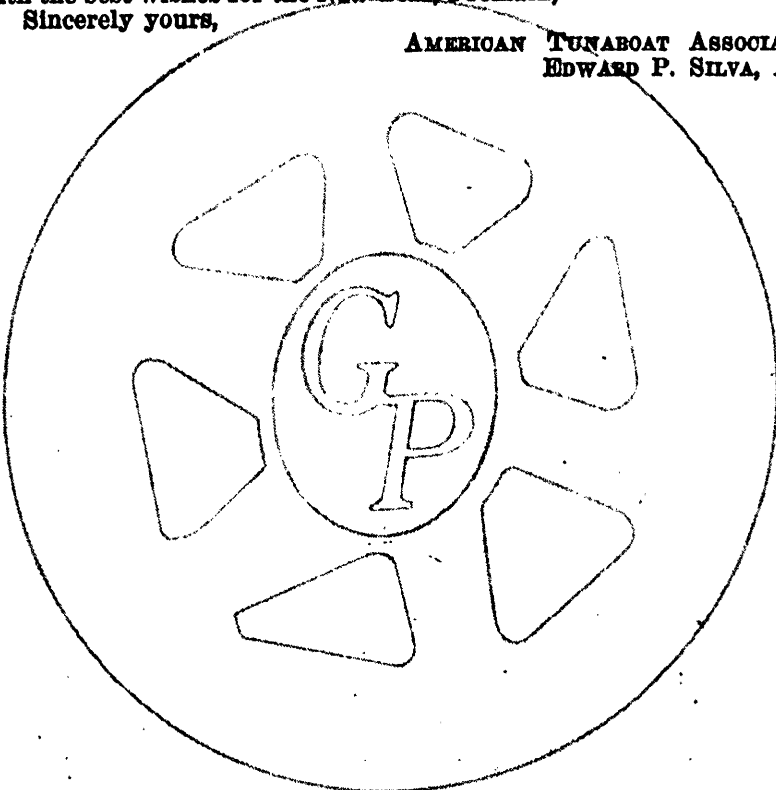
6. The cost of $207.65 has no pertinence whatever to summer albacore. This is a price determined during November 1956 about 120 days after the close of the summer albacore production season.

We are most appreciative of the comprehensive and careful investigations you are making into this subject. We hope these additional data, analyses, and comments will have been of value in speeding these studies to a quick conclusion. We are making continuing studies of this problem also and acquiring additional data as we can. We realize that this subject is complex and we will be pleased to aid you as best we can.

With the best wishes for the New Year, I remain,

Sincerely yours,

American Tunaboat Association,
Edward P. Silva, *President.*



Albacore landings at principal Japanese ports

Date	Region or port	Total landings in tons	Ex-vessel low price in dollars per ton	Ex-vessel high price in dollars per ton	Source of date
Oct. 5	Tokyo	3	168	224	NTS
Oct. 8	do			227	NSS
Oct. 9	do	2	183	183	NTS
Do	Misaki	4	232	242	NSKS
Oct. 10	do	37	155	232	NSKS
Oct. 12	do	17	215	255	NSKS
Oct. 16	do	25			NSKS
Oct. 20	Yaizu		202	249	NSKS
Oct. 25	Tokyo	18	211	226	
Oct. 26	do	2	207	210	NST
Oct. 27	do	6	188	221	NST
Oct. 28	do	2		225	NST
Oct. 29	do	15	191	256	NST
Oct. 30	do	14	155	216	NST
Oct. 31	do	10	205	215	NST
Do	Misaki	8	215	219	NST
Nov. 2	do	21	171	228	NSKS
Nov. 6	do	12	215	255	NSKS
Do	Tokyo	4		214	NST
Nov. 7	Misaki	8	202	249	NST
Do	Tokyo	9		219	NST
Nov. 8	do	18	201	212	NST
Nov. 9	do	2		211	NST
Nov. 10	do	2		219	NST
Nov. 13	do	3	213	219	
Do	Shiogama	12	202	233	NSKS
Nov. 14	Tokyo	2	207	207	NST
Nov. 15	do	13	213	215	NST
Do	Shiogama	17	210	215	NSKS
Do	Misaki	4	94	266	NST
Nov. 18	Kesennuma	4	191	210	NSKS
Do	Tokyo	10	175	175	NST
Nov. 19	do	6	192	192	NST
Do	do	11	222	222	NST
Do	Shiogama	(?) 12	228	249	NSKS
Nov. 20	Tokyo	14	134	196	NSKS
Do	do	2	188	188	NSKS
Nov. 21	Kesennuma	(?) 25	202	228	NSKS
Do	Tokyo	2	203	203	NST
Nov. 22	Misaki	12	163	182	NST
Nov. 23	Tokyo	19	179	192	NST
Do	do	13	161	198	NST
Do	do	10	181	181	NST
Do	Misaki	8	182	182	NST
Nov. 24	Tokyo	22	173	188	NST
Do	do	10	178	185	NST
Do	Misaki	6	155	181	
Do	do	83	81	181	NSKS
Do	Yaizu	(?) 20	158	192	NSKS
Nov. 30	Kesennuma	5	215	238	NSKS
Dec. 1	Yaizu	12	212	245	NSKS
Dec. 6	Misaki	4	175	194	NST
Do	Yaizu	(?) 5	158	168	NSKS
Dec. 8	do	(?) 10	208	212	NSKS
Dec. 10	do	(?) 8	202	222	NSKS

Source: As quoted in letter.

APPENDIX 17

JANUARY 4, 1957.

Mr. EDWARD P. SILVA,
American Tunaboat Association,
San Diego, Calif.

DEAR MR. SILVA: Your January 2 letter arrived this morning, and will be very carefully studied by us.

Thank you for your cooperation not only in giving us such a full explanation of your point of view but also for the speed with which you compiled and sent it to us.

Sincerely yours,

DAVID W. KENDALL,
Assistant Secretary of the Treasury.

APPENDIX 18

JANUARY 4, 1957.

Hon. DAVID W. KENDALL,
Assistant Secretary, Treasury Department,
Washington, D. C.

MY DEAR MR. KENDALL: Two additional items of information have come in that may be of use to you in your current investigation of albacore dumping.

(1) In the Suisan Keizai Shimbum of December 25, 1956, occurs the following article: "At a meeting in Tokyo December 21, the Trans-Pacific Freight Conference took the following actions:

"(1) Freight rates for frozen winter albacore will be $45 per ton in January-February 1957, $50 in March-April, and after April, the regular rate of $61.75 per ton will again apply.

"(2) Freight rates for frozen yellowfin will be $55 per ton in January-April, and after April the regular rate of $61.75 will again apply.

"(3) Members of the Frozen Food Exporters Association will not use vessels other than those belonging to the conference during the entire forthcoming year (1957)."

We do not know what implications this series of actions should have with respect to the decisions you are about to reach. From our own standpoint these comments can be made:

(*a*) The manipulation of the ocean freight rate on frozen tuna is beginning to shape up as a key factor in the competitive relations of the American tuna fishermen vis-a-vis the Japanese tuna fishermen in the United States tuna market.

(*b*) The Japanese are using their considerable economic bargaining strength vis-a-vis the freight conference shrewdly, boldly and to our considerable discomfiture.

(*c*) The designations we formerly provided to you of summer, winter, and mothership (southern sea) albacore as cognomenal of different albacore commodities are holding up.

(2) We learned yesterday that a small canning firm in San Francisco has contracted for the delivery of 1,000 tons of frozen albacore from Japan on a basis new to us. In all our letters we have attempted to differentiate clearly between facts and trade rumors and have attempted to assert as factual only those matters reasonable, documentable, and logical. In this particular case we can advise you at this stage that this particular transaction is in the rumor stage only but is indicative of something your better sources of information may wish to develop. We will advise you should we obtain conformation we regard as factual to assist you in this.

The deal, we are told, runs as follows: The firm will open its letter of credit in Japan on the basis of $350 per ton c. and f. for the albacore purchased with the understanding that it will be used as follows: 85 percent to pay for the fish initially, 10 percent rebate, and 5 percent allowance for rejects.

The 10 percent rebate will, of course, bring the c. and f. price down to $315, which is where we started. The 5 percent allowance for rejects on top of this, if fully used, will bring the c. and f. price down to $297.50 per ton. The 5 percent allowance for rejects on albacore has become normal trade practice in the past year or two, but the inspection system has become so efficient in the past year, both prior to shipment and upon arrival, that the reject losses on albacore have been running at less than 1 percent. Accordingly if only actual rejects are allowed on this shipment the c. and f. price will be one thing; if the whole 5 percent is allowed the c. and f. price will be something different again.

We have not attempted to keep full records of the claims on frozen tuna exported to the United States but in a quick examination of our files we find the following data on shipments in recent months. The source is the Japanese

Frozen Food Export Association which could furnish your Tokyo representative with complete data:

Ship	Landing date	Shipping weight	Reject claim	Unit: Pound percent
Akashisan M	Apr. 11	132,321	675	0.51
Van Buren	Apr. 13	428,029	2,788	.66
Tsuneshima M	Apr. 15	40,459	1,410	.35
Tudor	do	40,144	None	None
Akagi M	Apr. 18	20,247	3[illegible]	1.56
Golden Bear	Apr. 19	60,300	None	None
Hagurosan M	Apr. 21	211,916	1,754	.83
President Johnson	June 1	97,897	1,855	1.91
Hakonesan M	June 11	69,313	None	None
Susan M'sk	do	114,009	None	None
President Taft	June 14	80,809	None	None
Koral M	do	50,100	None	None
Satsuma M	do	50,250	None	None
Tancred	June 15	147,382	None	None
La Plata M	June 16	60,757	None	None
President Cleveland	do	91,675	390	.42
Ivaran	June 27	127,966	6,370	4.99
Fernmore	July 2	100,700	795	.80
President McKinley	July 9	259,277	550	.24
President Cleveland	Aug. 2	100,600	2,160	2.16
Kokei Maru	Aug. 6	10,030	None	None
President Taft	Aug. 18	202,000	None	None

Thus, on these 23 small shipments totaling 1,363 tons the reject rate was seven-tenths of 1 percent.

The odds and ends of information which continually flow into us have made a most puzzling picture out of albacore transactions these past few months, but now the design appears to be clearing up a little. With some diffidence we would hazard the guess that things have gone much in this way.

The $355 f. o. b. Tokyo check price on albacore which obtained during June, July, August, and September of this year (for reasons formerly given to you) was established with the tacit consent of the Japanese Government and it did not work. It did not sell fish beyond the original 5,000 tons. The Japanese Fishery Agency then gave the tacit permission of the Japanese Government to the Japanese Frozen Tuna Export Association to lower the check price to $270 per ton f. o. b. Tokyo or $315 per ton c. and f. United States. This gave impetus to sales which began to move along handsomely. There was a little room left for wheeling and dealing on freight rates.

At this point we began to hear a variety of rumors about summer albacore being available on all sorts of deals and prices—reaching as low as $240 per ton f. o. b. Tokyo. Some of these rumors dealt with $270 being paid and rebates being granted; some dealt with straight lower prices. We did not understand this because at this point we did not know that there was between 5,000 and 9,000 tons of "free" summer albacore warehoused in Japan over whose sale the export association did not have positive control or responsibility, and over which the control of the Japanese Government was also somewhat tenuous.

We then put forward our dumping complaint and when it began to take hold there was at least a momentary pause in the hurried rush to dispose of summer albacore stocks at any price. It was shortly after this that we heard of the subsidy scheme we reported to you, and the price seemed to stiffen up again to $270 f. o. b. or $315 c. and f. Then before Christmas you began withholding appraisal on alcabore shipments and there was a bustle of activity over this in Japan.

One of the outcomes of this last burst of activity is a commitment not to use tuna motherships this year to transport frozen tuna to this counry in exchange for a postponement of a raise in freight rates from $45 to $61.75 per ton.

Then there is this purported sale of 1,000 tons of albacore at $350 per ton c. and f. Since this is $75 per ton higher than the same fish was offered for 6 weeks ago and the market had not improved it could only mean that the fish had not been actually sold at that price. Our best guess is that the Japanese Government told the Japanese exporters that the only way they could beat the dumping charge was to raise the price of albacore.

As the Japanese industry generally does, it followed the wishes of its Government and raised the c. and f. prices from $315 to $350 per ton. But since none

of the albacore could be sold at this price it accompanied the deal with a 10 percent rebate under the table. This brought the actual c. and f. price back down to $315 per ton. This made the Japanese Government happy, satisfied the United States Government, and looked like the price at which the fish could be moved. Just to be on the safe side and make sure the fish would move, another 5 percent was added as allowance for rejects, although 1 percent would have been ample. Thus the actual c. and f. price could be brought down as low as $297.50 with everybody happy if the 5 percent was permitted to be fully utilized.

You may wish to investigate whether or not these guesses are close to the mark.

Sincerely yours,

AMERICAN TUNABOAT ASSOCIATION,
EDWARD P. SILVA, *President.*

APPENDIX 19

JANUARY 11, 1957.

Hon. DAVID W. KENDALL,
Assistant Secretary of the Treasury,
Department of the Treasury, Washington, D. C.

DEAR MR. KENDALL: We provided you with a trade rumor, in our letter of January 4, that a small canning firm in San Francisco had contracted for the delivery of 1,000 tons of summer albacore from Japan on a $350 c. and f. price with a 10 percent rebate plus a 5 percent reject allowance. We said "In all of our letters we have attempted to differentiate clearly between facts and trade rumors and have attempted to assert as factual only those matters reasonably documentable * * *."

We can now put the above-noted rumor over into the documentable classification. In a Tokyo trade publication of December 30 occurs the following item:

"Authorities in charge and the industry finally agreed to resume shipment of summer albacore stock which had been suspended because of dumping suspicion at $350 c. and f. (10 percent for special reserve included) and the following will leave Japanese ports before the year end:

Shipped by—	To—	Steamer	Date	Tons
Daiichi Bussan	Washington Packing	Korean Bear	Dec. 28	180
Nozaki	F. E. Booth	do	do	100
Kinoshita	do	do	do	100
Daiichi Bussan	Washington Packing	Atami Maru	Dec. 29	50
Nozaki	Pan Pacific	Tangus	do	100
Daiichi Bussan	F. E. Booth	President McKinley	Dec. 31	100
Maruboni	do	do	do	100
Takanao	do	do	do	100

Expected to be shipped in January to the following are:

	Tons
Sea Products (Star-Kist)	600
F. E. Booth	500
Cal Marine	300
Pan Pacific	300
Washington Packing	200
CRPA	1,000

In another dispatch appearing in the Tokyo fisheries press on December 31 is the following:

"The Frozen Tuna Sales Co. held its operation committee meeting and agreed unanimously on the following:

"1. Since some 2,000 tons of 2,745 tons consigned and on hand at the sales company have been contracted for sale, leaving about 600 tons unsold, the sales company will buy the 600 tons outright.

"2. The company begins receipt of consigned albacore for the latter half of the year in January, but, instead of receiving the production quota 12,000 tons at one time, 4,000 tons will be received for January."

The following news item appeared in the Tokyo press on December 24:

"Because of the suspension of appraisals on frozen tuna from Japan ordered by the Treasury Department, shipments arriving at United States ports after December 13 have been watched. However, the following shipments passed the customs without putting up bonds: Kurita, 50 tons at Los Angeles, December 12; Nozaki, 50 tons at Astoria, December 15; Marubeni, 100 tons at ——, December 16.

"Nozaki received a wire from Jim Ohta advising that no change in clearing the customs and exports from Japan should be resumed at once since their suspension is meaningless. He added that in the worst case the small and medium packers here apparently intend to stand up to assist the Japanese side."

For the past 2 weeks various of our members have been told by various canners in the area that the antidumping action has been squashed and that the association should quit stirring up things because we were just causing hard feelings and accomplishing no good.

We are now getting to the point where we must insist upon something practical being done on this dumping complaint. Nearly 3 months ago we filed our original complaint. In the intervening time we have provided you with copious data in substantiation of our complaint. You have not found any of this information to be inaccurate, or, if you have, you have not so informed us.

You did withhold appraisal on shipments of albacore and on the basis of this the Japanese Government withheld permission to export. Now all the 6,000 tons of summer albacore which were held by the sales cartel when we filed our complaint has been sold and either shipped or arrangements have been concluded for shipping. Quantities of the 5,000 to 9,000 tons of summer albacore which were held in Japan, not by the sales cartel, have apparently been contracted for.

The appearance is given to us that the Japanese Government is satisfied that the dumping charge on summer albacore has been squashed or is going to be. Therefore, business in this commodity has returned to normal. The sales cartel has gotten rid of its inventory and is now beginning to accumulate its 1957 quota of winter albacore. Business is back to normal for the Japanese.

But for us, our vessels are still tied up, some awaiting unloading for a month or more, after they get in from sea because their market is clogged by Japanese summer albacore that has been dumped on this market at $100 per ton below the cost of production. Now the burden of injury from this surplus of albacore in Japan has been shifted from the back of the Japanese fisherman to our back by the physical transport of that inventory to this side of the ocean.

Part 14.10 of the Treasury Department regulations under the Antidumping Act appears to quite clearly envision that, when a notice of withheld appraisement, the release of the merchandise shall not be granted except that a bond be posted adequate to assure payment of any special duty that may accrue by reason of the Antidumping Act.

Now we find that merchandise of the type covered by our complaint has been released without the posting of a bond sufficient to cover the $100 per ton which we contend represents the amount under cost of production for which the merchandise has been dumped on this market. We find that in consequence a principal importer, Mr. Ohta, has informed the exporters that exports from Japan should be resumed at once because the suspension is meaningless. Shipments have been cleared without the necessity of posting bond. Shipments have been renewed on a fully normal basis and this is with the approval of the Japanese Government.

While we are not totally aware of the work the Department must undertake to prevent the occurrence of injury, we are fearful that the net result of delay will mean that this merchandise will have been disposed of on this market, the injury done, and the wounds begun to heal before the necessary findings are made.

We will appreciate a detailed accounting of the measures thus far taken and to be taken to prevent injury before it is an accomplished fact and to make the Japanese aware that this is not a meaningless exercise as it vitally affects the welfare of many American fishermen and boatowners.

Sincerely yours,

AMERICAN TUNABOAT ASSOCIATION,
JOHN B. ZOLEZZI, *Vice President.*

APPENDIX 20

JANUARY 12, 1957.

HON. DAVID W. KENDALL,
Assistant Secretary of the Treasury,
Department of the Treasury, Washington, D. C.

DEAR MR. KENDALL: We send you this information letter with the belief that it will be helpful to you in your present investigation of the dumping of Japanese summer albacore and particularly with respect to your inquiry as to the means used in the trade to differentiate summer, winter, and mothership albacore.

1. In the United States canned-tuna trade it is not uniform trade practice and it is not required by law to specify what species of tuna is in the can, and it is never, to our knowledge, trade practice to label the source of origin of the albacore in the can. So far as we know the only regulation on this point is that only ablacore tuna can be sold as white-meat tuna. On many labels the name "albacore" as well as "white meat' 'is carried. There is no regulation against canning albacore and selling it as light-meat tuna; however, it is a rare domestic label either in the white-meat or light-meat trade that mentions the geographic area of origin of the contained tuna, much less the species.

2. Under normal circumstances, frozen summer albacore would never be available in any volume in Japan for export during the catching season of winter albacore. Accordingly, the designation "summer albacore" or "winter albacore" would not normally be found on sales slips, in purchase orders, or in other communications. As you know, winter albacore did not start being landed in Japan until the first week of December. At the end of December the landings had still not been large. Freezers had not been buying what little winter albacore there was for sale because their warehouses were still glutted with summer albacore. Accordingly, the winter albacore was being bought by Japanese canners and was not available for export in the frozen form. For these reasons, sales slips, etc., for sales after October 1, are not likely to show designation "winter" or "summer." Only summer and mothership albacore have been available for the sales since June and since mothership albacore is about twice or more the size of summer albacore there is no ground for concern about getting one in place of the other.

This is all pretty well summarized in the following article in the December 24 Nihon Suisan Shinbun:

"Freezers at present have a large stock of summer albacore in hand, with the Co-Sales Co. planning to use the stock as canned tuna. Miyakan, Taiyo, Kesennuma Shokuhin, Aomori Kanzume, and Yayoi Keeki are not interested in purchasing the summer albacore at $268 a ton because it is not profitable. This same attitude prevails everywhere in Japan. Production cannot be increased in canned tuna because of the limit of 1,500,000 cases a year. Since there is no prospect for increased United States consumption, production will be the same as last year. Production will be: Taiyo with its 5 factories, 110,000 cases; Aomori Kanzume, 20,000 cases; Kesennuma Shokuhin, 15,000 cases. The total production aim is 150,000 cases for the winter period. Since the landing price this year is $168 a ton, which is $67 a ton cheaper than last year, packers are optimistic about buying stocked summer albacore for canned production. Each company has its assigned limit with a free limit of 30,000 cases for each company."

3. Since none of the albacore which has been sold since June has been winter albacore price differentials between winter and summer will not show on sales or purchase orders on the sales since October 1.

Your agents are acquainted with the practice that has become almost normal to this trade where the Japanese Government establishes a check price, either formally as a regulation or informally as a recommendation. The Government does this so that the Japaneses Embassy here can tell the United States Government that they are not selling here at less than a certain price. The Japanese industry thereupon does not violate its Government's wishes. It seels at the official price but on the understanding that the purchaser will get a discount substantial enough so that he will buy the fish.

That the practice is followed is shown by the following article from the December 25 Nikkan Suisan Tsushin:

"Because of the American dumping problem, shipments of albacore by Japanese frozen business circles came to a halt. At the Co-Sales management committee

conference on the 24th a decision was reached to open exports again at $350 a ton c. i. f. with 10 percent as a security guaranty for the time being. Some 800 tons will be shipped on the 28th to F. E. Booth & Co.

"The Japanese Embassy in the United States suggested that shipping be opened again at $350 a ton c. i. f. because such a price would not be considered as dumping. However, reports from the United States indicate that buyers will not open a letter of credit at this price, so freezers have decided on opening shipping at $315 a ton with proof of cost involved. F. E. Booth & Co. informed Taiyo Gyogyo that they would buy albacore at $350 a ton (with 10 percent deposited as a guaranty) on December 24. Because of this the freezers have decided to ship. It is said that freezers will ship to buyers at the price of $315 (with a guaranty deposit) if buyers refuse to buy at $350 a ton."

4. The designations summer, winter, and mothership albacore are much more important from the seller's end than from the purchaser's end. Accordingly, you are much more apt to see this designation used in offers than in purchases. Offers are most often verbal. The continuous and consistent use of the specific terms in the Japanese fishery press is the best proof of their validity as commodity designations.

5. The close attention being paid to this matter in Japan is indicated by a wire from Tokyo day before yesterday saying that the Japanese have now switched back from the price of $350 c. and f. with a 10 percent rebate and a 5 percent reject discount to a straight $315 c. and f. price and the Japanese Government is now demanding that on all sales at this price there be included the following clause: "Buyer hereby agrees to increase the purchase price if this purchase price is considered to be below the fair market value by anyone."

We are coming to the point where we get news by air mail translated out of the Tokyo daily press, given to reporters there by the Japanese industry, which they got from the Japanese Government, which the Japanese Government got from the Japanese Embassy in Washington, D. C., and which it is claimed the Japanese Embassy got from the Treasury Department a good deal before we get it from you and this distresses us.

Examples are—

Nikkan Suisan Tsushin, December 15, 1956:

"On the problem of dumping, the Japanese Embassy in Washington and the United States Finance Bureau held a friendly conference, and the Finance Bureau seems to approve the Japanese report that the troublesome point of the claim of dumping seems to stem from the landing price at Shimizu Harbor. If export prices are considered from this, it might be dumping.

"On this point, United States Finance Bureau officers in Japan are asking Japanese traders where purchases of raw fish were made. Since purchases by frozen tuna traders were mainly made at Yaizu, Misaki, and Tokyo, the point is neglectable. It is felt that this problem will be cleared up in the near future."

Nikkan Suisan Tsushin, December 15, 1956:

"In reference to the dumping problem, the American Finance Bureau put out an official order on December 13 stopping tuna imported from Japan from passing into the hands of the buyers. This order was ready for issuance 2 weeks before but the Japanese Embassy requested the United States State Department to hold up the order until the session of the Japanese Diet closed. Thus, the order was withheld until December 13. While this order is in force Japan must leave the goods in the warehouses of their buyers, or if they want the goods to pass into the hands of the buyers, a guaranty of $85 a ton must be posted. Four hundred and thirty tons of tuna, which is presently on the way to the United States sent by Kurita, Marubeni, Nozaki, and Toshoku, will pass into the hands of the buyers by paying this guaranty."

Nippo Suisan Keizai Shinbun, December 16, 1956:

"In reference to the stoppage of Japanese tuna from passing to the hands of the buyers put out by the United States Finance Bureau till the Customs Department reaches a decision of its study, most of the large traders feel that the order is temporary and that it will not have a bad effect on their dealings. They expressed the view that—

1. A suspension of the tax estimate is different from a general customs import ban, and if the United States importers want the goods they can do so by paying a guaranty. Even after the order put out by the Finance Bureau, inquiries have been received by United States buyers.

2. The Japanese Government is negotiating daily with the United States Government through its Japanese Embassy in Washington, and it is reported

that the United States Finance Bureau admits that the price of $315 a ton landed at a United States harbor is not dumping. The problem, it seems, will be solved in the near future.

Nikkan Suisan Tsushin, December 18, 1956:

"On the tax estimation stoppage problem of Japanese frozen albacore, JETRO (Japan External Trade Reconstruction Organization) reported to the Frozen Food Export Association that there are no problems concerning the landings of tuna on December 18.

"The 200 tons of Kurita, Nozaki, and Marubeni passed the tax office safely, and it was not necessary to pay the tax. It seems that the tax estimation stoppage is a formal disposal to postpone the approval of the fact that frozen albacore is tax free. The dumping tax must be paid by Japan only after the verdict of guilty is given."

Nikkan Suisan Tsushin, December 19, 1956:

"On the tax estimation stoppage problem, 200 tons shipped by Kurita, Marubeni, and Nozaki passed customs without paying a guaranty.

"Mr. Jimmy Ota in the United States reported that it is unnecessary for Japan to stop exports and that small- and medium-sized packers in the United States will reinforce Japan if conditions should come to worse."

Nikkan Suisan Tsushin, December 24, 1956:

"On the present antidumping problem, the Japanese Embassy in the United States suggested that if Japan exports tuna at $350 a ton c. i. f. it will not stimulate the American market. Results of the studies of traders indicates that buyers will reject to open a letter of credit at $350 a ton c. i. f.

"Japan decided to export at $315 a ton c. i. f. with proof that the landing price is about $208 a ton. It is easy to prove that the present landing price is $208 a ton so exports from Japan may be reopened this week."

With best regards, I remain,

Sincerely yours,

American Tunaboat Association,
John B. Zolezzi,
Vice President.

Appendix 21

January 15, 1957.

Mr. John Zolezzi,
Vice President, American Tunaboat Association,
San Diego, Calif.

Dear Mr. Zolezzi: Thank you for your letter of January 10, in which you explain the changes in office in your association.

We had an informative talk with Dr. Chapman this afternoon, and believe that by now most of the problems in connection with the albacore dumping case have been, or are about to be, cleared up.

Sincerely yours,

David W. Kendall,
Assistant Secretary of the Treasury.

Appendix 22

February 7, 1957.

Mr. John B. Zolezzi,
Vice President, American Tunaboat Association,
San Diego, Calif.

Dear Mr. Zolezzi: Thank you for your letter of January 11, 1957, in which you furnish documentation of your previous information that shipments of frozen summer albacore are being invoiced at $350 c. and f., subject to a 10-percent reserve. You also express concern as to shipments which are being cleared without the requirement of putting up bonds to assure the payment of special duty, and request to be advised as to the present status of this case.

You are advised that the shipments invoiced as above noted are included in the study which is currently being made with respect to the recent developments in this case. You will recall that my letter of December 21, 1956, to your association advising you of certain tentative calculations of the cost of production of frozen albacore exported on or after November 27, 1956, was replied to by Mr.

Silva in his letter of January 2, 1957, in which he set forth detailed data as to the differences between various types of albacore, and requested our reconsideration of the case in the light of such data. Our representative in Japan was accordingly requested to obtain additional information, which Mr. Silva's representations indicated to be necessary to a conclusion fair to all parties involved. When this is received, a determination will be made as speedily as possible. In the meantime we are continuing to withhold appraisement of frozen albacore shipments, as set forth in the press release, a copy of which was furnished to you by Mr. Hendrick in his letter of December 13, 1956.

With respect to the release of shipments without the posting of additional bonds, you are advised that under the law and regulations in effect it is not mandatory upon the collector of customs to require the posting of such a bond. He has wide discretionary powers in determining whether additional security is needed in connection with any shipment entered in his district.

Your letter of January 12, and our talk on January 15 with Dr. Chapman help us in making progress toward a solution of this Japanese albacore dumping case.

As you are well aware, we have been endeavoring to get information leading to a determination in this case from any and all sources which seemed reliable. Obviously the Japanese Embassy is a source we must tap. That newspaper articles are printed in Japan, supposedly inspired by the Japanese Embassy, is a matter over which we can exercise no control. Nor had we thought that you expected us to give you a day-by-day account of the sort contained in these (often inaccurate) articles. It had been our impression that we had given you full information in regard to the developments in this case which was necessary to your complete understanding of it. This was done to make possible an informed decision, which would take into account your comments on all important aspects. This impression was not changed as a result of our talk with Dr. Chapman.

Very truly yours,

David W. Kendall,
Assistant Secretary of the Treasury.

Appendix 23

March 14, 1957.

Mr. Harold F. Cary,
General Manager, American Tunaboat Association,
San Diego, Calif.

Dear Mr. Cary: Reference is made to your letter of March 1, 1957, and to previous correspondence relative to importations of frozen albacore from Japan as to which you filed a dumping complaint on October 17, 1956.

An inquiry was conducted by our Treasury representative in Japan. The information furnished by him was supplemented by information obtained from various sources in order that the final conclusion in this case might be based on all the pertinent data available. The communications received from your association were given full and careful consideration, as were your arguments and reasoning presented in meetings held in Washington, and in telephone conversations.

The record in this case disclosed that sales for home consumption or for exportation to third countries could not serve as a basis for comparison with sales to the United States. Accordingly, the price to the United States of the exported frozen albacore was compared with its cost of production as that term is defined in the Antidumping Act.

In the determination of the values to be compared careful consideration was given to the questions raised by you as to freight costs, possible rebates, types of albacore, and the market prices of the fresh albacore which entered into the inventory from which much of the imported frozen albacore was obtained. Each of these points is answered below.

With respect to the freight costs which are lower than those previously in effect for this merchandise, you are advised that the purchase price definition of the Antidumping Act required only that the actual additional expenses incident to bringing the merchandise to the United States be deducted.

Investigation as to possible rebates disclosed that none of the merchandise imported since the date of your complaint has received the benefit of a rebate other than the price adjustment resulting from actual loss due to rejection by

the Food and Drug Division of the Department of Agriculture. These price adjustments were inquired into and found in each case to conform with the actual loss incurred.

With respect to the distinction between the various types of albacore, the weight of the evidence appears to indicate that the distinguishing terminology refers to the season of catch and to the type of equipment used. A number of factors affected the price and acceptability of the albacore for the purpose of freezing. In its condition as imported, the frozen albacore appears to meet the statutory requirement for identical or substantially identical merchandise regardless of the season in which caught or the type of catching equipment used. In this regard, therefore, it is considered to be in the nature of fungible goods.

It is so treated by the canners in this country. Accordingly, no distinction was made between the various above-noted origins of the frozen albacore processed from fresh albacore sold in the auction markets of Japan in our determination of the cost of production of the imported frozen albacore.

In accordance with the statutory requirement, the cost of materials and fabrication was based on such costs at a time preceding the date of shipment of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business. Thus as to the imported frozen albacore processed from fresh albacore sold in the auction markets of Japan, the prices considered were the prices prevailing in those markets for commercial landings made during the appropriate period prior to exportation of each of the imported shipments.

The Treasury Department in a letter to you dated December 21, 1956, furnished an illustrative example of a typical cost of production computation, setting forth the various consideration on which the computation was based. This formula was followed in all of the computations pertaining to each of the importations involved.

In each case, it was found that the purchase price of the imported frozen albacore was not less than the cost of production thereof. It was therefore determined that frozen albacore from Japan was not being, and was not likely to be, sold to the United States at less than fair value within the meaning of the Antidumping Act. Accordingly, appraising officers were instructed to proceed with appraisement of frozen albacore from Japan without regard to any question of dumping.

As to the claim regarding possible subsidization of the imported frozen albacore from Japan, the charges were not substantiated by our inquiry with respect thereto. It should be noted in this connection that as frozen albacore is free of duty, the countervailing duty provisions of the Tariff Act are not applicable.

Very truly yours,

D. B. STRUBINGER,
Acting Commissioner of Customs.

APPENDIX 24

[Translated from Suisan Tsushin, October 1956 issue]

A LOT OF FROZEN TUNA WERE PRODUCED BUT WHO'LL TAKE CARE OF THE RED INK?

Frozen albacore, the sales of which had been at a complete standstill since June of this year, finally began to move through export channels again in mid-October. The sales price per ton is said to $100 above the minimum check price of $270 per ton f. o. b.

The total losses to the frozen tuna industry this year, everything considered, will probably be not less than an estimated 500 million yen ($1,388,889).

Frozen tuna exports with an annual average value of $1,800,000 have been the mainstay of the export trade in marine products and of these, the albacore has been the star performer from the standpoint of the percentage of American dollars earned. That such huge losses as these should finally be incurred by this highly regarded export trade in frozen albacore should stimulate our thinking immensely.

The frozen tuna industry is now in a state of wild confusion over its losses, like bees in a stirred hive. However, it is extremely heartening to know that even in the midst of this disorder, through the medium of plans to dispose of these losses there is a movement afoot to thoroughly review and improve the

present sales system. It would be a matter or rejoicing indeed if this year's losses should provide the bedrock for tomorrow's success.

We first begin to realize this goal, of course, when we have the courage to search out the facts of this catastrophe calmly and objectively instead of closing our eyes to it, so I should like now to follow in the footsteps taken by the Frozen Tuna Mutual Sales Co. and study the causes of its losses as well as consider the future of the company.

To begin with, let us review briefly the conditions which existed within the industry at the time the Frozen Tuna Mutual Sales Co. was formed, on April 14 of this year. At that time, with ample funds supplied by parent companies, the producers recklessly bought up albacore at exorbitant exvessel prices of 480 to 500 yen per kan ($322.45 to $335.89 per ton) so that by the end of June almost all of the producers had filled their quotas. It need not be pointed out that the increase in exvessel prices was the result of undisguised and unrestricted competition between the canners and freezers in buying albacore.

However, in late June, because of the fact that the canners and freezers had nearly all filled their production quotas and, as a result of continued heavy landings, the price of albacore decreased to about 400 yen per kan ($267.71 per ton). The freezers, disregarding their quotas, started to buy albacore again in order to reduce the average base cost of their albacore holdings and, in this manner, greatly increased their stocks above their quotas. Thus it was inevitable that the Frozen Tuna Mutual Sales Co., created by the industry in the midst of this situation, should find itself quickly saddled with a large stock of albacore when it opened for business. In addition, the existence of the company itself was threatened by the specter of nonquota stocks.

Now, the first problem to confront the Frozen Tuna Mutual Sales Co. was the determination of the consignment price--a strong mutual sales price. Although the consignment price was to be established by a committee of representatives from seven companies (Taiyo, Nippon Reizo, Yayoi, Takeshiba, Tosuiko, Abe, and Kokusai) based on production costs and a consideration of United States market conditions, it was being reported then that the producers had pledged themselves to "a base of $365 for production costs" in the event that the consignment price was to be figured from production costs. In the United States market at that time, the price between the United States canners and the albacore fishermen's association, which has a great effect on the Japanese sales price, had not yet been settled and it was difficult to predict the outcome of the negotiations between the canners who were insisting on $350 per ton and the fishermen who were demanding $450 per ton.

The determination of the consignment price, however, was made in wholly unexpected quarters instead of following the procedures described. That is, Taiyo and Ichi Bussan, both powers in the industry, negotiated with CRPA for the sale of 5,000 tons of albacore at a price of $355 per ton f. o. b. and had entered into a temporary contract with CRPA (with a condition that the contract was to become effective with approval by the sales company). In the end, pressed by this fait accompli the consignment price was set at $355 but the producers, feeling that they had been forced by these circumstances to accept a price which was $10 lower than their own, expressed strong dissatisfaction.

In short, by pouring cold water upon relations within the industry the Mutual Sales Co. failed in its first attempt to do business.

The contract with CRPA, however, contained a so-called fall clause, which stated that "if the export price would decline 3 months after the contract, the company would be refunded the amount equal to the decrease." As will be discussed later, this condition stimulated activity among major canners in California and had great effect on later sales negotiations although at the time of the contract it didn't cause much excitement other than expressions to the effect, "why go as far as offering a refund?" Instead, interest centered mainly on the price which was thought to be too low at $355 per ton f. o. b. (formal contract price of $410 c. and f.). At about the time that even opinions had diverged as to whether or not the CRPA contract for 5,000 tons would be received, offers to purchase frozen tuna at the same f. o. b. price of $355 per ton totaling 4,000 tons came from California packers, Starkist, Franco-Italian, etc. However, sentiments that "selling at a low price to CRPA is enough for us" were strong and while a reply of acceptance was being debated, cancellation orders came from these companies. In retrospect, I wonder if this period may not have been one of the peaks of this year's business.

One informed source comments on the situation at this time as follows—"Isn't it true that the industry, holding the Mutual Sales Co. as a trump in its hand

and with the quick development of a seller's market, had the illusion that it could command whatever price it wanted? The mutual sales system is unquestionably a trump in hand for the seller but if it is not played at the right time, the result is an enormous loss.

It seems to me that the industry was being a little too greedy when without being able to exercise hardly any real control over production costs and production volume it formed Mutual Sales Co. this year when the statistics were entirely meaningless and then expected to ram everything through under its mantle."

Then again, another source says this: "Although we speak of mutual sales, the freezers have three handicaps when compared to the canners: (1) the quality of its goods drops the longer it is stored, (2) storage costs are relatively high and (3) the buyers instead of being numerous are restricted to (foreign) canners whose numbers are limited, so that despite a mutual sales organization, depending upon the circumstances, it is easy for the (foreign) canners to carry on a boycott or to band together to drive the price down, and our power to resist these actions besides is weak. Without knowing or caring much about these matters and burdened with "large storehouses made of glass," moreover by relying only upon spot transactions, and then expecting to win through by sheer dint of spirit was decidely asking a little too much. In any event, wasn't our position of bolstering ourselves with false courage by saying that we will win and throwing science and reason to the wind exactly the same as that of our troops during the war?"

OUT OF BUSINESS IN A MONTH

However, contrary to views of the producers, only 630 tons, the total of various orders by B. C. Packers, was sold after the 5,000 tons to CRPA, and thereafter, purchases by American canners ceased altogether. The Mutual Sales Co., therefore, found itself in the position of perhaps having to close shop only a month after its formation—although this situation was to continue for 4 more months, no one at the time anticipated anything as bad.

With the settlement of the price of albacore in the United States on July 10 at $350 per ton ex-vessel, unrest gradually stated to affect a part of the industry. This was because the United States product would be $30 to $35 cheaper than the Japanese product at its c. and f. price of $410 per ton, allowing 10 percent for the difference in yield.

As time progressed from the middle of July to the end of July, the wave of unrest gathered momentum for patience was very hard to come by what with even illegal nonquota stocks still on hand.

Subsequently, in accordance with a request by the Frozen Food Exporters Association, the (Pacific) conference freight rate on frozen albacore alone was lowered to $55 per tone for a 2 months' period beginning August 1 and the Mutual Sales Co. announced on August 3 the availability of its stock of 6,500 tons which was not too large an amount in itself, but these actions did not stimulate buying interest in the least.

Furthermore, news continued to be received that the albacore season in the United States was far better than that of the usual year. In addition, hopes that the California fishery would end in early August and that buying interest would start to be shown in mid-August were completely dashed as landings continued past mid-August, and it no longer became a question of "buying."

The following kinds of observations were made at this time by inner circles of the industry to account for the lack of buying disposition in the United States:

1. It could now be predicted that the albacore season in the United States would be 50 percent or more better than that of the average year and that landings would continue after the usual end of the season.

2. The California albacore landings were composed of fish weighing from 16 to 18 pounds which were considerably larger than fish of the usual year which averages about 12 pounds. These larger fish did not differ much from Japanese albacore in yield so that the latter lost its advantage.

3. In addition to albacore, fishing was also very good for yellowfin so there was no shortage of raw fish in California.

4. As a result of the good yellowfin season, cheap canned light meat tuna was placed on the market which competed strongly with canned white-meat tuna so that the canners held off packing canned white-meat tuna.

5. The chief competitor of the California canners, CRPA, having brought the large amount of 5,000 tons at a high price, the fall clause not withstanding the California canners joined forces to lay the groundwork for beating down the price of the Japanese product in order to take a crack at CRPA.

6. Although the Sales Co. had reported the amount of its stock as 6,500 tons, the producers in Japan held large amounts of albacore in excess of this quantity so that it was anticipated (by the California canners) that the producers would start to compete with one another and thus drive the sales price down.

7. The California canners were planning to smash the Sales Co. because of their extreme fear that with the change in the Japanese sales system and the formation of a mutual sales company this year the buyer's market which existed up to now would change to a seller's market.

PRICE CUT DEBATED

Now, signs that the industry was starting to sweat under these circumstances began to appear and deepen. As the industry entered mid-August, outcries for a lowering of the sales price gradually began to be heard, something which had been taboo until then. This sentiment, however, was not dominant as yet and the general feelings of the industry were divisible into three factions: those favoring a price cut, those not opposed to a price cut but favoring such action after the end of CRPA's fall clause time limit, and those still strongly opposed to a decrease in price.

On August 20, at a meeting of the Mutual Sales Co., it was informally agreed that "a sales price discussion committee will be formed between the Mutual Sales Co. and the Frozen Foods Exporters Association." This was viewed as a real indication that sentiment for a price cut had affected others. The proposal, however, ran into opposition the following day at a joint steering committee meeting of the Frozen Food Exporters Association when opinions were expressed to the effect that "the reasons for wanting to bypass the Mutual Sales Co. at this time and form a discussion committee are obscure," so that the plan of the Sales Co. failed to obtain approval.

The truth of the matter was that there was suspicion that something was again underfoot based on previous experience when the majority was forced to accept actions dictated by the large companies in setting the Mutual Sales Co. sales price but even this, in final analysis, stemmed from the fact that the industry had not yet resolved itself to accept its large losses.

As the middle of September passed, it appeared that the general trend was already set.

On September 21, just before the end of CRPA's fall clause time limit, the Frozen Foods Exporters Association at a meeting of its steering committee entrusted Mr. Nakabe, chairman of the board of directors, with the responsibility for future price negotiations and the National Freezers Association followed up with similar action at its meeting on the 26th. Thus, for the first time, it became possible to consider a reduction in the Mutual Sales Co. price of $355 f. o. b., and virtual approval was given to such a price cut.

That this assignment of responsibility to Mr. Nakabe was able to pass so smoothly through both associations was viewed as a result of (1) the realization by even the most adamant producers that they could not sell their fish without lowering the price, and (2) a scheme to attempt to make the losses which would come from a price cut joint losses rather than individual losses by letting Mr. Nakabe "mind the store." This loss-prevention scheme will be touched upon later but the situation in any event quickly gained in tension as arrangements were made for Mr. Nakabe to assume sole responsibility to negotiate the sales of fish.

The plans of Mr. Nakabe and his close associates for resuming the sales of fish were as follows: "We shall consider the United States packers in the north and those in the south separately, and we shall first give to either those in the north or those medium-scale packers in the south an opportunity to buy our fish. By doing this, we shall tempt the buying interest of the southern California packers who are showing strong inclinations to buy fish. For those who bought fish from us in June–July at a high price, we shall shade the prices by some means." Following these plans, from September to early October Mr. Nakabe quickly sounded out the views of CRPA's Gizdavitch and at the same time negotiated through Ichi Bussan with B. C. Packers' Hume who was in Japan at that time. Meanwhile, by close contact with Taiyo's representative in the United States, Mr. Kamogawa, and others, negotiations proceeded with various southern California packers. However, such positive actions as these taken by the Japanese to try to sell their fish gave rise inevitably to pressures on the part of the buyers to drive the price down. A price which was acceptable today was rejected tomorrow, a lower price was then quoted, etc. and, in this manner, the Japanese were left completely to the wiles of the buyers.

The saying that "their price drops $5 each day" describes bluntly the situation which existed at this time.

Meanwhile, on September 20, word came from Mr. Kamogawa in Los Angeles that "F. E. Booth of San Francisco has O. K.'d 100 tons of C. and F. $350." However, at a meeting of the Mutual Sales Co. on October 2, much dissatisfaction was expressed by exporting companies because of the opinion that 100 tons or so was not a large enough amount to be able to stimulate buying interest, because Taiyo had been named as the contracting company, and because of the inclusion of a 30-day fall clause, and so the results expected were not attained.

From the negotiations between Ichi Bussan and B. C. Packers, it was anticipated at first that a contract for about 2,000 tons would be obtained but Mr. Hume, upon observing the faltering attitude of the Japanese industry, escaped by saying that "a decision will be made after I return home."

According to another report, Mr. Hume came to Japan for the purpose of buying canned fish and did not have the authority to negotiate on winter albacore so that when he reported his dealings with Ichi Bussan to his company, he was severely reprimanded and ended up in a mess.

For CRPA, which was being regarded as the "life" of the industry, Gizdavitch expressed the views that they would like to conduct future negotiations for purchases with the following two conditions:

1. A refund of some kind for the 5,000 tons already bought, and
2. A sliding scale formula to be adopted in order for CRPA to maintain equal position with the southern California canners, i. e. $345 (C. and F.) per ton up to 1,000 tons, $335 per ton for 1,000 to 2,000 tons, $320 per ton for 2,000 to 3,000 tons, etc.

EXPORT RESUMED AT $270 F. O. B.

At this point, Mr. Nakabe, who had been trying hard to put things in order while endeavoring to insure that (1) a refund on previous sales was avoided by all means because of its great potential effect, and (2) that the new sales price was held at f. o. b. $300 per ton level, realized that these were impossible under present circumstances when his every move was known so that he made an about-face and resigned himself to the idea that there was no recourse but to try to make a breakthrough by lowering the price.

For 2 days, October 8 and October 10, Mr. Nakabe conferred at length with Mr. Gizdavitch and as a result of final negotiations, agreement was reached for the most part on the following terms:

1. In the event new purchases of tuna should exceed 3,000 tons, the price will be f. o. b. $270 per ton.
2. As refund for the 5,000 tons bought previously ($410 C. and F.), the new 3,000-ton order will be combined with the previous 5,000-ton order and the price will be dropped to an average of about $355 C. and F.; in other words, $29.40 will be deducted from each ton.

On the following day, October 11, Mr. Nakabe convened a meeting of the Mutual Sales Co., reported on the negotiations to date, and received approval for the sales price of f. o. b. $270 per ton (this was the check price so the price could not be lowered beyond this) and the payment of a $29.40 per ton refund. On October 16, confirmation was received from CRPA on the results of the Nakabe-Gizdavitch negotiation and formal orders for CRPA's 3,000 tons and an additional 1,000 tons for B. C. Packers (to be purchased through CRPA and shipped to B. C. Packers) for a total of 4,000 tons were received. Thus, the long-awaited export of frozen winter albacore was resumed.

At this point, let me touch briefly on a silly outcome of the circumstances surrounding the resumption of export trade. This concerns the change from a common to opposite positions by Taiyo and Ichi Bussan, both of whom had been the object of close scrutiny by the industry.

The origin of this conflict is said to have been the tug-of-war competition between Taiyo and Ichi Bussan for B. C. Packers. That is, Ichi Bussan contends that "we were first negotiating with B. C. Packers but Taiyo slipped in from the sidelines and stole them away" while Taiyo states that "Ichi Bussan failed in its dealings with B. C. Packers so that Mr. Nakabe, who had been given full authority, simply negotiated a sales contract with B. C. Packers through CRPA."

Subsequently, relations between Ichi Bussan and Taiyo changed still further because of the problem of making up the 3,000-ton consignment to CRPA. The various companies grouped around Ichi Bussan advocated a proportional allocation based upon the consignment value whereas Taiyo would not budge from its position that the purchaser had the right to specify how the consignment was

to be made up. In the end, all of the companies went along with CRPA's request that "1,000 tons of the 3,000 tons must be Taiyo mothership albacore," but feelings that "under a proportional allocation system, Taiyo's share of the consignment would not have been more than 500 tons" will not be easily forgotten. It may be said in other words that the conflict between Taiyo and Ichi Bussan represents basically a difference of opinion as to whether or not Director Nakabe's scheme for selling fish was a success or failure.

LOSSES AMOUNT TO 300 MILLION YEN ($833,338) IN THE FIRST QUARTER

From what has been written to now, the various causes for the losses have been brought to the surface, but the biggest problem facing the industry is that of determining how to cope with these losses and further, the formulation of plans to dispose of these losses.

First of all, taking things in order, let us roughly compute these losses.

1. Initial losses (June–July sales, 5,600 tons):

(a) Considering average dockside purchase price per kan to be 475 yen ($319.04 per ton), average storage time of 4 periods (TN: time interval not specified for a "period" but believed to be 15 days), interest on money for 60 days, 3 coats of glaze, and adding freezing fees, weighing charges, insurance fees, fees for putting in and taking fish out of storage, stevedoring expenses, Mutual Sales Co. expenses, advertising costs, trading firm commissions, and various other costs, the production price equals approximately $363 per ton.

(b) The sales price for 5,000 tons to CRPA was C. & F. $410 per ton and besides this, there were 600 tons at f. o. b. $355. If the refund of $29.40 per ton is deducted, the average sales price per ton equals $327.

(c) Therefore, for each ton, there was a loss of $39, for a total loss of approximately $218,400.

2. Second losses (estimated October sales, 6,500 tons):

(a) Considering average dockside purchase price to be 465 yen per kan ($312.37 per ton), storage for approximately 8 periods, interest on money for 120 days, 3 coats of glaze, and adding on the same kinds of charges as in (1), the average production cost per ton equals $374.

(b) The sales price will be assumed to equal $270 per ton.

(c) By subtraction, the loss per ton equals $104, for a total loss of $676,000.

3. The total overall loss equals $894,000 or approximately 322 million yen.

This is really a staggering figure. These calculations, however, do not include company expenses, participating costs, and other such direct expenses nor do they include estimates of losses for sales prior to the formation of the Mutual Sales Co. and predicted losses for the large quantities of illegal fish—stock in excess of the production quota (although nonquota fish can be exported at a great loss, these were excluded because of the difficulties of determining the quantities in storage and predicting the export price in later periods). If we should include these costs, however, it can probably be estimated without hesitation that the losses accruing to the producers during this period would easily exceed 500 million yen ($1,388,889).

If we now list the major trends of opinion within the industry concerning means of disposing of these losses, we have:

1. A part of the losses to be borne by every producer.
2. Depending upon the circumstances, the Mutual Sales Co. to shoulder part of the losses as "income not received."
3. The losses borne by each producer to be written off by treating them as part of the long-term obligations of the parent company.
4. The part of the losses borne by the Mutual Sales Co. and those written off as long-term obligations to be repaid by profits from future frozen tuna production and from profits in other lucrative "replacement" activities.
5. In addition, through efforts to improve the mutual sales system, representation to be made to the proper authorities for positive methods of support.

With respect to item 1, a spokesman for the producers expressed the strong viewpoint that "the losses should be made the total responsibility of the Mutual Sales Co." but this, in the end, was overruled by the argument that, "Since the Mutual Sales Co. by nature is only a consignment company, it cannot assume the losses. If it should now take responsibility for these losses, the confidence of the banks will fall to zero and this will threaten the very basis of existence of the Mutual Sales Co." With respect to "replacement" activities, for fear that

the industries concerned may interfere, plans are being laid in secret but it is understood that emphasis is being placed upon the business of importing and exporting agricultural and fisheries commodities.

WILL A NEW OPERATING POLICY BE LAID FOR THE MUTUAL SALES CO.

Together with these plans for disposing of the losses, there has now appeared a movement within inner circles of the industry to overhaul the operating policy of the Mutual Sales Co. The movement stems from the time when industry representatives met with Mr. Okai, Chief of the Fishery Agency, to appeal for help to dispose of their losses and were told, "Instead of asking for compensation, study the causes within your industry for these losses. Isn't it a prerequisite that you should first concentrate on the elimination of these causes? Without this, compensation, no matter how much, is useless." Even though the industry was on the verge of recognizing the keen need for improvement of its future policy, for an industry that was divided in its common interests and which found it difficult to agree on anything, the frozen tuna industry moved with exceptional speed in formulating the following plans:

1. Guarantee of consignment price: The present consignment price is simply a monetary value which has meaning only to the extent that it serves as a basis for installment payment to the producers so that if the sales price changes the consignment price must also change (as for example, this year). The producer is therefore at a loss to determine what basis to use in regulating his buying price. The result is that whether or not it is solely for the purpose of maliciously stirring up unrest, the producer exercises a louder voice in consignment price-sales price methods. After improvement of these points, the consignment price will be guaranteed regardless of what happens. (Going one step further from this consignment price guarantee, the Mutual Sales Co. system of buying fish is also being discussed.)
2. Basis for determining the consignment price: The basis for determining the consignment price will be the price at which the small and medium packers in the United States are selling their canned products. By back-calculating from this market price, a standard sales price will be set at a level at which the United States packers can reasonably buy fish, and this price will form the base for the consignment price.
3. Adjustment of the consignment price: The sales price will be determined by taking the standard sales price mentioned in the above article as the base and by considering from time to time conditions in the United States albacore fishery and the purchase price. However, in order to avoid such violent fluctuations in the sales price as just experienced, no great increase will be made above the standard price in case the albacore season in the United States is a poor one.
4. Stabilization of the domestic dockside price: Relative to the guaranty of the consignment price mentioned in a previous article, an average purchase price can be established for the frozen tuna producers but in order to insure harmonious relations between the freezers and canners, the ratio of fish to be bought for freezing and canning and the price will be agreed upon according to the season (in case the exports of frozen tuna prove to be profitable, a rebate to the fishermen may even be considered).
5. In order to carry out these plans, a price committee will be formed within the Mutual Sales Co. This committee will set the pattern for buying and selling in accordance with conditions.

These matters have not yet gone beyond the planning stage but in order to put these into effect, the backing of the Government above all is required.

Although petitions containing these plans are now being submitted to the authorities concerned, mainly by the Frozen Tuna Mutual Sales Association, the question is how these will be evaluated and how these will appear in policy measures. It may be that these plans may even be joined with the problem of revising the import-export laws which is the subject of discussion these days and become one of the focal points in the future.

Meanwhile, how the large exporting companies will strengthen their relations with the producers against whom they have large claims (the total, including those accruing from the present situation, is estimated to be approximately 1,100 million yen ($3,055,556), whether at the same time they will increase their voice in the Mutual Sales Co., the processes by which they will directly or indirectly increase their guidance of the producers in relation to the operating policy of the Mutual Sales Co. previously discussed, are all important points which will doubtless measure the shape of the industry in the future.

Senator FREAR (presiding). Mr. Nelson A. Stitt.

STATEMENT OF NELSON A. STITT, DIRECTOR, UNITED STATES-JAPAN TRADE COUNCIL, WASHINGTON, D. C.

Mr. STITT. Mr. Chairman and committee members, I am Nelson A. Stitt, director of the United States-Japan Trade Council, with offices at 1000 Connecticut Avenue in this city. The council has a membership of approximately 170 firms, practically all engaged in importing from and exporting to Japan. Our members, about half of whom are American companies and half Japanese companies doing business in the United States, account for a substantial share of the trade in both directions between the two countries. Since a number of Japanese commodities have been investigated under the Antidumping Act (13 cases since 1945), our interest in the proposed amendments to the law is obvious. Parenthetically, let me add that none of these cases has led to a finding of dumping after Treasury Department investigation.

We generally indorse the views expressed to you this morning by Mr. Radcliffe and Mr. Sharp. Our council wishes to make clear our opposition to international dumping, defined as "'unfair' international price discrimination" with the purpose or effect of injuring or destroying an industry in the country of import. ("Unfair" is quoted because of our view that price differentials per se are not necessarily unfair.) We believe United States legislation to prevent dumping as so defined is entirely proper. Accordingly, we are in sympathy with the purpose of H. R. 6006, but believe that some of its provisions should be changed. I am going to talk today principally on four points. I request permission to submit a fuller statement covering other provisions of the bill.

The United States-Japan Trade Council believes strongly that the act, as presently interpreted and administered, contains certain inequities which H. R. 6006 does not correct. These inequities permit the legislation to be used as a protectionist device to harry and cripple foreign competition in commodities where unfair price practices are nonexistent. Hence we would propose several amendments to the act in addition to those incorporated in H. R. 6006.

Section 201 (a) of the Antidumping Act authorizes the Secretary of the Treasury to make a determination of sales of foreign goods at "less than * * * fair value," i. e., dumping. Since value is universally expressed in terms of price, this would seem to agree with the generally accepted understanding of dumping as unfair international price discrimination. By longstanding custom, however, the Treasury Department refuses to consider the central issue of the fairness or unfairness of the price differential involved and bases its determination on the mere existence of a substantial price difference, computed arithmetically. Frequently, if a standard of "fairness" were used, the price difference could be justified without requiring further recourse to the Tariff Commission on the question of injury to domestic industry. Price differentials are normal and common, both in the domestic and international business fields. In short, if Treasury finds a substantial difference between the price of the foreign product in United States markets and its price in the foreign market or third markets, it labels the import as "dumped" without any regard

for the good business reasons, absent predatory intent or unfair motive, which might have given rise to the differential.

This, we submit, is contrary to the intention of Congress when it passed the Antidumping Act in 1921, and is probably contrary to the intention of Congress today.

We would, therefore, suggest an additional definition in section 212, as proposed by H. R. 6006, to the following effect:

> The term "less than fair value" means an artificially low price, not established in good faith, that is unjustified by competitive circumstances in the United States market or the conditions of the particular sale.

The act requires a determination by the Tariff Commission of injury to the competitive United States industry before a final finding of dumping may be reached.

When this measure was considered by the House, attempts were made to eliminate the test of injury. These proposals ignore the fact that foreign commodities at low prices are beneficial to American consumers, help to counteract domestic inflationary tendencies, and, on balance, represent an economic gain to the United States, so long as no domestic industry is being damaged by their importation. We trust this committee, and the whole Senate, will resist efforts to remove the injury test from the act.

The withholding of appraisement consequent upon initiation of a dumping investigation is a great burden upon the import trade. It immediately inhibits imports of the item concerned and, in many cases, acts as a virtual embargo for months on end.

Wide uncertainty as to final price is created and orders are greatly diminished, if not brought to a standstill. In fact, the evil effects of withholding of appraisement are so obvious and well known as to give rise to a strong suspicion that domestic producers utilize the complaint to minimize competition over an extended period, without any expectation of a final finding of dumping.

According to the Treasury Department, of 198 complaints of dumping received between 1934 and 1956, in only 8 cases (4 percent) was there a finding under the act. Since the end of World War II, only 1 finding of dumping has resulted from 52 investigations. Yet, in practically all these cases, withholding of appraisement was the first step. Thus, 190 import products were penalized without cause, 51 of them since 1945. This is a grossly inequitable situation and steps should be taken to remedy it.

In practical effect, the withholding of appraisement constitutes a heavy penalty levied upon imported commodities, possibly based upon suspicion alone (Sec. 201 (b). "Whenever * * * the Secretary has reason to believe or suspect * * * he shall forthwith authorize * * * the withholding of appraisement reports * * *). It is certainly contrary to United States ideas of law and justice that sanctions may be imposed before guilt or innocence is established.

The Treasury Department recognized that withholding of appraisement is a severe penalty in its report to the Congress on the act. In the section on effectiveness, it is stated:

> In addition, there is no doubt that foreign governments are keenly aware of our Antidumping Act, and fear its sanctions—perhaps most of all they fear the withholding of appraisement.

We feel that, in the light of the small percentage of cases in which dumping is found, the Congress should establish a stricter test than "reason to believe or suspect" before authorizing the Secretary of the Treasury to withhold appraisement.

If it is impracticable to wait for a dumping finding before withholding appraisement, then we would suggest striking from section 201 (b) the words "has reason to believe or suspect" and inserting in lieu thereof "has substantial evidence in hand to justify a reasonable belief." This should take care of a number of the cases where this unjustifiable penalty is now being imposed, and would discourage frivolous complaints unsupported by substantial evidence.

I would like to move now to a particular section of H. R. 6006, which is of particular interest to those involved in the trade between the United States and Japan.

Because of the nature of the Japanese domestic market and the economic circumstances prevailing in most of Japan's principal export markets other than the United States, many Japanese exports to this country are unique in that they are produced exclusively, or almost exclusively, to meet the demands of American consumers.

This means that, because of the absence of home-consumption sales and the insignificance of third-country sales, the cost-of-production (or constructed value) approach must be used in many cases involving dumping complaints against Japanese products. Therefore, our council is particularly interested in the definition of constructed value to be adopted.

It is interesting to note that the definition of "constructed value" adopted by the Congress in passing the Customs Simplification Act of 1956 appears word for word in section 206, as proposed by H. R. 6006, with one significant exception. The provisions of a minimum of 10 percent of costs to be added for general expenses and a minimum of 8 percent of costs plus general expenses to be added for profit were carried over from the original Antidumping Act.

Our council believes that this exception should be eliminated so that both acts coincide in language and effect. Economic circumstances, tax structure, accounting methods, and other industrial and social elements differ from country to country.

Attempts to enforce American concepts of expenses and profit in foreign economies are unjustified. The customs investigators are qualified to determine the prevailing rates in the country concerned, and these are the ones that should apply. They are, in fact, used in determining constructed value for the purpose of assessing United States customs duties. The Treasury Department should have gone all the way in conforming Antidumping Act definitions with Customs Simplification Act definitions.

We recommend that the final phrase of section 206 (a) (2), beginning with the word "except," be stricken—as a matter of both equity and simplification. In the event, however, that the Congress wishes to retain the 10 percent-8 percent formula, we respectfully suggest that the figures be inserted as normal standards for the guidance of customs officials, but leaving to them some discretion to adjust to prevailing conditions in the exporting country.

The United States-Japan Trade Council appreciates this opportunity to convey its views on the Antidumping Act to the Senate

Committee on Finance. I, personally, thank all of you for your kind and courteous attention. If we can be of further assistance to the committee on this, or other matters, we would be most happy to oblige.

Senator FREAR. Just one question, Mr. Stitt. On page 5, about two-thirds the way down, in the second paragraph, you say, "The cost of production (or constructed value) approach must be used in many cases involving dumping complaints against Japanese products." How many?

Mr. STITT. I think of the cases which have come up since 1945, there were about 12 or 13 cases involving Japan.

Senator FREAR. What were the products?

Mr. STITT. 1949, umbrella handles; 1949, magnifiers and lenses; 1950, shark-liver oil; 1950, work clothing; 1953, rayon staple fiber; 1953, plywood; 1954, sewing machine heads; 1955, chinaware; 1955, agar-agar; 1955, canned tunafish; 1955, frozen tunafish. And in addition to these particular commodities in the Treasury report, there has been one particular report on frozen albacore tunafish in 1957. Particularly in tunafish, the cost of production approach is the only one that should be used. I am not familiar with some of the other cases. In the plywood case you know that the cost of production had to be used, and I do believe, although I don't have the exact facts, that in the majority of them, the Treasury had to move on to constructed value in order to examine the case. I would like to emphasize that since 1945 no finding of dumping has been made in a case involving a Japanese product.

Senator FREAR. I was wondering about the number of the production?

Senator Williams?

Senator WILLIAMS. No questions.

Senator FREAR. Senator Douglas?

Senator DOUGLAS. Mr. Stitt, on pages 3, 4, and 5, you say that the withholding of appraisement constitutes a heavy penalty upon the importer of commodities?

Mr. STITT. Yes, sir.

Senator DOUGLAS. And upon importers generally. Would you outline the various ways in which the withholding of appraisement would do an injury?

Mr. STITT. Yes, sir. When the complaint is received and the Treasury Department initiates an investigation, the first thing that is done is that the customs collector is notified to withhold appraisement. This informs the importers that they are subject, perhaps, to some future levy, the extent of which they know not. And, therefore, it throws their whole cost and pricing structure off. They have to put up a bond to bring these commodities in after the announcement of withholding appraisement. So that many of them operating on rather thin margins are reluctant to bring the commodity in and sell it, being unaware of what their final cost is going to be.

The importing business frequently has to operate on rather narrow margins, and these gentlemen hate to jeopardize themselves and take the risk of some unknown future assessment.

Senator DOUGLAS. That is the injury to which you refer?

Mr. STITT. Yes, and it is a very substantial one, sir.

Senator DOUGLAS. Now the previous witness on page 7 of his testimony stated in the case of foreign pipe fittings that they are being sold in this country—sold to this country at prices varying from 24 to 37 cents lower than similar fittings are sold in the country of origin, namely, Japan. Do you know anything about that?

Mr. STITT. I don't know much about that case specifically, sir, I would be very happy to investigate it and submit a supplemental report on that.

(The following was later received for the record:)

UNITED STATES-JAPAN TRADE COUNCIL,
Washington, D. C., April 2, 1958.

Hon. HARRY FLOOD BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: This is in answer to two questions raised during my testimony before your committee on H. R. 6006, to amend the Antidumping Act of 1921.

1. I stated that, of the Japanese products investigated under the act since 1945, a considerable number had been decided on a cost of production (or constructed value) basis. Senator Frear inquired how many had been so determined.

There have been 16 cases involving Japanese imports since the end of the war. In my testimony, I enumerated 13 of these. I was then unaware of three recent cases, investigated in 1957; nail hammers, sledge hammers, and rakes, and hoes. In exactly half (or 8) of these 16 cases, the cost of production formula was used in determining the value to be compared with the purchase price or exporter's sale price. The eight products involved were as follows: Umbrella handles (1949); magnifiers and lenses (1949); plywood (1953); sewing machine heads (1954); "bamboo" chinaware (1955); canned tuna fish (1955); frozen tuna fish (1955); and frozen albacore (1957).

It should be noted that the items for which the cost of production approach was used in determining value are far more important tradewise than those where this basis was not used. Our council, therefore, is keenly interested in the act's definition of constructed value; we urge the Finance Committe to conform it to the definition of the Customs Simplification Act of 1956 by eliminating the 10 percent to 8 percent formula for general expenses and profit.

2. The witness who preceded me, Mr. Albert A. Carretta, alleged that large quantities of Japanese malleable iron pipe fittings were entering the United States at prices 24 percent to 37 percent lower than prices for similar fittings within Japan. Senator Douglas inquired of me as to the truth of this allegation.

The United States-Japan Trade Council is investigating the charge and will submit to you and to Senator Douglas a detailed report when in possession of all the facts. Our inquiries to date, however, have uncovered two elements in the situation which cast some doubt upon Mr. Carretta's accusation of "dumping." First, the pipe fittings sold in Japan are British standard and are dissimilar in many respects from the fittings of American standard exported to the United States. For example, the American standard fittings are banded; the British standard fittings are not. Interchangeability in the smaller sizes, as alleged by Mr. Carretta, is no proof of similarity. Rejection of the dumping complaint of his client by the United States Treasury Department was, we believe, well founded on the basis of lack of similarity. Second, it is very likely that Mr. Carretta's price comparisons utilize Japanese manufactures' "list prices" as examples of home market value. The practice of selling "off list," or at a discount, is just as widespread in Japan as it is here, however, and "list prices" therefore are most unreliable as evidence of going, or market, prices in Japan.

My testimony before the committee dealt largely with the general inadequacies of the present Antidumping Act and did not specifically cover many of the provisions of H. R. 6006. The acting chairman kindly granted me permission to submit a supplementary statement on the bill under consideration. I would appreciate your insertion of the enclosed statement, together with this letter, in the record of the hearings.

Sincerely yours,

NELSON A. STITT, *Director.*

SUPPLEMENTARY STATEMENT OF UNITED STATES-JAPAN TRADE COUNCIL

H. R. 6006 incorporates, in the main, the Treasury Department's suggestions designed to tighten the enforcement provisions of the Antidumping Act. The heart of the act, section 201 (a), with its concepts of "fair value," "industry," and "injury," is left untouched by H. R. 6006. The United States-Japan Trade Council is sympathetic with attempts to improve enforcement under the act (although we seriously question whether some of the proposed changes would be improvements) but we cannot support any of such amendments with enthusiasm unless the substantive language of section 201 is clarified. There is no equity in better enforcement if the law being enforced lacks equity.

FAIR VALUE

The concept of "fair value" was discussed at some length in our testimony. Presently, the Treasury Department equates "less than fair value" with a mere arithmetic difference in price. Since price differences are not unfair, per se, we recommend that the Congress clarify its intention to apply sanctions only to unjustifiable price differentials, i. e., "dumping." It would seem elementary justice that there be some inquiry into the fairness of a particular price difference before it is labeled as "less than fair." Since Treasury refuses to do so, it is encumbent upon the Congress to make its meaning clear.

INDUSTRY

This is another basic term in the act which, by Tariff Commission interpretation, has come to mean something other than the word itself would seem to imply. In the cast iron soil pipe case, decided in 1956, the Commission found that only 6 producers, located in California, of a nationwide industry of over 60 producers, constituted an "industry" under the Antidumping Act. This interpretation, if followed to its logical conclusion, could permit a finding of injury in every case, since somewhere in the country some marginal producer is bound to be in difficulties. The Congress, to our knowledge, has never countenanced this unusual device of the geographic segmentation of industry. It is recommended that the act be amended to define "industry" in its universally accepted sense as the entire group of producers of the particular commodity involved.

INJURY

Representatives of some domestic industries have advanced the notion that there is no requirement of materiality for the "injury" which must be found under the Antidumping Act. They insist that any damage, however slight, and whether or not casually related to the imports, is sufficient. The position of the Tariff Commission on this point is not clear. We believe the Congress meant more than just a minimal effect upon the domestic industry, and therefore recommend insertion of the word "materially" or "seriously" before the word "injured" in section 201 (a).

THE PROVISIONS OF H. R. 6006

Public notice

Section 201 (b) of the Antidumping Act would be amended by providing for public notice of the withholding of appraisement and for publication of the determinations of the Secretary of the Treasury and the Tariff Commission under the act, together with their reasons therefor. The United States-Japan Trade Council has no objection to the public notice of withholding of appraisement. In our testimony before the Committee, however, we objected to the Secretary's being authorized to withhold appraisement (a severe sanction) on mere suspicion, and recommended that he be required to have substantial evidence in hand before withholding appraisement. On the matter of publication of the determinations of the Secretary and Tariff Commission with the reasons therefor, we supported such a provision before the House Ways and Means Committee and are gratified that the committee saw fit to add it to the bill.

Restricted sales

Sections 202 (b) and 202 (c) of the act would be amended to permit Treasury to take into account (in computation of the dumping duty) sales in the home market upon which various restrictions have been placed after making due allowance for the effect of such restrictions on price. This change is designed to

bring the act's definition of "foreign market value" into conformity with the Treasury definition of "fair value" (Customs Regulations 14.7). As we pointed out previously, Treasury's definition of "fair value" does not accord with our view of the congressional intent. Changing the law to agree with the regulations places Treasury in the position of pulling itself up by its own bootstraps. We would hope Treasury might instead change the regulations to accord with the law. The United States-Japan Trade Council has no objection to the inclusion of restricted sales in the determination of "foreign market value" as long as this change does not imply congressional approval of Treasury's definition of "less than fair value" as a mere arithmetic difference in price disregarding the circumstances of sale which must enter into a determination of the actual "fairness" of the price differential.

Quantity discounts

Sections 202 (b) and 202 (c) of the act would be amended to permit Treasury to consider quantity discounts on sales in the foreign market as well as quantity discounts on sales to the United States. Under the present statute, only the latter is permissible. The Council has no objection to this change.

Other circumstances of sale

Sections 202 (b) and 202 (c) of the act would be amended to let Treasury consider other differences in circumstances of sale (such as credit terms and advertising and selling costs). Again, we have no objection, although it seems anomalous for Treasury to seek more discretion in the various elements that go into the computation of the dumping duty and, at the same time, to disavow any desire to investigate the economic elements that must enter into a determination of the "fairness" or "unfairness" of a particular price difference.

Such or similar

Sections 202 (b) and 202 (c) of the act would be amended to broaden the meaning of "such or similar" to grant Treasury authority to compare items which are not really "similar," as the term is now interpreted by the Customs Courts and the Tariff Commission. While we are sympathetic with Treasury's desire to avoid, wherever possible, use of the cumbersome and in exact cost of production (or constructed value) formula, we are positive that this amendment, as proposed, will add only uncertainty to the enforcement of the act. "Such or similar" are words of art in the law, with a settled meaning, and undue tampering with this meaning is inadvisable and could only stir up litigation. We have no objection to paragraphs (A), (B), (C), and (D) of subsection 3 of the proposed section 212 (Definitions), since these definitions of "such or similar" generally conform to accepted current usage and coincide with the provisions of the Customs Simplification Act of 1956. We would reject paragraphs (E) and (F) as reaching beyond the accepted meaning of "similar." These pragraphs are not in the Customs Simplification Act of 1956 and would grant Treasury authority arbitrarily to compare items dissimilar in actuality.

Home consumption sales inadequate

Section 205 of the act would be amended to permit, in the determination of foreign market value, the use of third country prices rather than home consumption prices where the volume of home country sales is so small as to be inadequate basis for comparison. The Council has no objection to this change.

Sales agency sales

Section 205 of the act would be amended to exclude from consideration as "sales," transactions between related persons and to permit use of sales agency prices in determining foreign value. We have no objection provided that, where sales agency prices are used, appropriate adjustment is made to reflect the costs of operation, distribution, and sales.

Constructed value

Section 206 of the act would be amended to substitute the formula for constructed value from the Customs Simplification Act of 1956 for the formula originally provided in 1921. The proposed new section would retain, from the 1921 act, the provisions for a minimum of 10 percent of costs to be added for general expenses and a minimum of 8 percent of costs plus general expenses to be added for profit—provisions which do not appear in the Customs Simplification Act. For reasons stated in our testimony before the committee, we recommend elimination of these special provisions and exact conformaiton with the Customs Simplification Act of 1956.

Definitions

Section 212 would add certain definitions to the act. Some of these have already been commented upon. Speaking generally and with exceptions already noted, we have no specific objection to the definitions set forth, with the reservation that it might be better, in the interest of uniformity, to hold the differences between these definitions and those of the Customs Simplification Act of 1956 to a minimum.

In closing, the United States-Japan Trade Council wishes to place itself on the record as wholeheartedly endorsing the general objectives of the Antidumping Act. We are opposed to unfair international price discrimination and predatory dumping. Such changes as we have suggested are in the interest of removing certain inequities embedded in the present act and its administration. We strongly oppose misuse of the Antidumping Act as a protectionate device and trust that the Senate Finance Committee will not countenance amendments of that character.

Senator DOUGLAS. Good. Now I take it that you believe the present act should be amended in a number of respects, and that many of the terms should be more carefully defined?

Mr. STITT. Yes, sir.

Senator DOUGLAS. Do you think, then, that there should be further hearings on this point?

Mr. STITT. I believe so, sir. Our feelings as to this act are mixed to this extent. We have no objections to the efforts to improve the enforcement of the Antidumping Act if the Antidumping Act defines dumping as we think it should be defined. We are reluctant to endorse the tightening of the enforcement provisions without something being done about the substance of the provisions of section 201.

Senator DOUGLAS. May I say, as a supporter of the Robinson-Patman Act in this country, I, too, am very much opposed to unfair competition and discriminatory price cutting, of course, just as much or even more opposed to it, in that it favors the foreign producer over American producers.

I will say this, that if we ever get to the point of defining "less than fair value," I shall most certainly take issue with your definition as it is given on page 3, in which you say that "less than fair value" means an artificially low price not established in good faith. In other words, you have to prove bad faith before you can prove "less than fair value." I am not a lawyer, but I have read a great deal as to what the administrative theses are over the years. And for this interpretation of what is good or bad faith to appear in the innermost recesses of men's minds, I think, is an impossible task. You can't prove bad faith. I think that Oliver Wendell Holmes in his classic book on common law, which was published over 70 years ago, came much closer to the realities, which was that people should be held to the consequences of their actions as they could be foreseen by the average man of reasonable intelligence, that we are held to that standard, and more and more the law looks to consequences rather than to intent, as I understand it. And your conjecture as to a requirement that they must prove bad faith in my mind would vitiate any finding that would permit all kinds of predatory and unfair dumping.

So that if these hearings are held, I want to tell you, I shall be against your definition. I think it is indicative of a whole series of disputes which are likely to arise in that matter, and which probably do require congressional definition and action. We are already dealing with these issues in case of the Robinson-Patman Act, and

which, therefore, I think deserve more careful attention than merely a couple of hearings.

Mr. STITT. I don't want to enter the lists against such a redoubtable opponent as yourself. You must recognize, this was drafted from the standpoint of knowing that the Congress very seldom accepts a definition of this breadth. I drafted it as broadly as possible with the hope that if it were narrowed it would not be narrowed too much. I would be very happy to take out the good faith requirement, in fact, if it could be drafted so that the burden would be upon the importer to come forward with evidence that competitive circumstances in the American market or the conditions of a particular sale required a price differential, thus removing the burden from the administrators of the act, we would be entirely happy.

Senator DOUGLAS. Thank you very much.

The CHAIRMAN (Again presiding). Thank you very much, Mr. Stitt.

The next witness is Mr. Alan S. Hays.

STATEMENT OF ALAN S. HAYS, REPRESENTING PARFUMS MARCEL ROCHAS, INC., AND PARFUMS MARCY, INC., NEW YORK, N. Y.

The CHAIRMAN. Will you take a seat, sir, and proceed.

Mr. HAYS. My name is Alan S. Hays. I am an attorney with offices in New York and in Paris, France. A large part of my practice is devoted to work in customs matters.

I appear before your committee today on behalf of two American-owned companies, Parfums Marcel Rochas, Inc., and Parfums Marcy, Inc. Each of these very reputable companies imports perfumery into the United States, and markets the perfumery to stores for sale at retail in this country.

My testimony is in opposition to H. R. 6006 because business enterprises such as the two I have just mentioned would risk being seriously injured by the adoption of the bill, and perhaps even put out of business, although neither they nor the exporters from whom they buy their merchandise are engaged in dumping. In making this prediction of the effect which the amended act could well have on them, I am not exaggerating.

My testimony will be in four parts:

1. A rather general statement of position.
2. A very specific reference to one of the worst practical effects which the amendment would create.
3. The cost of administering the act if amended by H. R. 6006, and
4. How it seems to me the act should be amended.

Other witnesses opposing this bill have stated many arguments. In general, I concur in their reasoning, but I shall try to bring out a few additional arguments, using certain specific illustrations.

First, however, my statement of general position.

In 1956, as we know, Congress directed the Secretary of the Treasury to study the Antidumping Act and to recommend such amendments as he might consider desirable or necessary to provide for greater certainty, speed, and efficiency in the enforcement of the act.

Congress did not instruct the Secretary to recommend substantive changes. Yet, the Treasury proposals do amount to a radical revision

of substance. For this reason the bill is genuinely new and controversial, and I respectfully urge upon your committee the necessity of recognizing and treating it as such.

The significance of the proposed amendment is not as simple as it appears on the surface to be. The texts of the Antidumping Act and of H. R. 6006 are founded on customs phraseology. The vocabulary of customs is a jargon of its own. Ordinary English words and phrases have taken on special meanings often absolutely contrary to their usage in the business world, to such a degree that persons unfamiliar with the subject, and especially those who have not carefully studied customs jurisprudence, are frequently misled. For instance, the word "whole sale" in customs sometimes has been held to mean "retail."

An attempt is made in H. R. 6006 to define some of these expressions, but experience under the valuation provisions of the Tariff Act demonstrates—vividly—that the ultimate judicial interpretation of such language is often far removed from the deceptive simplicity of the words themselves.

Certain actions under the Antidumping Act are such as a determination of likelihood of sales at less than fair value or a determination of injury or likelihood of injury are not reviewable in the courts (and in passing may I say that this seems utterly unconscionable).

Action under the valuation provisions of the Tariff Act which was very recently amended to include some of the same definitions proposed in this bill is judicially reviewable.

Adoption of H. R. 6006 is, therefore, almost certain to throw the proposed new meaning of the Antidumping Act into confusion for years to come.

It is impractical to conduct any important continuous business where costs are unascertainable or uncertain, and it is certainly not the intent of your committee to recommend restraining legitimate international trade by rendering it virtually impossible to ascertain the landed cost of merchandise.

Worse, the proposed amendment provides that whenever the Secretary of the Treasury has reason to believe or suspect that the price to the United States of an imported article is less than the foreign market value of that article, he shall forthwith take action so that the customs appraisement of the suspect shipment and all other shipments like it are suspended until his investigation as to possible violation of the act has been completed and the parties found guiltless.

Investigations of this type often require months, and sometimes even years. The record shows that the overwhelming majority are found not guilty.

Meanwhile, the parties are punished in advance of any determination, and treated before trial as though guilty. For withholding of appraisement under such circumstances effectually prevents the importer from knowing his landed cost. In many instances where investigation is prolonged, the business may even be destroyed.

Under past practice, which the Treasury apparently proposes to change if this bill is enacted, this procedure, which is so contrary to accepted American standards of doing justice, is of lesser unfairness because the Treasury has acted on only relatively new sample cases ordinarily only when vigorous complaint has been filed.

But under the proposed amendment—and this is a change of substance—appraisement will be stopped whenever the price to the United States is less than the apparent foreign market value.

Assistant Secretary Kendall pointed out in his testimony before the House Committee on Ways and Means (p. 54) that—

> We are going to use a new invoice form which right on the face of it, will have two figures, one the home consumption price and the other one the price to the United States.
>
> Those are both prices in the country of origin. If there is a price differential, it will be flagged just like that and I think that that will go a long way toward improving the administration of the act.

Just how would the administration of the act be changed if the proposed amendment is adopted? Would the change constitute an improvement in the administration?

The change in administration indicated by the testimony I have just quoted can be best illustrated by referring to a specific situation.

Parfums Marcy, Inc., imports a perfume called Replique. The home consumption price of Replique which the exporter will be obliged to mark on the new form of customs invoice is, for the 1-ounce size, 2,209 French francs.

Senator DOUGLAS. Home consumption price, is that the price to the ultimate consumer, or the price at which the factory or the producer sells to whom?

Mr. HAYS. To the retailer.

Senator DOUGLAS. To the retailer?

Mr. HAYS. Yes, sir.

Senator DOUGLAS. And your company in France sells directly to the retailer?

Mr. HAYS. Yes, sir. This is equivalent to $5.26. The price of the 1-ounce size to the United States, which will also be marked on the new customs invoice, is $3.43. Thus, the price to the United States is lower by $1.83.

Consequently, the customs invoice would show sales to the United States at less than the apparent foreign market value. The Secretary of the Treasury would be obliged to open an investigation, and to cause appraisement to be withheld. In the end, he would find that the foreign market value indicated on the customs invoice is higher because it includes internal French taxes of about 25 percent, and because——

Senator DOUGLAS. Twenty-five percent?

Mr. HAYS. Yes, and because the exporter when selling in France for home consumption absorbs costs of home market advertising, selling expenses, delivery costs and so on, which are not applicable on the sales to the United States. Due to these factors, the Secretary would be required in the end to adjust the foreign market value downward to a price substantially the same as the price to the United States, and to determine that there is no violation of the Antidumping Act. Under the proposed amendment, his conclusion would be reached only after appraisements had been suspended, whereas under the existing practice no such withholding of appraisements would occur in such a case.

I have used Replique perfume as a concrete example. If the Antidumping Act is amended as per H. R. 6006 and is then conscien-

tiously applied, the same drastic fate would, I believe, be suffered by literally thousands of American importers. This is no idle preview.

The Treasury Department, in preparing its final list under the Customs Simplification Act of 1956, made a thorough analysis of the invoices covering American importations of fiscal 1954. Release A-148 of the Treasury Department dated January 28, 1958, disclosed that 16.6 percent of the total fiscal 1954 dollar volume of importations dutiable on the basis of value were such as to require their inclusion on the final list.

It is obvious that by far the greater part of current importations in this category would be subject to investigation under H. R. 6006, and that appraisements would be suspended accordingly. A vast stoppage of foreign trade would thus occur.

I respectfully suggest that before your committee gives definite consideration to H. R. 6006, you request the Treasury officials to prepare from their confidential records a tally sheet of the exact number of investigations which would have been necessitated in fiscal 1954 if H. R. 6006 had then been in effect.

Surely, the number would have been in the thousands. Yet, as in the case of Replique perfume, the vast majority of the investigations, and quite possibly even all of them, would ultimately show no dumping violation.

Far from constituting an improvement in administration of the act, H. R. 6006 would result in an enormous increase of abortive paperwork, causing unjustified injury to large numbers of importers.

What of the cost to the Government in administering H. R. 6006? The Treasury Department suggests that adoption of the bill would eliminate numerous investigations abroad as to the costs of production of the exporting manufacturers. Perhaps so. Let us revert, however, to the case of Replique perfume where the prima facie foreign market value is higher than the price to the United States. Determination of the statutory foreign market value could be made only by taking into account the "other differences in circumstances of sale" referred to in sections 202 (b) and (c) of H. R. 6006. These other differences in circumstances of sale exist, not in the United States, but in France. A serious consideration of such differences would necessarily depend upon investigation in France.

As the situation of Replique is typical, it is clear that foreign investigations would be called for in at least a big majority of cases.

To handle properly the thousands of investigations arising under the amended act, not only would the Treasury personnel in the United States require great enlargement, but also the staff of Treasury representatives abroad.

Would it not likewise, then, be a subject of pertinent inquiry on the part of your committee to ascertain from the Treasury the cost of administering H. R. 6006 before passing judgment on whether to recommend its passage, especially since its enactment would not in fact materially increase findings of dumping practices?

Finally, a word should be said on the constructive side. It seems to me that amendment of the Antidumping Act in accordance with the proposals made by the American Bar Association in the House would be wise. I favor also the proposals made in the House that the

standard for fair value be world prices rather than foreign market values. Those are the realistic fair values in international trade.

I thank this committee for the opportunity given me to express my views.

The CHAIRMAN. Thank you very much, Mr. Hays.

STATEMENT OF ROBERT N. HAWES, ON BEHALF OF HARDWOOD PLYWOOD INSTITUTE

The CHAIRMAN. Our next witness is Mr. Robert N. Hawes appearing for the Hardwood Plywood Institute.

Please have a seat and let us have your views.

Mr. HAWES. Mr. Chairman, members of the committee, my name is Robert N. Hawes. I am a partner in the law firm of Hawes, Gosnell & Dougherty. Our offices are at 1145 19th Street NW., Washington 6, D. C.

My firm has been for many years counsel for the Hardwood Plywood Institute, a trade association of hardwood plywood manufacturers.

The American hardwood plywood manufacturers have been seriously concerned with the administration of the Antidumping Act for a number of years. Their concern was due to their having been under attack from low-priced plywood imports produced in highly industrialized low-wage countries, such as Japan, plus the dumping of large quantities of plywood when such action met the convenience of the foreign plywood producers.

In 1952 the American producers of hardwood plywood suspected that plywood was being dumped by Finnish and Japanese producers into our markets. After months of investigation including the obtaining of reports from abroad, pricelists, and so forth, facts indicating dumping were established.

In November 1953 complaints were filed with the Treasury charging dumping of plywood by Japanese and Finnish producers. Nine months after the complaints were filed, the Treasury suspended apraisals on plywood from Japan and Finland. The reason for this delay in suspension of appraisal was never explained satisfactorily to the American industry.

In April 1955 the Finnish producers were advised by the Treasury that the Customs Bureau had found dumping, and the Customs Bureau's report was turned over to the Finns for review and explanation. The right to see the report was refused when requested by me, the representative of the American industry.

In October 1955, as counsel for the domestic industry, we were advised that dumping was not established in all Finnish shipments and, therefore, the Treasury was exercising its administrative discretion to make a no-dumping finding on the complaint against Finland. We were refused any further information or a copy of the Customs Bureau's report. The Finns had apparently explained the dumping to the satisfaction of the Treasury.

Twenty-three months had elapsed from the filing of the complaint and the rejection by the Treasury of the report of the Customs Bureau that there had been dumping.

In December 1955, 25 months after the filing of the complaint against Japanese plywood, I was advised that a no-dumping finding

would be made. We were refused a copy of the Customs Bureau's report and findings on Japan.

Two years passed before the Treasury made a finding in either case. In the interim, plywood flowed into the United States in ever-increasing quantities. The suspension of appraisement on plywood had no effect whatsoever on the quantities shipped by Japan and Finland—both increased. The importers appeared to have absolute confidence that the Treasury would not render a ruling adverse to their interests. The confidence was justified.

The Customs Bureau, after Treasury had formally dismissed our dumping complaints, charged a number of importers with duty assessments based on a higher foreign value for the plywood than the sales price on the invoices and customs declarations. I understand that the Customs Bureau contended that the sales price was less than the foreign market value.

As dumping is a sale to the United States at a price less than foreign market value, it would appear that all of these cases involved dumping. This hardly seems compatible with the no-dumping finding by Treasury on the industry's complaint covering the period when these imports entered. These facts are common knowledge in the plywood markets, and the American producers of hardwood plywood have found it difficult to understand why its complaints were dismissed with a no-dumping finding.

The experience of the industry which we represent indicates that the Antidumping Act should either be amended to make it an effective weapon against dumping practices or it should be repealed. The record of enforcement of the act since 1934 is hardly one to instill respect of the importers and foreign producers for our laws, or one to create in our industries confidence in the agency charged with enforcement of the act.

In the period 1921–33 there were 54 dumping findings. From 1934 to 1957 there were 189 complaints and only 8 findings. There were 7 times as many findings in the first 12 years after enactment than in the past 23 years. It is inconceivable that 181 American industries would make baseless charges, particularly as a prima facie case must be made before Treasury investigators.

There should be some questions answered by the administrators of a law with such a record. The secrecy in which the investigations and the findings have been cloaked have made it impossible for complaining American industries to prepare an indictment of the administration of the act to present to Congress. It has been particularly galling that the Treasury's investigation reports have been made available to foreign producers but have been denied to the American industry concerned.

H. R. 6006 is, as the House report states, the Treasury bill with some slight amendments. In other words, the amendments to the Antidumping Act proposed in H. R. 6006 are the suggestions of the agency which has the enviable enforcement record cited above.

It is the view of our industry, after our unfortunate experience, that H. R. 6006 does little to insure proper administration of the act. We have been advised that plywood is being dumped into our markets today. The very low prices charged by one exporting country has forced other foreign countries to reduce their prices to the United States below the sales price in their own countries. We do not see

how we could conscientiously recommend a complaint under the Antidumping Act as amended by H. R. 6006.

REPORTS AND HEARINGS

H. R. 6006, section 201 (c), provides that the Secretary shall state his reasons for his determination. Reasons for an action and a report detailing an investigation are two entirely different things. A report on the facts developed is what is needed.

This section should provide that the Secretary make a report of the facts developed in his investigation plus his findings based on the report. Unless the Secretary is required to make a report, the facts on which the finding is based will be buried under the stamp of "Secret" or "Confidential" information. We, who have been through these proceedings, usually know the reasons for a finding, but cannot have the facts that support the finding.

H. R. 6006 does not provide for public hearings. It has long been the complaint of importers that the Treasury did not grant public hearings. We, too, think that there should be public hearings with an opportunity for all interested parties to be heard. All the evidence on which the finding is to be based should be required by the act to be presented at the hearings. The right to resort to the excuse that information is secret or confidential should be eliminated. If importers and foreign producers do not want the facts to be disclosed, then there is some reason to suspect such facts.

It is strange that Treasury should object so strongly to public hearings. Treasury may feel that an open hearing with a record would preclude the exercise of what Treasury terms "administrative discretion."

The Secretary of the Treasury should be required by the act to make a full and detailed report on all dumping investigations; the domestic industry should be permitted to review this report, just as the foreign producers are presently allowed to do.

TIME TO MAKE INVESTIGATION AND REPORT

H. R. 6006 sets no time limit for the Secretary to complete his investigation and make known his finding. The 2 plywood cases were pending 23 and 25 months, respectively. In our opinion, this delay was inexcusable. The only conclusion we can fairly draw is that the first investigations found dumping, and reinvestigations were required to overcome such findings.

All parties are entitled to a quick, but thorough, investigation. Four months should be ample time for Treasury to complete its investigation. We strongly recommend that 4 months be fixed as the time to make the investigation and report.

APPEAL FROM RECOMMENDATIONS

H. R. 6006 does not provide for an appeal for the American industry from a finding of the Secretary. Importers have an appeal from the assessment of the antidumping duty under section 210 of the Tariff Act of 1930. American industry has no appeal from the Secretary's no-dumping finding. The omission of the right of appeal

gives the Secretary an autocratic right to determine antidumping complaints without fear of being overruled or having his findings challenged.

So long as there is no appeal from the Secretary's findings, the Secretary will continue to decide cases on the basis of administrative discretion. This situation has existed for the past 22 years and, until Congress provides for a review of the Secretary's actions, there will not be a change.

INJURY

H.R. 6006 does not amend the provisions of the act requiring a finding of serious injury to the domestic industry. Injury to the domestic industry is no part of dumping proceedings; dumping is an unfair trade practice, recognized as such by GATT and all countries. Dumping duties are assessed in other countries without consideration of injury to the domestic industry.

Our act favors the foreign producers and importers who flout our laws against dumping. The failure of the Treasury Department to recommend the elimination of the injury requirement is based on Treasury's belief that dumping must be a predatory act with the avowed purpose of destroying the competitive American industry.

Therefore, until an American industry is in serious condition, there is no dumping under Treasury's theory. Dumping today is a hit-and-run proposition; the foreign exporters and American importers know the weakness of the act, so, by hitting areas one at a time, damage to the entire industry cannot be proved. The damage to the industry in the area is real and serious, but that is not dumping under the act. The injury should not be a consideration. We believe that the act should be amended to eliminate the requirement of injury to American industry.

Amendments to the Antidumping Act are essential, but should not be made unless the real core of the trouble is to be reached. The House Ways and Means Committee were put under a great deal of pressure to get out H. R. 6006. I believe if time had permitted consideration of various amendments, a bill would have been written which would have brought some order out of a chaotic situation which merits serious consideration of Congress.

Senator Magnuson's bill, S. 1671, has amendments which are the very minimum required to make this act operative. Unless your committee feels that it can give the time required to study and review the facts and reasons which lie behind the proposals in S. 1671, then we hope that you will not report any bill at this session but make a complete and thorough investigation next session.

We thank you, on behalf of our clients, for granting us the opportunity to appear before you. We hope that you will consider what we have said.

Thank you.

The CHAIRMAN. Thank you for appearing.

Proceed, Mr. Rode.

STATEMENT OF JOHN D. RODE, ON BEHALF OF THE ASSOCIATION OF THE CUSTOMS BAR

Mr. RODE. Gentlemen, my name is John D. Rode, and I appear on behalf of the Association of the Customs Bar.

Our position here is the same as it was before the House Committee on Ways and Means. We take no position on the advisability or merits of antidumping legislation in general, but we wish to be heard on matters relating solely to procedure and judicial review. As specialists in the field of customs law, our members have had a great deal of experience in the actual application and effect of this law, and we offer the following suggestions in the hope that they may prove helpful to this committee.

I should state also that our association endorses the recommendation of the standing committee on customs law of the American Bar Association.

The amendments to H. R. 6006 adopted by the House, providing for notice to be given of suspicion of dumping, and for notice of the decision of the Treasury Department as to its determination of fair value and of the decision of the Tariff Commission as to the question of injury, were suggested and recommended by us, and we feel they are steps in the right direction.

The following proposals, we feel, merit your further action:

1. Interested parties should be given an opportunity to be heard in the case of investigation as to fair value by the Secretary of the Treasury and in the case of determination of injury by the Tariff Commission. This opportunity is usually permitted by both of these authorities but it should really be a matter of statutory right, as in escape-clause cases and matters arising under sections 336 and 337 of the Tariff Act.

2. There should be a complete record kept of all proceedings before the Tariff Commission on the question of injury. Testimony should be reduced to writing. The determination of injury is at best a difficult problem, and a full record should benefit the Government, the importers, and the domestic interests and should act as a guidepost for the future.

3. A determination of injury by the Tariff Commission should be subject to judicial review in the same manner as are the Secretary of the Treasury's findings of value, price, and so forth, under the present law. An amendment to this effect would seem advisable, this function having been transferred from the Treasury Department to the Tariff Commission by the Customs Simplification Act of 1954.

4. Finally, we suggest that the unfair and retroactive application of the Antidumping Act needs revision. Under the present law, a finding of dumping applies to all unappraised merchandise entered not more than 120 days before the question of dumping was raised by or presented to the Treasury Department. This liability extends to such unappraised merchandise regardless of the reason for the delay in appraisement and regardless of the fact that some ports of entry may be far behind other ports in their appraisement of identical merchandise.

There is no magic in the 120-day period. The fact that occasional spot dumping may go unpenalized is no reason for condoning retro-

active penalties on regular shipments in the usual course of trade. The Treasury Department has stated:

"With regard to decisions as to dumping price, the Treasury sees no justification for regarding these as anything more than an exercise in arithmetic."

Certainly a period of 1 or 2 days should be ample time for the Treasury Department to make even the most complex calculations it might face in a dumping price finding.

Gentlemen, I have been almost dangerously brief commenting on this very complicated matter of antidumping legislation. Our association will be very glad to assist you or your staff further and in detail at your request.

Thank you for the courtesy in permitting us to appear here today.

The CHAIRMAN. Thank you for appearing, Mr. Rode.

The next witness is Mr. Tyre Taylor, of the Southern States Industrial Council.

STATEMENT OF TYRE TAYLOR, GENERAL COUNSEL, SOUTHERN STATES INDUSTRIAL COUNCIL

The CHAIRMAN. We are glad to see you again and we will be glad to have your statement.

Mr. TAYLOR. Thank you.

Gentlemen of the committee, my name is Tyre Taylor. I appear here on behalf of the Southern States Industrial Council, the headquarters of which are in the Stahlman Building in Nashville, Tenn. my address is 1010 Vermont Avenue here in Washington.

The council was established in 1933. It is a nonprofit regional organization representing virtually all lines of industry in 16 southern States from Maryland to Texas, inclusive. This membership includes chemicals, cotton and woolen textiles, ceramics, lumber and plywood, paper, petroleum, and many other industries which have a direct, vital interest in the matter which this committee is considering today.

I do not know the number, but I am certain that the council's membership includes some firms whose applications for relief from unfair dumping competition have been denied and a larger number who have been hurt but recognized the futility of applying for relief under the act.

At a meeting of the council's board of directors held in Hot Springs, Va., on May 24–25, 1957, its position on international trade was reaffirmed. Among other things, this position calls for protection of American producers and workers from the unreasonable and unfair competitive practice of dumping. My appearance here today is pursuant to that directive and authorization.

And I wish to say, Mr. Chairman, we are deeply grateful to the committee for this opportunity to present our views.

It is generally if not universally recognized and accepted that the Antidumping Act has proven ineffective. However, if any proof were needed that the act has been virtually inoperative and a dead letter, it is supplied by the fact that, of 92 applications for relief filed under it over the past 10 years, only 2 were granted and 90 denied. Without going into any great detail, I should like to mention some of the reasons which we believe to be responsible for this dismal record.

A controlling factor has been, of course, the extremely liberal foreign economic policy of the Government in recent years. For a variety of reasons, the Roosevelt, Truman, and now the Eisenhower administrations have wanted the freest possible trade with the non-Communist world.

Accordingly, where they have had discretion, they have not hesitated to use it in furtherance of foreign policy generally. I think it is also only a statement of fact to say that they have done this without too much regard for the adverse effect upon American industry and American workers. This is shown not only in the extreme reluctance to make a finding that dumping has occurred, but in a multitude of tariff reductions and by militant, all-out support of Trade Agreements Act extensions, GATT, and OTC. There is no question but that, given an administration friendly to the congressional intent and purpose in enacting the Antidumping Act, the record would have been quite different. However, the act itself is deficient is several important respects.

No. 1, the definition of foreign market value. And I will not discuss that, Mr. Chairman, because we think that the House bill takes care of it very well.

No. 2, the words "such or similar merchandise," we also think that that has been taken care of very well.

No. 3—and I would like to emphasize this—there also should be, and in our view this is most important, some definite criteria of injury written into the act. When is a United States industry injured? When it is threatened with extinction? When it has to lay off—temporarily or permanently—a significant percentage of its employees? Or when it is prevented from expanding by unfair foreign competition?

We feel that these criteria should be both definite and reasonably broad. With the act as it now stands, it has been virtually impossible to establish "injury," even though the affected industry may have been suffering severely.

Many of our members are small concerns and are frequently without the facilities or resources to prove injury, even though the criteria were made definite and broad. For this reason, it is respectfully suggested that consideration be given to shifting the burden of proof that there has been no injury to the foreign exporter once the fact of dumping has been established.

I may add that proof of injury is not necessary to establish dumping. By universally accepted definition, dumping is conclusively esetablished upon proof that there has been a sale of merchandise in this country at a price lower than the foreign producer sells it for in his own country.

No. 4—and this is also a notable omission from the Treasury recommendations and the House bill—there should be a definition of the word "industry" with a view to protecting any segment of American industry which is adversely affected by dumping. The reasons for this are easily seen. If by industry we mean all of the various branches of, say, the textile industry, it would usually be impossible to prove that the industry as a whole was injured, though the producers of some particular product such as velveteens were being put out of business.

No. 5, we feel that the Treasury and Tariff Commission should be required to publish within a reasonable time the findings or reasons upon which their decisions are based. I believe that is taken care of in the House bill.

One important purpose of the act should be that of its deterrent effect. This, however, is now virtually nil as is evidenced by the paucity of proceedings brought under it—only 92 in 10 years—or an average of less than 10 annually. And no wonder. Its effectiveness as a deterrent is directly proportional to the certainty of its provisions and the promptness with which remedial measures can be applied.

I spoke earlier of the broad discretion conferred upon the Secretary of the Treasury by the existing act. We feel, as I have already tried to indicate, that this discretion is already too broad and should be restricted; that all general phraseology and ambiguities should be removed or clarified; and that every provision should be made as definite as possible.

I thank you.

The CHAIRMAN. Thank you very much, Mr. Taylor. Are there any questions?

Mr. TAYLOR. Thank you.

The CHAIRMAN. The next witness is Mr. George Bronz.

STATEMENT OF GEORGE BRONZ, ATTORNEY AT LAW, WASHINGTON, D. C.

The CHAIRMAN. Will you identify yourself and proceed?

Mr. BRONZ. Mr. Chairman, my name is George Bronz. I am an attorney with offices in the Hill Building in Washington. I have at various times represented importers in proceedings before the Tariff Commission, the Office of Defense Mobilization, the Treasury Department, and elsewhere. The representation of importers constitutes a substantial part of my practice.

I served as special assistant to the General Counsel of the Treasury Department for many years, and in that capacity my duties included participation in the determination of dumping questions in the Treasury.

My appearance today is not on behalf of any particular client. I am appearing in my own name, as an individual, and I do so simply to propose one amendment to the Antidumping Act. I have prepared a text of the specific proposal for amendment which I am submitting to the committee, and I ask that the clerk distribute copies thereof to the members. It will take me only a few minutes to explain the purport of the amendment as so proposed.

The Antidumping Act now provides that the Secretary of the Treasury may make a finding that a class or kind of foreign merchandise is being or is likely to be sold in the United States at less than fair value. Upon such finding, if the Tariff Commission also finds that imports of such merchandise are injuring or are likely to injure a domestic industry, a dumping order is issued by the Treasury. Such an order means that the appraisement of any merchandise of the class or kind specified in the order is held up while a determination is made as to whether the particular shipment is in fact being sold at less than fair value.

The result of the language of the present act is that when the Secretary of the Treasury determines that one exporter is selling his goods at less than fair value, an order may be issued which would affect all exporters of the same commodity. In practice, the orders usually specify imports of the commodity in question from one or more specified foreign countries. Exporters who are completely innocent of any charge or even suspicion of dumping, who may be the competitors of the guilty exporter in a foreign country, who may be hurt just as badly in their competition as any American producer is, are subjected, by the literal reading of the present text of the act, to the same dumping order. Such an order is, in effect, an injunction issued by the Secretary of the Treasury which puts the burden on the importer to prove that the particular shipment is fairly priced. The innocent importer can purge any particular import and prove that it was not sold at less than fair value. But, in practice, that may take many months, and during that time the importer will not know the duty for which he may be held liable, and, therefore, the price at which he may be able to sell the goods in this market.

The amendment I propose is designed to eliminate this injustice. It simply provides that if the Treasury makes a finding of dumping, the dumping order be applied only against the party found to be guilty of dumping. Other foreign exporters to the United States who may be wholly innocent of dumping should not be subjected to the same penalties as their competitor who has been found to have been dumping.

Therefore, I propose to the committee the adoption of an amendment of sections 201 and 202 as indicated by the underlining of the sheet I have distributed here to the committee.

I ask, Mr. Chairman, that the text of this amendment be included in the record at this point.

The CHAIRMAN. Without objection, it may be included.

(The amendments referred to are as follows:)

PROPOSED AMENDMENTS TO SECTIONS 201 AND 202 OF THE ANTIDUMPING ACT, 1921, AS AMENDED

SEC. 201. (a) Whenever the Secretary of the Treasury (hereinafter called the "Secretary") 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 by an exporter, 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. The said Commission, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in this Act called a finding") of his determination and the determination of the said Commission. The Secretary's finding shall include a description of the class or kind of merchandise to which it applies and of the exporter thereof in such detail as he shall deem necessary for the guidance of customs officers.

SEC. 202. (a) In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided for in section 201, exported by the exporter specified in such finding, entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping was raised by or presented to the Secretary or any person to whom authority under section 201 has been delegated, and as to which no appraisement report has been made before such finding has been so made public, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, than the cost of production) there shall be levied, collected, and paid, in addition to any

other duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

Mr. BRONZ. Thank you for the opportunity you have given me.

The CHAIRMAN. The committee will give full consideration to your amendment. Are there any questions?

The next witness will be Mr. Charles R. Carr, California Fish Canners Association.

The CHAIRMAN. Please proceed.

STATEMENT OF CHARLES R. CARRY, EXECUTIVE DIRECTOR, CALIFORNIA FISH CANNERS ASSOCIATION, INC.

Mr. CARRY. Mr. Chairman and members of the committee, my name is Charles R. Carry. I am executive director of the California Fish Canners Association, Inc., having its offices at Terminal Island, Calif., a trade association the members of which produce approximately 60 percent of all canned tuna packed in the United States.

I am not here to discuss generally the merits of the Antidumping Act. Rather I am here to bring to your attention a situation which concerns our members greatly and which it is hoped your committee may be able to cure.

Our members do not condone dumping. In order that there might be no misunderstanding, our membership at a meeting on July 18, 1957, reiterated the position it has taken consistently as long as it has been in existence that it is strongly opposed to the dumping of any commodity by any country in the United States.

The members of the California Fish Canners Association are in a rather awkward position in their operations. These canners are forced to depend on imports of raw material for part of their supply. The same countries that supply the raw fish to us also sell canned tuna in the United States in competition with our finished product.

Our members are, therefore, potentially the victims of complaints about dumping when they purchase part of their supply of raw material especially if the purchase is made at a favorable price because of a temporary oversupply in the exporting country and at other times they must be on their guard to prevent the finished product from being dumped in this market.

The commodity which causes us the greatest concern with respect to possible allegations of dumping is the product frozen albacore tuna. This fish is a member of the tuna family which is highly seasonal in occurrence not only in the United States fishery but in the Japanese fishery and there is at this time serious question whether the domestic albacore fishing fleet is able to provide all of the requirements of the domestic canners for this particular species. In other words, we must buy part of our requirements abroad, especially if we wish to keep our canneries operating most of the year.

In recent years there have been two complaints concerning the dumping of frozen albacore. The filing of a dumping complaint, as has been pointed out by others many times, inevitably causes purchasers in this country great difficulty. The mere announcement of the withholding of appraisement not only prevents the buyer from reselling the merchandise, or selling a processed product made from an imported raw material, but in some cases such an announcement causes the foreign shipper to withhold shipments of the merchandise.

This happened to many of our canners on the occasion of the two complaints. The Japanese Government refused to issue export permits for the shipments of albacore until the Treasury Department announced that no basis for a dumping complaint existed. Until the announcement was made, however, those of our members who are forced to rely on imported frozen albacore as a source of raw material were seriously handicapped in their operation.

The withholding of shipments from Japan took place at a time when albacore are not customarily available to our fishermen in any quantity. Our members who needed this tuna found their schedule of operations completely upset and their inventories depleted almost to the point of nonexistence. Upsetting of production schedules is a costly and serious problem. Depletion of inventory is a serious matter also in the highly competitive field of tuna merchandising.

Our problem may be unique. Although I have listened to many discussions of the Antidumping Act, in no case have I heard any discussion whatever of how this act affects the importation of seasonal perishable commodities. Apparently our industry is the only industry where the importation of such a product may give rise to an allegation of dumping. If this be so, it would seem that special provisions must need to be writen into the law to cover seasonal, perishable commodities such as albacore.

There is a further unusual factor about our industry in that the product is not raw albacore when we purchase it in Japan, but rather frozen albacore and apparently our purchases of frozen albacore are the only purchases of this particular commodity in the world at this time. The Japanese canning industry ordinarily purchases only unfrozen fish, or if it purchases frozen fish at all, it purchases this product in such small quantities as not to constitute "sale for consumption in the country of exportation."

There are at the present time no sales of frozen albacore to countries other than the United States so that in practically every instance the fair value of the frozen tuna must be determined by referring to the "cost of production" or as H. R. 6006 woud now provide, the "constructed value."

Mr. Stitt touched on this in his remarks previously.

When dealing with a seasonal perishable commodity such as tuna, it is inevitable that there will be wide fluctuations not only in the price at which the fisherman will sell his catch on return to port, but the price at which the purchaser who subsequently freezes it for later shipment will sell. This fluctuation will be influenced by the size of the catch, the period of the year and many other things which do not enter the picture when non-seasonal, nonperishable articles manufactured or otherwise are considered.

There are perhaps two ways to cure the difficulty concerning seasonal perishable commodities. The first would be to make the Antidumping Act inapplicable to such commodities. I would not recommend this. There are times when dumping may in fact take place which neither we nor anyone else would want to escape penalty.

The other possibility is the insertion in the law of special provisions which deal with seasonable perishable commodities.

Although I am not an attorney, I have examined the law as carefully as I am able, and it seems to me that our difficulty at least could be cured by an amendment as follows:

On page 6, section 206 (a) (1), line 16, after the words "course of business," strike the semicolon, insert a comma and add the following language:

except that in the case of imported merchandise that is primarily a seasonal and perishable material and has been processed only by freezing to prevent spoilage, the raw materials cost shall be the price at which such raw material is sold or freely offered for sale in the country of exportation on or about the date of purchase or agreement to purchase of the merchandise imported into the United States.

This proposal is not designed to escape entirely the possibility that there may be allegations of dumping. It is designed only to give us some assurance of what our raw material cost will be when we purchase frozen albacore from other countries for canning in the United States. We are willing to take our chances that our business judgment as exercised by the purchase of the frozen fish is sound. If we are wrong, that is simply another one of the commercial risks taken every day in business.

The CHAIRMAN. Thank you very much, Mr. Carry. Your suggested amendment will be given consideration by the committee.

Are there any questions?

The next witness is Mr. Herbert E. Harris of the American Farm Bureau Federation.

STATEMENT OF HERBERT E. HARRIS II, ASSISTANT DIRECTOR OF INTERNATIONAL AFFAIRS, AMERICAN FARM BUREAU FEDERATION

Mr. HARRIS. Mr. Chairman, my name is Herbert Harris. I appear here for myself and Mr. George J. Dietz on behalf of the American Farm Bureau Federation.

With the chairman's permission, I would like to file my statement for the record, and to make some very brief statements in the interest of time.

The CHAIRMAN. Without objection, that insertion will be made.

(The statement referred to is as follows:)

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION PRESENTED BY GEORGE J. DIETZ, DIRECTOR OF INTERNATIONAL AFFAIRS AND HERBERT E. HARRIS II, ASSISTANT DIRECTOR, INTERNATIONAL AFFAIRS

We would like to express our appreciation for the opportunity to appear before this committee and to discuss the proposed amendments to the Antidumping Act. The views which we express here are based on the 1958 policies of the American Farm Bureau Federation, which state in part:

"For an economy to be dynamic and expanding, goods and capital must flow freely. This requires world trade and world investment. Government should encourage private investment and stimulate trade as an outlet for the increasing productivity of the world's farms and factories. This approach requires systematic abandonment of policies directed toward restriction of the production and distribution of goods and services throughout the world."

We do not support the proposed changes to the Antidumping Act embodied in H. R. 6006. Later in this statement we will give detailed reasons for this position and suggest policy that we believe is consistent with an expanding international trade.

During the past 3 years total United States exports have greatly expanded. However, our imports have failed to keep pace and there has resulted in calendar

year 1957 a trade imbalance of about $6 billion. The following is a table indicating this balance of trade pattern:

United States exports and imports of goods and services, 1952–56

[Billion dollars]

Calendar year	United States exports	United States imports	Trade imbalance
1952	13.3	10.8	2.5
1953	12.4	11.0	1.4
1954	12.7	10.3	2.4
1955	14.3	11.5	2.8
1956	17.3	12.8	4.5
1957	19.3	13.3	6.0

This imbalance of trade presents some real problems for the United States. It seems to us that there are at least two clear alternatives: (1) We can continue policies designed to increase trade on a reciprocal basis, or (2) we can continue to resort to high foreign-aid expenditures and agriculture will have to continue to rely on, what we choose to call, "interim programs" such as sales for local currency, etc. Farm Bureau feels that it is essential that United States foreign-trade policies be oriented to two-way trade on a mutually satisfactory basis. Certainly this is preferable to continued emphasis on the interim or emergency-type programs, and it is also preferable to a permanent policy of large appropriations for the mutual-security program.

UNITED STATES POLICY MUST STIMULATE EXPORTS AND IMPORTS

It seems apparent, therefore, that it is in the best self-interest of the United States to have a healthy two-way trade on a mutually satisfactory basis.

For this reason, the principles embodied in the reciprocal-trade agreements program are fundamental in building a sound and dynamic United States trade program.

Farm Bureau also recognized in the Customs Simplification Act, which was passed by Congress in 1956, an important means of eliminating the redtape and bottlenecks which impede trade.

The Antidumping Act was intended to guard against unfair trade practices of foreign companies who might attempt to destroy certain American industries and thereby monopolize certain markets. Farm Bureau vigorously supports American industry's right to such protection.

There is impressive evidence, however, that the Antidumping Act could be used as a device to thwart the progress made in customs simplification and other acts and thereby circumvent the trade-agreements program. If appraisements should be withheld indiscriminately on imported articles simply because the allegation of dumping is made, most of the progress made under the Customs Simplification Acts would be lost. It must also be considered a perversion of the Antidumping Act if it is used as a device to replace the normal escape-clause proceedings. An industry which feels that it can show injury or likelihood of injury due to trade concessions under the reciprocal-trade agreements program has recourse through the Tariff Commission under the escape clause.

PRESENT DANGER OF ANTIDUMPING PROCEDURES

The report of the Secretary of the Treasury to the Congress on the operation and effectiveness of the Antidumping Act recognizes (p. 18) that the withholding of appraisement on imported articles is the most feared sancion in the Antidumping Act. The act as amended states that appraisement will be withheld "* * * as to such merchandise held or withdrawn from warehouses for consumption not more than 120 days before the question of dumping has been raised. * * *" whenever the Secretary suspects that the sales price is less than foreign market value. Such action pleases foreign exporters and United States importers at great disadvantage. These traders must sometimes wait for months without knowing what the import duty will be on their merchandise. Under such conditions they must assume unwarranted risks if they proceed to sell the merchandise or they must suffer the disadvantage of delaying sales, thereby tying up capital

and often incurring storage charges. Such conditions can be defended if all or even a large percentage of these imports were actually in contravention of the Antidumping Act; however, this is not the case.

Since 1934, 228 investigations have been instituted with the resulting orders to withhold appraisements on the imports of merchandise affected. It has been determined that eight of these investigations indicated that the Antidumping Act was being violated. Therefore 96 percent of the instances where appraisements have been withheld due to antidumping investigations have been against innocent parties. The following is a table which sets forth these facts:

Decisions under Antidumping Act, 1934 to present

	Number	Percentage
Total cases disposed of	228	
Finding: No sales at less than fair value	138	64
Finding: No injury	28	13
Imports negligible or allegations withdrawn	54	19
Cases held not in violation of Antidumping Act	220	96
Finding under Antidumping Act	8	4

A device which tends to seriously impede legal imports to this extent must be considerd a trade barrier. Farm Bureau, therefore, strongly recommends that investigations not be instituted except where there is substantial evidence that the Antidumping Act is being violated. We further recommend that the processes be expedited so as to minimize the hardships on innocent parties.

CHANGES PROPOSED IN H. R. 6006 (TREASURE REPORT)

In this framework we would like to discuss briefly the changes proposed by the Treasury Department and incorporated in H. R. 6006. It is proposed (1) to redefine foreign market value in order to make possible the assessment of dumping duties whenever there is a finding of dumping; (2) to make possible the consideration of quantity discounts as well as other factors in order to arrive at an accurate f. o. b. factory price; (3) to permit the disregarding of domestic sales when they are relatively small; and (4) to make possible the use of similar merchandise as the basis for comparison.

Farm Bureau feels that these changes will have little effect upon the operation under the Antidumping Act. They will not correct the main deficiencies in the present procedures nor will they sufficiently guard against the possibility of unwarranted or indiscriminate appeals for antidumping investigations.

We see, however, in recommendation No. 2 the possibility that great uncertainty will be created in the minds of foreign exporters as to whether or not a given transaction will be considered dumping. This recommendation also creates posisbility of more extensive and time-consuming investigations. We would earnestly hope that consideration would be given to restrict the operation of this act to the original purposes for which the act was passed.

The American Farm Bureau Federation recommends, therefore, that instead of approving the proposed changes to the Antidumping Act (embodied in H. R. 6006), Congress make clear the original intent of this legislation and give the administrative agencies of Government clear direction as to the implementation of this act.

PURPOSE OF ANTIDUMPING ACT

We feel that the Antidumping Act of 1921 was intended to protect industry from unfair trade practices and to protect consumers from the creation of a controlled market through monopolistic practices. Whether or not a given trade practice is unfair probably cannot be determined through simply arithmetic. The fact that a foreign manufacturer's price is computed to be less in the United States than it is in his home country or to third countries indicates the possibility of unfair trade practice but it should not be considered as conclusive proof of an unfair trade practice. In the determination of whether or not there is dumping, consideration must be given to the competitive factors involved in the case. If an exporter's price does, in fact, simply meet the price of his competition, be it foreign or domestic, he should not be accused of dumping.

IMPORTANCE OF TRADE TO FARMERS

The volume of exports of agricultural commodities is vital to the American farmer. Agriculture has the capacity to supply a large foreign demand. Farm Bureau, therefore, has vigorously pursued policies designed to expand international trade. We will continue to give emphasis to programs that will create and further expand export markets for American farm production.

Since 1953, when our total farm exports amounted to only $2.8 billion, we have been able to expand our foreign marketing until in fiscal year 1957 they exceeded $4.7 billion. These exports represent the production from approximately 60 million acres of American farmland. Over 14 percent of total American agricultural production in marketing year 1956-57 went into export markets. It has been estimated that these export markets represent the production of approximately 1 million farmers and farmworkers in the United Staes. Thus it is clear that agriculture has much to gain by sound trade policies.

The following table indicates the tremendous importance of exports to some of our agricultural products:

Marketing year 1956-57 agricultural exports

Commodity	Production	Exports	Percentage exports-production
Wheat.........million bushels..	1,004.0	548.0	55
Rice.........million 100-pound bags..	32.2	26.3	82
Cotton.........million bales..	13.3	7.9	59
Tallow and grease.........million pounds..	3,398.0	1,540.0	45
Tobacco.........do....	2,179.0	501.0	23

In this struggle for export markets American agriculture has had to increasingly resort to various Government programs such as Public Law 480 (the Agriculture Trade Development Act) and section 402 of the Mutual Security Act. Over 40 percent of our exports in fiscal years 1956 and 1957 moved directly under programs of this type. If all Government programs which make exports possible by subsidizing the sales price are considered, it is our best estimate that more than two-thirds of our agricultural exports are under some special program. It is imperative that American agriculture not become overdependent upon these types of sales and that our export marketing be done through normal commercial channels for dollars whenever and wherever possible.

Public Law 480 sales for foreign currency indicate that substantial export markets exist for American farm products if countries are given the continuous opportunity to earn dollars with which to buy these products.

It is imperative that the United States pursue policies designed to expand multilateral trade on a mutually satisfactory basis. This means that we must avoid undue restrictions but must have the necessary machinery to give reasonable protection to the domestic industry. This applies to all segments of the United States economy.

Mutually satisfactory trade is a necessary instrument and perhaps the most important part of our foreign policy. Increased sale and export of agricultural commodities is very necessary for a healthy agricultural economy. We recommend that the Congress continue to give emphasis to programs designed to increase international trade. In this regard, we feel a 5-year extension of the Trade Agreements Act without "crippling" amendments, is of particular importance.

Mr. HARRIS. Mr. Chairman, the Farm Bureau does not support the proposed changes to the Antidumping Act embodied in H. R. 6006 at this time. We feel that the act is not at this time good legislation.

The committee are familiar with agriculture's interest in foreign trade. Over $4.7 billion of farm products went into export markets last year.

I will refer to page 6 of my statement which shows the tremendous impact that these exports had on some particular products: 55 percent of our wheat production, 82 percent of our rice production, 59 percent of our cotton production, and so forth.

In this framework, the Farm Bureau is extremely concerned over the amount of these exports that moved under special Government programs. Over 40 percent moved under Public Law 480, section 402, of the Mutual Security Act and Export-Import Bank loans. When we include the amount of exports that moved under subsidized prices, we have a figure of approximately 70 percent, which Government programs either directly or indirectly made possible.

The Farm Bureau is extremely concerned about this. For this reason we have vigorously supported the Reciprocal Trade Agreements Act, because we feel that there are only two possible choices: Either we continue to pursue policies that will expand reciprocal trade, or we will have to continue to resort to foreign-aid programs, interim programs for agriculture, and things of that sort.

Now, we feel like the Antidumping Act was intended to guard against unfair trade practices of foreign countries who might attempt to destroy certain American industries and thereby monopolize certain markets. The Farm Bureau vigorously supports American industry's right to this protection. However, we feel that this act has possibilities of thwarting progress made under the Customs Simplification Act which was passed by the Congress 2 years ago, and previous acts. We feel that there may be attempts to replace the formal procedures under the escape clause.

The Treasury recognized that the withholding of appraisements, is a real sanction on importers. We feel that an act which in its enforcement shows 8 actual violations out of 228 investigations—which again, Mr. Chairman, meant a sanction in each of the 228 cases, that is, the withholding of appraisement—we feel that such a record constitutes substantial evidence that this is a device which tends to seriously impede legal imports and to this extent the act must be considered a trade barrier.

We would earnestly urge, therefore, that instead of approving the proposed changes to the Antidumping Act as embodied in H. R. 6006, the Congress make clear the original intent of this legislation, and give the administrative agencies of Government clear directions as to the implementation of the act.

That concludes my remarks, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Harris.

Are there any questions?

The next witness is Mr. Wesley Cook of the Textile Workers Union of America.

STATEMENT OF WESLEY COOK, REPRESENTING TEXTILE WORKERS UNION OF AMERICA

The CHAIRMAN. Will you take a seat, sir, and proceed.

Mr. COOK. Mr. Chairman, I would like permission to file with the committee the prepared statement.

The CHAIRMAN. Without objection, it may be inserted.

(The statement is as follows:)

STATEMENT OF THE TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, IN SUPPORT OF AMENDMENTS TO THE ANTIDUMPING ACT

The Textile Workers Union of America supports H. R. 6006, passed by the House. We endorsed the House bills in this area and believe that the final bill should be approved by the Senate. Nothing has transpired since the hear-

ings last July before the House Committee on Ways and Means to have changed or altered our views on the subject. From our experience in the rayon staple industry, an effective antidumping law would be most useful in preventing destructive price competition from injuring the American industry.

Disapproval of the practice of dumping is widespread, if not universal. It is generally considered, even by freetraders, as an unfair business practice in international trade. Within the respective national boundaries, individual countries have the power to assure fair competition among the traders or allow for such price-setting practices as the Nation desires. But, in the international field, we have no means of preventing unfair-pricing practices except through national legislation designed to control imports within the respective countries. Dumping, being such an unfair practice, should be regulated, and is now covered by the 1921 Antidumping Act. The challenge is to improve its administrative provisions and procedures so that its purposes are more promptly realized. The proposed amendements are designed to overcome delays, close loopholes, and permit the collection of dumping duties where such imposts are properly required to realize the purpose of the law.

The practice of dumping is particularly serious in such industries as rayon staple, where production in most foreign countries exceeds their own domestic consumption. To keep their plants operating at or near full capacity, these producers are dependent upon foreign outlets. They are, therefore, intent upon selling the staple abroad. Their entire pricing policy is often directed to this purpose. Being large producers and controlling their own domestic markets through protective legislation or private agreements with foreign producers, they are insulated from competition in their own markets. As a result, they tend to set their own domestic prices at a level which would assure them handsome profits to cover a substantial proportion of their normal overhead costs. They are then free to move into the international market and to cut prices in order to assure themselves of foreign outlets. Because of the importance of the overhead costs in the pricing of rayon staple, the foreign producers have a wide range of choice in setting their prices, and will select the one which will assure them the sale of the volume of staple which they desire to dispose, irrespective of the effect of such sales upon the domestic industry of the country to which these products are sold.

The economic base for this two-price system is the protection which these companies obtain in their own domestic markets. From it stems the ability to engage in predatory practices in other countries. The foreign producers will vary the volume they wish to sell in the different countries, depending upon the volume of domestic consumption and their competitive positions in the various foreign countries. The price they will set for such sales to a single foreign country will depend upon their objectives rather than their domestic price schedule or cost structure. The result is definite dumping, which may in any one foreign market be sporadic and, in others, intermittent or continuous, depending upon the desires of the foreign producer.

As indicated, such a two-price system results in discrimination against the domestic consumer of the exporter, and often results in injury to producers in the countries to which the staple is exported.

The American rayon staple industry has suffered from such unfair competition. The prices at which staple has been sold in this country have tended to be below the prices charged for the product in the respective home markets. This practice has continued with impunity. We are informed that rayon staple which is selling for 31.5 cents in Austria is now being shipped to this country for 23 cents. Rayon staple is being sold in France for 37 cents, but the declared value of the staple when it is landed in this country is 24 cents. The contrast for Germany is 31.3 cents as compared with 24 cents declared value, and for Italy 28 and 24 cents, respectively. We believe that such disparity in prices is both unfair and destructive.

Another view of the manipulative practices followed by foreign producers in their effort to increase the volume of imports into this country is provided by the history of the declared value of the rayon staple imported into this country. In 1952, the average declared value was 41 cents. In 1953, it dropped to 34 cents. During the first half of 1954, it remained at 34 cents, but during the second half it declined to 28 cents. This remained the price during 1955, and it dropped to 27 cents in 1956. Following the reduction in prices in the latter half of 1954, imports rose considerably, as is attested by the fact that, in 1955, the imports reached an alltime high of 172 million pounds as compared with 68.2 million pounds in 1953 and 58.2 million pounds in 1954. Thereafter, the domestic pro-

ducers undertook to meet the price competition, and imports in 1956 declined to 92 million and the import volume is currently being maintained at this level.

The sharp shift in the source of our imports provides us with another view of pricing practices followed by these foreign producers. While the largest import source in 1954 was Belgium (19.7 percent), it dropped sharply in 1955 to be overtaken by West Germany and the United Kingdom. Norway, which was a large exporter in 1954 (13.9 percent), declined perceptibly in 1955. West Germany, which provided 18.7 percent of the exports in 1954, has increased its share of the market each successive year, and in 1955 provided 20.9 percent of the exports, 27.2 percent in 1956, and 32.9 percent of the imports in the first 4 months of 1957. France has seemingly also increased its relative share from 10 percent in 1954 to 14.4 percent in 1955 and 17.7 percent in 1956.

The individual foreign producers select the foreign markets according to their own best interests and adjust prices to assure their own success in selling their predetermined volume.

These dumping practices are not only unfair but, also, destructive. They divert a portion of the domestic demand to foreign sources on an unfair basis and then, therefore, unstabilize the market. The recurrent short-time operations, as well as the layoffs, reflect the effect of these imports. The domestic industry would be fully occupied if domestic demand is supplied primarily, if not exclusively, from the domestic sources.

It is generally agreed that the Antidumping Act should be modified to be more effective and easily administered. The two bills which we are herewith considering are desired to accomplish this purpose. The Secretary of the Treasury, in submitting his report, indicated that the administration can be changed to assure "greater certainty, speed, and efficiency in the enforcement of this provision." The present bills are intended to accomplish this purpose.

The major changes contemplated under the present bills will prevent the use of subterfuge to circumvent the purposes of the present bill and permit the facile calculation of "fair value." As the Secretary properly observed, the procedure should be such as to allow the agents to arive at a "fair value" through a simple arithmetical process. The most important basis changes contemplated by the proposals would eliminate the technical evasion used by importers which allowed them to place unimportant restrictions on home-consumption sales to avoid assessment of dumping duties, even if there had been a finding of dumping. Under the present bill, this act of nullification will no longer be effective. The Treasury would, under the proposed bill, be permitted to set a fair value on the home-consumption price in the country of export, regardless of restrictions. This change is of vital concern to the rayon staple industry, inasmuch as it has been a common practice to attach a restriction on the sale of the product which limits the purchaser to using it for further processing and thereby debars the imposition of any dumping duties on the import even when there has been a finding that the foreign seller had engaged in dumping. The purpose of the legislation is to bring the two concepts of "foreign market value" and "fair value" in harmony with one another.

The remainder of the amendments will permit the facile calculation of "fair value." It allows the calculation of quantity discounts and other conditions as circumstances of sales, thereby permitting the adjustment of the foreign value for credit terms, advertising and selling costs, minor variations in method of production or manufacture, and other terms of sales. One change would eliminate the possibility of continuing the subterfuge of using the sales agency as a blind for the determination of price. Another loophole will be closed by allowing the Treasury to use third-country prices rather than home-consumption prices if the volume of home-consumption sales is so small as to furnish an inadequate basis for comparison.

The belief underlying the Antidumping Act is that sales below the prevailing domestic price in the exporting country are unfair and tend to be disruptive of the normal flow of commerce. Its purpose is often predatory, and its effects in a foreign country can be most destructive. We believe that the establishment of a dumping practice in itself should be sufficient justification for action being taken to prevent this practice from continuing. Legitimate foreign trade would not be stopped. It is trade which rests on the exploitation as well as monopolistic control of the home market which would be stopped. If the present bill does not forthrightly provide for the assessment of antidumping duties as soon as a finding of dumping has been made, the concept of injury should be broadly conceived so that relief can be obtained from these unfair practices without great difficulty.

We in the Textile Workers Union of America know how destructive foreign competition can be. We have seen sectors of our industry destroyed by the flood of imports into this country from countries whose costs and prices are well below those prevailing in this country. These are being considered through the usual channels of tariff schedules and understandings with foreign countries. We would not like to see a continuance of the predatory practices which cause the destruction of sections of our industry. This destruction stems not from established differences in price, but from discriminatory practices which result in the dumping of foreign goods in the United States at prices below those prevailing in the exporting countries. Other countries have set up prohibitions against such practices by American exporters. We believe that similar restraints on importers will produce a more stable flow of goods among nations.

Mr. Cook. I would like to make brief remarks on certain aspects of the problem which are not included in the brief. The brief itself goes into the general principles of the economic problems. What I would like to discuss briefly is the effect on employment in the United States, both in the staple fiber industry and the supplier industries, which are largely chemical in nature.

As an aid to this discussion, I have asked the clerk to give the members of the committee some employment data of one of the corporations, which is a major producer in this field, the American Viscose Corp. The exhibit shows that when we finish the present short-time operations whereby employees work less than 40 hours per week for a limited period of 10 weeks, we will have on furlough, barring a sudden increase in production, in the Nitro, W. Va., plant of the company, 262 out of a total employment of hourly rated employees of 932. This is a reduction of 28 percent.

In the Parkersburg plant the corresponding figures would be a furlough list of 361 out of a total employment of 1,485.

In order to make the full significance of these figures clear to the committee, I should point out that the level of production in these plants is different from the level of the employment. For instance, the Nitro plant is currently operating and will, after the final termination of 262 employees, operate at a level of 56 percent of production, although only 28 percent will be laid off.

This, of course, means that the company's cost of production is tremendously high.

And the Parkersburg plant will be operating at a level of 50 percent production, although only 24 percent of the people will be laid off.

Now, this effect on employment and on production is true not only of the 5 or 6 companies which manufacture in this field of viscose process staple fiber; it is also true of all their suppliers.

And the supply problem, I feel, has not been given in these committee hearings sufficient consideration. Roughly the volume of supply to a plant is in the ratio of 10 carloads of supplies for 1 carload of finished product. I will give some specific figures to illustrate the relationship.

For instance, for every pound of staple fiber there is slightly more than 1 pound of woodpulp that has to be brought into the plant and processed. For every pound of staple fiber, somewhat more than 3 pounds of coal have to be transported to the plant site and consumed. For every pound of staple fiber, 1 pound of sulfuric acid must be consumed. For every pound of staple fiber, about seven-tenths of a pound of caustic soda must be consumed, and of carbon bisulfide, three-tenths of a pound. The domestic capacity to produce staple fiber is

roughly 450 million pounds annually. One freight car of staple fiber holds about 45,000 pounds.

So that the industry has an installed capacity to produce in terms of freight cars about 10,000 cars per year, and in terms of supplies it is 100,000 freight cars, for a total shipment in and out of about 110,000 freight cars.

Now, this is a very substantial item. It is of concern as regards employment in the chemical dissolving wood-pulp industry, in the coal-mining industry, in the basic chemicals, such as sulfuric acid, caustic soda, carbon bisulfide, and in the transportation industry.

If we were to take the figures of the actual production in the industry during 1957 and add to our domestic production the imports of approximately 84 million pounds, we would have operated at very close to full production in our industry. At the present time, when the recession not only in textiles but in the economy in general has reduced the general level of production to a considerable extent, the reduction in foreign imports has not kept pace. Whereas our domestic plants are operating from 50 to 60 percent of capacity, the estimated figures—the official figures for 1958 will not be available for some little time yet—the estimated figures show the reduction in staple imports to be in the neighborhood of 15 to 20 percent of the average for 1957.

The effect in the form of injury to the domestic economy, if you will refer back to the figures which I gave you relating to employment and level of production, is much more serious at the present low level of production in the economy than they would be at full or approximately full production, because it is impossible for the employer in reducing his level of operations to maintain the productivity per man hour at the same level as he does in full production.

So that in a case such as we are experiencing at the present time, the question of injury is at least twice as serious as it was in the last quarter of 1957.

(The employment data referred to is as follows:)

Employment data: American Viscose Corp., staple-fiber plants, hourly employees Mar. 17, 1958

Plants	Active employees	Number currently sharing time	Number now on furlough	Estimated number on furlough at end of time sharing	Total number employees with job rights (active and on furlough)
Nitro	837	833	95	262	932
Parkersburg	1,274	750	211	361	1,485

The CHAIRMAN. Thank you very much, Mr. Cook.

I notice you have plants at Nitro and Parkersburg. The American Viscose has two plants in Virginia.

Mr. COOK. Three plants in Virginia, sir.

The CHAIRMAN. Have you got figures on those?

Mr. COOK. Front Royal, Va., also produces staple fiber, sir. I will give you the figures for the plant as a whole, but I cannot break it

down between the tire yarn and staple fiber, the two products that they make there.

The complement of employees for the plant who have job rights under the contract are 1,939. Presently there are 171 on furlough, and when we finish the present sharing of time, which includes about 1,300 employees, there will be a total number of people on furlough of 431. This is roughly 25 percent of the total employment there.

The CHAIRMAN. That is at Front Royal?

Mr. COOK. Front Royal, Va. My estimate is that the breakdown as between staple fiber and tire yarn is approximately the same; there is not much difference in the level of production.

The CHAIRMAN. We are chiefly concerned about the staple fiber products and not the tire yarn?

Mr. COOK. The tire yarn is not affected by the dumping procedure, sir. There is very little shipment either in or out of the country in this category of goods.

The CHAIRMAN. At Roanoke there is larger employment?

Mr. COOK. The Roanoke plant is completely a textile fiber plant. The normal complement of employees there is 2,014. This is the number on the seniority roster who have rights for recall or are presently employed. We have at the present time on furlough 544, and we are sharing time in additional groups involving 190, so that when we finish the 10 weeks of sharing time in the balance of those groups, we will have a furlough list of 582.

The CHAIRMAN. Would you explain what sharing time means exactly?

Mr. COOK. Well, our contract, sir, provides for a normal 40-hour week. It also provides, if the orders of the company are not sufficient to provide for 40 hours of employment for all of the regular employees, that within the individual units, such as the spinning department, or the viscose department, we will share time in accordance with the work available, but not below an average of 32 hours per week per employee.

If for instance, the shortage of orders was such that it would require a 31-hour week or a 30-hour week, we would first lay off enough people to maintain the 32-hour week. Then after we have shared time in whatever degree it is between 32 and 40 hours for 10 weeks in a calendar year, we will furlough enough employees to go back to 40 hours, on the theory that permanent sharing of the work is not a good idea.

The CHAIRMAN. Thank you, Mr. Cook. You made a very clear statement.

Do you have any questions Senator Douglas?

Senator DOUGLAS. Mr. Cook, I was much interested in your statement on page 2 of your prepared memorandum about the price policies of the foreign producers of rayon that dealt with the point about which I sought information from the Treasury yesterday, and they were apparently unable to give it to me. What you say is:

> To keep their plants operating at or near full capacity, these producers

that is, producers of foreign countries—

> are dependent upon foreign outlets.

Mr. COOK. Yes.

Senator DOUGLAS (reading):

> They are therefore intent upon selling the staple abroad. Their entire price policy is often directed to this purpose. Being large producers and controlling their own domestic prices through protective legislation or private agreements with foreign producers, they are insulated from competition in their own markets. As a result, they tend to set their own domestic prices at a level which would insure them handsome profits to cover a substantial proportion of their normal overhead costs. They are then free to move into the international market and to cut prices in order to assure themselves of foreign outlets.

Now, this is a very important statement. Do you know the statement to be true?

Mr. COOK. I believe it to be true, sir. And from personal knowledge. Supposing I state what my qualifications are in this field. I am 56 years old, and I have lived in Europe for 6 years, all of it during my adult period. I lived in Germany from 1929 to 1932, and in Austria from January 1949 to January 1952.

In the first period I was a student at German universities; in the second period I was an employee of the United States Government assigned to the economic mission in Austria, popularly known as the Marshall plan. I believe, sir, that it is safe to say that European economies are controlled in a sense in which ours are not.

Senator DOUGLAS. They typically operate through cartels.

Mr. COOK. They frequently operate through cartels. But there is a relationship between these cartels and the government for the stabilization of their economy.

Let me give this as an example, sir: If one of the major producers of staple fiber in the United States—let us take this company I cited, the American Viscose Corp.—if they wanted to as a reprisal against what they consider dumping in this country to pick out the 2 or 3 largest importers to the United States and say, "We are going to dump our staple fiber in your country"—with the possible exception of West Germany they could not get away with it. They could not get a buyer, either because of the foreign exchange regulations, that is, your ability to purchase foreign exchange through national banks, or the tariff import licensing regulation, or because of the employers' self-imposed—let us call it the cartel—has certain regulations about where they are going to buy things. They would not be able, with the possible exception, I say, of Western Germany—and since the imposition of the antidumping law I am not sure that they could do it there—they would not be able to ship over and sell in that country at the price that that country sells here. I am talking about the wholesale prices.

Senator DOUGLAS. You are saying that we could not carry out reprisals against them. But is there evidence to indicate that they have controlled prices or a series of national prices about which the various producers are in agreement with each other to fix prices?

I suspected that for a long time, but the Treasury could not give me any information.

Mr. COOK. Sir, I could not possibly say that I could prove it, and you could ask me for the proof, and I would not have it. I can give you an opinion.

Senator DOUGLAS. I wish you would.

Mr. COOK. The way in which they arrive at the prices and at the limitations is fairly complicated, and it is not the same from one

country to another. Basically they have an enlightened self-interest in the healthy condition of their own country, and basically the price of staple fiber within those countries is one which the industry itself can live with, and that means that it covers all of their cost of operation plus a modest profit.

There are very few of those countries which do not have a surplus, although a lot of them are small—Norway, Sweden, Holland—they have very small surplus quantities and present no problem.

Senator DOUGLAS. You went on to say:

They are then free to move into the international market and to cut prices in order to assure themselves of foreign outlets.

Now, are you certain of that?

Mr. COOK. Yes, I am. The statement actually is a little too brief. There are many other reasons for doing it. The individual company may not have any control at all as to what market they are going to sell in. There may be a political condition or reason. For instance, the country may be short of dollars, and therefore they want to sell in the United States or in Canada. Or they may be trying to build up trade in the Middle East.

Senator DOUGLAS. I understand. But they will sell at lower prices f. o. b.?

Mr. COOK. They can afford to, and will.

Senator DOUGLAS. Even lower prices than they would charge to comparable purchasers in their own country under comparable conditions?

Mr. COOK. It is not only that, but below the actual cost of production, if that was all they were producing.

Senator DOUGLAS. That is, if the overhead were reduced?

Mr. COOK. That is right.

Senator DOUGLAS. This has always seemed to me to be an actual case of dumping, and one that needed to be guarded against.

Mr. COOK. It is a very difficult problem, but I am convinced, sir—and you know the general position of our union on the tariff, that we are not opposed to reciprocal trade—we do have doubts about some of the ways it is handled, we are in favor of international trade to a considerable extent, sir, but in this particular case we feel that there is actual dumping.

The CHAIRMAN. Thank you very much, Mr. Cook. We will give consideration to your full statement.

The next witness is Mr. O. R. Strackbein, who represents the Nation-Wide Committee of Industry, Agriculture, and Labor on Import-Export Policy. Will you have a seat and proceed?

STATEMENT OF O. R. STRACKBEIN, CHAIRMAN, THE NATION-WIDE COMMITTEE OF INDUSTRY, AGRICULTURE, AND LABOR ON IMPORT-EXPORT POLICY

Mr. Chairman, in my appearance before you I speak for the memmembership of the nationwide committee of which I am chairman, but I want to list specifically those members of the organization that have authorized me to speak for them in lieu of their making an appearance of their own.

Those who have a strong interest in strengthening the Antidumping Act but who will not appear here to present a statement separate from mine are:

The Florida Fruit & Vegetable Association
California Almond Growers Exchange
Pin, Clip & Fastener Association
Bicycle Institute of America
American National Cattlemen's Association
Oregon Filbert Commission
Soft Fibre Manufacturers' Institute
Rhode Island Textile Association
Carpet Institute, Inc.
United Wall Paper Craftsmen & Workers of N. A.
Tile Council of America, Inc.
National Match Workers' Council
Match Manufacturers
The National Wool Growers Association
The International Brotherhood of Operative Potters
Scientific Apparatus Makers Association
The Hat Institute
United Hatters, Cap & Millinery Workers International Union
The American Lace Manufacturers Association
The American Flint Glass Workers Union
Wine Institute
Cordage Institute
American Knit Handwear Association
Screw Manufacturing Industry (all types of screws)
Handbag Industry, National Authority for the Ladies'
California Fig Institute
Seafarers' International Union
Massachusetts Fisheries Association
Mushroom Growers Cooperative Association
Cultured Mushroom Institute
Umbrella Frame Manufacturers of America
Wall Paper Institute
United Mine Workers of America
Industrial Fasteners Institute
United States Potters Association

The Antidumping Act should not need amendment today, but, unfortunately, it does. This is because it is no longer effectively enforced. There was a considerable number of years when it was enforced. That was, however, before the Executive authority superseded the Congress in the regulation of our foreign commerce. Today the Antidumping Act is almost extinct. Its life hangs by a narrow thread. Unless it is given a powerful transfusion in the form of vital amendments it may as well be given a suitable spot in a museum, as an exhibit of what happens to congressional authority when it is entrusted to the Executive branch.

If we keep in mind that the Antidumping Act of today is the same as the act of 1921, the vast difference in the outcome of dumping cases calls for an explanation. One would guess from the results that some great changes must have been made in the law; otherwise how could such a wide chasm appear in the enforcement?

An examination of the trend indicates that the failure of enforcement of the Antidumping Act coincides with the general policy of liberalizing our trade restrictions beginning in 1934. There was neither repeal nor modification of the act at that time. Yet a complete change in the enforcement record took place. The executive branch merely took its cue from what it assumed to be the general

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policy and, without bothering to go to Congress, undertook to repeal the act in all but name by simply not enforcing it.

The fact that the Treasury Department was able to do this indicates that too much discretion was contained in the Antidumping Act in the first place; and the inevitable conclusion is that if the act is to be resurrected and set up once more among the living, the Executive discretion must be suitably abridged. If this is not done, any amendment to the act will be an utterly useless legislative gesture.

If we examine the parts of the present act that bestow such breadth of discretion on the Secretary of the Treasury that he can virtually nullify the act, we find that several provisions are at fault. These loopholes should be plugged so that the intent of Congress cannot be set aside by the Treasury Department at will.

Actually, there are 3 or 4 provisions in the act, any one of which can be utilized as justification of failure to enforce the law. Therefore, retention of any single one of these wide avenues of Executive discretion would leave the law as useless as it is today. For this reason, no order of importance can be given in listing the provisions of the present law that should be amended. The sequence of the following provisions is therefore simply coincidental and has no special significance:

1. The so-called injury provision of the present law once provided the Treasury Department and now provides the Tariff Commission with a wide scope of discretion.

Some interested parties have concluded that a definition of "injury" would eliminate or greatly narrow the breadth of the discretion.

However, it should be noted that the definition of "injury" written into the statutory escape clause of the Trade Agreements Extension Act of 1951 had little effect upon the ultimate outcome of the Executive disposition of cases brought by interested parties under the clause. Moreover, subsequent amendments calculated to tighten the law failed as completely as the original statute to modify Executive action.

For that reason we have no faith whatever in the possibility of defining "injury" in the Antidumping Act in a manner that would assure the survival of the legislative intent.

In any event, dumping should be prevented or deterred because it is recognized as an undesirable practice in international trade. The purpose of its discouragement is not protection of the revenue. Otherwise the dumping of duty-free goods could be overlooked and that is not the case. Dumping duties are applicable to duty-free items no less than to those on the dutiable list. Dumping is justifiably condemned because of its economic disruption, including its interference with orderly marketing.

To reduce such interference to terms of provable injury represents an invitation to nullification of the law and frustration of the very purpose of the antidumping statute. It is true that nullification need not necessarily occur if the injury test were retained in the law, as may be inferred from its earlier enforcement in years gone by (as referred to above; but that failure to enforce would continue as it has in recent years should the injury test not be dropped could be anticipated from the record of the post-1934 period. To restate the situation in another form would be to say that the present law is so loosely drawn that its administrative results can vary from pole to pole, depending on the opinion of the administration. We, therefore, have a government not

of law but of men, in this instance, and that condition should be corrected.

The injury provision of the act is ill-conceived in any case. No such test is to be found in the countervailing duty provision of the Tariff Act. All attempts to introduce proof of injury as a condition of imposing the penalty of that aw were overwhelmingly defeated in the Senate in recent years.

The provision in the Antidumping Act might be likened to a condition in the speed law requiring that injury must be proved before a speeding penalty could be imposed. As it is, speeding is considered a violation of law, whenever the speed limit is exceeded, whether specific injury occurs or not. Excessive speed is regarded as endangering the public safety.

Dumping, on its part, may be regarded as injurious to a healthy trade, as are other forms of unfair competition. No one has to prove injury from a restraint of trade in order to invoke the antitrust laws. It is assumed that restraint of trade of itself is undesirable and against the public interest. The same may be said of dumping, and with equal justification.

It may also be pointed out that customs simplification is not enhanced by the injury provision.

Finally, removal of this provision would also eliminate the need for defining the term "industry" in the act.

2. Another open door leading to personal, if not irresponsible, administration of the Antidumping Act is to be found in the lack of any requirement, as distinguished from a discretionary provision, that an investigation be made by the Treasury Department on application of an interested party and the complete absence of any provision for a public report setting forth the facts and reasons for a negative finding when such a finding is made.

These gaping doors can readily be closed by provisions requiring an investigation and a public report if the finding is negative.

3. There is another double door in the present act through which reluctant enforcement officials can escape. One is the "freely offered" provision and the other is the similitude test.

Apparently the original intent of the "freely offered" provision has been perverted or distorted to provide shelter for the reluctant administrators. The term was originally used to exclude "offers," i. e., unauthentic or fictitious offers, by cartels or monopolies that did not reflect the true foreign market value. It is now used as a means of throwing a possible finding of dumping out of gear on the grounds that the counterpart of the exported goods are not freely offered for sale in the home market and that therefore no foreign market value exists.

Much the same may be said about the similitude requirement. Under the present administration of the act, it has become altogether too easy to escape from a finding of foreign value on the grounds that the goods exported are different from those sold in the home market. Even minor differences that have little or no effect on the competitive impact of the goods concerned are accepted as evidence that there is no ascertainable foreign market value of the goods in question. This means that "export value" is accepted as the basis of duty assessment when in fact it would not be necessary to do so

if the similitude clause were not interpreted in a narrow or quite unrealistic sense. The objection to acceptance of "export value" in lieu of "foreign value" arises both from the nature of the definition of "export value" and the fact that such value often is lower than "foreign value."

H. R. 5120 and identical bills introduced on this subject would go far toward plugging up the loopholes or narrowing the executive discretion that have been used, as described above, as openings leading to nonenforcement of the act. These bills would also retain the retroactive features of the Antidumping Act while placing a time limit on the processing of particular cases. The retention of reasonable retroactivity is necessary for the deterrent effect it produces; while limitation on the time of the Treasury Department's processing of a case will prevent wearing down the applicants and dissipating the effects of a positive finding.

It will be noted that the provisions of H. R. 5120 are designed to accomplish one principal aim: Namely, restoration of the Antidumping Act to the efficiency and speed of administration that was once characteristic of its enforcement and that Congress has a right to expect in the execution of its legislation. The need for legislation has been created by the executive domination of the administrative agencies that carry out foreign trade legislation. The Treasury Department has bowed to the trend in executive policy and without legislative direction has changed the whole meaning of the Antidumping Act of 1921.

It is up to Congress if it would have its intent carried out to deprive the executive of the scope of discretion that it has used to disregard legislative intent.

H. R. 5120 and its companion bills are designed to do this. Therefore we support it and urge its adoption by this committee.

The CHAIRMAN. Thank you very much for letting us have your views, Mr. Strackbein.

The CHAIRMAN. We have two remaining witnesses. The next witness is Hon. Scott W. Lucas, former leader of the United States Senate.

Senator DOUGLAS. My former colleague and my dear friend.

Mr. LUCAS. Thank you, Paul.

STATEMENT OF HON. SCOTT W. LUCAS, ATTORNEY, ACCOMPANIED BY JOSEPH J. O'CONNELL, JR., AND MORRIS MILLER, ATTORNEY, WASHINGTON, D. C.

Mr. LUCAS. Mr. Chairman and members of the Finance Committee, I have on my left Hon. Joseph J. O'Connell, Jr., who at one time was General Counsel for the Treasury of the United States, and also my associate, Morris Miller, attorney, with me here in Washington.

My name is Scott W. Lucas. I am a practicing attorney with offices at 1025 Connecticut Avenue NW,, Washington, D. C. I appear before your committee today, along with Joseph J. O'Connell, Jr., a practicing attorney of Wasshington, D. C., on behalf of the World Commerce Corp., and John J. Ryan & Sons, Inc., of New York, the latter being one of the principal importers of rayon staple fiber.

Mr. Chairman, I sat in this room on Wednesday and heard the spokesman for the Treasury Department, responsive to inquiries from Senators Anderson and Douglas, say that the principal purpose of the Treasury proposal was to correct the situation arising out of five commodities: bicycle pedals, canned mushrooms, calculating machines, fiberboard, and rayon staple fiber.

The Treasury witness admitted, after further questioning, that the first four of these commodities are giving no trouble at all now. The fifth commodity was rayon staple fiber. Our client is the only importer of rayon staple fiber from Belgium, Italy, and France, and I am sure the Treasury will agree that our client is not dumping. Is the Treasury seriously justifying this farflung amendment in order to reach one commodity, and that commodity only to the extent that it is coming from countries other than France, Italy, or Belgium?

Incidentally, rayon staple fiber imports from these three countries accounts for approximately 30 percent of all rayon staple fiber imports.

Mr. Chairman, I ask, what is all this shooting about? We can see no objection to the Treasury recommendations calculated to improve efficiency in the enforcement of the Antidumping Act. But for the life of us, we can see no responsiveness to this mandate in those recommendations which make substantive changes in the act.

The Treasury must have testified with tongue-in-cheek on this amendment to the Antidumping Act, when in their report to the Ways and Means Committee last year they said, under the caption "Effectiveness," of the present act, the following:

> As to the effectiveness of the Antidumping Act in the recent past, the Treasury feels that the act has successfully prevented raids on the American market which would have otherwise been made and has in general kept the exporters' prices up to a level where the competition has not been hurt. It is significant that while a considerable volume of communications was received from American industry advocating changes in the act, there were very few who complained of injury from present imports. It is significant also that only a small number of complaints of dumping have been made during the past few years.

We submit that this statement, standing alone, clearly indicates that there is nothing radically wrong with the present Antidumping Act.

Mr. Chairman, section 5 of the Customs Simplification Act of 1956 directed the Secretary of the Treasury, after consulting with the Tariff Commission, to review the operation and effectiveness of the Antidumping Act of 1921, recommending the Congress any amendments to said act which he considered necessary or desirable to provide—and this is important—for greater certainty, speed, and efficiency in the enforcement of the Antidumping Act.

Mr. Chairman, these directives become important in the consideration of this legislation, in view of what the Treasury recommended. We heartily approve those provisions which improve the enforcement of the law and which are directly responsive to the injunction to the Treasury Department to come up with recommendations for greater certainty, speed, and efficiency in the enforcement of the Antidumping Act.

It is my purpose to show the committee that, in addition to this specific assignment, the Treasury recommended substantive law, which has nothing to do with improving the enforcement of the act and to which we take exception.

Administration of the Antidumping Act begins in a particular case when the Treasury has reason to suspect that merchandise is being imported into this country at less than "foreign market value."

When that happens, the Secretary suspends the appraisement of such merchandise for ordinary duties, and undertakes an investigation. If he finds sales at less than "fair value," this finding is sent to the Tariff Commission, which has the responsibility under the law to determine whether or not there has been, or is likely to be, an injury to the domestic industry.

As you can see, the first serious impact of antidumping enforcement is not in the findings, not in the investigation, but it is in the withholding of appraisals and the consequent uncertainty during that investigation as to duties ultimately payable. This becomes a real headache to the importers and a real barrier to the importation of foreign merchandise.

It is significant to note that under the present law from January of 1934 until October of 1954, 146 dumping cases had been disposed of, the "fair value" and injury being determined by the Treasury. It is most interesting to discover that in only 7 cases out of the 146 was there a basis for a finding under the Antidumping Act.

From October 1954 until December 1956, injury determinations were made by the Tariff Commission. Out of 52 cases disposed of by the Treasury, with or without Tariff Commission action, there was only one finding under the Antidumping Act. But, as I have stated before, the real damage inflicted upon exporters and importers in these 198 cases was the uncertainty and the withholding of appraisals during the investigations.

Mr. Chairman, we feel certain that under the Treasury's new approach to the subject matter at hand, administration will be more difficult and hundreds of investigations will be instituted where no injury will later be found to exist. This means more experts, a larger staff, and more appropriations.

Thus, the certain effect of the Treasury proposal is to increase the number of investigations. To this I would have no objection if it meant better protection for our domestic industry, but it is clear that if the present proposal recommended by the Treasury had been in full and effective operation from 1934 until 1954, when there were only 8 findings of dumping out of 198 cases, the investigations would have been increased enormously without any commensurate increase in the number of findings.

This follows, Mr. Chairman and members of the Committee, because the law (sec. 201 (b)) expressly directs the Secretary, whenever he has reason to suspect that foreign merchandise is being sold to the United States at less than its "fair value" forthwith to authorize the withholding of appraisements of such merchandise.

The Treasury, in following this instruction, has proceeded on a sampling basis. It now says that it can proceed with a more effective administration if its proposals are adopted. This must mean that it will institute an investigation on every first clear indication of a sale to the United States at less than home value.

It is obvious that the vast majority of the investigations will be terminated when the reasons for the difference are developed, since the law requires that the prices be adjusted by allowances for most of the differences before the prices are compared.

Mr. Chairman, we should not forget the basic and fundamental purpose of the Antidumping Act of 1921. It is a legislative weapon to eliminate an unfair practice, namely, predatory dumping. We all agree that this kind of practice should be restrained, and we share the Treasury's view that it has been, under the present legislation.

Predatory dumping is not easily arranged nor a common experience. So long as foreign merchandise reaches this country, even under the "foreign market value," if it aids the consumer, and that is important, Mr. Chairman and gentlemen of the committee, and I repeat, if it aids the consumer, and in no way injures any domestic industry, it is the type of world competition that keeps stability in the economy of the Nation.

This is what Mr. David Kendall, former Assistant Secretary of the Treasury, had in mind when testifying before the Ways and Means Committee on this bill, in quoting from the book of Prof. Jacob Viner, one of America's outstanding economists:

> There is a sound economic case against dumping only when it is reasonable to suppose that it will result in injury to domestic industry greater than the gain to consumers.

That is Viner's statement corroborated by Mr. Kendall, former Assistant Secretary of the Treasury, who testified before the Ways and Means Committee last year.

Since Mr. Kendall quoted from the book of Professor Viner, I am glad to use Professor Viner also as my authority. When testifying before the Joint Economic Committee on this very same subject in 1954, he said:

> Maybe it is getting into the hands now of men who do have ideas and these ideas may be protectionist. If such is the case, what they can do with that antidumping law will make the escape clause look like small potatoes. They can, if they wish, raise the effective tariff barriers more than all the negotiations in Geneva will be able to achieve in the other direction.

Mr. Chairman, as one who has believed in the reciprocal trade agreement program throughout my public and private life, I make this statement, either we trade with other nations upon a fair and reciprocal basis or suffer the consequences.

In view of what I have said, which is treated in greater detail in the statement I have filed with the clerk for insertion in the record, we urgently request that no action be taken upon so much of H. R. 6006 as is substantive rather than procedural.

Mr. Chairman and gentlemen of the committee, I thank you very much.

The CHAIRMAN. Thank you very much, Senator Lucas. We are always glad to have you back, you have spent so much time here.

Are there any questions?

Senator DOUGLAS. I hesitate to ask questions of my former colleague.

Senator Lucas, you have had a very prominent part in getting the Reciprocal Trade Agreements Act renewed from time to time, and I know that as United States Senator you had a deep interest in it. I take it that it is your considered judgment that this bill could be used to negate the purposes of the reciprocal trade, is that true?

Mr. LUCAS. We feel very strongly about that, I agree with you, it could be.

Senator DOUGLAS. And that merely taking comparative f. o. b. prices would not be a fair test as to whether or not dumping was occurring?

Mr. Lucas. That is correct.

Senator Douglas. Because of the reasons which have been given by Mr. Hays and other witnesses?

Mr. Lucas. That is right. The adjustments allowed by law make the difference.

Senator Douglas. And the launching of investigations upon the—or rather the withholding of the appraisement merely upon the basis of differences between home price and export price—will harass importers and lead to a great barrier in the way of international trade?

Mr. Lucas. That is certainly very true.

Senator Douglas. Thank you very much.

The Chairman. Thank you again, Senator Lucas.

Mr. Lucas. Thank you very much.

(The additional prepared statement referred to, submitted by Mr. Lucas, is as follows:)

STATEMENT SUBMITTED BY SCOTT W. LUCAS ON BEHALF OF WORLD COMMERCE CORP.

My name is Scott W. Lucas. I am a practicing attorney, with offices at 1025 Connecticut Avenue NW., Washington, D. C., and am appearing before you today on behalf of World Commerce Corporation of New York City.

The bill before you, H. R. 6006, is mistitled.

It should read "A bill to increase tariffs, prevent imports, and for other purposes." For, stripped of all of its technical language, that is what H. R. 6006 would do.

In order to show that this is the case, permit me briefy to summarize the background. Bear in mind that what we are talking of is a bill which was drafted by the Treasury Department responsive to a mandate from Congress in the Customs Simplification Actof 1956 for a report on how the Antidumping Act is working and for recommendations to provide for greater certainty, speed, and efficiency in the enforcement of that act. What act was Congress talking about?

The 1921 act, stated in its simplest terms, was to prevent dumping, and the question here is what did the 67th Congress mean by dumping? Reading the legislative history of that act—the House report, the Senate report, debates, and the conference report—reveals a common interpretation of that type of dumping at which Congress was aiming. That Congress did not mean every price cutting and underselling; it did not mean every discrimination. It meant such commercial warfare as was intended to destroy an American industry, to be followed by raising prices in order to recoup dumping losses. It meant price differentials accompanied by unfair circumstances or unfortunate public consequences. It meant dumping activated by predatory motives. In short, it meant those pricings which constitute what, in our own public law, we refer to as unfair trade practices.

Now the injunction to the Treasury Department to come up with recommendations for greater certainty, speed, and efficiency was not worded in a manner so as to direct the Secretary of the Treasury to make recommendations to revise the purpose of the 1921 law, but to come up with recommendations which would improve the enforcement of that law. With your permission, I shall now proceed to demonstrate that, although the Treasury recommendations did contain certain features calculated to improve the efficiency and certainty and speed in the enforcement of that act, the Treasury proposal (which the House has passed) contains also language which deals, not with the enforcement of the act, but with the purpose and intent of that act.

By the Antidumping Act of 1921, an assessment of a special dumping duty is imposed when imports are found to have been sold in the United States market below "fair value" and such sales have caused or threaten injury to the competitive United States industry. This duty is measured by the difference between "foreign market value" and the price to the United States market. You will note that I have used two terms which may require brief elaboration. One is "fair value" and the other is "foreign market value." "Fair value" is not defined in the Antidumping Act of 1921. For more than 30 years, the regulations

of the Secretary of the Treasury called for "fair value" to be based on "foreign market value," which is defined in the act. "Foreign market value," as defined in the act, meant the price at which the commodity was freely sold (i. e., without restrictions) in the exporting country's home market; if the home-market price in the exporting country was subject to any conditions on resale or use, then the "foreign market value" was the price at which the item was sold by the exporting country to third countries.

Early in 1955, the Treasury regulations defining "fair value" were changed. Under the present regulations, "fair value" means, in general, the home-market price in the country of export, even if there are certain restrictions on home-market sales, that is, even if the item is not freely offered (except where sales in the home market are not in significant quantities).

To this point, the situation, therefore, has been this: That "foreign-market value" was defined in the Antidumping Act of 1921 as meaning the price at which the item was freely sold in the exporting country's home market, and, if not so freely sold, then the price at which it was sold to third countries; that "fair value" was not defined in the act, but was left to Treasury regulations and that for more than 30 years the Treasury definition of "fair value" conformed closely to the statutory definition of "foreign-market value"; that in 1955 the Treasury regulations were amended so that "fair value" means the market price in the home country, whether or not freely offered. When the Treasury Department, a year ago, submitted its report and suggested bill intended to provide for greater certainty, speed, and efficiency in the enforcement of the act, it pointed out that the act should be amended, so far as its definition of "foreign-market value" is concerned, so that "foreign-market value" would conform to the Treasury Department definition of "fair value." The Treasury supported this proposed change on the grounds that, if the statutory definition of "foreign-market value" were not changed, an anomaly would exist. Of course an anomaly exists. But to contend that the anomaly would be removed by the simple expedient of having the statutory definition of one term conform to a regulatory definition of another term cannot stand the test of logic or reason.

For more than 30 years, this anomaly did not exist. Its existence now flows only from the Treasury Department's action. And the fact that such an anomaly can now exist and the fact that such action by the Treasury can be taken, highlights the real basic weakness in the act. It is this weakness which made possible the so-called anomaly. For under the present law (and even under H. R. 6006) the real anomaly (not the Treasury's) obtains in that you have a fixed statutory definition of "foreign-market value" and a fluid, changeable administrative definition of "fair value."

The Treasury Department supports its redefinition of the statutory term "foreign-market value" on the grounds that it will permit the Treasury to determine whether a price is unfair by a simple mathematical comparison of one price with another. But I revert to the proposition stated earlier, that the purpose of antidumping legislation is to curb predatory price discrimination, to protect free competition, rather than to prevent competition. Obviously, a mere exercise in arithmetic cannot determine whether a price is really unfair, that is, whether dumping, in its predatory sense, is going on. The heart of the matter is that the Secretary of the Treasury, before issuing a "finding of dumping," should be satisfied that he is condemning "a trade evil rather than a bargain. It would seem strange if Congress had required a Cabinet-level officer to do nothing but check the arithmetic of his subordinates before taking so important a step as issuing a finding. * * * The present arithmetical exercise would seem directly to contradict the intention of the act's draftsmen and the very policy the Secretary claims to follow." (Peter D. Ehrenhaft, Protection Against International Price Discrimination: United States Countervailing and Antidumping Duties, Columbia Law Review, January 1958.)

It thus is clear that by redefining "foreign market value" for the purpose the Treasury has asserted, the Treasury Department is changing the whole concept of the Antidumpting Act. The Congress which enacted that act made a clear, calculated distinction between "fair value" and "foreign market value," defining the latter term and leaving the former term to be defined by the Secretary, an officer of Cabinet rank. That Congress made it clear what dumping consisted of an unrealistically low price fixed by an exporter, anxious to capture a United States market, to be followed by a later recoupment of the loss by selling the commodity here at a higher price. Whether there was dumping, therefore, was to be measured against the commercially realistic standard of fair value, which

was not to be more than the price freely offered in the exporter's home market, or, if there were no freely offered prices in the home market, then the price charged by the foreign supplier to third countries. By proposing to redefine the statutory term "foreign market value" so as to equate it with its regulation's definition of "fair value," the latter term meaning the price at which the item is sold in the exporter's home market, freely or not, the Treasury Department has adopted a commercially unrealistic formula which completely distorts the purpose of the Antidumping Act—and doing this under the guise of performing an assignment to make recommendations "for greater certainty, speed, and efficiency in the enforcement of" the Antidumping Act.

A little analysis of the Treasury Department's administrative redefinition of "fair value" and its proposed statutory redefinition of "foreign market value" will reveal that this is a protectionist, rather than an antidumping, measure. Certainly the Treasury Department, having worked in this field for more than a generation, is sophisticated enough in the international market scene to know that there are many circumstances why the fair export price of a commodity is less than the price at which the commodity is sold in the home market. The most universal reason is that there is no possibility of making any sales at all for export at the prices obtainable in the home market, and it is, therefore, the normal course in the United States and all other countries in international trade to sell at less for export than in the home market. This follows for several reasons: Delivery costs are higher for export sales than for sales in the home market and this difference must be absorbed by the seller if the cost to a purchaser is not to be greater in an export sale than in a sale for home consumption; the time between the order and the delivery is longer and more uncertain in export sales than for sales in the home market, and this export disadvantage must be offset by lower prices; the distance between the buyer and the seller increases the risk of disputes and their satisfactory settlement, and customers must be given a price advantage to offset this risk. In none of these cases is the price in this country lower than the home-country price because of any calculated unfair trade practice. It is lower because that is the way international business has to be conducted and the Treasury Department should be the first to know this.

You will note that I have discussed the "fair value" definition, which is not in the law today and which is not included in H. R. 6006, but would be approved by enactment of the bill. I have explained why the real anomaly is the absence of a statutory definition of "fair value" and will suggest that there be a statutory formula for computing "fair value." It is important, however, to point out how the statutory definition (present and proposed) of "foreign market value" affects the administration of the Antidumping Act and how the two terms are related.

The real impact on the importer, the manufacturer, and the consuming public arises, not from the finding of injury, not from the finding of dumping, not from the imposition of the antidumping duties, but from uncertainty caused by each investigation and increased when there is a suspension of appraisals. As a practical matter, this means that imports of the commodity in question are halted. According to the Randall report, imports of commodities from Western Europe, with an annual value of $25 million were suspended while dumping charges were investigated. In 1957, it was alleged that there were over 30 investigations then in progress, and that appraisements were being withheld on imports having a value in excess of $100 million.

The withholding of appraisement is required to be directed by the Secretary whenever he has reason to suspect that the price is less than foreign market value. The finding of dumping can be made only after the investigation shows the price to be below fair value. By H. R. 6006, a new standard is urged to replace the 1921 definition of foreign market value—a standard which the Treasury Department almost boasts will insure more investigations. In short, the Treasury's definition is not calculated to result in more injury findings, in more findings of dumping, in more impositions of antidumping duties. Rather it is intended to result in more investigaitons, more withholdings of appraisals, more halting of imports, which will later be proved to have been unwarranted.

The United States is today the largest importer and the largest exporter in the world. In his budget message of January 13, 1958, the President said: "We live in a world of economic, no less than political, interdependence. As the greatest producer, consumer, and exporter in the world, the United States must be a dependable market for foreign goods if mutually beneficial trade is to grow

and prosper." Meanwhile, the other body is considering legislation to extend the Reciprocal Trade Agreements Act. And, with all this effort to make the United States an importing, as well as exporting country, you have before you a measure which in bald fact contains a back-door escape clause.

The United States must be most cautious that legislation affecting international trade is not so loosely drawn as to lead to unexpected results harmful to international trade. The mere enactment of such legislation can produce harmful actions by foreign countries. Already certain activities of this country in the field of international trade have had serious consequences abroad.

Indeed, it has often been said, both here and abroad, that in effect the United States is the largest dumper by reason of its sales of surplus agricultural commodities at prices below the cost to the United States. This is a serious charge, and equally serious is the fact that such a feeling is expounded vigorously and, indeed, with considerable rancor among friendly nations in all parts of the world.

I point this out only to accentuate the fact that the United States must not take legislative action of a nature which will create greater hostility among friendly foreign nations with whom we trade. It is, therefore, extremely important that the legislation which is enacted by the United States Congress in respect to dumping should be sufficiently thought out and carefully phrased as not to lead other countries to emulate us by enacting undesirable reciprocal legislation harmful to our trade. We should also bear in mind that in the coming years there will be established in Europe a common market—a market within which trade barriers and custom duties will be eliminated among the participating western European countries. The American manufacturer will be hard put to compete in this large area of 160 million potential customers. Certainly the Congress does not now want to take action against foreign imports which will in turn further prejudice the sale of American goods in that market.

The United States should always prevent dumping—dumping in the real sense of the word—dumping that is designed to destroy a whole American industry in order that when such destruction has been accomplished the foreign producer can take over the American market. But it is equally essential that the United States in its desire to cure the dumping evil not prevent legitimate practices in international trade.

Competition among firms in the United States has always been deemed helpful; indeed, our antitrust laws are based on that very fact. It is equally true that competition among the domestic manufacturers and foreign manufacturers in the American market is healthy, and the same is true of competition among American producers and foreign producers in the foreign market.

For all these and other reasons, it is, therefore, extremely important that any amendment to the Antidumping Act should avoid creating obstacles to fair, competitive, international trade. Any amendment which results in this would be contrary to our own national interests; it would be contrary to the policies of both of our great political parties; and it would be contrary to the interests of the American people.

Under existing law, as I have said, special antidumping duties can be imposed only (1) if the Treasury Department finds 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, and (2) if the Tariff Commission 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 of such merchandise into the United States.

The act did not prescribe any formula for determining "fair value." This determination was left to the discretion of a single person, the Secretary of the Treasury, a policy officer of Cabinet rank, who could determine whether a situation was within the policy of the statute but was not to be burdened with the administrative detail of measuring the special duties.

Early in the history of the Antidumping Act, "fair value" was defined by a regulation as identical with the adjusted "foreign market value" or cost of production by which the special dumping duties were to be measured. However, about 2 years ago, the Treasury Department revised the regulations and redefined "fair value." In so doing, it adhered to a concept inconsistent with the statute and its purpose; namely, that foreign goods were being dumped if they were sold in the United States or elsewhere at less than the price charged for them in the foreign home market.

This was a strange conclusion for the Treasury to reach at the time it was announced. It was not only inconsistent with the distinction Congress had made

in the law between "fair value" and "foreign market value" or cost of production, but it was also inconsistent with representations then being made to the Congress by the Treasury Department that "foreign market value" should be eliminated as a measure of regular United States import duties because that value was so often commercially unrealistic as a measure of the real value of goods in international trade.

Now the Treasury is asking that its commercially unrealistic standard of the value of goods in international trade be endorsed by the Congress as a proper standard for determining whether goods are being dumped. This endorsement is not to be openly expressed by a statutory definition of "fair value," but it is implicit in the language of the proposed amendments, and this purpose of the amendments to ratify the definition with minor alterations is frankly admitted by the Treasury's report in which its proposals were submitted. There is less frankness in the absence of any explanation as to why a statutory definition is not proposed. I can only assume that this omission represents a lack of confidence in the definition the Treasury has sought to establish by regulation.

I submit that the Congress should not ratify this basic change in the Antidumping Act which the Treasury has effected by regulation and now seeks to make secure.

Adoption of this Treasury proposal would change the law from one designed to impose special duties to offset true dumping to a law making possible the use of the Antidumping Act as a device for levying ordinary protective duties at rates higher than those promised to other nations under the trade-agreements program. To this extent, it would be a mere illegitimate supplement to the escape-clause legislation. The escape clause has its legitimate place in that program; it has no place in the antidumping law. The inclusion of this concept in the antidumping law would make possible the unfair governmental practice of imposing so-called dumping duties on goods which are sold to the United States at a price which is fair in international trade under any standard of a fair price in fair, competitive, international trade.

The Treasury Department achieves this anomalous and unjust position by having as its objective the determination of "fair value" by simple arithmetic. The Treasury, in effect, is saying that every effort should be made to base the determination of sales at less than "fair value" by subtracting the sale price to the United States from the home-market price, and, if there is a difference, then is generally a sale at less than "fair value."

The Treasury Department apparently realizes the above-stated effect of its proposal and feebly seeks to provide a means of avoiding it, at least in some cases. As section 202 (b) and (c) of the Antidumping Act are proposed to be amended, they would provide for certain allowances in determining a "foreign market value" for the purposes of the act. The present provisions for making allowances for quantity discounts would be continued, with certain changes of apparently minor effect, but new provisions are added, the first of which would permit allowances for "other differences in circumstances of sale." In its explanation of this proposal, the Treasury lists typical differences between home market and export transactions contemplated by the proposal as "restrictions on sale, credit terms, advertising and selling costs, and minor variances in methods of production and manufacture."

These examples also reveal that Treasury has failed to recognize the real reasons why the use of home-market prices are economically unsound. That price can be a false standard for many reasons. The article in question might in the home market be considered a luxury article commanding high prices, here a necessity; a monopoly may exist there; special taxes might be applicable; there may be import restrictions against raw materials applicable where used for manufacture for sale in the local market. The examples are many, and will be increasing in number as underdeveloped areas become more and more industrialized and more advanced economically.

The Treasury examples are apparently only illustrative, but they amply indicate a recognition that a "foreign market value" determined in this manner is an unrealistic measure of a "fair value" for goods in international trade. It is good that Treasury at least recognizes the fact that a "foreign market value" so determined is an unreal standard. Our complaint about this recognition is that it is only a partial recognition and that it is embodied in a solution that can result only in lengthy delays and the perpetration of dangerous injustices.

This does not mean that I am not in full agreement with those who think the Antidumping Act should be amended and that a primary objective of the amendments should be to make possible an enforcement of the act that will be

certain, speedy, and efficient. As a basic necessity, I urge that the act be amended effectively to limit its application to true dumping. I suggest that this can best be done by a realistic definition of "fair value" or an equivalent clarification of the law which would limit application of the law to merchandise which is being, or is likely to be, sold in the United Staets, or for exportation to the United States, for less than its normal price in international trade, plus, in the case of sales in the United States, regular import duties and charges and United States selling expenses. The law might best and properly define the normal price in international trade as the actual cost of producing the merchandise, plus a profit not less than that usually realized in international sales of like merchandise. However, the Treasury Department has objected to any requirement that it determine costs of production in foreign countries if this can be avoided.

I, therefore, suggest that the normal price of any product in international trade, the world price, can easily be arrived at by determining the weighted average price in sales to third countries and to the United States during a representative period, but, insofar as including sales to the United States is concerned, there should not be included any sales made during any part of the 120-day period under section 201 (b). In this connection, and I will refer to it later, it would seem appropriate to reduce this 120-day period to 30 or 60 days, insofar as retroactive application of dumping duties is concerned.

In addition, this world price would be adjusted to take care of any unusual economic factors, such as any clearly established change in the market level, either abroad or in the United States. Under this formula, what the Secretary of the Treasury would be determining is whether goods are being sold in the United States at an arbitrarily, artificially created low price where the price does not have any fair relationship to factors of international trade, to the conditions existing in foreign markets and in the United States market.

In making this determination, the Secretary of the Treasury would first look at the sales of the commodity in question from the country in question in the international field. He would, first, go through the arithmetical determination as to whether the sale price in the United States is less than the weighted average sales price in a representative period to third countries and to the United States (adjusted as above) which we call the world price. The determination of what would be a representative period would have to be arrived at by consideration of each industry in and of itself. If there is a difference, he would then determine whether this difference is caused by the reasonable competitive fair-price consideration, such as special conditions in third-country markets or special conditions in the United States market—in general, by circumstances of fair competition.

It is admitted that by first looking to this standard of world price rather than first looking to the home market price, the difficulties to be encountered by the Secretary of the Treasury would be considerably lessened. This is so because the world price is less likely to be governed by special unusual conditions than is the home market price. In other words, by using this formula, the Secretary of the Treasury will find that he will have to be taking into account fewer special economic circumstances than would be the case if he used the home market price.

In the event the Secretary of the Treasury finds that there are not sufficient sales to third countries and to the United States to establish a world price, then the Secretary of the Treasury would base his calculation on the cost of production. In this connection, I support the proposal advanced by the Treasury Department for using constructive value to determine cost of production, as contained in its recommendations for amendment to section 206, and which is based on section 402 of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956. If the cost of production figures are not reasonably available, only then should the Secretary utilize the home market price, adjusted to take into account all quantity differences and all the special economic factors that might exist in the establishment of that price.

The standards I propose would be certain and realistic; they would be understandable to the foreign manufacturer and exporter as well as to the United States importer. The United States producers could detect deviations from them in most cases and importers and foreign suppliers could engage in normal business transactions without fear of the risk and uncertainty they have encountered under the administration of the existing law and which would be considerably increased if the Treasury proposals are adopted.

This proposal would enable the elimination of the nomalous situation of which the Treasury Department complains of whereby foreign exporters are enabled,

by placing unimportant restrictions on home consumption sales, to avoid assessment of dumping duties, even if there has been a finding of dumping. This could be achieved by having the fair value price as so determined by the Secretary of the Treasury with adjustments in changes in market levels used for determining the assessment of special dumping duties in the event a finding of dumping is made.

Above all, we could not object if other countries adopted such standards in their antidumping laws. For more than 20 years the United States has participated as a leader in attempts to standardize and make more reasonable the measures taken by individual governments to regulate international trade. It surely would not be consistent with this position for the United States to assert that dumping is an unfair practice in international trade and then define dumping in such a manner as to brand us as practicing that dumping consistently and on a gigantic scale in our foreign disposals of products for which prices in the United States are supported by governmental actions. That would be the exact effect of adoption of the Treasury proposals.

Rayon provides a good example of the dangers I have outlined regarding the Treasury Department proposals, and an equally good example of the equitableness of our proposals. Our client today can provide for the sale to American spinners of foreign-produced rayon and can give the American spinner the assurance that such sales will not be below the average weighted international price.

While the price of rayon in the international market varies from time to time, the general average international price remains quite constant. It provides a standard which the foreign producer and our client and the American buyer can understand, and one which they can all use with some real degree of certainty. If, however, they must use home market prices as the standard, then they are going to run into variations with each country because of differing customs duties, because of special limitations on sales and a whole host of special economic factors related to the home market price in each country and varying for each country. In these circumstances, the importation of rayon would be a risky business. This risk would obviously cut down and curtail the amount of rayon imported into this country.

The American spinner would, therefore, be at a disadvantage in exporting finished yarns and fabrics. If the American spinner, by reason of amendments to the antidumping legislation, is forced to pay a higher price than the international price because of peculiarities in home market prices not recognized by the Treasury Department, then he will no longer be able to have his finished yarns and fabrics compete in the foreign market.

This could have very serious effects on our own rayon industry. For example, during recent years considerable improvements and developments have been made in rayon staple which originated in foreign countries. This category includes crimped rayon staples, solution-dyed rayon staples, and many other examples. After these innovations and improvements were introduced into this market, domestic industries produced the same quality. This inducement to the domestic producer to improve his wares was good for the American producer; was good for the American consumer. It expanded the industry; it expanded the market; it placed the consumer in a better position. However, administration of the antidumping law under the proposed Treasury amendments might well have eliminated this result since the uncertainties of the trade would be so great as to produce a serious curtailment of imports of foreign rayon.

Such a result would also affect other industries in the United States. Thus, it must be remembered that foreign rayon manufacturers buy United States woodpulp. It is obvious that if they are deprived of the United States market for the sale of their rayon, they would buy their woodpulp elsewhere. Thus the Italian rayon industry purchased $3.5 million of pulp in the United States in 1956. In the same year $2.25 million of Italian rayon was sold in the United States. And even if these dangers in the rayon industry do not in fact materialize, the fear that they could take place might well be enough to prevent or seriously curtail the rayon imports here.

What is true of rayon applies to all imports, in varying degrees. Home market price is almost bound in every case to be a less realistic test than the world price.

I do not want to be understood as objecting to all of H. R. 6006. We heartily endorse those sections which are directly responsive to the mandate to the

Treasury Department to come up with recommendations to improve the enforcement of the 1921 Antidumping Act.

The proposed redefinition of "foreign market value," which is the main portion of H. R. 6006, is simply a protectionist measure, is not responsive to the injunction to the Treasury Department, will undo what other pending measures are trying to accomplish, and, in the words of Professor Viner, "what they can do with that antidumping law will make the escape clause look like small potatoes."

If the Congress feels it timely to reexamine the policy of the Antidumping Act, then, it is respectfully suggested, a separate investigation on the substance rather than the enforcement of the law would be in order. If the thinking is that the Antidumping Act should have its thrust changed from its original intention of adding an antidumping tax to the normal tax where predatory dumping takes place, then that law becomes inextricably tied in with the Government's, that is to say, Congress', thinking on tariff and trade agreements policies. One thing is clear, however: the Treasury amendment, under the guise of administrative expedition, would change the basic intent of the Antidumping Act.

The CHAIRMAN. Our next witness is another distinguished gentleman, Gen. Kenneth Royall, former Secretary of the Army.

STATEMENT OF KENNETH C. ROYALL, REPRESENTING THE RAYON STAPLE FIBER PRODUCERS ASSOCIATION

The CHAIRMAN. We are very glad to have you, General Royall.

Mr. ROYALL. Mr. Chairman, hearing my very good friend Senator Lucas present this matter leads me to believe that he and I are really not talking about the same thing. H. R. 6006 does not affect the reciprocal trade agreements in any way, either plus or minus. And none of those who have been hostile to this bill have said so, I think, with the exception of Senator Lucas.

The criticisms directed at H. R. 6006, not only by Senator Lucas but others, are really attacks on the existing antidumping law—not on the amendments in H. R. 6006. For example, this law does not change in the slightest the matter of withholding assessment, it has nothing in it at all to that effect.

The last Congress, including this committee, recognized that the antidumping law had to be more effective, in order to protect American industry, and said so to Treasury in an amendment to the Customs Simplification Act of 1956.

This bill, H. R. 6006, was drawn by Treasury in an effort to accomplish the purpose of this committee and of the Congress. There were many changes that could have been made in the Antidumping Act, and there are many people who want to make those changes. But the Treasury Department took a very middle-of-the-road view.

The only really material thing Treasury did was to remove a method of escape which arose from the restrictions interpretation, based on the 1933 Cottman case which made the act unenforceable when there were any restrictions on the sale—however meaningless. The rest of the changes do not touch anything that the opponents have seriously discussed during this entire hearing.

The Cottman case was and is law. It has had to be followed. The question arose yesterday whether that case was appealed. The answer is that certiorari to the Supreme Court of the United States was applied for and denied. So there was no option but to follow that case.

Now, there has not been a single person to appear before the committee that has defended the Cottman decision and it is generally recognized that escape from the Antidumping Act by methods of unrealistic and artificial conditions is not justified.

There was an effort by opponents to show that the H. R. 6006 provisions as to restrictions would hurt American industry. Since this primarily came from those who did not want H. R. 6006 passed—urged by those who were defending in large part importers—the argument was made with a certain amount of crocodilian tears.

The fact is that this restriction provision of H. R. 6006 will not harm American industry but on the contrary will greatly aid administration of the act—which was the purpose for which you asked recommendations. This can be demonstrated to anyone desiring us to do so.

Someone used the language "farflung changes," being made by H. R. 6006. There is nothing farflung about them. They are simple, understandable, middle-of-the-road, and practical. Principally they merely prevent this restriction device which has been used and which is largely responsible for the failure to—for the lack of ability to enforce this act.

Now, there have been suggested a number of other changes in addition to those in H. R. 6006. We do not think that in the Antidumping Act any more than we did in the Antitrust Act, or any of our other broad statutes, that we are going to reach perfection all at once.

We believe ourselves that there ought to be some clarifying of other provisions. There are differences of opinion about these and other changes. But we do know that this bill, H. R. 6006 clearly prevents the main factor which makes this law unworkable.

When I testified in the House, I proposed, among others, a definition of injury, and some others have proposed this today. I have in my prepared statement suggested the possibility of a modified injury provision which I would not think that anyone would object to. No one has adverted to it today. We have also suggested other modifications—all set forth in our proposed statement. But the important thing in H. R. 6006 is this restriction change. Other suggestions are made because we think they will clarify the act, but we are practical enough to know you can't do everything at once in any comprehensive law. You can't make it 100 percent correct the first time.

The fairness of antidumping laws is universally recognized in the free countries of the world. Recently the European Economic Community specifically provided for it among its members. An antidumping law exists in all of the western European countries; it exists in Canada. And the laws in those countries are much more easily enforced and much more thoroughly enforced than they are here.

You have heard of the effect of dumping on a number of American industries. There was some question why there weren't more industries seeking relief from dumping. Well, the Cottman case made it rather a vain thing for any industry to make a protest. And that is shown by the very figures that have been provided here. This would not be the situation if this law were amended as the House bill provides. There are a number of industries that have testified to injury from dumping. They include potash, hardboard, the list of industries represented by Mr. Taylor, the list in other statements,

soil pipe, tuna, plywood, pipefittings, and, down the line, calculating machines, fiberboard. There are many others. We cannot know without an effective law whether we have included everybody who would complain. Chemicals, by the way, I will add that. Chemicals embrace many industries and products. The chemical statement is here in the record to show the effects that dumping has had. Now let me talk a few minutes about rayon, to bring dumping home insofar as the only people that I represent here.

When I went before the House committee last summer, I predicted that aside from other factors, there would be a decline in the rayon staple fiber industry as a result of dumping of the fiber in the United States. That decline is now with us in a big way. Statistics of the Bureau of Census show that staple fibers are imported into the United States from 15 foreign countries. Now, the effect has already shown itself—the effect of dumping has shown itself, not only in the profits of the company, but in the employment of labor, as has been testified by Mr. Cook.

Last week one of our clients was forced to lay off 10 percent of his production employees. Within the next 2 weeks another member of the industry will have to make deep cuts. As testified, this not only affects the rayon industry; it also affects the industries with which we deal and those which supply us. We are now utilizing only 50 percent of our productive capacity. And these foreign countries continue to dump.

I have available list prices taken from an accepted source, Skinner's Silk and Rayon Record. Austria's home price is 31½ cents; France, 37; Italy, 28; and West Germany, 31.3. Now, that is their own selling price at home, where they make rayon staple fiber. But staple fiber is coming in here at 23 and 25 cents.

Senator DOUGLAS. Are they on wholesale prices?

Mr. ROYALL. I don't know. But the figures are on a comparable basis.

Senator DOUGLAS. Would you agree with the statement Mr. Harris made, that European industry in the synthetic field is cartelized with price agreements between the producers?

Mr. ROYALL. You mean in Europe?

Senator DOUGLAS. In Europe; yes.

Mr. ROYALL. We don't know those facts. We do know this, and I think it was stated by Mr. Cook or one of the witnesses. We do know that what with their cartel agreements, or with their lack of restrictions on business conspiracies, and with the laxness of their governments in an effort to enforce laws on competition which we would consider normal, the industries in European countries can and do pay for their overhead in many instances by sales in their own country, hoping that they can establish a market here, and then gradually raise their prices here. That is what they are doing, and that is what they will continue to do if H. R. 6006 is not passed.

Senator DOUGLAS. In other words, they will fix a high domestic price on a quantity which will absorb appreciably less than their potential output, which carries their overhead, and then sell here at prime cost, so to speak, without much allowance for overhead?

Mr. ROYALL. Maybe none, maybe less than the cost of overhead. We don't know enough about it to be specific

Senator DOUGLAS. Not average overhead?

Mr. ROYALL. Here, we dont' make near that much spread, 30 percent or more for overhead. And whether the sales here are less than the cost without overhead, or equal to such cost, or only a part of it, I can't tell you. But I do know imports from Europe produce a situation that we cannot duplicate there.

We can't do that anywhere. Under the present law we are playing a one-sided game. They are able through their methods of doing business to hurt our industry. We can't even get in other countries in many cases.

Senator DOUGLAS. You say this would be removed if the qualification of restricted sales were eliminated?

Mr. ROYALL. That restriction dodge, sir, is the biggest thing, we believe, that is back of this trouble. It is the principal thing that has prevented us from taking any effective action against dumping. That is what this bill, H. R. 6006, is about. Now, all the talk about the present Antidumping Act being bad, all the talk about fanciful improvement in it is beside the point just camouflage—this bill is a simple, direct bill, approved by the State Department without qualification, and the State Department is all on the side of free trade. There is nothing in this bill that is designed or can affect the reciprocal trade agreements.

The CHAIRMAN. That was stated by the representative of the Treasury Department?

Mr. ROYALL. That is right. I don't mind answering your questions, but I don't want to run over my time any more than I can help.

Now, the domestic shipments of American-made rayon fiber in the United States in November of 1957, that is, were 29 million pounds. In February 1958, they were 22 million pounds.

The CHAIRMAN. Is that production figure?

Mr. ROYALL. Shipment figures. While that was happening, the foreign imports not only didn't go down, but on the latest statistics we have, they went up a little. This is the best illustration of how this dumping is working actually. We are off over 20 percent, and imported fiber might even be up a little.

In other words, the proportion of imported fiber to what American manufacturers ship has gone up from 20 to 27 percent. In other words, a 35-percent increase in the proportions in this short period. This illustrates the urgency of a quick solution in this matter of dumping by enacting the H. R. 6006 restrictions amendment. That is what this bill does in effect—plus a few other things which no one has really attacked. As has already been shown, dumping affects or may affect all other industries. Now, there has been something said about studying this bill. Well, I used to be in the legislature in North Carolina, and one of the first things I heard when I went there was "if you can't kill a bill, study it again." And I note that rule applies in the United States Senate as well as it did there. I have resorted to it, sometimes successfully, and sometimes unsuccessfully. But when we have got as much at stake here as we have, and when we are faced with the situation in ours and other industries which has been given you, it seems to me that we should promptly pass this very moderate bill that we have before us—a bill which was unanimously adopted in the subcommittee and the full Ways and Means Committee after a full discussion, which bill passed the House without a single dissent,

which bears the recommendations of every department in the United States Government, including—and I repeat—the State Department, as not being detrimental to any of their ideas of foreign relations, and which bill originated with this committee really at its request, and which comes here supported by good sense and practical value. We hope this committee will report the bill out promptly.

The CHAIRMAN. Thank you very much.

(The prepared statement of Mr. Royall is as follows:)

STATEMENT OF KENNETH C. ROYALL

My name is Kenneth C. Royall. My firm, Royall, Koegel, Harris & Caskey, represents the Rayon Staple Fiber Producers Association and I speak as counsel for that group.

The Antidumping Act of 1921 was amended in 1954 by transferring the administration of the injury provisions from the Treasury Department to the Tariff Commission. This Finance Committee's report then stated that: "The committee recognizes that further substantive changes in the antidumping law may be desirable, particularly in relations to price and injury definitions. * * *"

Later, in an amendment to the Customs Simplification Act of 1956, this committee requested that the Secretary of the Treasury be directed to review the operation and effectiveness of the Antidumping Act and to recommend to the Congress such amendments as the Secretary considers desirable or necessary to provide for "greater certainty, speed, and efficiency in the enforcement" of the act.

The Treasury made such recommendations in February of last year, and the recommended changes are embodied in H. R. 6006, which is before this committee today.

Extensive hearings were held in the House on this legislation in July of last year. Three slight modifications were made by the House Ways and Means Committee with the concurrence of the Secretary of the Treasury. These amendments will materially aid in the effective administration of the Antidumping Act and were not controverted. The bill as so modified passed the House Ways and Means Committee and passed the House on a suspension of the rules and by a voice vote. We earnestly urge early enactment of this legislation which will greatly benefit American industry and labor and will serve to prevent the unfair practice of dumping and to prevent much of the evasion of the act which now exists.

Before the House Ways and Means Committee, we urged other modifications—not adopted by that committee. These modifications are designed further to strengthen the Antidumping Act and make its operation more certain. On the basis of considerations brought out in the hearings before the House committee, we have revised those other modifications to some extent for presentation to this committee, and copies are attached to my written statement and will be discussed later. However, these suggestions should not in any sense be construed as detracting from the merit or importance of H. R. 6006 in its present form.

The original Antidumping Act of 1921 and H. R. 6006, with or without additional modifications, are intended to remedy the effect of the unfair international trade practice of selling foreign goods in the United States at prices lower than those charged for the same goods in the country from which they are exported. The wisdom and fairness of antidumping measures are universally recognized by the free countries of the world. The act is not a penal law. It provides that in case of a violation there will be assessed against the foreign exporter as a special dumping duty only the difference between the price which such exporter charges in his home country and any lower price he charges for exports to the United States.

At the outset it is important to call attention to the fact that the Antidumping Act has no relation to escape-clause proceedings, that it is not involved in perilpoint determinations, that it is neither dependent upon nor related to the trade agreements program or the lack of such a program nor is it inconsistent with it.

Other countries, notably Germany and Great Britain, have recently enacted legislation strengthening their own antidumping laws. In the treaty establishing the free trade market of the European Economic Community, it was thought essential to provide specifically for procedures to protect a member country from the dumping practices of other member states. We also call attention to the

fact that the State Department has endorsed the proposals included in H. R. 6006. Certainly that would not have been done if this bill would interfere with foreign relations or any foreign policy, trade, or otherwise.

One of the greatest deterrents to the administration of the Antidumping Act is the present provision that "foreign market value" (which is 1 of the 2 elements in determining an assessment) shall be based only on goods "sold or freely offered for sale." This provision has unfortunately been judicially construed so that no "foreign market value" can be determined if any restrictions—no matter how inconsequential—are imposed in connection with sales to foreign countries. The effect of this has been to prevent the determination of any "foreign market value" and thus to defeat the operation of the act.

In the industry which I represent, the usual restriction placed by fiber producers on sales in the foreign market is that the customer cannot resell the purchased fiber prior to processing it into yarn. Since the customer is normally a textile mill which intends to process the fiber anyway, this restriction could not well be important or meaningful for any purpose except to prevent—as it has done— the imposition of dumping duties in the United States.

This same situation is confined to rayon staple fiber or to any single industry. An equally meaningless restriction could be imposed upon the sale of any commodity to preclude the assessment of dumping duties. The enactment of H. R. 6006 would close this loophole which has heretofore been an easy avenue for evasion of the congressional purpose and intent expressed in the Antidumping Act. In this and other changes proposed in H. R. 6006, such as the definition of "such or similar merchandise," the proposed legislation copes with many of the problems which now prevent the effective enforcement of the Antidumping Act.

As previously stated, we believe that in some respects H. R. 6006—although helpful in the administration of the Antidumping Act—should be further clarified and improved.

H. R. 6006 provides that, in determining the amount of special dumping duty under either subsections (b) or (c) of section 202 of the act, due allowance shall be made for "differences in circumstances of sale" between sales made in the country of exportation and the United States. The word "circumstances" is too indefinite and furnishes neither the interested parties nor the Treasury with any criteria for making "due allowance" in determining the final assesment of dumping duties. Nowhere in the act is there any definition of "circumstances of sale." In fact, such circumstances as "restrictions on sales" are covered elsewhere in the proposed amendments.

The Treasury in its report to the Congress at the last session indicated the type of circumstances which it had in mind in drafting this language. In aid of lending certainty to the act, we propose that in lieu of the phrase, "differences in circumstances of sale," there be substituted the following: "differences in credit terms, in payments of the purchaser's advertising and selling costs, and in other terms of sale." Our proposal is in line with the Treasury's report, and it will cover all the "differences in circumstances" which should be considered.

Another modification which we propose is also by way of clarifying the present language of the act. In its report to the Congress, the Treasury Department recommended that the Antidumping Act be amended so that the two terms "fair value" and "foreign market value" would be brought into conformity. This objective is entirely sound, and H. R. 6006 includes several modifications which tend to bring into conformity the present "fair value" definition as contained in Treasury regulations and the statutory definition of "foreign market value." However, in our opinion, one other step is necessary to further that objective and to prevent uncertainty in the application of the statute.

Section 201 (a) should be amended to provide that the Secretary shall find that sales have been made at less than "fair value" whenever such sales are made at less than "foreign market value" or "constructed value." We do not believe that the Treasury should have the authority or wants authority to define the term "fair value" in such a manner as to defeat the obvious intention of the Congress that dumping duties should be assessed whenever injury is caused by sales to the United States at less than "foreign market value." Our proposed amendment would make it clear that such authority does not exist.

Two amendments to the Antidumping Act proposed by the Secretary of the Treasury represent a departure from the present Treasury regulations under which the Treasury now operates and may lead to uncertainty in the application and administration of the act. One of these amendments concerns the proposed definition of "usual wholesale quantities" and the other concerns the reliance

upon third country sales when sales in the country of exportation are deemed insufficient to form a reasonable basis upon which to make a value determination.

Under section 205 of the present act, "foreign market value" is determined by the price at which merchandise is sold in the country of exportation in the "usual wholesale quantities," with no further definition of that phrase. In determining "fair value," however, the Treasury regulations now take into account "the prices of a preponderance of the merchandise thus sold, weighted averages of the prices of the merchandise thus sold, or any other available criteria that the Secretary may deem reasonable." This authorizes varying criteria to be determined by the Secretary.

The definition of "usual wholesale quantities" in H. R. 6006 has the advantage of prescribing a single criterion, that is, the price or prices for that particular quantity in which the greatest aggregate volume of merchandise is sold. However, the disadvantage to American industry arises from picking that criterion which it appears could frequently result in the lowest price and therefore the lowest foreign value of any of the criteria which have been or could be used for this purpose. This would give American industry somewhat less protection from dumping than it deserves.

For the protection of American industry, we therefore ask that there be added to section 205 a proviso to the effect that in no event shall be the "foreign market value" be less than the weighted average of the prices of substantially all sales in wholesale quantities within a representative period.

Another departure of H. R. 6006 from the present Treasury regulations is the provision for reliance solely upon third country sales under prescribed circumstances in order to determine "foreign market value." The present Treasury regulations relating to "fair value" provide that if the quantity of the merchandise sold in the foreign country for home consumption is so small as to be an inadequate basis for comparison, then consideration will be given to the sales of merchandise sold by the foreign producers "otherwise than for exportation to the United States." This latter phrase would mean that consideration is to be given to all merchandise sold for home consumption in the foreign country and for exportation to any country other than the United States.

H. R. 6006 now proposes that if the quantities sold in the foreign country from which the merchandise is exported are inadequate, then the determination of "foreign market value" will not be based at all upon goods sold in the producing country but will be based solely on sales to third countries. The Treasury also proposes to amend its regulations so that the rule thus applicable to "foreign market value" will also be applicable to "fair value."

While we agree that "fair value" and "foreign market value" should be governed by the same criteria, we feel, where there are inadequate home market sales in the country of export, that the "foreign market value" should in no event be less than the weighted average of sales both in third countries and in the foreign country of export, however small the latter sales may be. We propose that section 205 (foreign market value) be amended so to provide. Our position is consistent in purpose with the present Treasury regulations which use the criteria of sales "otherwise than for exportation to the United States."

We have already covered in the previous discussion four proposed modifications, to wit, explanation of the term "differences in circumstances of sale," correlation of "fair value" and "foreign market value," clarification of the application of the definition of "usual wholesale quantities," and modification concerning the use of third country sales for the determination of "foreign market value."

In addition to these 4 suggestions, we propose 2 other modifications, important ones, about which the Senate Finance Committee has previously commented.

In Senate Report No. 2326, 83d Congress, 2d session, at page 3, the Senate Finance Committee stated that "The committee believes, for example, that it should be clear that injury in a particular geographical area may be sufficient for a finding of injury under the Antidumping Act." Unfortunately, no provision is made in H. R. 6006 to cover this situation.

For relief under the present act, the Tariff Commission is required to find that "an industry in the United States" is being or its likely to be injured or is prevented from being established. Yet the act does not define the term "industry." This can result, and has in the past resulted, in uncertainty and indefiniteness in the administration of the antidumping law.

The best example of this is the recently litigated Soil Pipe case. While this case was decided in the Supreme Court in favor of the American industry concerned, yet this was only on a procedural ground and additional dispute and

litigation is almost certain. This matter should be now clarified in line with the Senate's previously expressed views, and a definition of the term "industry" would facilitate the "certainty, speed, and efficiency" in the enforcement of the act desired by the Congress.

The plain intent of the Antidumping Act is that the word "industry" applies to the production or distribution of any definable product which may be affected by the unfair-pricing incident to dumping and that it applies to such production or distribution in any geographical area. We propose such a definition This apparently is the definition now accepted by the Tariff Commission.

Another, and an important, problem to which this committee has previously referred, concerns the standard by which injury to an American industry is determined. On August 5, 1954, this committee stated in the report previously referred to that it recognized that further substantive changes in the antidumping law might be desirable, particularly in relation to the definition of injury.

Several suggestions concerning injury were made in the hearings before the House Ways and Means Committee. These suggestions range from the complete elimination of any necessity for a finding of "injury" (similar to the provisions of the Canadian law) to a requirement which would really mean that the American industry concerned must be in a state of virtual bankruptcy before the remedial provision of the act could take effect. In my own testimony before the House committee I urged a definition of "injury" that I thought would cover all types of injury to American industry which, as a practical matter, could be expected to arise.

In view of the wide range of suggested modifications of the present "injury" provisions, this seems to be a problem concerning which reasonable men may differ as to exact provisions. Nevertheless, it should be clear that the generally disruptive economic effect of dumping merchandise in this country by any foreign producer should be stopped unless it is established that no American industry will be injured by such practices.

This, it seems to me, was the intent of the Congress in originally enacting the Antidumping Act. The legislative history makes it apparent that the only purpose of any provision requiring a showing of injury was solely to prevent the burden and harassment which might arise from the insignificant or trifling cases having no effect whatsoever on American industry. Injury should not be a prerequisite or even a consideration except to that extent.

This limited purpose can be accomplished by modifying the present act to provide that unless the Tariff Commission finds that American industry is not injured by sales of merchandise at less than "fair value," special dumping duties shall be imposed. Adoption of such a modification would notify the importers and domestic industry alike that the American Government will not tolerate dumping of foreign merchandise in this country unless it appears that there is no injury to any American industry.

This is a principle upon which there should be universal agreement among all proponents of the now conflicting proposals in this connection. It will more clearly effectuate the intent of the Congress to protect American industry, labor, and agriculture from the injurious effect of dumping. We believe that our suggestion on injury goes directly to this essential point. We cannot see how there could be any real dispute concerning the adoption of this proposal among those who are truly interested in an effective Antidumping Act.

The foregoing comments relate to amendments which are designed to clarify the legislation under consideration and to make certain the intent of the Congress in the enforcement of the Antidumping Act. We believe that the adoption of these amendments will add greatly to the certainty desired by the Congress, speed the administration of the Antidumping Act, and promote the efficient enforcement of its provisions.

Immediate action in this field is essential. As I testified before the House Ways and Means Committee last year, "time is running to our financial detriment every time [dumped] rayon [staple fiber] is sent here from overseas." This statement I then made has been fully borne out by subsequent events.

Shipments by the rayon staple fiber industry in February amounted to only about 50 percent of its productive capacity. In the same month, imports were more than one-fourth as large as domestic shipments. Obviously, our domestic productive capacity is more than sufficient to supply the entire domestic needs but is prevented from doing so by imports. Most of these imports are dumped goods. This is shown by the price differentials set forth in my statement before the House Ways and Means Committee.

The influx of rayon staple fiber at dumping prices has already taken its toll of our American labor market. Last week, one of my clients was forced to lay-off 10 percent of its production employees. I am advised that within the next 2 weeks another member of the industry will be forced to make deep cuts in the number of its employees. This not only results in the loss of employment for many hundreds of employees but it also represents a loss to the industry of a hard core of trained personnel.

The present condition of the domestic staple industry is indicated by the figures for monthly shipments at the beginning and end of the last 3-month period. These figures and the quantities imported for the same period are as follows:

[Millions of pounds]

	Domestic shipments	Imports
November 1957	29.2	5.9
February 1958	22.1	[1] 6.0

[1] Estimated.

It is apparent from an examination of these figures that the domestic industry is undergoing a severe crisis, to which dumped imports are contributing greatly. During this period domestic shipments are off over 20 percent and imports remain constant.

The proportion of imported fiber to domestic fiber shipped to domestic mills has grown in this short period from about 20 percent to over 27 percent, in other words, an increase proportionally of about 35 percent. This illustrates the urgency of a quick solution of this dumping problem. Inventories of domestic staple have been steadily increasing and further cuts in production must obviously be made unless the situation improves materially in the immediate future.

I have adverted only to the rirect effect of dumping on the rayon staple fiber industry itself. Coupled with this is the fact that suppliers of the raw materials of this industry, such as wood pulp, sulfuric acid, caustic soda, and carbon bisulphide, have likewise suffered from a loss of sales caused by dumped fiber and so have carriers and many others rendering service to our industry. Add the unemployment resulting from this cause to the direct unemployment resulting from the dumping and the effect on our American economy in this one segment alone is staggering. Multiply these facts by the various other industries suffering from these same unfair dumping practices and it becomes apparent that remedial legislation is needed and is needed now.

Last year, before the House Ways and Means Committee, I predicted the decline in the rayon staple fiber industry and other industries as a result of the dumping of foreign merchandise in the United States. This decline is now with us in a big way and is a growing decline. Certainly, making the Antidumping Act effective is not a panacea for all of our present ills. But just as certain is the fact that effective legislation to remedy the unfair practice of dumping will provide a measure of relief to the American economy.

The act is not now effective. Prompt action is essential. This Congress has the opportunity by forthright action to insure that the unfair intenational trade practice of dumping will no longer be permitted in the United States. We submit that H. R. 6006 should be enacted promptly.

Rayon Staple Fiber Producers Association Modifications

No. 1 Injury and Fair Value

(Words in brackets are proposed deletions from the present text of the Antidumping Act, 1921, as amended; words in italic are proposed additions. H. R. 6006 makes no change in Section 201. (a).)

201. (a) Whenever the Secrtary of the Treasury (hereinafter called the "Secretary") 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. *Unless,* the said commission [, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative,] *shall within three months determine and publicly certify to the Secretary that an industry in the United States is not being, or is not likely to be injured, or is not prevented from being established, by reason of the importation of such merchandise into the United States,* the Secretary shall make public a notice (hereinafter in this Act called a "finding") of his determination. [and the determination of the said Commission.] The Secretary's findings shall include a description of the class or kind of merchandise to which it applies in such detail as he shall deem necessary for the guidance of customs officers. *In making his determination under this subdivision, the Secretary shall find that merchandise is being, or is likely to be, sold in the United States at less than its fair value if the purchase price of such merchandise is less, or the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, then the constructed value).*

NO. 2 DEFINITION OF "INDUSTRY"

(Words in italic are proposed additions to sec. 5 of H. R. 6006, 85th Cong., 1st Sess.)

"*(5) The term 'industry in the United States' means that subdivision or other portion of the producing organizations manufacturing, assembling, processing, extracting, growing, or otherwise producing in commercial quantities a product, article or raw material which portion or subdivision may be affected by reason of the importation of the particular merchandise under consideration. In applying the preceding sentence, the Commission shall (so far as practicable) take into consideration any regional or geographic distribution or production of such product, article or raw material and shall distinguish or separate the operations of the producing organizations involving such product, article or raw material from the operations of such organizations involving other products, articles or raw materials.*"

NO. 3 DIFFERENCES IN CIRCUMSTANCES OF SALE

(Words in brackets are proposed deletions from H. R. 6006, 85th Cong., 1st sess.; words in italic are proposed additions to H. R. 6006)

That subsections (b) and (c) of section 202 of the Antidumping Act, 1921 (19 U. S. C. 161 (b) and (3)), are amended to read as follows:

"(b) In determining the foreign market value for the purposes of [subsection (a)] *this title,* if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the purchase price and the foreign market value (or that the fact that the purchase price is the same as the foreign market value) is wholly or partly due to—

"(1) * * *

"(2) [other differences in circumstances of sale] *differences in credit terms, in payments for the purchaser's advertising and selling costs, and in other terms of sale,* or

"(3) * * *

"(c) In determining the foreign market value for the purposes of [subsection (a)] *this title,* if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the exporter's sales price and the foreign market value (or that the fact that the exporter's sales price is the same as the foreign market value) is wholly or partly due to—

"(1) * * *

"(2) [other differences in circumstances of sale] *differences in credit terms, in payments for the purchaser's advertising and selling costs, and in other terms of sale,* or

"(3) * * *"

NO. 4. FOREIGN MARKET VALUE

(Changes in sec. 3 of H. R. 6006, 85th Cong., 1st sess., are printed in italic)

"SEC. 205. For the purposes of this title, the foreign market value of imported merchandise shall be the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the prinicpal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States): *Provided, however, that such prices shall in no event be less than the weighted average of the prices of all or substantially all of such or similar merchandise sold in wholesale quantities for home consumption within a representative period prior to the time of exportation (or if not so sold or offered for sale for home consumption, or, if the Secretary has determined that sales for home consumption form an inadequate basis for comparison, then such price shall in no event be less than the weighted average of the prices of all or substantially all of such or similar merchandise sold in wholesale quantities otherwise than for exportation to the United States within such representative period)*, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value."

The CHAIRMAN. The committee will adjourn, to meet in executive session tomorrow morning.

(By direction of the chairman, the following is made a part of the record:)

STATEMENT PRESENTED BY COLUMBIA RIVER PACKERS ASSOCIATION, INC.

This statement is made on behalf of the Columbia River Packers Association, Inc., Astoria, Oreg., an Oregon corporation, which has been active since 1899 in the processing of canned, frozen, and fresh salmon, tuna, and numerous other fish products. It has fish-packing operations in Bristol Bay and southeastern Alaska, on Puget Sound and the Columbia River, and for a distance of some 500 miles along the Oregon and Washington coasts. In addition, it has the only tuna-packing operation located in the Hawaiian Islands. The company's 1957 gross sales were $18,833,740, covering in excess of 1 million cases of assorted seafood products, of which canned tuna constituted some 60 percent.

This company has been active in the canning of tuna produced off the coasts of Oregon and Washington since the inception of this fishery in 1938. There has been a wide fluctuation in the annual production of tuna in the local fishery. Since 1947, the company has augmented its supply of domestic tuna through imports of frozen tuna from Japan. This practice has, during the past 10 years, enabled this company to greatly increase and stabilize its tuna-packing operations, thus providing practically year-round employment for some 500 cannery and cold-storage employees in Astoria and the northwestern section of the State of Oregon. Its products are merchandised in the major markets of the Nation

under the well-known Bumble Bee brand, which has an enviable reputation for quality.

It is our understanding that you have before you the matter of H. R. 6006, a bill amending the Antidumping Act, which has been passed by the House of Representatives and is now before the Senate for consideration. We feel that this bill contains clarifying language which would improve the administration of the present act. We believe that its passage would cause no great disruption in our foreign trade picture or in the tuna industry. We have no objection to these proposed clarifying amendments; however, we feel that they do not cure some of the basic faults of the present law. We do not think that the principle of using the cost of production of an exporter is a practical approach, particularly in reference to perishable materials. This cast is most difficult to determine. It is not controlling in the world market. It leaves the importer operating in darkness since he cannot know with any accuracy what the exporter's cost of production may be.

We feel, in justice to importers of raw perishable material from friendly nations, that the following language should be inserted in the present act.

On page 6 of the bill, as passed by the House of Representatives, line 16, eliminate the semicolon following the word "business." Insert in place of the semicolon a comma and the following matter: "except that in relation to imported merchandise that is a seasonal and perishable material and has been processed only by freezing to prevent spoilage, the material's cost shall be the price at which such raw material is sold, or freely offered for sale, in the country of exportation on or about the date of purchase, or agreement to purchase, of the merchandise imported into the United States."

It is obvious that any business relative to the trading or marketing of perishable raw materials must be conducted upon a more elastic formula than that which might be imposed on trade in nonperishable commodities. We believe this suggested amendment to the act, as passed by the House, would present an equitable solution of this problem.

In connection with your consideration of H. R. 6006, we would also call to your attention that during the consideration by the House of Representatives of this measure and other similar proposals introduced at that time, we were of the opinion that many of these alternative proposals, such as those presented in H. R.'s 5102, 5120, 5138, 5139, and 5202, would, if adopted, alter the whole basic tariff and foreign trade policies of this Nation and have substantially damaged the American tuna industry. Our principal objection to these bills was that they removed completely the question of proving damage to American producers in determining whether dumping duties should be imposed. We feel that the elimination from any portion of our tariff laws of the historical concept that no trade barriers should be erected, unless damage and injury to American industry can be proven, should never be contemplated without the most serious justification. This condition certainly does not exist in the present instance.

We respectfully urge that your committee do not consider any proposals beyond the scope of H. R. 6006 as presently written, except the amendment herein suggested to deal with the problem of the importer of a perishable commodity which has been processsed only by freezing to prevent spoilage.

ALLIED CHEMICAL & DYE CORP.,
New York, N. Y., March 14, 1958.

HON. HARRY F. BYRD,
United States Senate,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: The Finance Committee is undoubtedly giving active consideration to H. R. 6006, a bill to amend the Anti-Dumping Act, 1921.

As you know, the bill embodies the recommendations of the Treasury Department to provide for "greater certainty, speed, and efficiency in the enforcement thereof." Changes made by the Ways and Means Committee in the original Treasury draft were, we understand, not opposed by the Treasury. As stated in its report, the Ways and Means Committee refused to make further changes in the law suggested by different interests, because they were considered departures from the basic policy of the law.

We believe that the policy stated in the congressional directive is of unquestioned soundness and can only be made effective by early enactment of the present bill. We sincerely hope that the Finance Committee may see its way to a favorable reporting of the bill in time for final passage at the current session.

May I express my deep satisfaction that the Finance Committee is now assured of a continuation of its present able leadership.

Sincerely yours,

RICHARD F. HANSEN, *Secretary*.

AMERICAN VISCOSE CORP.,
Philadelphia, Pa., March 17, 1958.

Hon. HARRY F. BYRD,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: I spent last week with our Atlanta, Ga., district sales manager traveling throughout that State, North Carolina, and South Carolina, looking for business. We talked with officers and purchasing directors of the corporations visited. Although there was a reasonable amount of business, there was in general a tense feeling of doubt on the near future of our industrial economy.

The newspapers are filled with articles on the subject. I noted one in an Atlanta paper, a proposal by Representative John E. Fogarty (Democrat, Rhode Island), chairman of the House Appropriations Subcommittee which supervised funds for unemployment payments, introducing a measure to increase and extend unemployment compensation for jobless Americans over 40 instead of 26 weeks. Another article on the editorial page entitled "Tariffs" brings out a very important point in the maintenance of the American standard of living. I am attaching a photostatic article for your interest.

Our corporation has been in business since 1910. It is a fine American company and has given steady employment over a period of years to as many as 23,000 persons—and at the same time income to about the same number of stockholders.

Since the reduction in rayon staple tariff, this business has been shrinking rapidly and it is obvious that we will soon be unable to operate at a profitable level unless drastic and positive action can be taken. Foreign staple is now and has been "dumped" into this country at prices below our profit level. The offending exporters are being subsidized by their governments. During 1957 at least 84 million pounds—more than the combined output of 2 of our plants, were imported. Our company's operations had to be further curtailed.

Unemployed Americans cannot buy goods at any price. With the rising unemployment these jobs are needed for American workers.

I respectfully request your immediate attention to and support of the antidumping bill, H. R. 6006.

Respectfully yours,

H. J. MICHEL, *General Manager*.

The Editors: I have noticed reports that unemployment is on the rise in some sections. This includes textiles and the auto industry. Many people are never disturbed until they are counted among the unemployed. Then they want something done.

I notice many people riding around in foreign cars. You can observe people rushing to buy the foreign-made textile goods. Big bargains, so they think, but is it such a bargain if they were the ones out of a job because of such buying?

In Washington they talk of lowering the tariffs. It seems some want to flood our country with 'cheap labor" goods. We have a high standard of living (at present) but throwing people out of work will not keep our standard.

It is time we return to free enterprise system and raise tariffs. Combined with reduction of taxes, we would then be on the road to increased employment.

A. J. BRADY.

Atlanta.

SCHEUER ASSOCIATES, INC.,
New York, N. Y., March 26, 1958.

Re: H. R. 6006, Antidumping

Hon. HARRY F. BYRD.
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: We have a deep interest in the proposal to amend the Antidumping Act of 1921. Our firm represents both domestic and foreign textile producers. Our parent company is Scheuer & Co., one of the largest textile brokers in the United States whose business is entirely in domestic textiles, and therefore, the welfare of the domestic textile market is our primary concern. One of our clients, on whose behalf we address ourselves to this committee, is Societe de la Viscose Suisse, the Swiss producer of viscose rayon staple fiber.

At the outset we wish to affirm our objection to dumping, and our approval of the purposes that resulted in the enactment of the Antidumping Act of 1921; namely, the protection of the domestic industry from destruction by predatory dumping. By predatory dumping, we mean the clasic definition of dumping price raids for foreign producers which injure American industry. The framers of the law recognized their obligation to the American consumer as well as the American producer, for in their debates and hearings they stated that they did not expect the act to be applied to all bargains in international trade, only against predatory dumping which injured domestic industry.

We do not address ourselves to the problem of predatory dumping: both the Antidumping Act and the disposition of the Treasury Department adequately protect our industry. Our concern is that in an overzealous endeavor to protect the domestic producer, we may deprive the domestic consumer of his protection, of his right to benefit from advantages in foreign trade, the leveling influence of competitive prices, and the inventive genius of other countries. This we fear will result if this bill is adopted.

The validity of our fears is shown by a brief reference to the history of the Antidumping Act. For many years the act was effective. Findings of dumping during the first 13 years of the law served notice on predatory foreign producers of our firm purpose to protect our industries. Dumping exports to the United States became rare indeed. True, many complaints of dumping since 1934 were found by the Treasury Department to be unjustified: this was not the fault of the law, but rather it reflected the lack of merit of the overwhelming number of the complaints. Many domestic producers equated all foreign competition with dumping and demand protection against competition by calling it dumping. Willing they were to sell their products to foreign countries, often at prices lower than their prices in this country: but they were reluctant to face a foreign product in the United States marketplace. When they encountered legitimate foreign competition, many such organizations raised the cry of dumping. That it did not exist did not matter: the important thing was to shout loud enough and embarrass and impede imports—certainly during the time the issue was being adjudicated. None of such domestic producers who since 1934 raised the false cry of dumping failed or closed their doors because of the foreign products in our markets. All of them shared in the spectacular growth of productivity. expansion and profits, that has marked American industry in the last generation.

Faced with a realization that the Antidumping Act in law and in practice not only protected the domestic producers against dumping, but also protected domestic consumers of foreign products against false claims of dumping, a number of domestic producers began a campaign to weaken the protection of the consumer. They were successful in part, for as a result of their endeavors the customs regulations were changed.

These changes caused the anomalous situation whereby a finding of dumping can be made under the customs regulations, but no dumping duty can be collected. This is not a weakness in the law: it results from the illegality of the regulations. The regulations went beyond the law, and were in fact an attempt by the Treasury Department to usurp the legislative authority of Congress.

Realizing that its regulations are not enforceable in the courts because of their illegality, the Treasury now comes to Congress and inverts the facts, imputing the weakness to the law, rather than to its improper regulation.

Principal advocates of the proposed amendments to the Antidumping Act of 1921 are, we understand, the domestic rayon staple fiber industry. From small beginnings, nurtured by the European rayon industry, and European inventions and processes, the domestic industry has become a giant, with tremendous profits and capital enhancement. It now seeks to close the doors to foreign rayon staple

fiber, through the device of dumping legislation. The domestic consumers do not want this legislation: they want European rayon staple. The European producers serve several vital purposes in the domestic market:

(1) Foreign staple fiber furnishes a supply cushion when the domestic mills cannot meet the domestic demand, as had happened many times.

(2) Foreign staple acts as a brake on extortionate prices of domestic rayon staple fiber.

(3) Foreign staple supply is a resource which insures domestic mill operation in cases of unavoidable casualties, strikes, etc., which might occur in plants of domestic staple fiber producers. When contingencies of this type occurs as it has in the past, United States mills which have been regular customers of foreign suppliers are given preference in supply and are thus able to maintain their spinning and weaving operations which otherwise might be shut down.

Domestic rayon staple consumers do not buy foreign staple fiber because of the historical price advantage of about 2 cents per pound. If this were their motivation, they would buy only foreign staple, and cut off the domestic producers. This price differential does not represent a bargain to domestic consumers, because the domestic producers, so close to the users, can supply goods more quickly and can service their purchasers faster with technical facilities.

Passage of this bill would serve to create for the domestic suppliers a tight monopoly, and would remove from the domestic consumers and effective protection. Enactment of this measure would thus be violative of the true purposes of the Antidumping Act of 1921.

If amendments there be, they should be directed to:

(1) Requiring public hearings by the Tariff Commission on the question of injury.

(2) Providing for Presidential review of findings of injury.

(3) Providing for judicial review of the legality of the proceedings, and of findings of sales at less than fair value.

Such measures would serve to protect the interests of both domestic producers and domestic consumers, and would help us maintain a posture of fair play in international trade.

Sincerely,

T. D. Lewis, Jr., *Vice President.*

Greater Detroit Board of Commerce,
Detroit, Mich., March 26, 1958.

Hon. Harry Byrd,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

Dear Senator Byrd: This material is submitted to your committee to express the views of the Greater Detroit Board of Commerce on the subject of antidumping legislation, H. R. 6006, now being considered.

These views are based on a policy statement adopted in 1956 by the two committees of the Greater Detroit Board of Commerce concerned with international trade and affairs, namely, the world affairs committee and the import and customs committee, and approved by the board of directors. This statement was reaffirmed in March 1957. The text of the pertinent statement is reproduced at the end of this presentation.

The Greater Detroit Board of Commerce is a nonprofit corporation, duly authorized and existing under and by virtue of the laws of the State of Michigan.

To underline the interest of the Detroit business community, as expressed through the Greater Detroit Board of Commerce in the present hearings, we would like to point out that this organization, with a membership of over 6,500, represents more than 4,100 business firms in the Detroit metropolitan area with a population of more than 3.5 million people.

The views of the Greater Detroit Board of Commerce on antidumping legislation are submitted to the committee to aid its members in determining what United States policy should be in the administration and enforcement of the Antidumping Act of 1921.

At the outset we should make clear that this organization firmly supports the basic purposes of the antidumping law, namely the prevention of shipments of foreign merchandise to the United States market at unfair low prices designed to injure domestic industry and/or to eliminate competition, and to establish a monopoly.

Any amendments to existing legislation designed to improve the effectiveness of the statute will have the wholehearted support of this organization.

However, beyond making the basic legislation more effective for its intended purposes, we also feel that the administration of the antidumpig law, particularly during the recent past, has not always been such as to create the belief both at home and abroad that the antidumping legislation is solely what it was intended to be, namely, a weapon against certain kinds of commercial warfare.

We believe that the antidumping law should be so administered as to impose a minimum of obstruction to the normal course of import trade and should prevent the filing of spurious claims of "dumping" designed to impinge on the rights of American importers to trade freely with the rest of the world.

Any amendments to the Antidumping Act should recognize the inequities now existing from the viewpoint of the importer who contracts for the delivery of merchandise in good faith and suddenly finds himself embroiled with the Bureau of Customs and the Tariff Commission while his goods are withheld for appraisement. In the interest of greater equity for the importer we urge that:

1. The Secretary of the Treasury should be required to publish immediately a notice of a complaint, or suspicion, of dumping or sales below fair value, and after the publication of such notice provide the importer or other interested party with information on the basis of the complaint or suspicion.

2. If and when the Secretary publishes a finding of sales below fair value he should be required to give the reasons for such finding after having given the importers an opportunity to be heard as to why such a finding should not be made.

3. After turning a case over to the Tariff Commission, subsequent to a finding that sales of imported goods took place below fair value, the Tariff Commission should be obligated to hold public hearings, if requeted, to determine injury. Upon its determination of whether or not injury or the threat of injury had been incurred, the Tariff Commission should publish its conclusions and its reasons for such finding.

4. The delays, incident to a determination of injury and the final finding of dumping or no dumping, should be cut to a feasible minimum. To relieve the importer from the extended period during which he faces the risk of retroactive penalties, final disposition of an antidumping case by the Treasury and the Tariff C[illegible]ission should be made within a period not to exceed 9 months from the date [illegible] the first complaint or suspicion of dumping.

Among the most important changes which ought to be included in any legislation to amend the antidumping legislation, we believe that an interested or affected party ought to have recourse to the Customs Court for a review of the legal issues involved. American principles of justice demand that the affected party may find a remedy in law.

We believe that amendments such as these would provide for a more equitable treatment of importers and would remove the stigma of star-chamber proceedings which so often have attached to antidumping cases in the past.

Beyond these changes, however, it is of vital importance that the Congress continue to recognize, as it did when the antidumping legislation was first discussed in Congress in 1921, that a sale at less than fair value need not necessarily involve dumping. In other words, the Congress may wish to reaffirm as a basic doctrine that the requirements for a finding of a sale below fair value would require also that such sales were not made merely in good faith to meet domestic competition and that the purposes or effects of such sales below fair value had the intent of eliminating competition, destroying or seriously injuring domestic producers, or establishing a monopoly.

Any legislation such as the Antidumping Act should not impose any undue limitations of the rights of buyers and sellers in the market place. In order to assure that this basic condition of trade in a free enterprise economy be adhered to and that the rights of an importer to bargain for the best price possible is an inherent right of the American businessman.

We also believe that antidumping legislation would be strengthened if the Congress would redefine the injury concept under which the Tariff Commission was to make its investigations.

Under normal conditions world trade will, like all competition, cause injury to certain elements of business. We urge that the injury concept be redefined and clarified so that the Tariff Commission will have standards which will require a finding of injury only if the injury to a domestic producer due to foreign dumping is material and is directly caused by dumping.

Part and parcel of the redefinition of injury is a clear statement of the intent of Congress that a domestic industry is not synonymous with a fraction of a domestic industry. This erroneous idea seems to have been behind the soil pipe case in which the California soil pipe makers alone were regarded as an industry, although they accounted for only a small fraction of domestic production. A domestic industry should be the total of all producing organizations in the United States producing like or directly competitive products. In such a definition of standards of what a domestic industry is, Congress may wish to give the Tariff Commission a certain leeway to eliminate from a domestic industry those portions or subdivisions of industry which produce unrelated products or articles.

The antidumping law is an important aspect of United States foreign trade policy. Its enforcement should not only accomplish what it was designed to do, but should also avoid restricting unnecessarily the flow of international trade. To this end, the policy declaration of the Greater Detroit Board of Commerce was adopted, as follows:

"ADMINISTRATION OF THE ANTIDUMPING ACT

"We approve and fully support the purposes of the Antidumping Act of 1921 which was intended to control discriminatory pricing policies by foreign suppliers. We are deeply concerned, however, that recent administration of this legislation is not in line with the basic purposes of this act.

"We wish to point out that not every low-priced purchase abroad constitutes dumping. The present methods of investigations, now delegated to the Tariff Commission, do not require that agency either to publish a report, or in any other way make public the reasons for its decision.

"Such arbitrary procedures run counter to American principles of justice, particularly since even the institution of proceedings, possibly based on unjustified charges, causes all appraisals to be withheld and thus may cause severe hardships on importers contracting for imports in good faith. This is all the more unfair since the importer continues to face retroactive penalties.

"The Tariff Commission in the soil pipe case elastically defined 'industry' as being a small segment of an entire industry, thus creating a dangerous precedent and threat to the orderly development of foreign trade.

"We advocate that the basic purposes and intent of the Antidumping Act, as amended, be redefined by Congress and that definite and fair standards for determining existence of injury to American industry be adopted by Congress for the guidance of the Tariff Commission, in keeping with our national economic interests and our foreign trade policy."

We would appreciate if the Senate Finance Committee would give our views due consideration, and make this letter part of the record.

Sincerely yours,

CARLOS E. TORO,
Manager, World Trade Department, Greater Detroit Board of Commerce.

STATEMENT OF THE NATIONAL SHOE BOARD CONFERENCE, INC.

My name is Theodore M. Alfred. I am secretary-treasurer of the National Shoe Board Conference, Inc., of Boston, Mass. I am submitting this written statement on behalf of that organization in support of the amendments to the Antidumping Act of 1921 proposed by the Treasury Department, and embodied in H. R. 6006.

We submit that the Antidumping Act of 1921 has not effectively protected our industry from injury from the dumping of foreign shoe board producers. We believe that H. R. 6006 is logical and a necessary step in preventing such dumping.

Shoe board is a term for fiberboard or leatherboard made on wet lapboard machines and used primarily in such parts of shoes as heels, counters, innersoles, midsoles, shanks, and tucks. The shoe board industry is a division of the paper industry, and the National Shoe Board Conference, Inc., is a member organization of the American Paper and Pulp Association.

The shoe board industry is small business. There are 17 shoe board mills in the United States located mostly in small towns where they are an important factor in the local economy.

Nearly every shoe made today contains some form of shoe board.

Without shoe board, few conventionally made shoes could be manufactured.

Shoe board is manufactured primarily from waste materials, but in its finished state performs the functions of, and substitutes for, virgin or scarce materials. Although essential in peacetime, the shoe board industry is indispensable in wartime. The use of waste materials frees critical materials such as leather and rubber for other applications. Moreover, the shoe board industry has manufactured military materials, such as components of combat boots, shell grommets for projectiles, gas mask face forms, and the like, thereby warranting priority ratings as high as AA-1 during World War II.

During World War II, imports of shoe board were negligible. Although figures are not available to us for 1943 to 1945, our records show that only 59 tons of shoe board were imported in 1942; 1943 to 1945 were probably even less. Therefore, without the domestic shoe board industry, the Nation's above-named defense requirements could not have been met.

The shoe board industry is a vital industry which should, in the Nation's interest, be preserved.

Particularly within the last 4 years, materials classified as shoe boards have been shipped into the United States in quantities well in excess of that shipped in earlier years. For instance, only 10 years ago, in 1947, only 755 tons of shoe board were imported. In 1955, 3,291 tons of shoe board were imported and, in 1956, 2,699 tons of shoe board were imported. This trend has continued into 1957.

We also have reason to suspect that there may be additional tons of imported fiberboard, under different classifications and at resultantly lower tariffs, that have found their way into the shoe industry and displaced the production of domestic shoe board producers.

The current production of the domestic shoe board industry is approximately 40,000 tons a year. Thus, imports are approaching 10 percent of domestic production.

During this approximately 3 years of increased import activity, several domestic shoe board producers have been forced out of business. The Davis Paper Co. of West Hopkinton, N. H., the Spaulding Fibre Co., Inc., of Townsend Harbor, Mass., and the Sterling Shoe Fibre Co. of Eagleville, Conn., have closed their doors.

Other shoe board manufacturers have been forced to sell their products at less than normal prices because of competition. Others through aggressive selling and research programs have, in some measure, been able to compensate for loss of markets by development of new products and new markets.

Small business is more vulnerable to outside influence and less flexible in its operations than a large business. A shoe board mill is necessarily a mill of relatively large capital investment per product unit or per employee; its ability to adjust its manufacturing programs to combat concentrated competitive efforts of foreign producers is limited. Moreover, there is little incentive to modernize or even adequately maintain our mills in the face of the continuing inroads being made by foreign producers. We are willing to accept fair competition when the competitive prices are based upon legitimate cost differentials. We believe in competition. There are, however, boards which are no longer being made in this country because of the inability of domestic industry to meet prices charged by foreign mills which we firmly believe are less than the prices which they charge in their own domestic markets.

We respectfully submit that the plight of the shoe board industry is in considerable measure caused by imports of foreign shoe boards at prices below those charged by such foreign manufacturers for similar shoe boards in their domestic markets.

We believe that the original spirit and effective action contemplated by the Antidumping Act of 1921 have been controverted by the absence of specific criteria of dumping.

We believe that the proposals of the Treasury Department are a sound and well considered first step in making the 1921 Antidumping Act more effective and, if enacted, will make findings of dumping, where it, in fact, exists, more probable than has been the experience under existing law.

Proof of sales by foreign producers on the American market at less than fair value is difficult under the existing law. We firmly believe, on the basis of information known to our industry, that such sales are taking place.

Further, we believe that, in particular, the proposed redefinition of the term "such or similar merchandise" will materially aid in the comparison of shoe boards, and thus in the proof of sales at less than fair value.

For instance: shoe boards are generally used in shoes as fillers, in parts of the shoe where they are not seen. Color, therefore, is immaterial to its function. Yet production and sale of a board of one color in the exporter's domestic market, and production and sale of an otherwise physically identical but different colored board for export to the United States at a lower price, may allow the exporter to avoid comparison of the two prices for the purposes of the Antidumping Act.

We believe that the proposed redefinition of "such or similar merchandise" in section 212 (a) is at least a step towards recognition that a product may be functionally identical for the purposes for which used even though not identical in other rather academic considerations.

Since shoe manufacturing in most modern countries is substantially similar, we submit it to be patently false when an exporter from a country in which shoes are made by conventional shoe making machinery and methods claims that a shoe board is made for the United States market only, and that it does not make such a product for its domestic market.

To the end of assisting in the identification of such materials, we have and will continue to be of any assistance to the customs officials we can. The shoe industry, and the shoe board industry, employ specialized manufacturing processes. We believe we know our own field, and can best identify the likely end use of our type of product. We believe, with all due respect, that this is necessarily true.

We believe that the proposed amendments to sections 202 and 205 will aid in the comparison of products for antidumping purposes.

The Treasury Department has also proposed a new invoice form which, by asking for additional information from the exporter, will enable customs officials more readily to spot sales at a dumping price. Although this is not embodied in the instant bills, we believe that such invoice forms will make the enforcement of the act considerably more effective.

We submit that the provision and requiring of such invoice forms, such as certain other countries already require, is desirable.

Our association has discussed at considerable length the nebulous criteria of "injury to an industry in the United States." We have no magic formula. We wish we did. We do, however, submit that there have been—(1) sales of shoe board of foreign manufacture to the United States at less than the price that those exporters are charging for materials identical for the intended purposes in their domestic markets; (2) that this constitutes dumping prices; (3) that the difficulty of implementing the spirit of the 1921 Antidumping Act has permitted these sales to continue unabated; and (4) that our industry has been injured.

We believe that although we could not truthfully say that the three domestic producers of shoe board have been forced out of business solely because of such imported materials, we can truthfully say that in 2 of the 3 cases imports of foreign boards at prices we believe to be below their fair value were a very considerable, if not governing, factor in forcing these mills out of business. Many of us who are still in production in this country have managed to stay in production only by costly changes in our machinery and equipment and by transfer of our sales and research efforts into other areas. While we, of course, readily agree that aggressive sales and research are good for us, and good for the Nation as a whole, we must submit that we are being forced out of our natural and normal fields of operation. This, we respectfully submit, is injury.

In summary: We feel that H. R. 6006 is a logical and necessary first step in the implementation of the Antidumping Act. We do not feel that the Antidumping Act has been able to effectively protect us from injury from the dumping of foreign producers in the manner in which it was intended.

We respectfully request their favorable consideration and enactment.

APPENDIX A. SHOE BOARD MILLS

The Colonial Board Co., Manchester, Conn.
Commonwealth Supplies Co., Amesbury, Mass.
Bath Fiber Co., Inc., Bath, N. H.
Endicott Johnson Corp., Johnson City, N. Y.
Fibertex Corp., Portsmouth, N. H.
George O. Jenkins Co., Bridgewater, Mass.
Leighton Fibre Products Co., Columbus, Ohio
Milton Leatherboard Co., North Rochester, N. H.

23756—58——17

The C. H. Norton Co., North Westchester, Conn.
F. E. Norton Sons, Inc., Henniker, N. H.
Penacook Fibre Co., Penacook, N. H.
Robers Fibre Co., Inc., Poland Springs, Maine
Rogers Fibre Co., Inc., Bar Mills, Maine
Sherman & Co., Belfast, Maine
Spaulding Fibre Co., Inc., North Rochester, N. H.
West Virginia Pulp & Paper Co., Covington, Va.
Western Fibre Co., Caseyville, Ill.

STATEMENT OF M. H. KLINE, VICE PRESIDENT, RARE METALS CORP., SALT LAKE CITY, UTAH

This statement is being filed in behalf of American Quicksilver Institute which represents more than 80 percent of the domestic industry and of which I am a director.

Approximately two-thirds of the world production of mercury comes from Spain and Italy.

Prior to 1949, all mercury from these countries was sold in the world market by Mercurio Europa, better known as the Mercury Cartel. This group set prices and apportioned markets through their London marketing agent. This cartel was discontinued in 1949 due to internal disagreement over United States purchase of Italian mercury above Italy's quota for exchange lira.

At the present time all Spanish mercury is marketed through the Almaden mine in Spain. All Italian mercury is marketed through a newly organized Mercurio Italia who have as their selling agent the former cartel mercury agents in London.

Both sources of metal quote the same prices and seem to alternate in supplying the United States market.

At the present time and for some months past the London Metal Bulletin has reported that European mercury producers (Italy and Spain) are offering metal on the London market at 80 pound sterling. Thus, if the United States duty of $19 per flask is added, is the equivalent of $243 per flask in the the United States.

The New York market price according to E. &. M. J. metal reports has been considerably below this figure since last November. Shipments of European metal have been delivered in the United States during January, February, and March presumably at prices considerably below the London offering price plus duty.

Approximately $16 of the present $19 duty is apparently being absorbed by the European producers.

There is no information available to the United States producer on what price mercury is sold at within the producing countries of Italy and Spain, and thus under former antidumping laws and regulations it was difficult to make an adequate case.

Thus, although absorption of the tariff by European producers in the late 1940's, as shown in the following publication of the cartel in 1948, almost destroyed the United States industry, no action was taken by industry under the antidumping provisions due to the technicalities and uncertainties of the former:

"It is understood that the Spanish-Italian quicksilver group's price for the United States market has been raised by $2 to $54 a flask, f. o. b.

"The previous quotation was the lowest level at which the group sold in order to overcome the heavy United States import duty on foreign metal while maintaining their general world price at $60 f. o. b.

"The advance is attributed to the elimination of the greater part of United States domestic production owing mainly to these cheaper offers."

I have read the House bill under consideration at this hearing, and I must confess it is not entirely clear whether the mercury problem is completely covered by that bill.

I hope that in the final drafting of any clarifying amendments to H. R. 6006 consideration will be given to the problem facing this strategic metal and that the final bill will effectively prevent dumping by foreign producers of this metal in the United States.

STATEMENT ON S. 1671, ANTIDUMPING ACT AMENDMENTS, BY HON. WARREN G. MAGNUSON, UNITED STATES SENATOR

Mr. Chairman and members of the Finance Committee, I appear before you today to speak in behalf of S. 1671, a bill which I introduced in March 1957 to strengthen the Antidumping Act. The following Senators joined me in this proposal: Mr. Barrett, Mr. Flanders, Mr. Murray, Mr. Thurmond, and Mr. Young.

This committee of the Congress has recognized the need for amending the Antidumping Act. This recognition was stated in terse but compelling terms in section 5 of the Customs Simplification Act of 1956. In that act, the Congress requested the executive branch of the Government to prepare amendments which would "provide for greater certainty, speed, and efficiency in the enforcement of such Antidumping Act." I understand the administration has submitted proposals in conformity with the above directive—proposals which differ somewhat from those incorporated in S. 1671.

I will not comment on the administration's proposal, but will direct my attention solely to the provisions of my own bill, S. 1671, in the belief that that proposal is a stronger, more effective way of meeting the objectives sought by the Congress.

I realize that your committee has the difficult task of reconciling many proposals made to you, and that the legislation you finally approve may represent a combination of various bills, rather than a single measure presented to you.

One other brief comment before explaining the objectives of S. 1671. I know you have received extensive testimony from industry and public representatives on the Antidumping Act as it now stands, and that this has included testimony on the way the act has been administered. For example, I have seen testimony presented to you by Dr. W. M. Chapman, representing the American Tuna Boat Association, in which he describes a specific case of dumping of albacore in the summer of 1956, and the disastrous effects of such dumping upon tuna fishermen and certain segments of the processing industry. It, therefore, would be repetitious for me to cite specific cases.

Briefly, here's what S. 1671 proposes to do:

1. Remove the injury requirement, with a provision that the duty will not be imposed when (within 30 days of the finding of a dumping price) the Tariff Commission finds and certifies that there is no existing or developing production of like, similar, or competitive merchandise in the United States.
2. Restore the full retroactivity of the dumping duty, when dumping is found, to all entries not finally liquidated by the collector of customs at the time suspected dumping is first brought to the attention of the Treasury Department by an interested party.
3. Provide for a prompt and mandatory dumping price investigation and hearing, upon notice of suspected dumping from any customs official or upon application of any interested party.
4. Provide that dumping price investigations must be completed within a specific time, such as 60 or 90 days, and that the findings thereof must be published in a report stating the evidence and considerations supporting such findings of dumping or no dumping.
5. Clarify the definition of "fair" and "foreign market value" so that the foreign value can be readily determined on a basis of practical, competitive, and commercial realities; and so that the intent of the act cannot be circumvented by artificial and meaningless restrictions in foreign sales or offers for sale, or by minor differences between articles sold abroad and those exported to the United States, which have been used in the past to justify the failure to find a foreign value on which a finding of dumping could be based.
6. Provide for Court of Customs and Patent Appeals review of the findings in such dumping investigations.

I believe the amendments represented by S. 1671 and the objectives just cited are in accord with the directive contained in section 5 of the Customs Simplification Act of 1956. In a general way, let me state my own philosophy concerning the practice of dumping on the American market. I believe dumping to be an unfair trade practice per se. That being true, I further believe that, once the fact—that dumping has occurred or is occurring—has been established, the burden of proof should then be placed upon the importer. By this I mean that the importer—the one accused of dumping—should be forced to prove that his actions are not an unfair trade practice and are not injuring or threatening to injure a domestic industry engaged in the production, distribution, or sale of the same or similar commodities.

The act now places upon the complainant—upon the domestic industry—the burden of proof that dumping has occurred and the burden of proof that this is injuring or is likely to injure the domestic market.

He who dumps goods on the American market, together with his associates or foreign suppliers, are the only parties who have available to them all of the facts to establish whether the price is a fair price in the foreign market. He, together with his associates and suppliers, are the ones best in position to prove that "no dumping has occurred," if such be the case. The importer and his associates and suppliers either have all the facts or have access to them. The injured party in the United States very often cannot obtain the facts. It, therefore, seems to me logical and reasonable to place upon the importer and his associates the burden of proof rather than upon the injured party in the United States. In my bill, therefore, proof of injury is removed and the burden of proof is shifted to he who has created the problem.

I consider this a very important factor to be considered by your committee, along with the provisions in S. 1671 which clarify the definition of "fair" and "foreign market value."

In the past, the Treasury Department and others charged with enforcement of the Antidumping Act have followed such strained and ridiculous procedures and interpretations that the Antidumping Act has been rendered virtually meaningless.

We must have foreign trade; we want to share our markets on a reasonable basis with our foreign friends and competitors; however, I think it perfectly proper to serve notice upon them, by legislation similar to S. 1671, that we will not condone dumping.

BASIC INC.,
Cleveland, Ohio, March 28, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee, Washington, D. C.

DEAR SENATOR BYRD: With reference to your committee's scheduled hearing on H. R. 6006, I am writing, in lieu of personal appearance, to express the views of Basic Inc., an Ohio corporation, on proposed amendments to the Antidumping Act, now under consideration by the Senate Finance Committee.

Basic is an important supplier of granular basic refractories, used principally in the construction, maintenance and repair of basic hearths, and to line the industrial furnaces which produce steel, copper, and other metallurgical products.

Our concern with the threat of dead-burned magnesite (an important refractory material) being dumped into this country is based on the history of our industry and on its contemporary experience. Rising imports from Austria and Yugoslavia and a sporadic marketing pattern by a number of countries indicate the existence and growing nature of this threat to our small but essential domestic industry. These circumstances were set forth in some detail supported by statistics in our statement to the Committee on Ways and Means of the House of Representatives on proposed amendments to the Antidumping Act. That statement, which was filed July 31, 1957, is incorporated in the printed hearings of the committee on H. R. 6006 at pages 417–422, to which you are respectfully referred for additional detail. Since the signing of that statement, more recent statistics suggesting a continuation of the trends there set forth provide renewed ground for concern, as shown by the attached table. This table shows increased imports from Austria and Yugoslavia and shows other sporadic imports from Switzerland and Italy, which latter two countries are probably not the true sources of origin.

We endorse the various changes to the present law incorporated into H. R. 6006 as it was passed by the House of Representatives and believe that these will contribute importantly to the underlying purposes of the Antidumping Act. At the same time, we believe that the following additional amendments to the act are necessary if the act is to be fully effective:

1. INJURY

Some additional provision is needed to assure the imposition of dumping duties when a domestic industry is prevented by dumping from establishing itself in new market areas or from developing in an orderly manner existing market areas. Theoretically, such results should, in and of themselves, be sufficient to establish an injury under the act, and clearly they should not go uncontrolled in a free economy committed to the prevention of unfair trade prac-

tices. The usual indicia of actual injury, however, would necessarily be shown in such cases only on a speculative basis. Inhibition upon orderly growth and development is a special category of harm similar but not identical to that now expressly covered in the act's requirement that the duty must be assessed if the Commission determines an industry in the United States is prevented from being established by reason of the dumping.

An amendment to section 201 (a) of the present act by inserting just before the last comma in the first sentence the following words should help to cure this problem: "* * * or from developing new market areas or participating in the growth of existing markets, * * *."

This change would still require a causal connection between dumping and the inability of the industry to develop its markets in an orderly manner, and thus avoid frivolous or insubstantial claims. On the other hand, it would make clear that no manifestation of the more usual indicia of injury such as loss or decline in relative market participation need necessarily be proven before the duty could be imposed. Exclusion from a part of the domestic market by the unfair practice would be sufficient evidence of injury.

2. HEARINGS

Provision should be made to require the Tariff Commission, upon being advised by the Secretary of the Treasury of a dumping determination, to hold public hearings at which all interested parties shall be given an opportunity to be present, to produce evidence, and to be heard.

At present there is no statutory requirement for a hearing. The Commission, drawing upon its experience with other statutes has, in fact, held such public hearings in its Dumping Act proceedings. The practice is a commendable one and should be formalized by specific statutory requirement to assure the orderly administration of the law. The American Bar Association has recommended such an amendment. This objective can be accomplished by modifying the first part of the second sentence of the present text of section 201 (a) of the act to read:

"The said Commission, after investigation, with public notice and public hearing for interested parties, shall notify the Secretary of its determination, * * *."

3. LIFTING OF DUMPING DUTIES

Provision should be made for some public notice and hearing when the lifting of dumping duties are proposed after a finding.

The present law has no requirement of this kind, and the regulations outline only an informal proceduring making it entirely discretionary with the Secretary. Thus there appears to be a gap which could operate to nullify the findings arrived at through the long and deliberate proceedings required of the Commission. Opportunity for interested parties to be heard whenever the Secretary proposes to eliminate the dumping duty would serve to avoid injury to domestic industry by a premature action of this kind. This could be accomplished by adding to the last sentence of the present text of section 201 (a) the following: "* * *, and such finding shall not be modified or revoked without due public notice and hearing by the Secretary."

It is respectfully requested that this letter be included in the committee's official record of the hearing on H. R. 6006.

Very truly yours,

H. C. LEE, *Vice President.*

Magnesite imports to the United States

[Short tons]

Country of origin	1952 [1]	1953 [1]	1954 [1]	1955 [2]	1956 [2]
Austria	18,011	33,026	46,641	61,460	66,281
Italy	2,379			1,653	7,115
Norway	1,504				
Switzerland				19,933	55
United Kingdom	500				
Yugoslavia		3,383	17,987	15,551	18,431
Canada	2,074	2,888	3,584	4,095	3,002
Total from Europe	22,394	36,409	64,628	98,597	91,882
Total imports	24,469	39,297	68,212	102,692	94,884

[1] Source: U. S. Bureau of Mines Minerals Yearbook.
[2] Source: U. S. Department of Commerce, Bureau of Census Report FT110, schedule A code 5,723,000.

STAUFFER CHEMICAL CO.,
New York, N. Y., March 28, 1958.

Re H.R. 6006

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR BYRD: Stauffer Chemical Co. urges the Senate Finance Committee to report favorably on H. R. 6006 and strongly advocates its enactment into law at the earliest possible date. In our opinion, early enactment of this measure is vitally necessary if the Antidumping Act of 1921 is to become an effective weapon against vicarious dumping practices. Its passage must not be delayed pending consideration of further desirable changes in the act.

As chemical manufacturers, we are particularly concerned with the shortcomings of the present law because the chemical industry is peculiarly vulnerable to the dumping of foreign goods. Unlike most manufactured products, chemicals have relatively standard characteristics, with little difference in design or brand acceptance. If a given chemical meets standard commercial specifications, there will be little or no customer preference between the domestic product and the foreign product. When adequate supplies are available from both sources, it is obvious that price becomes the controlling factor in the customer's choice between domestic and foreign goods.

Thus, the domestic chemical industry is particularly sensitive to pernicious dumping of foreign chemical products at cutrate prices.

The ineffectiveness of the Antidumping Act of 1921 is strikingly demonstrated in statistics submitted to the Congress by the Secretary of the Treasury in his recent report on the operation and effectiveness of the Antidumping Act. Of 146 cases arising under the 1921 act from 1934 to October 1, 1954, only 7 resulted in the imposition of special antidumping duties. Effective October 1, 1954, the determination of injury in antidumping cases was transferred to the Tariff Commission. Of 52 dumping cases heard between that date and December 31, 1956, only 1 case resulted in imposition of an antidumping duty. From the standpoint of a chemical manufacturer, it is particularly significant that no relief has ever been granted with respect to a chemical product under the present statute.

These results were in spite of widespread dumping during the periods involved, and are explained by the comparative ease with which foreign producers avoid the effect of the present law by taking advantage of its many loopholes and weaknesses.

The vital importance of adequate antidumping protection to the domestic chemical industry is illustrated by the economic history of three products of Stauffer Chemical Co.—tartaric acid, cream of tartar, and potassium nitrate. In 1921, when the present Antidumping Act was passed, there were four domestic companies manufacturing tartaric acid and cream of tartar. Today, Stauffer Chemical Co. is the sole remaining producer, and its production is confined to a single plant. Similarly, there were five domestic producers of potassium nitrate in 1921. With the exception of a small producer of technical potassium nitrate on the Pacific coast, our company is, today, the only domestic maker of this chemical. The closing of these American plants can be directly related to competition from foreign materials freely dumped into this country in spite of the 1921 act.

Without wishing to burden the committee with statistics, a few comparative prices on potassium nitrate will illustrate the grave situation which must be remedied without delay if we are to avoid closing the last domestic source of potassium nitrate. Refined potassium nitrate is offered by West German manufacturers to West German customers at a price of $7.23 per hundredweight. The same manufacturers offer the same material to American buyers at $5.13 per hundredweight, a full $2.10 lower than the local German price. East German material is offered here at $4.55 per hundredweight. While the local East German price is difficult to establish, it is reliably believed that the price differential for the East German product is even greater than for the West German material.

These discount prices to American customers result in a net price after payment of ordinary duties and importation charges, which is $2.75 per hundredweight lower than the current price for material produced in the United States. Since current American production costs exceed the East German price for material delivered duty paid in the United States, it is obvious that Stauffer

Chemical Co., as sole domestic producer, must either reduce its price to meet the German competition and sell at a loss, or else discontinue the manufacture of potassium nitrate.

If domestic production of potassium nitrate were discontinued, the United States users of this material would be entirely dependent upon foreign sources of production. Potassium nitrate is used in the manufacture of matches, explosives, fertilizers, heat-treating salts and glass; as a meat preservative; in metallurgy; in the treatment of tobacco; as a chemical reagent; and by a variety of other industries. Discontinuance of domestic production would unquestionably lead to uncertainty of supply and higher prices to domestic users.

The situation with respect to tartaric acid and cream of tartar is substantially similar. As in the case of potassium nitrate, Stauffer Chemical Co. is faced with a choice between continued loss operation or discontinuance of the sole remaining domestic plant. If this plant were closed, industries such as tanning, baking powder, soft drinks, hard candies, medicinals, ceramics, photography, textiles, metallurgy, beverages, and organic synthetics of other chemicals would become wholly dependent upon the foreign product.

A similar situation also appears to be developing with respect to certain organic solvents now being produced by Stauffer, such as trichloroethylene. Other products could also be mentioned, but the foregoing should serve to illustrate the gravity of the problem.

The recommendations of the Secretary of the Treasury, embodied in H. R. 6006, would eliminate some of the major loopholes which have allowed certain foreign producers to dump cutrate chemicals into the United States. While we feel that further loopholes must also be closed before the spirit of the antidumping laws can be fully effectuated, H. R. 6006 represents an essential first step toward equitable implementation of the present law. Its early enactment is essential, and should on no account be delayed pending investigation of the desirability of further changes in the present law

We, therefore, urge your vigorous endorsement of H. R. 6006. In urging this, we do not oppose legitimate competition from foreign chemical producers. We do, however, oppose the vicarious dumping practices which have unfairly robbed American manufacturers of an opportunity to compete with foreign goods on equitable terms. If the American chemical industry is to remain vigorous and self-supporting, relief from these vicarious dumping practices must be granted now.

Very truly yours,

HANS STAUFFER, *President.*

NEW YORK, N. Y., *March 27, 1958.*

H. R. 6006—Amendment to the Antidumping Act of 1921

Hon. HARRY F. BYRD,
Senate Office Building,
Washington 25, D. C.

DEAR SIR: If my impression is correct the Antidumping Act of 1921 was designed to serve a worthy purpose, namely to protect American industry from destructive dumping of foreign materials in our market at abnormally low prices which would seriously injure and disrupt our industry.

I strongly feel that this act needs amendment because on the flimsiest of pretexts domestic industry claims injury. In one case where total imports were only 0.4 percent of domestic production, the Tariff Commission found dumping. I feel that the Antidumping Act of 1921 is well intended but badly written and needs complete overhauling if it is to be made effective to prevent real dumping.

H. R. 6006, from what I understand, is supposed to clarify certain technical terms but I think it confuses some terms and will do more harm than good. I feel such important words as "industry" need to be defined. A yardstick for the term "injury" should be established. It should be recognized that certain price differentials between certain markets are normal and necessary. If, i. e., a large purchaser in the United States buys in units of 50,000 and a small country such as Malaya buys in units of 100, it is quite obvious that the Malayan customer should pay substantially more than we do. Another thing which is unjust is the fact that if an importer is accused of dumping he is not notified; cases are not subject to judicial review, all of which, I believe, should be given careful consideration to when writing a new bill and I, therefore, respectfully urge that H. R. 6006 be defeated until careful study has been made of the whole Anti-

dumping Act of 1921. Then a new bill should be introduced written in such a manner that it would clearly state the intention of Congress. Such a bill could then do what it is supposed to do.

Respectfully yours,

WATER S. GUGGENHEIM.

COMMERCE & INDUSTRY ASSOCIATION OF NEW YORK, INC.,
New York, N. Y., March 24, 1958.

Re H. R. 6006—A bill to amend the Antidumping Act of 1921

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR MR. CHAIRMAN: The Commerce & Industry Association of New York, Inc., is the recognized service chamber of commerce for the New York metropolitan area and includes within its membership approximately 3,500 firms engaged in all phases of domestic industrial and commercial activities, as well as import and export operations.

This association has taken the position for many years that certain types of international commercial transactions were clearly unfair and should be proscribed by statute. The Antidumping Act was enacted in 1921 to penalize firms engaged in this type of transaction and to protect American firms which might otherwise suffer irreparable injury.

The purpose of the 1921 statute was to prevent the sale of foreign goods in the United States market at prices below their fair value when such sales had the effect of destroying American competing industry by establishing a monopoly or eliminating competition. The actions circumscribed by Congress by that statute were undeniably unfair trade practices, often referred to as predatory dumping.

The hit-and-run type of predatory dumping, where large consignments are offered at artificially low prices to unload a surplus, or the steady eroding type of cutrate sales intended to destroy American competition, were both within the legislative intent.

Both domestic producers and importers are injured whenever any segment of the trade resorts to such predatory price dumping of foreign goods on the United States market. Antidumping legislation offers protection, consequently, not only to the American producers but also to competing importers who may be equally hard hit by irresponsible elements flooding this country with underpriced merchandise.

It must be emphasized, however, that a price for an imported article lower than the price at which such article is sold in the home market, or to some third country, does not in itself justify a finding of dumping, irrespective of the question of injury to the American competing industry. There are many factors involved in the determination of what is a commercially realistic and competitive price for sales to the United States. Thus, it is unreasonable even to consider the question of dumping if such price differential can be readily explained by the presence or absence of certain commercial conditions in the foreign market distinct from those which prevail in this country.

Recognizing the evil effects of the type of dumping within the purview of the statute, we cannot overstress the danger present for all businessmen in legislation which permits the indiscriminate harassment of both the innocent and the wrongdoer. Whatever protection has been afforded American business by the Antidumping Act of 1921 has been at the expense of importers in general. We respectfully submit that such a condition should be eliminated as much as possible, so that the purpose of the law may be achieved without coincident ill effects on the entire import trade.

Specifically, we have in mind the fact that importers under the present statute must do business in the face of a constant threat that a finding of dumping will bring down severe retroactive penalties covering an extended period of time in the past, and in an unspecified amount, long after the merchandise has been sold and distributed throughout this country's commerce. This has had in the past, and continues to have at the present time, the understandable effect of bringing to a halt any further importations of such merchandise, although in most instances there is no finding of dumping. The suspense and uncertainty were, in themselves, of sufficient force to drive importers out of business.

It is true that the facts may subsequently demonstrate that neither unfair pricing nor injury to the competing domestic industry did take place, but the harm was already done insofar as the importer was concerned.

Much of this needless harrassment is due to the fact that the investigations by both the Treasury Department and the United States Tariff Commission are often long drawn-out and time-consuming. A procedure should be developed whereby dumping investigations will be initiated only when there are substantial reasons for suspecting dumping, and will be abandoned as soon as the investigation demonstrates that there has been no dumping. Furthermore, when an investigation is started, it should be judiciously and expeditiously conducted, with prompt notice to all parties in interest, and an opportunity for the importer to be heard.

It is gratifying to note that H. R. 6006 has already been amended to provide for public notice when a dumping investigation is instituted and to require the Secretary of the Treasury and the United States Tariff Commission to issue public statements relative to their determinations of "price" and "injury."

We respectfully urge that the bill before your committee be further amended to provide that:

(*a*) In every investigation conducted by the Secretary of the Treasury or the United States Tariff Commission, there should be public hearings, following the issuance of notice thereof, at which all interested parties be given an opportunity to be heard.

(*b*) Both the complainants and the importers be given the explicit and unequivocal right to a judicial review, by a court of competent jurisdiction, of determinations made by the Treasury Department respecting "price" and the United States Tariff Commission respecting "injury."

(*c*) All parties be protected from any unreasonable delays by either the Treasury Department or the United States Tariff Commission in the administration of the antidumping statute.

Representing both domestic and importing firms within its membership, and aware of the need for legislation to protect business from the disastrous effects of predatory dumping of foreign goods in this market, this association cannot overemphasize that the collateral effects of such legislation and its administration should not be permitted to cause unnecessary harrassment for businessmen.

Very respectfully yours,

VINCENT J. BRUNO,
Assistant Director, World Trade and Transportation Department.

THE AMERICAN COTTON MANUFACTURERS INSTITUTE, INC.,
Washington 6, D. C., March 27, 1958.

Hon. HARRY FLOOD BYRD,
Chairman Committee on Finance, United States Senate,
Washington 25, D. C.

DEAR SENATOR BYRD: The American Cotton Manufacturers Institute supports H. R. 6006, a bill to amend certain provisions of the Antidumping Act of 1921, now before the Committee on Finance. We believe that enactment of H. R. 6006 would be an important step toward effective control of dumping.

Other strengthening amendments are also needed. At our last annual meeting the following resolution was adopted expressing ACMI's position on antidumping legislation:

"The Customs Simplification Act of 1956 provided for a review by the Treasury Department of the operational effectiveness of the Antidumping Act of 1921. The Secretary of the Treasury filed this report with the Congress on February 1, 1957. This report, as well as other studies of the matter, indicate clearly that the act is now virtually a dead letter.

"Legislation tightening up and making the antidumping machinery effective for the protection of American industry is clearly needed. Firm administration of any such new legislation is equally important.

"The American Cotton Manufacturers Institute supports action designed to accomplish these objectives."

We do not believe that the Treasury recommendations incorporated in H. R. 6006 correct all of the major difficulties in the present antidumping rules and procedures revealed by the Treasury's own report of last February. As we

stated to the Committee on Ways and Means when this bill was before them last summer:

"We believe that if the injury test is to be retained in the amended bill the burden of proof should be reversed; in other words, where dumping is found to exist injury should be presumed to have occurred or to be threatened and dumping duties applied unless lack of injury can be proved to the satisfaction of the Tariff Commission. We believe the word 'industry' should be defined in the Antidumping Act in the same way that it is now defined in the Trade Agreements Act with the addition of language incorporating the geographic segment principle established in the soil pipe case.

"We think it essential in tightening-up administration of the act that a time limit, perhaps 90 days, be established within which the Treasury must act on complaints of alleged dumping."

We respectfully suggest that the Committee on Finance report H. R. 6006 favorably with amendments strengthening the House bill along these lines.

Cordially,

R. BUFORD BRANDIS,
Chief Economist.

STATEMENT OF REPRESENTATIVE CLEVELAND M. BAILEY OF WEST VIRGINIA

ANTIDUMPING ACT OF 1921

Mr. Chairman, I need hardly tell this committee of my interest in the amendment of the Antidumping Act of 1921.

There is hardly an industry in my district in West Virginia that is not afflicted with a serious problem of import competition.

The coal industry has suffered severely from imports of residual fuel oil; the pottery and glassware industries are among the oldest industries in the country, and they have for many years fought for their very lives against imports that threatened them year in and year out. Also, we have some smaller industries such as the manufacture of spring clothespins and toy marbles. Both have been beset by heavy import competition.

Generally, of course, we have looked to the tariff to assure us against final eviction by imports.

However, during the past 23 years our tariffs have been severely cut under the so-called reciprocal trade agreements program. The result has been that these various industries are now exposed to more severe import competition than ever before. The tariff is no longer adequate.

The glassware and pottery industries and also the spring clothespin industry have sought relief through the Tariff Commission without success. The Commission sent a recommendation to the President to increase the duty on handblown glassware, but the President refused to act on the recommendation. The same happened with spring clothespins.

The real difficulty, I am convinced, lies in the control exercised by the executive branch over our tariff administration. Congress has just about lost its power to call the shots in tariff and trade matters—to a considerable extent through our own fault. We delegated certain powers to the President and then turned our backs and let the State Department run wild; and let me tell you that Department took full advantage of the opportunity. We will get nowhere in trying to legislate on tariffs unless and until we break the State Department stranglehold.

Now the question might arise what all this has to do with amending the Antidumping Act of 1921.

Mr. Chairman, there has been a weakening and relxation of measures having to do with import competition all along the line since the Trade Agreements Act was passed in 1934. The Antidumping Act has been no exception.

There was a time when the act was enforced; but that was before the Trade Agreements Act was passed. In recent years the Antidumping Act has been treated the same as all other restrictions on imports. It has virtually become a dead letter.

Here we have a law that is the same or very nearly the same as it was when it was first passed. Once it was an effective act; today it might as well be thrown into the wastebasket.

But that is not how it should be; and let me say that I think things are changing. I think that more and more people see the wisdom of taking care of our industries and not letting them be driven out by imports that in many instances come from foreign industries that we built up with our own money.

Why should we permit dumping of goods in our market at prices below those prevailing within the countries of export when the only justification for such pricecutting is to undercut the prices of our own producers here at home?

Already under our reduced tariffs other countries have a tremendous advantage over us in selling in our home market. Why should we wink at further undermining of our wage and living standards by failure to enforce the Antidumping Act?

I am aware that the administration bill, H. R. 6006, would make a few changes in the present act but it would not go to the root of the matter. This, frankly, is getting the Treasury Department to carry out the law of Congress. As I have said, this same act was once enforced. It could still be enforced; but it will not be enforced in its present form so long as the executive discretion exercisable under the act remains as broad as it is.

Therefore, what is needed by way of amendments is something that narrows the executive discretion and clearly tells the executive what is to be done.

At the last session of the Congress when we had up in the House of Representatives for consideration the Customs Clarification Act, I exchanged some pointed remarks with the House committee chairman over the provisions in that legislation which permitted the use of an export value as the basis on which to compute import duties rather than the cost of production base that was previously followed.

I contended at that time that this one change would virtually destroy the Antidumping Act. I submit that my prophecy at that time has become a reality. Otherwise, we should not be today considering amendments to our antidumping laws.

Proof of my statements is found in the fact that the State Department is offering this legislation aimed at strengthening our presently emasculated antidumping statute. They do not propose to go far enough to cure the existing ills.

I offer you here, Mr. Chairman, the suggestion that S. 1671, presently before your committee, should be amended to accomplish the following objectives:

1. Remove the injury requirement with a provision that the duty will not be imposed when (within 30 days of the finding of a dumping price) the Tariff Commission finds and certifies that there is no existing or developing production of like, similar, or competitive merchandise in the United States;
2. Restore the full retroactivity of the dumping duty, when dumping is found, to all entries not finally liquidated by the collector of customs at the time suspected dumping is first brought to the attention of the Treasury Department by an interested party;
3. provide for a prompt and mandatory "dumping price" investigation and hearing, upon notice of suspected dumping from any customs official or upon application of any interested party;
4. provide that "dumping price" investigations must be completed within a specified time, such as 60 or 90 days, and that the findings thereof must be published in a report stating the evidence and considerations supporting such findings of "dumping" or "no dumping";
5. clarify the definition of "fair" and "foreign market value" so that the foreign value can be readily determined on a basis of practical, competitive, and commercial realities; and so that the intent of the act cannot be circumvented by artificial and meaningless restrictions in foreign sales or offers for sale, or by minor differences between articles sold abroad and those exported to the United States, which have been used in the past to justify the failure to find a foreign value on which a finding or dumping could be based; and
6. provide for Court of Customs and Patent Appeals review of the findings in such dumping investigations.

NATIONAL MILK PRODUCERS FEDERATION,
Washington, D. C., March 27, 1958.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: We shall greatly appreciate it if you will have inserted in the record of the hearings on H. R. 6006 this statement relating to the problems which dairy farmers encounter under foreign-trade programs and the Anti-Dumping Act, 1921.

The National Milk Producers Federation is a national farm organization. It represents over half a million dairy farmers and some 800 dairy cooperatives

which they own and operate and through which they act together to process and market at cost the milk and butterfat produced on their farms.

Matters of foreign trade are of vital importance to dairy farmers because domestic prices of dairy products are substantially above world price levels. The disparity in price is sufficiently great to require strict import quotas to prevent a destructive level of imports from undermining our agricultural programs and impairing the domestic source of supply of milk and dairy products.

Import controls are applied under section 22 of the Agricultural Adjustment Act. Foreign nations which are parties to the General Agreement on Tariffs and Trade have ruled that our use of these controls to protect our own agricultural programs from destructive imports is a violation of GATT and that we may use section 22 controls only when permitted to do so by the GATT nations. We have that permission at the present time, rather grudgingly granted, in the form of a temporary and uncertain waiver. Under the terms of the waiver, the United States is required to report annually to the GATT nations. One of the considerations bearing on the extension of the waiver is the reduction of our domestic agriculture prices to the lowest levels permitted by law.

As bad as this situation is now, we think it would become much more serious if the OTC bill should be passed. That bill would greatly strengthen the hand of GATT nations by giving them official status as an international trade organization with congressional authority to administer and interpret GATT. Once that is done, Congress will have lost much of its constitutional power to regulate the trade which moves across our own shores.

The fact that domestic prices are above world price levels also creates a problem with respect to exports. As long as this price disparity exists, it will be necessary for this country to move agricultural products into world trade at prices below the domestic price if the United States is to retain a fair share of the world market. We have never recommended that our surplus agricultural products be dumped indiscriminately on foreign nations or in world trade. On the other hand, other nations should not object if American agricultural products are sold in world trade at competitive world prices in sufficient volume to retain for this country a fair share of that trade.

The export sales program for cotton authorized by Congress in the Agricultural Act of 1956 illustrates this point. Should the OTC bill be passed, we believe programs such as this would not fare well at the hands of the GATT nations.

It is not an answer to this problem to say that our domestic agricultural prices should be further reduced. Prices are already at a level far below that necessary to maintain the purchasing power of this important segment of the economy. To a certain extent we are living off the investment and depreciation of the farmer. We tried that once before—with unfortunate results.

While the antidumping laws do not affect us as directly as do some other foreign trade policies, they are, nevertheless, one of the cogs in the machine, and they need to be improved to make them more practical and efficient.

We favor legislation to broaden the power to institute antidumping proceedings and to treat dumping as an unfair practice per se.

Sincerely,

E. M. Norton, *Secretary.*

American Bar Association Recommendations Adopted by the House of Delegates Presented by the Standing Committee on Customs Law

I. The committee requests authority to propose and support the following amendments to the pending bill, H. R. 6006, or other proposed legislation which may be considered by the 85th Congress to amend the provisions of the Antidumping Act of 1921, as amended (19 U. S. C. A., sec. 160 et seq.), by brief and by personal appearance in the name of the American Bar Association, before the Committee on Ways and Means, House of Representatives, and Committee on Finance, United States Senate.

A. Amend H. R. 6006 by inserting after line 4, page 1, thereof, the following:

"By adding at the end of subsection (a) thereof the following:

"*Providing,* That adequate public notice shall be given of institution of investigations by the Secretary of the Treasury or the Tariff Commission hereunder, and in the course thereof and prior to any deter-

mination by either, all parties interested shall be given reasonable opportunity to appear, to produce evidence and be heard."

B. Further amend H. R. 6006 by inserting after line 4, page 1, and after amendment A above, the following:

"By adding at the end of subsection (a) thereof the following:

"Determinations of the Secretary of the Treasury and of the Commission shall include a full statement of the basis thereof and reasons therefor, and shall immediately be made public."

C. Further amend H. R. 6006 by inserting at page 8, following line 16, a new section to read as follows:

"Section 210 of the Antidumping Act, 1921, (19 U. S. C. 169), as amended, is further amended by inserting after the words 'sections 160 to 171 of this title' the following:

"Determinations by the Secretary of the Treasury and by the United States Tariff Commission under this title"

so as to make the section read as follows:

"For the purposes of sections 160 to 171 of this title, determinations by the Secretary of the Treasury and by the United States Tariff Commission under this title, the determinations of the appraiser or person acting as appraiser as to the foreign market value or the cost of production, as the case may be, the purchase price, and the exporter's sales price, and the action of the collector in assessing special dumping duty, shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; and the general appraisers, the United States Customs Court, and the Court of Customs and Patent Appeals shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of appeals and protests relating to customs duties under existing law."

II. The committe requests further authority to oppose by brief and by personal appearance in the name of the American Bar Association before the Committee on Ways and Means, House of Representatives, and Committee on Finance, United States Senate, the provisions of H. R. 9424, 85th Congress, 1st session, or similar legislation, which would create administrative review of the determination of appraised values of imported merchandise on the grounds that such proposal would delay final determination of dutiable values, would create a series of lay member administrative courts at numerous ports of entry throughout the United States, and might well operate to transfer a portion of the jurisdiction now vested in the United States Customs Court to such administrative lay tribunals.

I hereby certify that the above is a true and correct copy of the resolution adopted.

JOSEPH D. CALHOUN, *Secretary*.

Dated: March 14, 1958.

AMICALE INDUSTRIES, INC.,
New York, N. Y., March 31, 1958.

Re: Hearing on H. R. 6006.

Hon. HARRY FLOOD BYRD,
Chairman, Committee on Finance,
Senate of the United States, Washington, D. C.

DEAR SENATOR BYRD: In view of the fact that the schedule of witnesses for the above hearing was completely filled and that my request to appear as a witness was therefore denied, I am submitting herewith for the record of your committee, the following statement.

The proposed bill far from merely amounting to procedural changes in the law, in fact radically changes the entire substantive law in existence since 1922 relating to the concept of "freely offered for sale." We are fully aware that protectionist interests seek to make changes which would result to all purposes in a major cut off of imports to the United States. To place greater restrictions on the importer than have been in existence for 36 years, would be a great detriment to international trade. If, in this day and age, unreasonable burdens and risks are placed on international trade, this will only be a drawback to

the aspirations and efforts of our Government, particularly in relation to friendly foreign countries.

We are aware that the American rayon producers have spared no effort to introduce and support the restrictive features of the proposed law. We have seen arguments presented before your committee that rayon staple fiber is sold in Germany for over 30-cents per pound while German producers are selling it here for 24-cents per pound. This, in the first place, is a gross misstatement. The current price of rayon staple fiber in Germany, with the various customary discounts allowed to customers is below 26-cents per pound. The supposed sales price of German staple fiber over here as quoted by the same sources at 24-cents per pound, entirely omits the cost of transportation, insurance, customs clearance, a duty of 15-percent ad valorem and commission to the American agent.

As far as the sales price of merchandise in general is concerned, this is determined by market conditions in the various countries. In the United States we have in the rayon field groups of large mills with central purchasing agents. These mills use rayon in quantities unknown in other countries and, therefore, are in a position to exert substantial pressure on the price structure. Contrary to this, in other countries whether neither the consumption of rayon fiber is on a comparative level with that of the United States, nor the size of the mills in the same class, the seller can put up far more resistance to pressure on prices. Very few commodities indeed can be sold at the same price in different countries. By the new definition of the proposed law, a country in which an orderly home market provides relatively good prices would be barred from exports to the United States by penalty of dumping fines, while another country exporting the same commodity to the United States would be inviolate if its home market lacks the discipline and stability and, consequently, features low prices.

We would like to suggest that the injury which the rayon producers allegedly suffer from imports are largely due to their own actions. We can point to the market for a related product; namely, rayon filament yarn, which is free from foreign competition by virtue of excessive duty. Here, we have found an entirely disorganized market structure. For 150 denier filament yarn, for instance, the price declined in recent weeks from 91-cents per pound to 69½-cents per pound.

Although American rayon producers have been vociferous in their demand for a protectionist law, they cannot claim to come with clean hands before your committee. They have exported to Europe substantial amounts of rayon staple fiber at extremely low prices. These prices were so low that some merchandise is being reimported to the United States and has been sold as recently as last week to American mills for 25-cents per pound, f. o. b., American port. This would amount approximately to 26-cents per pound delivered to their mill.

It seems to me that the current trend to general international understanding, for which international trade is an important avenue of approach, will be severely hampered if selfish protectionist groups have their way. Furthermore, more restrictive "dumping" laws will only force those nations to look for outlets in so-called iron curtain territories. This would be a distinct backward step in our progress toward increased reciprocal trade.

Respectfully yours,

AMICALE INDUSTRIES, INC.,
By ROBERT W. SPITZER, *Vice President.*

DRUG, CHEMICAL, AND ALLIED TRADES SECTION,
NEW YORK BOARD OF TRADE,
New York, N. Y., March 25, 1958.

Subject: Request of the Drug, Chemical, and Allied Trades Section of the New York Board of Trade for favorable action on H. R. 6006.

Hon. HARRY F. BYRD,
Chairman, and members of the Senate Committee on Finance, United States Senate, Washington, D. C.

GENTLEMEN: The Drug, Chemical, and Allied Trades Section of the New York Board of Trade was organized in 1890, and represents approximately 800 member firms who are manufacturers and distributors of drugs, chemicals, and related products throughout the United States. These firms are interested in customs administration, and are sensitive to acts of unfair competition of which dumping is a prime example.

The Treasury, at the direction of Congress, has reviewed the operation and effectiveness of the Antidumping Act, and in consultation with the Tariff Commission has suggested changes which are desirable and necessary for greater speed and efficiency in the enforcement of the act. These changes have been incorporated in H. R. 6006 as passed by the House of Representatives.

On behalf of the Drug, Chemical, and Allied Trades Section of the New York Board of Trade, I am authorized to recommend the enactment of H. R. 6006 in the form in which it was passed by the House in August 1957.

We believe that dumping will be made more difficult under the provisions of H. R. 6006, and therefore respectfully urge that your committee recommend and the Senate enact this bill.

W. Boyd O'Connor, *Chairman.*

Virginia Farm Bureau Federation,
Richmond, Va., April 7, 1958.

Senator Harry Flood Byrd,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

Dear Senator Byrd: We have read with much interest the statement made by the American Farm Bureau Federation before the Senate Finance Committee on March 27 regarding changes in the Antidumping Act contained in H. R. 6006.

The recommendations set forth in this statement are clearly in the best interests of our Virginia farmers and of agriculture as a whole.

It is very clear that the capricious application of unreasonable antidumping restrictions can serve just as effectively in the restraint of foreign trade as unreasonably high tariffs. Importers cannot afford to invest their money in foreign goods and then run the risk of having such goods tied up for long periods of time, pending the outcome of a long, drawn-out antidumping investigation, the results of which may or may not be favorable.

It seems to us that the thing which we most have to fear from the Russians at the moment is that they may succeed in isolating us from the rest of the world in an economic sense. Economic isolation will be followed by political, military and ideological isolation. In this case, the Russians would find it relatively simple to succeed with a program of economic penetration, political propaganda and ideological subversion.

Japan and the other "have not nations" cannot exist except through trade. If we give them our goods and get nothing in return, sooner or later we will become a "have not nation." We will have impoverished ourselves and in so doing we will have destroyed their self-respect. Lasting friendships are not built in this way.

The choice is fairly plain—either we must compete with the Japanese and others on the assembly lines or in the foxholes. Most people have a strong aversion to foxholes, especially those who have made use of them.

We sincerely hope that your vote will be favorable toward the continued international exchange of goods on a mutually satisfying and helpful basis.

With every good wish, I am.

Very truly yours,

Maury A Hubbard, *Executive Secretary.*

Statement of Russell B. Brown, General Counsel, Independent Petroleum Association of America

The Independent Petroleum Association of America (PIAA) is a national trade association of independent producers of crude petroleum and natural gas with membership in every petroleum-producing area in the Nation.

Excessive petroleum imports have plagued the domestic petroleum industry for many years. Just prior to World War II, petroleum imports totaled less than 5 percent of domestic production. Today imports amount to more than 23 percent of domestic production.

IPAA is vitally interested in all laws pertaining to foreign trade and particularly those laws such as the Antidumping Act which have been enacted to protect domestic industry from unfair and undesirable foreign trade practices.

The administration of the Antidumping Act with respect to petroleum has been such as to aggravate the growing threat to the domestic petroleum in-

dustry resulting from excessive foreign imports. For example, in 1949 under the operation of the ECA program, IPAA had reason to believe that the Antidumping Act was being violated with respect to imports of oil from the Middle East. Even though this apparent violation was pointed out in testimony before congressional committees, the Treasury Department took no action to institute an investigation to determine whether or not the act in fact was being violated.

Later, on August 22, 1952, the Senate Small Business Committee, Subcommittee on Monopoly, announced that a report from the Mutual Security Agency disclosed the following: "* * * quantities of Middle East oil were dumped in the United States at net prices far below those realized on shipments to Europe."

During that same month in 1952, the Department of Justice brought action in the United States District Court for the Southern District of New York (Civil Nos. 78-152; 78-153; and 78-154) in which one of the allegations was to the effect that the prices charged ECA and MSA by the Middle East companies were higher than the market price prevailing in the United States for similar Arabian crude oil.

In spite of the fact that this matter was widely known no action was ever initiated by the Treasury Department to determine whether or not the Antidumping Act had been violated.

This experience of the domestic petroleum industry is brought to your attention to show why IPAA believes that the present law is inadequate and is vitally in need of strengthening.

IPAA believes that the present law and the pending bill H. R. 6006 are deficient in the following respects:

1. There is no requirement for an investigation of an alleged breach of the law.
2. No provision is made for public hearings.
3. There is no requirement for publication of findings of fact with respect to antidumping investigations.
4. Even though dumping has been established, proof of injury to an industry is still required before effective action is taken. Proof of injury as a result of dumping should be unnecessary and imposes an undue burden upon affected domestic industries. Dumping is an unfair and undesirable trade practice and an aggrieved industry should not be required to prove that it has been injured before Governmental action is taken to stop such practices.

IPAA recommends that H. R. 6006 be amended to cure the defects outlined above.

WASHINGTON, D. C., *April 1, 1958.*

Mrs. ELIZABETH B. SPRINGER,
Chief Clerk, Senate Finance Committee,
Senate Office Building, Washington, D. C.

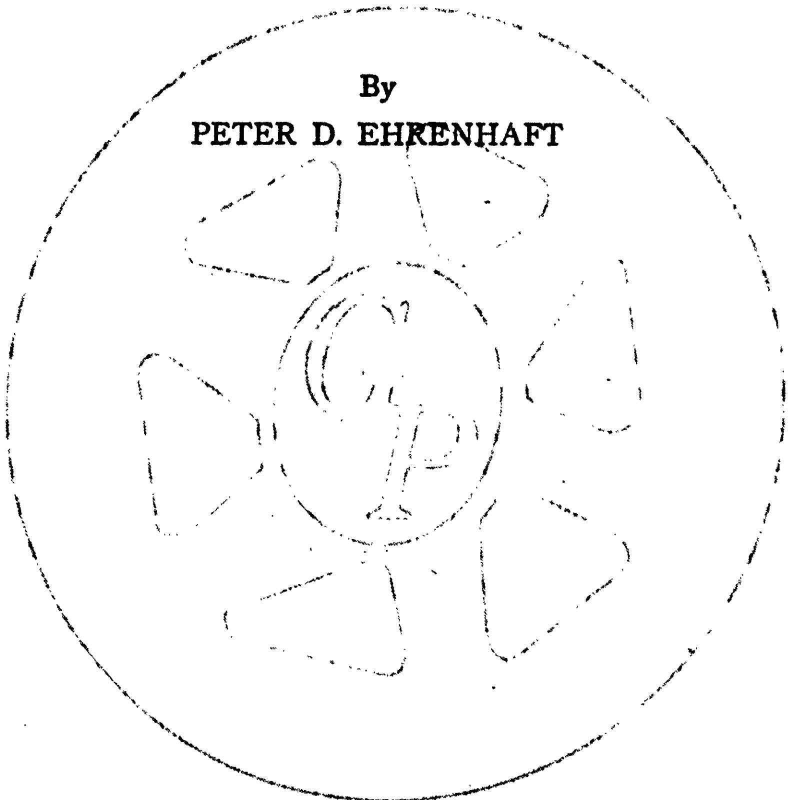
DEAR MADAM: In view of the fact that your committee has recently held hearings on proposed revisions in the Antidumping Act (H. R. 6006), I have taken the liberty of enclosing two copies of a recent article of mine concerning antidumping legislation. I hope that it may be of use and interest to the committee members and the staff. Its possible inclusion in the record would, of course, be appreciated. I would also be most grateful if you would be good enough to send me a copy of the printed transcript of these hearings when it becomes available.

Very truly yours,

PETER D. EHRENHAFT.

PROTECTION AGAINST INTERNATIONAL PRICE DISCRIMINATION: UNITED STATES COUNTERVAILING AND ANTIDUMPING DUTIES

By
PETER D. EHRENHAFT



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PROTECTION AGAINST INTERNATIONAL PRICE DISCRIMINATION: UNITED STATES COUNTERVAILING AND ANTIDUMPING DUTIES

PETER D. EHRENHAFT*

The American economy has, from its birth, been dedicated to the ideal of free competition. But as the economy has matured, this ideal has not infrequently been threatened by excesses grown out of unrestrained rivalry. Congress and courts have found it increasingly necessary to hedge economic free action, lest freedom strangle the competition it was meant to foster.[1]

Among the trade practices which have lent themselves to such abuse is that of price discrimination, *i.e.*, the sale of goods to one customer at a price other than that charged a second. As a 1914 House report summarized the predatory aspects of discrimination:

> [I]t has been a most common practice of great and powerful combinations engaged in commerce . . . to lower prices of their commodities . . . in certain communities and sections where they had competition, with the intent to destroy and make unprofitable the business of their competitors. . . . Such a system is . . . manifestly unfair and unjust, not only to competitors who are directly injured thereby but [also] to the general public. . . .[2]

Section 2 of the Clayton Act, then enacted, included the first prohibition against certain price discriminations, *viz.*, those threatening "to substantially lessen competition or tend to create a monopoly in any line of commerce."[3] However, court interpretations of the enumerated statutory justifications for discrimination managed to excuse much differential pricing, and the development of new merchandising techniques (*e.g.*, retail chain store outlets that avoided middlemen and were supplied directly by manufacturers) revealed methods for circumventing its terms. Thus Congress was prompted to enact the Robinson-Patman Act[4] in an attempt to narrow

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* A.B., Columbia College, 1954; LL.B., M.I.A., Columbia University, 1957. The author wishes to express his gratitude to Professor Richard N. Gardner of Columbia Law School for his guidance.

1. Since the Sherman Act, 26 STAT. 209 (1890), as amended, 15 U.S.C. §§ 1-7 (1952), as amended, 15 U.S.C. §§ 4-7 (Supp. IV, 1957), legislation has increasingly concentrated on more specific sectors of the economy. See, *e.g.*, 70 STAT. 1125 (1956), 15 U.S.C. §§ 1221-25 (Supp. IV, 1957) (Automobile Dealer Act).

2. H.R. REP. No. 627, 63d Cong., 2d Sess. 8 (1914).

3. 38 STAT. 730 (1914), as amended, 15 U.S.C. § 13 (1952). The prohibition was hedged by so many exculpatory qualifications that Senator Cummins was moved to remark, "there are not enough teeth in section 2 of the Clayton bill to masticate successfully milk toast. . . ." 51 CONG. REC. 14250 (1914).

4. 49 STAT. 1526 (1936), 15 U.S.C. §§ 13, 13a, 13b, 21a (1952). See Rowe, *The Evolution of the Robinson-Patman Act: A Twenty-Year Perspective*, 57 COLUM. L. REV. 1059 (1957).

still further permissible price discriminations. The result of these and similar statutes has been a "legal pull toward price uniformity by sellers."[5]

The problem of predatory price discrimination is, of course, not a purely domestic one. For not only have American producers engaged in such practices, but foreign manufacturers have similarly sought to capture markets in the United States and elsewhere by artificially and temporarily reducing prices in the hopes of driving competitors out of business. Recognizing these facts, Congress enacted the Antidumping Act of 1916,[6] making it criminal for persons to import articles into the United States "at a price substantially less than the actual market value . . . Provided, That such act . . . be done with the intent of destroying or injuring an industry in the United States. . . ." But the difficulties inherent in attempting to prove the statutory intent have prevented active enforcement of this act.[7]

To remedy these inadequacies, and to combat anticipated post-war raids by European manufacturers on the American market, Congress enacted the Antidumping Act of 1921.[8] Its key features were the adoption of an administrative remedy enforceable against the imported goods themselves, and the elimination of the finding of "intent" on the part of the importer. This act has remained substantially unchanged,[9] but general dissatisfaction with existing antidumping legislation led the 1956 Congress to request[10] a report from the Secretary of the Treasury reviewing the operation and effectiveness of the 1921 act. The Secretary made his report on February 1, 1957, and, on the last day of the 1957 session of Congress, the House passed a bill embodying the substance of the Secretary's proposals.[11] The House report accompanying the bill recognized the fact that these proposals did "not involve any change in the basic policy of the act."[12] But in view of the attention the Antidumping Act has recently received, and the virtually uniform opposition its present operation has engendered—both by persons favoring and opposing increased trade liberalization—the relatively unimportant changes suggested by the Treasury and passed by the House must be considered disappointing. Reexamination of the act and its underlying policy seems called for.[13]

5. Rowe, *Price Differentials and Product Differentiation: The Issues Under the Robinson-Patman Act*, 66 YALE L.J. 1, 2 (1956).
6. 39 STAT. 798, 15 U.S.C. § 72 (1952).
7. See Report to the Committee on Ways and Means from the Subcommittee on Customs, Tariffs, and Reciprocal Trade Agreements, *United States Customs, Tariff and Trade Agreement Laws and Their Administration*, 85th Cong., 1st Sess. 95-96 (1957) (hereafter cited as BOGGS REPORT).
8. 42 STAT. 11 (1921), as amended, 19 U.S.C. §§ 160-73 (1952), as amended, 19 U.S.C. §§ 162-73 (Supp. IV, 1957).
9. Some procedural changes were incorporated into the act by the Customs Simplification Act of 1954, § 301, 68 STAT. 1138, 19 U.S.C. § 160 (Supp. IV, 1957).
10. Customs Simplification Act of 1956, § 5, 70 STAT. 948.
11. H.R. 6006, passed by voice vote. 103 CONG. REC. 14923 (daily ed. Aug. 29, 1957).
12. H.R. REP. No. 1261, 85th Cong., 1st Sess. 2 (1957).
13. *Ibid.*

I. The Nature of Dumping

A. *The Theory*

Economists define "dumping" broadly as "price discrimination between national markets."[14] Usually these two markets are, on the one hand, that of the domestic-exporting country and, on the other, that of the foreign-importing country. Thus, "dumping" generally refers to sales for export at prices lower than those charged at the same time and under like circumstances to buyers in the domestic market.[15] However, it is clear that "price discrimination" can as well take place between two foreign markets and not involve a comparison with prices charged domestic buyers at all, or it may be practiced in reverse, with home prices lower than those charged for export.[16]

Economists' analyses of dumping emphasize that only those price differentials constituting unfair competition are to be condemned. Professor Viner has, for example, classified price discriminations in international trade into three distinct groups, each characterized by the motive of the dumper and the continuity of his dumping. He considers such a breakdown essential for the formulation of adequate responsive action, as it reveals that only one type of dumping may candidly be considered unfair competition.[17]

First, and probably negligible, is *sporadic* dumping. As the term implies, this is an occasional, unforeseen trade phenomenon. Its causes are generally overproduction and/or speculation by a producer who, originally entertaining no notions of selling goods more cheaply abroad, is forced to

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14. Viner, Dumping: A Problem in International Trade 3 (1923). This is considered the standard text on the subject, and its definitions have been accepted by leading economists. See Haberler, The Theory of International Trade 296 (1936); Kindleberger, International Economics 235 (1953).

15. This latter is the "working definition" used in Viner, Memorandum on Dumping 3 (League of Nations Pub. No. 1926.II.63) (hereinafter cited as Viner, Memorandum), and is the one generally used by legislators. See Trendelenburg, Memorandum on the Legislation of Different States for the Prevention of Dumping with Special Reference to Exchange Dumping 5 (League of Nations Pub. No. 1926.II.66). It was in these terms that Assistant Secretary of the Treasury Kendall explained the term to a congressional committee at the recent hearings on amendments to the Antidumping Act. *Hearings Before the House Committee on Ways and Means on H.R. 6006, 6007, and 5120, Bills to Amend Certain Provisions of the Antidumping Act*, 85th Cong., 1st Sess. 32 (1957).

16. See Haberler, *op. cit. supra* note 14, at 297. Haberler would eliminate the "national markets" qualification altogether, for he finds the price laws underlying the "dumping" phenomenon to be the same whether the price discrimination occurs between buyers in two different countries or between buyers in the same country. Accepting his analysis would logically permit complete application of domestic anti-price discrimination statutes, such as the Clayton Act, to the international problem of dumping. Some have claimed that such a carry-over of principles and standards was the intention of the Congress that enacted the Antidumping Act of 1921. See, *e.g.*, statement of William Barnhard, Secretary of the National Anti-Dumping Committee, *Hearings*, *supra* note 15, at 345; Boggs Report 94.

17. Viner, Dumping: A Problem in International Trade 23 (1923). A similar analysis was attributed to William Culbertson, then a member of the Tariff Commission, in the course of Senate debate on the 1921 Antidumping Act. See remarks of Senator Stanley, 61 Cong. Rec. 1194 (1921).

resort to distress sales if he is at all to dispose of his surplus stock and at the same time not spoil his traditional market. Such dumping is naturally a temporary annoyance to competing producers in the importing country. On the other hand, it does provide consumers with short-lived bargains. As sporadic dumping is by definition unforeseen and sui generis, it cannot be considered of major significance for legislators in formulating a national trade policy.

The second type of dumping may be characterized as *intermittent.* It involves the more or less frequent and planned sale of goods abroad at prices below those charged to domestic buyers. The dumping producer may resort to such practices for any one of a number of reasons—to acquire a foothold in a foreign market or prevent its loss to competitors, to destroy a competitor, to prevent the establishment of a rival concern, or to retaliate for dumping practiced in the opposite direction. The temporary cheapness of the dumped goods is a small gain for consumers, compared with the extended deleterious effects such aperiodic dumping may have on domestic producers and on the working force. And once the competition has been driven out, the dumping producer may, and probably will, raise prices to the highest level the traffic will bear to the eventual detriment of consumers as well. This is predatory dumping used as a weapon of commercial warfare, endangering the industry and labor of the importing country.[18] It is at such unfair practices that antidumping legislation should (and the 1921 Antidumping Act was probably intended to) be aimed.

The third, and in many ways the most controversial, type of dumping is that characterized as *persistent.* This is the practice of systematic, extended sale for export at prices below those charged in the home market. Persistent dumping may be motivated by export bounties granted by governments for the purpose of earning needed foreign exchange, or for balance of payment or even prestige purposes. Or a producer may recognize that cheap foreign sales are economically feasible in industries where expanded production brings decreasing unit costs, and where domestic demand is inelastic.[19] Although such price discrimination may be branded as "dumping," it can nevertheless be of great economic advantage to the importing

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18. See H.R. Rep. No. 1, 67th Cong., 1st Sess. 23 (1921).

19. Viner, Dumping: A Problem in International Trade 31 (1923). Viner suggests still further categories, but those enumerated will suffice for present purposes.

There are, of course, other methods of classifying dumping practices. A Federal Trade Commission report, for example, characterized the various techniques as "bounty," "freight," "consignment," or "social" dumping, thus emphasizing the method rather than the frequency or motivation. S. Doc. No. 112, 73d Cong., 2d Sess. 2-14 (1934). However, since the methods of dumping are generally immaterial to an evaluation of its economic effects, while the economic effects, on the other hand, frequently are a function of frequency and motivation, the Viner classification seems preferable from the point of view of the legislator.

country, provided, of course, that the latter can be assured of a continuous supply of the goods at the bargain price.[20] Where antidumping duties are applied to such imports, the flexibility and elasticity of international markets are decreased and each nation's potential gains from trade are reduced.[21] In such cases antidumping duties become a protective tariff.

Economists are generally agreed that it is only the intermittent, predatory dumping of goods that is to be restrained. Despite the fact that "precision of expression is not an outstanding characteristic of the Robinson-Patman Act,"[22] that act was drafted and is administered with a view to preventing this unfair competitive practice by domestic suppliers within the American market.[23] It is an open question whether the present Antidumping Act is similarly directed with respect to our foreign sources of supply. Part of the explanation for this may lie in the fact that the act has not been viewed primarily as a facet of American "free enterprise" legislation, but rather as a segment of tariff policy.[24] While not incorrect, such a view distorts the purpose of the act. It suggests a distinction between the fairness of discriminatory pricing practices in internal and international trade—a distinction presumably justified by the fact that producers abroad are not,

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20. "Antidumping duties are legitimate only if . . . they are found not to be interfering with permanently cheap imports." Viner, in *Hearings Before the Subcommittee on Foreign Economic Policy of the Joint Committee on The Economic Report Pursuant to Sec. 5(a) of Public Law 304, 79th Congress*, 84th Cong., 1st Sess. 606 (1955). Two well known illustrations exist of the principle that importing countries may benefit from the persistent dumping of commodities on their markets by foreign producers. These are the extensive dumping sales of German steel in Holland at the turn of the century and the similar cut rate sales of American motion pictures abroad prior to World War II. See HABERLER, *op. cit. supra* note 14, at 315; KINDLEBERGER, *op. cit. supra* note 14, at 237. It was exporters of these products in third countries, such as American steel manufacturers and European movie producers, who were injured by this dumping, and who protested. *Ibid.*

21. *Id.* at 239. However, Kindleberger too must admit that it is often difficult to distinguish between predatory and persistent dumping, particularly as the difference does not become apparent until some time has elapsed, during which domestic producers may have suffered irreparable harm. *Ibid.* Viner answers this argument with the assertion that since the average and marginal costs of dumped goods can be ascertained quite readily, the importing country can also judge whether or not the cheap price of a particular commodity is due to abnormal and predatory, rather than usual and economic reasons. According to this view, only those goods sold for export below marginal cost of production are really suspect and should be made the subject of antidumping duties. VINER, MEMORANDUM 11. However, ascertaining foreign costs of production creates very serious problems. Although the existing Antidumping Act has provisions for determining whether or not dumping is taking place by relating the export price of goods to their cost of production, the recent report of the Secretary of the Treasury asserts that this method presents such difficulties that its use "is generally warranted only as a last resort." REPORT OF THE SECRETARY OF THE TREASURY TO THE CONGRESS ON THE OPERATION AND EFFECTIVENESS OF THE ANTIDUMPING ACT AND ON AMENDMENTS TO THE ACT CONSIDERED DESIRABLE OR NECESSARY 7 (1957) (mimeographed edition) (hereinafter cited as 1957 TREASURY REPORT).

22. Automatic Canteen Co. v. FTC, 346 U.S. 61, 65 (1953).

23. See FTC v. Morton Salt Co., 334 U.S. 37 (1948). Predatory discrimination may also be actionable under the Sherman Act and the Federal Trade Commission Act. See, *e.g.*, United States v. Paramount Pictures, 334 U.S. 131, 160 (1948); FTC v. Cement Institute, 333 U.S. 683, 720 (1948).

24. See remarks of Representative Reed during the debate on the 1957 amendments to the act, 103 CONG. REC. 14921 (daily ed. Aug. 29, 1957).

for example, subject to American antitrust and similar regulatory statutes.[25] The argument is then made that uncontrolled foreign producers can never be "fair competition" to domestic ones,[26] and that their sales to this country at discriminatory prices are unfair per se.

This argument, however, does not withstand economic analysis. As indicated earlier, there are many cases in which a producer may, or even must, charge higher prices at home than he can command abroad.[27] American agricultural products on the world market today are a case in point.[28] The fact that such goods may be overpriced at home does not necessarily render unfair their lower competitive price abroad. The point that foreign producers are not subject to antitrust laws is no more relevant in determining the "fairness" of their prices than is the availability to them of any other favorable factors, such as their proximity to raw materials or cheap power or labor.

Discussion of the lack of foreign antitrust laws does point out, however, the economist's view that only a monopoly is able to engage in predatory dumping. Without a domestic monopoly in which high prices may be consciously maintained, a producer cannot cover the losses sustained through inordinately cheap foreign sales.[29] In addition, the dumper must be sure that his home market is effectively isolated from the markets in which his goods are being dumped, lest the cheap goods be reimported and then be used to undercut the producer's high home price.[30] All of these factors add up to the economic truism that predatory dumping in international trade is neither an easily arranged practice nor a common experience.

To recapitulate briefly, when creating a framework for the maintenance

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25. See statement of Robert Hawes, counsel for The Hardwood Plywood Manufacturers, *Hearings, supra* note 15, at 152; BOGGS REPORT 94.

26. The argument has similarly been made with respect to imports from absolutely controlled economies, such as the Soviet satellites. In the course of the Tariff Commission's investigation of the dumping of potash from East Germany, one economist suggested that a greater likelihood of injury to American industry existed when goods were imported from countries where shippers operated on a "non-economic basis" than when identical goods were bought from foreign producers who were forced to take profits and losses into account. This argument was successfully presented to the Tariff Commission in 1933, when it ruled that imported goods produced in a communist country were, ipso facto, unfair competition within the meaning of § 337 of the Tariff Act of 1930, 46 STAT. 703, 19 U.S.C. § 1337 (1952), cited in BOGGS REPORT 17.

27. See note 20 *supra*. The traditional case involves a producer who could decrease unit costs by expanding production, but who is faced with an inelastic domestic demand.

28. See statement of Herbert E. Harris II, of the American Farm Bureau Federation, *Hearings, supra* note 15, at 336; see note 20 *supra*.

29. Furthermore, if the dumping producer has a local competitor, the latter could sell the goods at home at a price below that of the dumper, thereby forcing down the home price so that eventually the "discrimination" between home and foreign markets would be at an end.

30. Barriers to reimportation may be "natural," such as long geographic distances or high transportation and handling charges, or they may be "imposed," such as outright prohibitions on reimportation, tariffs, quantitative restrictions, or agreements with foreign buyers that they will not resell in the producer's market. See HABERLER, *op. cit. supra* note 14, at 301.

of free competition, the basic question regarding the price of any commodity is whether that price is economically defensible and still consistent with fair dealing. Import prices that are low due to favorable foreign factors of production must be so considered. Import bargains due to persistent dumping may also be so considered. It is only the unrealistically cheap goods of the predatory dumper (the monopolist who in this way seeks to take an unfair advantage of his economic strength) that must be stopped with forthright antidumping legislation. The relation between predatory price discrimination and commercial virility should help to explain, however, why the American Antidumping Act has not been applied extensively in the recent past: the simple fact is that since World War II few producers outside the United States have possessed the requisite economic power. But with accelerated international reconstruction and development, the preeminence of the American producer may not remain unchallenged. It is therefore timely to examine the administration and effectiveness of our protections against international price discrimination.

B. *In Practice*

The methods of effecting price discrimination in international trade are varied and complex. A distinction is frequently drawn between differentials created by government action and those imposed by producers themselves. Price discriminations which stem from government intervention are created by exchange controls which cheapen exports, by tax rebates on exported commodities, by preferential shipping rates, or even, according to some foreign antidumping legislation of the past, by "social conditions" making for lower wage or overhead costs in the producing country.[31] Dumping by private producers (or by governments as producers) may take the open form of cheaper export price quotations or preferential treatment in payment,

31. See, *e.g.*, Austrian and British Antidumping Acts of 1924 and 1925, respectively, cited in S. Doc. No. 112, 73d Cong., 2d Sess. 13 (1934). The provision in § 307 of the United States Tariff Act of 1930, excluding the importation of goods produced by convict or slave labor, thus without fair economic cost, may be considered related. 46 STAT. 689 (1930), 19 U.S.C. § 1307 (1952); *cf.* § 336, 46 STAT. 701 (1930), 19 U.S.C. § 1336 (1952), permitting the President to vary the tariff in order to "equalize" foreign and American costs of production.

Although some have urged that the American Antidumping Act should also take account of low foreign wages, see, *e.g.*, statement of Rob[illegible] Hawes, counsel for the Hardwood Plywood Manufacturers, *Hearings*, *supra* note 15, a[illegible] '41, most economists would not consider low wages, long working hours, lighter social legislation charges, reduced food or material prices as the result of state subsidies, lower freight rates, and the like, elements of "real" dumping. Such elements in the factors of production affect the internal, domestic price of the commodities in question no less than their export price. Similarly "exchange dumping"—a price differential due to depreciation of the exporter's currency, has not been considered "true" dumping. See TRENDELENBURG, *op. cit. supra* note 15, at 5. But from the point of view of the importing country, the distinction between "real" and "false" is unnecessary. It need only inquire into the reason for the cheapness of particular imports, determine whether or not the bargain is likely to be permanent, and, finding other considerations (*e.g.*, national security) to be equal, then act accordingly.

shipping, packing, or priority of order fulfillment. There may be rebates to foreign buyers from the producer or his cartel. Or covert techniques, such as consignment dumping,[32] may be employed.

"The practice of dumping, or selling more cheaply in foreign markets, is as old as the mercantile system. In this country Alexander Hamilton called attention in 1791 to English Government bounties that made it possible [for British exporters] to dump sail cloth and linens into the United States."[33] When the anti-British Embargo Act was repealed in 1814, complaints about English textile dumping were allegedly instrumental in securing passage of America's first protectionist legislation—the Tariff Act of 1816.[34]

But as a bogeyman of major international significance, dumping first emerged toward the end of the nineteenth century.[35] As giant industries grew into cartels and trusts in both Germany and the United States, producers, particularly of heavy machinery and steel, engaged in extensive dumping of their excess manufactures in less adequately developed markets.[36] This was, however, more boon than bane to the importing countries, and it was not until the period following World War I that attempts were made to protect "war baby" industries from dumped imports and to fight depreciated currency dumping.[37] In this country, such endeavors coincided with efforts to curtail predatory domestic price discriminations.[38]

However, even prior to World War I, there existed a species of price discrimination in world trade that had both gained adverse recognition and been the target of attempted suppression. Nearly all European countries engaged in the practice of providing indirect subsidies, through various types of bounties or tax rebates, to the producers, and particularly to the exporters, of certain "essential" commodities. For historical reasons, the favored industries were primarily the producers of flour, sugar, and alcohol.[39]

32. This involves shipment to a consignee in another country for future resale at the dumping price, either within the country of the consignee or in some third country. See S. Doc. No. 112, 73d Cong., 2d Sess. 7 (1934).

33. *Id.* at 1.

34. KINDLEBERGER, *op. cit. supra* note 14, at 236-37. Viner, on the other hand, believes the fear of English dumping played but a minor part in the development of American protectionist sentiment. VINER, DUMPING: A PROBLEM IN INTERNATIONAL TRADE 43 (1923).

35. For a thorough review of phenomena prior to 1890, that could be considered dumping, see *id.* at 35-50.

36. *Id.* at 51, 80; HABERLER, *op. cit. supra* note 14, at 315. See also FTC, SUPPLEMENTAL REPORT ON ANTIDUMPING LEGISLATION AND OTHER IMPORT REGULATIONS IN THE UNITED STATES AND FOREIGN COUNTRIES 55-63 (1938), reviewing the instances in which antidumping duties were levied on American exports, particularly machinery.

37. CHALMERS, WORLD TRADE POLICIES 9-10 (1953).

38. See text at note 8 *supra*.

39. VINER, DUMPING: A PROBLEM IN INTERNATIONAL TRADE 164 (1923). The complexities of some of these bounty systems, meant to encourage cheap exports to the detriment of similar protected industries in other countries, are illustrated in Downs v. United States, 187 U.S. 496 (1903). There the Court found a devious method of excise tax collection,

When treaty disposition of the problems created by the bounty system failed, governments were eventually led to the unilateral imposition of "countervailing" duties on those imports receiving official export bounties abroad. The first measure of this type was the American Tariff Act of 1890.[40] It imposed an additional duty of one-tenth of one cent per pound above the ordinary duty on all refined sugar imported from countries that subsidized the export of such sugar with bounties greater than those used to subsidize the unrefined type. The act was, naturally, of very limited applicability, but by 1894 the provision for a countervailing duty had been extended to all bountied sugar,[41] and in 1897 to all dutiable merchandise receiving government export assistance.[42]

Particularly as it affected world production of sugar, the pyramiding of bounties and countervailing duties led to ever more ludicrous results. As early as 1864 negotiations were initiated among the world's beet sugar producing countries with the aim of abolishing or restraining bounties which impeded the economic flow of this staple. With the exception of Russia and the United States, all producing states finally signed the 1902 Brussels Sugar Convention.[43] Although applying a temporary check to a runaway development in a restricted area of trade, the Sugar Convention, together with its "enforcement bureau," faded out of sight at the end of World War I.[44] Other multilateral attempts at regulation of dumping met with varying success. Among these was the Convention for the Protection of Industrial Property,[45] to which the United States and 32 other nations acceded, and which vaguely bound its signatories not to engage in unfair competitive practices.[46] There were more vigorous antidumping resolutions adopted at the 1920 Brussels International Financial Conference, the 1927 Geneva World Economic Conference and at various meetings of the League of Nations.[47] However, in the 1920's little basis could be found for faith in

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employed by the Russian Government with respect to sugar exports, to be an export bounty, sufficient to subject the sugar to an American countervailing duty. VINER, DUMPING: A PROBLEM IN INTERNATIONAL TRADE 174 (1923), is critical of this and similar decisions, on the ground that the exports involved did not receive genuine bounties within the meaning of the applicable statutes.

40. Chapter 1244, § 237, 26 STAT. 584 (1890). At the same time, this Government granted a bounty to American sugar producers. *Id.* § 231, 26 STAT. 583.

41. Tariff Act of 1894, c. 349, § 182 1/2, 28 STAT. 521.

42. Tariff Act of 1897, c. 11, § 5, 30 STAT. 205, reenacted in the [Underwood] Tariff Act of 1913, c. 16, § IV E, 38 STAT. 193, and in still broader form in the Tariff Act of 1922, c. 356, § 303, 42 STAT. 935. The present provision, similar to that of 1922, is a part of the Tariff Act of 1930, § 303, 46 STAT. 687, 19 U.S.C. § 1303 (1952).

43. 95 BRITISH AND FOREIGN STATE PAPERS 6 (1902) (in French), abrogated, Sept. 1, 1920, 1 LEAGUE OF NATIONS TREATY SERIES 400 (1920).

44. S. Doc. No. 112, 73d Cong., 2d Sess. 19 (1934).

45. Nov. 6, 1925, 47 STAT. 1789, T.S. No. 834.

46. *Id.* arts. 10, 10 bis, 10 ter.

47. All are reprinted in S. Doc. No. 112, 73d Cong., 2d Sess. 19-20 (1934).

the feasibility of international control of the dumping problem; the practice seemed too profitable to be outweighed by the resulting harm.[48]

But attempts at international regulation have not been abandoned. Article VI of the General Agreement on Tariffs and Trade (hereinafter referred to as GATT)[49] represents the latest mutilateral effort at control of the predatory aspects of dumping and export bounties. Its novelty lies in the fact that it also seeks to soften the rigors of the excessive, trade-stifling antidumping and countervailing duties that have been adopted by many countries in the past thirty years. Its extensive provisions, pursuing a middle course between these opposing considerations, provide a most reasonable guide for legislation in the field.[50]

As multilateral endeavors have so often proved ineffective, many trading countries have turned to independent legislation directed against dumping. The development of countervailing duties, designed to offset government export subsidies, has been discussed.[51] The first attempt at combatting unfair price cutting by private foreign exporters was the Canadian Anti-Dumping Act of 1904,[52] imposing an antidumping duty of up to fifteen per cent *ad valorem* on dutiable goods imported into Canada at less than their fair market value on the home market.[53] Prior to World War I, other members of the British Commonwealth passed similar legislation. But it was not until after the war that the United States and most of the European countries adopted antidumping statutes on the Canadian model.[54]

The American Antidumping Act of 1921[55] was a prototype of those then passed. Factors in securing its passage in this country were fears that renewed German exports would endanger the war-fostered chemical industry[56] and apprehension that imports generally would be excessive in the light of post-war European currency depreciations.[57] But a League

48. VINER, MEMORANDUM 16.

49. 61(5) STAT. A3, A23 (1947), T.I.A.S. No. 1700 (hereinafter cited as GATT, with appropriate article number).

50. See U.S. DEP'T OF STATE PUB. No. 2983, ANALYSIS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 197 (1947).

51. See text at notes 41-50 *supra*.

52. An Act to amend the Customs Tariff, 1897, 4 EDW. 7, c. 11, § 19 (Canada 1904).

53. VINER, DUMPING: A PROBLEM IN INTERNATIONAL TRADE 202 (1923), points out that as the act applied almost exclusively to imports from the United States, it was easy to administer and effective in its purpose. Today, Canadians are more concerned about American dumping, particularly of agricultural products, in *third* countries which Canada also supplies. Canadian antidumping duties can, of course, do nothing directly to prevent this practice.

54. See text at note 37 *supra*.

55. 42 STAT. 11 (1921), as amended, 19 U.S.C. §§ 160-73 (1952), as amended, 19 U.S.C. §§ 160, 161(a) (Supp. IV, 1957).

56. The Emergency Tariff Act, 1921, 42 STAT. 18, of which the Antidumping Act was title II, placed a complete embargo for a period of three months on certain chemicals, drugs and dyestuffs unless such articles or satisfactory substitutes were unavailable in the United States.

57. See remarks of Senators King, Hitchcock, and Smoot, 61 CONG. REC. 1021, 1028,

of Nations report in 1927 found antidumping legislation, both in the United States and elsewhere, "not enforced in actual practice."[58] In regard to the United States, this judgment, on the whole, was and remains accurate.[59] However, there have been indications that more vigorous enforcement may be forthcoming. And as the 1956 Senate report on foreign economic policy has pointed out, an indiscriminate application of antidumping duties could do much to negate this country's larger program of reciprocal trade liberalization.[60] This country's tariff policies, including both the reciprocal trade agreements and the Antidumping Act, are scheduled for congressional review in 1958.[61] Appreciation of the interconnection of these two aspects of our foreign economic policy will be an important factor in determining the direction of the future American tariff.

II. United States Countervailing Duties

A countervailing duty may be defined as a surtax, in addition to normal customs duties, imposed on imports whose exportation has been facilitated through a bounty or similar assistance in the exporting country. The additional duty is intended to neutralize the foreign subsidy, and thus prevent injury to the producers of comparable products in the importing country who operate without the benefit of such bounties.[62]

The evolution of such duties in the United States has already been outlined.[63] From the first countervailing duty of 1890, imposed on refined sugar receiving government export bounties, coverage was rapidly expanded to include all dutiable goods receiving an official or a private subsidy. The present provision, now to be examined, was enacted as section 303 of the Tariff Act of 1930.[64]

1029 (1921). However, the debate in the Senate would seem to indicate that truly predatory dumping in the United States was considered a virtual impossibility and that the act would therefore not have widespread application. See remarks of Senator McCumber, *id.* at 1021, 1024.

58. Trendelenburg, *op. cit. supra* note 15, at 7.

59. The 1957 *Treasury Report*, annex B, indicates that between January 1, 1934, when records were first consistently maintained, and October 1, 1954, when the 1954 amendments to the act became effective, the Treasury Department entered seven findings of dumping, four of which concerned the same commodity, although from different countries, viz., "ribbon fly catchers." Following the effective date of the 1954 amendments, and through December 31, 1956, there was a single finding entered. This finding, however, was the center of great controversy. Its validity was unsuccessfully challenged before the Supreme Court. Horton v. Humphrey, 352 U.S. 921, *mem. affirming* 146 F. Supp. 819 (D.D.C. 1956).

60. S. Rep. No. 1312, 84th Cong., 2d Sess. 27 (1956). As Professor Viner was previously moved to tell a congressional committee: "Maybe it is getting into the hands now of men who do have ideas, and these ideas may be protectionist. If such is the case, what they can do with that anti-dumping law will make the escape clause look like small potatoes. They can, if they wish, raise the effective tariff barriers more than all the negotiations in Geneva will be able to achieve in the other direction." *Hearings*, *supra* note 20, at 607.

61. Jones, *Key Tariff Fight Put Off to 1958*, N.Y. Times, Sept. 1, 1957, § 3, p. 1, col. 1.

62. *Cf.* GATT, arts. VI(1), VI(3), VI(6)(a).

63. See notes 40-42 *supra* and text.

64. 46 Stat. 687 (1930), 19 U.S.C. § 1303 (1952).

Section 303 is broadly framed and has been liberally construed by its administrators. Generally, it imposes a countervailing duty on all dutiable merchandise receiving any export bounty or grant whatever, whether that source of assistance be public or private, collective or individual. The breadth of coverage is perhaps best illustrated by the variety of devices which the Customs Bureau (and the courts, in upholding the Bureau's findings) have construed as falling within the statute's words "any bounty or grant." Most controversial have been the decisions holding drawbacks,[65] excise tax refunds,[66] and exchange controls[67] to be "grants" assisting exportation. A leading economist has considered this enforcement "harsh" and often inconsistent with the economic justification for the existence of such duties.[68] It is certain that multiple exchange rates may as frequently tax the foreign exporter as subsidize him, and that, where the former is true, a countervailing duty is an unwarranted burden on trade.[69] At the very least, some official designation of those exchange controls which have been or may be interpreted to be subsidies should be made available to producers and importers.[70] For, as the recent *Boggs Report* indicated, in the "absence of any reports from the Treasury Department as to the basis on which its determinations of the existence of subsidization are made, it is difficult, if not impossible, to analyze the administration of section 303."[71]

When the Secretary of the Treasury finds that a particular import has received an export subsidy, he is directed in mandatory language to levy a countervailing duty on the merchandise equal to the net amount of the foreign bounty. Although the Secretary has discretion in determining whether or not a particular product has been subsidized, once he has found the subsidy he must levy the duty. His finding is then conclusive.[72] The statute requires no public hearings or notice of investigations regarding possible applications of countervailing duties, although Treasury Regulations do permit interested parties to present written representations to the

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65. Downs v. United States, 187 U.S. 496 (1903).
66. G. S. Nicholas & Co. v. United States, 249 U.S. 34 (1919).
67. Robert E. Miller & Co. v. United States, 34 C.C.P.A. (Customs) 101 (1946); F. W. Woolworth Co. v. United States, 28 C.C.P.A. (Customs) 239, 115 F.2d 348 (1940).
68. Viner, Dumping: A Problem in International Trade 173, 174 n.12 (1923).
69. Boggs Report 95. In this connection it should also be noted that the proposed article XVI of GATT would exempt tax rebates on exports from characterization as "subsidies" for the purposes of countervailing duties legislation. U.S. Dep't of State, General Agreement on Tariffs and Trade, Present Rules and Proposed Revisions 76 (1955).
70. Boggs Report 95.
71. *Ibid.*
72. Downs v. United States, 113 Fed. 144 (4th Cir. 1902), *aff'd*, 187 U.S. 496 (1903); Franklin Sugar Refining Co. v. United States, 178 Fed. 743 (C.C.E.D. Pa. 1910). The latter case upheld a finding and levy of duty signed by the Assistant Secretary of the Treasury. The court considered this insufficient to warrant upsetting the levy, although it did think the statute made the task of fact finding and duty assessment personal to the Secretary.

Commissioner of Customs once the latter has initiated an investigation under the act.[73] The regulations also permit any person, such as a competing domestic producer, to bring allegations of export bounties to the attention of the Commissioner.[74] Although this is an undoubted aid to enforcement, it also provides, by virtue of the act's vague standards, an opportunity for harassment and confusion of both the importer and the foreign exporter to the detriment of the stability that is the goal of a sound tariff policy.[75]

In considering possible applications of countervailing duties, the act neither requires nor permits the Secretary of the Treasury to take into account the lack of potential injury to a domestic industry from the imported goods,[76] nor may he consider the fact that the subsidy may have been granted in order to bring a high priced import down to, rather than below, the generally competitive level in the American market. Nor is there a "side door" through which the President may avoid the imposition of the duties for the sake of greater national interest, as is permitted under the "escape clause" mechanism of the Trade Agreements Extension Act of 1951.[77]

Countervailing duties are applicable even where the commodity is shipped from the subsidizing country to the United States via some third country. This provision would cover, for example, English jams and jellies made, in part, from the sugar dumped in England by subsidized continental sugar refiners. The fact that the bountied product has been extensively processed in a third country is irrelevant. Once the finding has been made and the duty has been assessed by the Collector of Customs, it must be paid before any review of the correctness of its assessment is available through appropriate proceedings in the customs courts.[78] The act does not prohibit

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73. 19 C.F.R. § 16.24(d) (Supp. 1956). The similar situation with respect to Treasury findings of dumping has been criticized as "in effect star chamber practices contrary to American principles of justice." Minority Report of Representatives Reed and Simpson, appended to UNITED STATES COMMISSION ON FOREIGN ECONOMIC POLICY, REPORT TO THE PRESIDENT AND THE CONGRESS 8 (1954) (hereinafter cited as RANDALL REPORT). Although H.R. 6006, 85th Cong., 1st Sess. § 1 (1957), passed by the House on August 29, 1957, would require publication in the Federal Register of notice that a dumping investigation is being authorized, the bill still makes no provision for a mandatory hearing. Compare the hearing provisions under the "escape clause" of the Trade Agreements Extension Act, 1951, § 7(a), 65 STAT. 74, as amended, 19 U.S.C. § 1364(a) (Supp. IV, 1957).

74. 19 C.F.R. § 16.24(b) (Supp. 1957).

75. See RANDALL REPORT 292.

76. *Cf.* GATT, art. VI (6)(a), where a finding of injury is required. In 1953 the Treasury Department urged Congress to adopt an injury test for countervailing duties, but the recommendation was not adopted. Letter of Assistant Secretary Rose, in *Hearings Before the House Committee on Ways and Means on H.R. 5106, a Bill to Amend Certain Administrative Provisions of the Tariff Act of 1930 and Related Laws, and for Other Purposes*, 83d Cong., 1st Sess. 42 (1953).

77. 65 STAT. 74 (1951), as amended, 19 U.S.C. § 1364(c) (1952). See also recommendation 14 of S. REP. No. 1312, 84th Cong., 2d Sess. 31 (1956).

78. See United States v. Sherman & Sons Co., 237 U.S. 146, 152 (1915). As to the exclusive jurisdiction of the customs courts, *cf.* Morgantown Glassware Guild, Inc. v. Humphrey, 236 F.2d 670 (D.C. Cir.), *cert. denied*, 352 U.S. 896 (1956); Horton v. Humphrey, 146 F. Supp. 819 (D.D.C.), *aff'd*, 352 U.S. 92 (1956).

simultaneous imposition of countervailing and antidumping duties,[79] nor does it provide for automatic lapse or review of the levy. Of the twelve items presently subject to countervailing duties, some have been so listed for decades.[80]

The above observations point out some of the deficiencies apparent in the present countervailing duties statute. These duties have not been a particularly oppressive burden on United States trade because they have been seldom utilized in recent years.[81] Some sixty-one items have been subjected to such duties at one time or another, the most recent addition to the list being Cuban cordage, included in 1955. Twelve commodities are presently so taxed.[82] Nevertheless, the well considered judgment of the Randall Commission was that this legislation, together with the antidumping provisions, contributes to the feeling that United States trade policy is uncertain, if not Janus-faced, with respect to goods offered for sale at bargain prices.[83] It is true that other sections of our tariff laws, such as the "national security"

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79. *Cf.* GATT, art. VI (5). However, there is no indication that both have been applied to the same commodity in recent years. Although GATT does prohibit simultaneous application of the two duties to a single commodity, the inconsistency of present American legislation is unaffected. Because of the fact that the countervailing duties and antidumping statutes were enacted prior to October 30, 1947, the inconsistency is considered to be nonviolative of GATT pursuant to a reservation to article XXVI adopted by the contracting parties in 1955. 2 GENERAL AGREEMENT ON TARIFFS AND TRADE, BASIC INSTRUMENTS AND SELECTED DOCUMENTS 48 (3d Supp., Geneva 1955). However, if new legislation in either field is adopted, presumably this reservation would be inapplicable. The argument may then of course be made that the revisions are mere "amendments" to existing legislation, and that the reservation would still permit continued inconsistency.

Considerable controversy existed at one time over the question whether countervailing duties were compatible with the unconditional most-favored-nation treatment which the United States had pledged by treaty to a number of countries on whose goods such duties were levied. The Wickersham report on the most-favored-nation clause to the League of Nations, reprinted in 22 AM. J. INT'L LAW 134 (Spec. Supp. 1928), considered countervailing duties to be contrary to the principle of most-favored-nation treatment but justifiable due to the "overbearing necessity" of preventing dumping. *Id.* at 148. From the point of view of a third country, however, it would seem that *only* through imposition of countervailing duties on subsidized imports could it consider itself receiving equal treatment from the importer. See Note, *Dumping and "Most-Favoured-Nation" Treatment*, 75 SOL. J. 875, 876 (1931).

In any case, the United States Court of Customs and Patent Appeals has expressly held that countervailing duties do not violate the most-favored-nation clause of our reciprocal trade agreements. Balfour, Guthrie & Co. v. United States, 31 C.C.P.A. (Customs) 63, 136 F.2d 1019 (1943); Minerva Automobiles, Inc. v. United States, 25 C.C.P.A. (Customs) 324, 96 F.2d 836 (1938).

The implied permission of the use of countervailing duties by the contracting parties to GATT, despite the most-favored-nation clause in article I of that instrument, would seem to indicate general acceptance of the Ame ican theory of compatibility of countervailing duties with a most-favored-nation pledge. Ratification of proposed article XVI, outlawing most export subsidies, and national action consonant with such a provision, would make the issue moot.

80. 19 C.F.R. § 16.24(f) (Supp. 1956).

81. See RANDALL REPORT 292.

82. 19 C.F.R. § 16.24(f) (Supp. 1956).

83. RANDALL REPORT 292. See also statements of Doctors Humphrey and Viner in *Hearings*, *supra* note 20, at 268, 606. This becomes painfully apparent when the United States itself heavily subsidizes the export of agricultural products at prices considerably below those maintained on the domestic market. See BOGGS REPORT 89-91.

clause in the Trade Agreements Extension Acts,[84] may present more serious threats to a consistent policy of trade liberalization. However, these are consciously not predicated on economic considerations. So long as the provisions for countervailing duties are meant to protect competition (rather than to protect producers) in the American market, they should include corrections along the lines indicated.

III. United States Antidumping Duties

An antidumping duty may be defined as a surtax, in addition to normal customs duties, imposed on imports whose price is less than some predetermined "fair value" for such goods. The additional duty is intended to restore the price of the goods to their fair value, and thus prevent injury to the importing country's producers of similar merchandise, who otherwise could not meet the abnormally low price.[85]

Artificial export price depression through government or private subsidy was the earliest form of international price discrimination. Defense against this technique has been left largely to the previously considered countervailing duties. But the later and more prevalent type of discrimination has been privately organized predatory dumping. Treating this as a manifestation of illegal unfair competition, and subjecting the participants to criminal penalties, was the first method attempted for handling this practice.[86] When this method proved ineffective, a more realistic administrative remedy, in the form of antidumping duties, was adopted.[87] With one major procedural

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84. Trade Agreements Extension Acts of 1954 and 1955, 68 Stat. 360, 69 Stat. 166, 19 U.S.C. § 1352a (Supp. IV, 1957). These permit the President to adjust imports to whatever level he feels is consistent with the national security. The difficulties encountered in administering these vague standards are reviewed in Boggs Report 98-102.

85. The key phrase is "abnormally low price." Other aspects of competition from cheap foreign imports are covered by other parts of the tariff laws. For example, imports produced by convicts or slave labor, and thus without economic cost, are barred by Tariff Act of 1930, § 307, 46 Stat. 689, 19 U.S.C. § 1307 (1952). Imports produced in countries with costs of production lower than those prevailing in the United States are to be taxed so as to "equalize" the costs of production in the two countries. Tariff Act of 1930, § 336, 46 Stat. 701, 19 U.S.C. § 1336 (1952). The latter provision (which flies directly in the face of the economic justification for trade, precisely based on comparative advantages in costs of production) does not apply to articles imported from countries with which the United States has entered into a trade agreement. Trade Agreement Act of 1934, § 2(a), 48 Stat. 944, 19 U.S.C. § 1352 (1952). The United States has concluded such trade agreements with 41 countries. Boggs Report 33.

A more closely related aspect of attempted control over "abnormally low" priced imports is § 337 of the Tariff Act of 1930, 46 Stat. 703, 19 U.S.C. § 1337 (1952), which excludes imports brought into the country by "unfair methods of competition . . . the effect . . . of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. . . ." Although this may be interpreted to apply to goods being shipped to this country by a predatory dumper, it has generally been applied only to imports deceptively marked, goods infringing on American trade marks and patents, and misbranded products. Boggs Report 17.

86. See Antidumping Act of 1916, 39 Stat. 798, 15 U.S.C. § 72 (1952).

87. A provision for antidumping duties had been passed by the House as a part of the Underwood Tariff Act of 1913, but this section was stricken from the bill by the Senate

change, the Antidumping Act of 1921 as originally enacted is the law today.

Although the Antidumping Act is considerably longer and more detailed, and requires the consideration of a number of additional factors, its basic scheme is the same as the provision in the Tariff Act concerning countervailing duties. When the Secretary of the Treasury has reason to suspect that merchandise is being imported into this country at less than its "fair value," he is authorized to suspend appraising such goods for the payment of ordinary duties. If he finds the goods are in fact being sold here for less than their fair value, he issues a "finding of dumping." The amended act directs him then to advise the Tariff Commission of his finding. The Commission is to determine within three months whether or not an American industry "is being or is likely to be injured, or is prevented from being established, by reason of the importation of the merchandise in question."[88] Should the Commission so find, the Secretary is then to levy on such merchandise (and on similar goods unappraised or imported up to 120 days prior to the date the question of dumping was first presented to the Secretary) a special antidumping duty. This duty is, generally, the difference between the importer's purchase price and the "foreign market value" or, in the absence of data on the latter, the difference between the purchase price and a constructed "cost of production."

The aim of the act, as in the case of the countervailing duty provision, is to offset artificially low prices which American producers could not fairly be expected to meet. Its greatest differences from the countervailing duty provision are: (1) that antidumping duties may be applied to *all* imports, while countervailing duties are applicable only to goods otherwise dutiable; and (2) that the act includes an "injury test" which the countervailing duty statute does not. Both of these provisions are defensible from the point of view of the rationale of antidumping legislation, but the imprecise language in these and other parts of the act has aroused considerable criticism.[89]

Finance Committee. S. Rep. No. 80, 63d Cong., 1st Sess. 31 (1913). The present Antidumping Act began its congressional career in 1919 and was finally passed as title II of the Emergency Tariff Act of 1921, 42 Stat. 11, as amended, 19 U.S.C. §§ 160-73 (1952), as amended, 19 U.S.C. §§ 160-61 (Supp. IV, 1957).

Tariffs are clearly the most suitable weapon for fighting dumping, since, however great the financial resources of the dumper may be, a duty of sufficient height will soon drain them. Viner, Dumping: A Problem in International Trade 159 (1923). However, only prohibitive or ad hoc duties can prevent dumping, since ordinary tariffs, no matter what their height, may be surmounted by the determined dumper if they remain constant both before and during the attempted dumping. *Cf. id.* at 160-61.

88. 68 Stat. 1138 (1954), 19 U.S.C. § 160 (Supp. IV, 1957).

89. At the 1957 Hearings on the Antidumping Act, Assistant Secretary of the Treasury Kendall was in the very distinct minority when he stated his opinion that "a complete new law is not what is required but rather the comparatively simple and common sense changes which are recommended by [the Treasury Department]." *Hearings, supra* note 15, at 30. Soon after its original enactment, Professor Viner called it a "model of draftsmanship." Viner, *op. cit. supra* note 14, at 262. But its subsequent history has caused him to reverse his judgment. See his statement cited in note 59 *supra*.

A. *The Secretary of the Treasury's Investigation*

The procedures of the Antidumping Act are set into motion by an investigation by the Secretary of the Treasury into the question whether particular goods are being or are likely to be sold in the United States or elsewhere at less than their fair value.[90] The Secretary (or, in practice, the Commissioner of Customs) may initiate such an investigation *ex parte*, or after receiving information from a customs officer sufficient for him reasonably to suspect dumping is taking place. Private persons have no direct access to the Secretary but may present allegations of dumping to customs officials.[91] The statute vests virtually absolute discretion in the Secretary with respect to beginning or terminating a dumping investigation, a procedure which, while arbitrary, has consistently withstood constitutional challenges.[92]

The importance of this section lies in the fact that once a dumping investigation has been started, appraisement (*i.e.*, the process of clearing through customs) of all merchandise of the type being investigated is suspended.[93] In effect, imports of the commodity in question are halted (or are admitted only on posting of a bond sufficient to cover antidumping duties) until the suspicion is affirmed or rejected. The result has been that considerable quantities of merchandise accumulate, their status in doubt, for the extended period of such an investigation.[94]

The claim has been made that importers regard the restrictions imposed during such investigations as worse than the penalties to which they may become subjected in cases where dumping is finally established.[95] Indeed, it is said that the trade-restricting effect of the Antidumping Act should not be measured by the relatively few findings of actual dumping, but rather by the much larger number of investigations that have been under-

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90. 68 STAT. 1138 (1954), 19 U.S.C. § 160(a) (Supp. IV, 1957). The words "or elsewhere" are included so that the imposition of antidumping duties cannot be avoided by dumping merchandise in a third country and then transshipping it to the United States.

91. 19 C.F.R. § 14.6(b) (Supp. 1956).

92. Kreutz v. Durning, 69 F.2d 802 (2d Cir. 1934); C. J. Tower & Sons v. United States, 21 C.C.P.A. (Customs) 417, 71 F.2d 438 (1934). These cases rejected the argument that the grant of discretion to the Secretary was an unconstitutional delegation of legislative authority or that it violated due process of law. The *Tower* case also rebuffed the argument that the initiation of a dumping investigation is a non-ministerial act, which the Secretary may not delegate to a subordinate, such as the Assistant Secretary (the case before the court) or, presumably, the Commissioner of Customs (as provided by present regulations).

93. 68 STAT. 1139 (1954), 19 U.S.C. § 160(b) (Supp. IV, 1957); 19 C.F.R. § 14.9(a) (Supp. 1956).

94. At the time of the *Randall Report*, imports of commodities from Western Europe, with an annual value of $25 millions, were suspended while dumping charges were under investigation. RANDALL REPORT 292. At the hearings on the act in 1957, the claim was made that with over thirty investigations then in progress, appraisements were being withheld on imports having a value in excess of $100,000,000. Statement of William Barnhard, Secretary, National Anti-Dumping Committee, in *Hearings*, *supra* note 15, at 347.

95. *Hearings*, *supra* note 20, at 161.

taken pursuant to the act.[96] As the Tariff Commission has reported that the average time elapsed between the first request for an investigation and the final determination on the imposition or non-imposition of antidumping duties has, since the 1954 amendments, been eight to nine months,[97] the validity of this argument becomes more apparent. In 1954 the Senate Finance Committee proposed a ninety day limitation on the Secretary's investigation. But Treasury objections that such a limit would result in further hindrances to, rather than in enhanced efficiency of, administration of the act were apparently persuasive, for the suggestion was not adopted.[98] However, as protracted delays are harmful both to domestic industries and to importers, with both prevented from accurately determining their true market positions until a decision is reached, all sides can agree that some time limit would be appropriate.[99]

A further well-publicized flaw in this portion of the act is its lack of provision for public notice that a dumping investigation has been authorized or that one has been concluded. The Antidumping Act amendments passed by the House in 1957 (H.R. 6006) would remedy this situation by requiring announcement in the *Federal Register* both that an investigation is contemplated and that a decision has been reached, including the reasons therefor. This should go a long way toward correcting a much criticized omission.[100] However, no provision for hearings was included in H.R. 6006. Presumably, interested parties, now to be officially notified of the pendency of an investigation, must still avail themselves of the Treasury Regulations[101]

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96. *Ibid.* As Assistant Secretary of the Treasury Kendall himself succinctly suggested, "Withholding of appraisement necessarily creates uncertainty. It is a major deterrent, often more feared than the imposition of the duty." *Hearings, supra* note 15, at 40.

Between January 1, 1934, and December 31, 1956, 198 investigations were undertaken. Eight final impositions of antidumping duties were ordered within the same period. 1957 TREASURY REPORT 15-16.

97. UNITED STATES TARIFF COMMISSION, INJURY DETERMINATIONS UNDER THE ANTI-DUMPING ACT (1955). The statute limits to three months the time within which the Tariff Commission must determine the question of injury to a domestic industry. 68 STAT. 1138 (1954), 19 U.S.C. § 160(a) (Supp. IV, 1957).

An extreme situation is presented in the case of United States v. Henry Peabody & Co., 40 C.C.P.A. (Customs) 59 (1952), concerning matches imported from Finland in 1929. Not until 1941 was dumping found and appraisal authorized, and not until the date of the decision, twenty-three years after the original importation, was the importer's liability finally determined.

98. S. REP. No. 2326, 83d Cong., 2d Sess. 3, 4 (1954).

99. Compare the nine month limit in the escape clause and the four month limit in the peril point clause of the amended Reciprocal Trade Agreements Extension Act of 1951, §§ 3(a), 7(a), 65 STAT. 72, 74, as amended, 19 U.S.C. §§ 1360(a), 1364(a) (Supp. IV, 1957).

100. All sides of the tariff question vigorously supported such an amendment at the 1957 hearings. See, *e.g.*, statements of Richard H. Anthony, Executive Secretary of the American Tariff League; Harry S. Radcliffe, Executive Vice-President of the National Council of American Importers; and John S. Rode of the Association of the Customs Bar, in *Hearings, supra* note 15, at 121, 130, 223. Importers favored the notice provision, as it would enable them to plan their business without fearing the imposition of extended retroactive antidumping duties. Domestic producers favored the disclosure as offering publicity to potential sources of injury.

101. 19 C.F.R. § 14.6(c) (Supp. 1956).

that permit them to make pertinent information available to the Commissioner of Customs. There would seem to be no good reason for not providing, at least to the interested parties, the opportunity to be heard. The Tariff Commission's regulations,[102] authorizing public hearings on the issue of "injury" under the act, if and when the Commission considers them necessary, are a step in the right direction. But a provision in the act itself, requiring both the Treasury Department and the Tariff Commission to hold hearings on the issues within their respective jurisdictions, would have virtually universal support.[103]

B. *The Meaning of "Merchandise"*

The Antidumping Act speaks only of "foreign merchandise" being sold in the United States. The words are undefined, and thus two problems are immediately presented: (1) how similar must two specific imports be to be classified as "similar merchandise," subject to the duty and available for value comparison purposes; and (2) what must be the relation of this merchandise to the potentially injured domestic industry?

The problem of what is to be covered by "such" or "similar" merchandise is, of course, inherent in most economic regulatory legislation. It is a problem common to the Tariff Act[104] and it has confounded the administration of that relative of antidumping—the Robinson-Patman Act.[105] H.R. 6006 attempts to sharpen the definitions of "merchandise" and to bring them into conformity with those of the Customs Simplification Act of 1956. The House report on the bill reiterated a classic illustration of the problem: if a foreign producer sells long handled shovels to the United States, and sells only short handled shovels in his home market, may the short handled shovels be considered "similar merchandise" for the purpose of comparing the fairness of the former's export price?[106] Under the definitions of the Customs Simplification Act, the answer would be "yes," and in the context of antidumping, it should be. But on this point the Court of Customs and Patent Appeals has held that merchandise must be defined by the Secretary with sufficient precision so that the customs appraisers need exercise no discretion in determining whether or not a particular item is subject to the antidumping duty.[107] Classifying long and short handled

102. 19 C.F.R. § 208.4 (Supp. 1956).

103. See note 100 *supra*.

104. See Tariff Act of 1930, § 402(f)(4), 46 STAT. 709, as amended by the Customs Simplification Act of 1956, 70 STAT. 945, 19 U.S.C. § 1402(f)(4) (Supp. IV, 1957).

105. See Rowe, *supra* note 5.

106. H.R. REP. NO. 1261, 85th Cong., 1st Sess. 7 (1957).

107. United States v. Tower & Sons, 14 C.C.P.A. (Customs) 421 (1927). Here "rugs from Canada" was held too vague. The appraiser was left to determine whether this phrase meant all rugs, and if carpets were to be included. This was a delegation of the discretionary power vested in the Secretary personally, and the statute authorized no redelegation.

shovels as "shovels" would probably pass this test, but on the other hand use of the term "digging equipment" would most likely be inadequate.

The second issue raised here is whether the Antidumping Act authorizes imposition of an antidumping duty on merchandise *X* because of its injurious effects on an industry producing commodity *Y*. For example, who has standing to protest the alleged dumping of residual oil in this country? A spokesman for the United Mine Workers suggested to a congressional committee that such dumping was injuring the coal industry.[108] A "plain meaning" approach to the statute would seem to allow the imposition of an extra duty on the oil in such a case if the union's charges could be substantiated. On the other hand, injury to importers, due to imposition of antidumping duties, is not a valid "injury" consideration under the act. Nor may an American exporter consider himself injured, within the meaning of the act, by the dumping of foreign merchandise in third countries, when similar merchandise is shipped for sale at its "fair value" to this country. Dumping in third countries becomes cognizable under the act only when the identical merchandise once dumped abroad is then shipped for resale to the United States.[109]

C. *The Fairness of "Fair Value"*

If and when the Secretary of the Treasury finds that merchandise is being imported into the United States for sale at less than its "fair value," the Antidumping Act directs him to issue a finding of dumping.[110] It is thus apparent from the face of the statute that what the Secretary considers to be the fair value of merchandise may virtually determine the extent to which the entire act is enforced. But although the bulk of the Antidumping Act is devoted to detailed definitions of various operative terms, the words "fair value" are left undefined. They are, in fact, used but once in the entire act—in this single crucial section.

Divergent interpretations of the term have been offered:

(1) The official position of the Treasury Department is that the determination of "dumping" is nothing more than "an exercise in arithmetic."[111] Treasury Regulations adopted in 1955 have therefore created a mathematical definition of "fair value" to which the price of imports is compared:[112] if their price is lower than this "fair value," then a finding of dumping issues. Essentially the regulations base the fair value of merchandise on the price at which it is sold for home consumption in the country of export. However,

108. *Hearings*, *supra* note 20, at 286.
109. See note 90 *supra*.
110. 68 STAT. 1138 (1954), 19 U.S.C. § 160(a) (Supp. IV, 1957).
111. See 1957 TREASURY REPORT 22, 23.
112. 19 C.F.R. 14.7 (Supp. 1956).

if sales volume at home is too small to form an adequate basis for comparison with sales in the United States market, the benchmark is to be all sales except those for export to the United States—in other words, home consumption plus third country sales. If these figures are unavailable, then reference is made to cost of production.

Defining "fair value" in this way was a novel departure in the administration of the act, and has created enforcement difficulties. The principal problem that arose was what the Treasury Department called the "anomalous situation" of its finding sales to be at a dumping price (under the Treasury definition), but at the same time lacking statutory authority to assess antidumping duties.[113] This self-created anomaly arose because antidumping duties were, and still are, to be assessed by a method spelled out by the statute itself, *viz.*, by measuring the difference between the import price of the merchandise and its "foreign market value."[114] The latter term is defined by the statute as the price at which goods are "freely offered for sale."[115] When home sales are encumbered by any restrictions (*e.g.*, on resale or use of replacement parts), however insignificant, no "foreign market value" is ascertainable there for antidumping purposes.[116] Instead, a comparison must be made with markets in which the goods are freely offered for sale—usually in third countries in which the offending producer may be dumping as well as in the United States. In such a case there would be no United States sale at a price less than "foreign market value," although that price *was* less than the Treasury Department's "fair value" (the latter being unaffected by restrictions in the terms of sale on the home market).

The Treasury's "anomalous situation" is sought to be corrected by H.R. 6006, which redefines the term "foreign market value" in the act in terms consistent with the Treasury Regulations' definition of "fair value." The virtue of consistency in this is apparent. And in so far as it permits consideration of some restricted sales in finding "foreign market value," it also brings the act closer to commercial reality. There are few foreign markets today in which goods may truly be considered "freely offered" for sale. But whether these Treasury sponsored definitions are consistent either with the legislative history or the purpose of the Antidumping Act is another matter.[117] Amending the definition of "foreign market value" to facilitate uniform administration of the act may have beclouded the true issues in-

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113. 1957 TREASURY REPORT 18.
114. Section 302(a), 68 STAT. 1139 (1954), 19 U.S.C. § 161(a) (Supp. IV, 1957).
115. Section 205, 42 STAT. 13 (1921), as amended, 19 U.S.C. § 164 (1952).
116. See J. H. Cottman & Co. v. United States, 20 C.C.P.A. (Customs) 344, 354-57 (1932).
117. See text at notes 127-31 *infra*.

volved—particularly the very desirability of the "fair value" standard created by the Treasury Regulations.[118]

(2) The older Treasury practice, prior to the issuance of the 1955 Regulations,[119] seems to have been a direct application of the statute's definitions of "foreign market value" or "cost of production" to the term "fair value." The Court of Customs and Patent Appeals went so far as to suggest that such application was the most reasonable means for determining fair value,[120] and that a sale, mathematically less than at the figure reached by using the statute's method for calculating foreign market value or cost of production, was automatically a sale at less than fair value.[121] This method of determining fair value was held sufficiently precise to answer constitutional objections to the *ex parte* and *in camera* methods by which the Secretary determined dumping.[122]

However, because this method is patently impractical under existing law, it has been abandoned. While the present statutory definition of foreign market value is often a meaningless standard for determining fair value,[123] the alternative of determining foreign costs of production in every case of suspected dumping would be too onerous a task for efficient administration of the act.[124] Of course, if the new definition of foreign market value in H.R. 6006 is written into law, the Secretary of the Treasury will once again, in effect, be determining fair value on the basis of the statutory foreign market value.

(3) Persuasive arguments, however, have been presented for the proposition that the entire approach of the Treasury Department in seeking a mathematical formula for the determination of "fair value" (and hence "dumping") is incorrect from both policy and legislative history viewpoints.[125]

The aim of any sound antidumping legislation must be to curb pred-

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118. See remarks of Representative Eberharter, 103 CONG. REC. 14920-21 (daily ed. August 29, 1957).

119. In 1954 the Treasury had first attempted defining "fair value" as the price at which "a significant majority" of the goods in question was being sold, regardless of how or where they were sold. See statement of Assistant Secretary of the Treasury Rose, *Hearings Before the House Committee on Ways and Means on the Customs Simplification Act*, 83d Cong., 2d Sess. 44 (1954). Objections to this approach from "all sides" resulted in revision to, and promulgation of, the present form. See 1957 TREASURY REPORT 23.

120. Kleburg v. United States, 21 C.C.P.A. (Customs) 110, 114, 71 F.2d 332, 335 (1933).

121. United States v. European Trading Co., 27 C.C.P.A. (Customs) 289 (1940). The court pointed out that the two tests could not be combined so as to find an artificially high foreign value, and held that antidumping duties could be imposed only where domestic (United States) sales were below one or the other standard.

122. Kreutz v. Durning, 69 F.2d 802, 804 (2d Cir. 1934).

123. See text at note 115 *supra*.

124. The use of a constructed foreign cost of production is rarely utilized even in the area expressly contemplated by the statute. See 1957 TREASURY REPORT 7.

125. See, generally, statement of William Barnhard of the National Anti-Dumping Committee, *Hearings*, *supra* note 15, at 340-45.

atory price discrimination and thereby protect free competition, rather than to maintain high prices and prevent competition.[126] But it is difficult to see how a mere exercise in arithmetic can suffice to determine whether dumping, in its predatory sense, exists. Before the Secretary of the Treasury issues a "finding of dumping" he should be convinced that he is condemning a trade evil rather than a bargain. It would seem strange if Congress had required a cabinet level officer to do nothing but check the arithmetic of his subordinates before taking so important a step as issuing the finding.[127] It would seem equally odd for Congress to use the term "fair value" to describe the Secretary's role, if it meant him to substitute therefor the very words ("foreign market value") used in every other part of the statute and extensively defined by the act itself.

The act's legislative history shows that although the House had at first adopted a mathematical test, the Senate insisted upon some high level consideration of such a step, and thus had the clause providing for intervention of the Secretary himself added as an amendment.[128] Further, the debates in Congress and the reports accompanying the act stress the point that the act was designed to combat "unfair competition,"[129] making safe the assumption that this was the context in which the term "fair value" was used.[130] The present arithmetical exercise would seem directly to contradict the intention of the act's draftsmen, and the very policy the Secretary claims to follow.[131] Consequently, any prospective revision of the

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126. As previously indicated, and as recognized by the Treasury Department itself, price discrimination both in domestic and foreign commerce is a common experience and may, in fact, have beneficial results. See 1957 TREASURY REPORT 20.

127. *Compare* the majority opinion in United States v. Central Vermont Ry., 17 C.C.P.A. (Customs) 166, 172 (1929), stating that the Secretary could do no more than the appraisers in mechanically applying the standards of "foreign market value" to the price facts of the import before him, *with* the dissenting opinion, *id.* at 179, which emphasized the contrary legislative history and a contrary opinion of the Attorney General.

128. H.R. REP. No. 79, 67th Cong., 1st Sess. 11 (1921).

129. See Remarks of Representative Fordney and Senator McCumber, respective floor managers of the bill, 61 CONG. REC. 262, 1022 (1921); H.R. REP. No. 1, 67th Cong., 1st Sess. 23 (1921).

130. The Secretary of the Treasury has specifically rejected this interpretation of the words "fair value." His report states that the words mean "fair market value," *i.e.*, what a willing buyer will pay a willing seller, rather than "equitable" value. 1957 TREASURY REPORT 19. While the Secretary may be partially right, he fails to indicate of which market he is speaking. If he means the market in the United States, and that "fair value" means what a willing buyer will pay a willing seller in this country, then obviously fewer findings of dumping will be issued than presently. Adoption of such a definition would be tantamount to permitting the importer to raise the time honored Robinson-Patman Act defense, *viz.*, "meeting competition." This would probably be a desirable development.

But it seems clear that the United States is not the market the Secretary had in mind, and that he did not intend the interpretation offered above. The Treasury Regulations point specifically to prices of sales for "home consumption" in the exporter's country. But these may, of course, also be "unfair" because over-priced. When reduced to, and not below, the competitive level of the American market, they are "dumping" under the Treasury Regulations, although manifestly not "unfair" to American competition. Their importation should not automatically be branded as "dumping."

131. The Secretary may, of course, claim that the act vests absolute discretion with

antidumping laws should include a statement of policy and an indication of just what it is the Secretary is expected to do.

D. *The Requisite Degree of "Injury"*

Once the Secretary has issued his finding that merchandise is being dumped, he is directed to transmit this information to the Tariff Commission so that the latter may 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."[132] Until 1954 such injury investigations had been made by the Secretary of the Treasury. But Congress, acting on a recommendation of the Randall Commission,[133] shifted this task to the Tariff Commission. As the Tariff Commission is regularly engaged in similar inquiries under the peril point[134] and escape clause[135] provisions of the Trade Agreements Acts and the unfair practices section of the Tariff Act,[136] it was felt that this change would enhance the efficient administration of the Antidumping Act by placing the injury determination in the hands of experts on the subject.[137]

The injury test is quite naturally one of the most controversial sections of the Antidumping Act. While it reiterates the purpose of the act (that dumping be prevented when injurious to American producers), it is a very real limitation on the act's applicability to certain merchandise.[138]

It has been urged that as dumping is an unfair trade practice, it ought to be made illegal per se, thereby eliminating the need for any injury test.[139] Bills designed to eliminate the required consideration of injury were introduced in the 1957 session of Congress but were not reported out of committee.[140] A similar bill had the approval of the Ways and Means Committee

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him in determining "fair value," and that in the absence of statutory guidance, he may adopt any reasonable standard for determining fair value, arithmetical or otherwise.

132. 68 STAT. 1138 (1954), 19 U.S.C. § 160(a) (Supp. IV, 1957).

133. RANDALL REPORT 48.

134. 65 STAT. 72 (1951), 19 U.S.C. § 1360(a) (1952).

135. 65 STAT. 74 (1951), as amended, 19 U.S.C. § 1364(a) (Supp. IV, 1957).

136. 46 STAT. 703, 704 (1930), 19 U.S.C. § 1337(b)-(d) (1952).

137. See, *e.g.*, statement of Assistant Secretary of the Treasury Rose, in *Hearings, supra* note 119, at 14; 1957 TREASURY REPORT 12.

138. Only a single import has been found threatening injury to a domestic industry by the Tariff Commission since the latter has begun making these inquiries: "Cast Iron Soil Pipe from the United Kingdom," T.D. 53934, 90 TREAS. DEC. 354 (1955). The *Code of Federal Regulations*, 19 C.F.R. § 14.13(b) (Supp. 1956), lists one other finding of dumping currently outstanding: "Hardboard from Sweden," T.D. 53567, 89 TREAS. DEC. 197 (1954). The injury determination for the latter finding was conducted by the Treasury Department prior to the effective date of the 1954 amendments to the Antidumping Act.

139. See, *e.g.*, statements of Richard Anthony, Executive Secretary, American Tariff League, and Robert N. Hawes, Counsel for Hardwood Plywood Manufacturers, in *Hearings, supra* note 15, at 131, 152; remarks of Representative Bailey, 103 CONG. REC. 5925 (daily ed. May 8, 1957).

140. See the Forand Bill, H.R. 5120, and the Bailey Bill, H.R. 5102, 85th Cong., 1st Sess. (1957).

in 1953,[141] but it failed in the House. Those favoring this latter bill analogized dumping to the unfair competitive practices prohibited by the Federal Trade Commission Act and the price-fixing doctrine evolved by the Supreme Court. The report accompanying the bill also suggested that the injury test was both too time consuming and too cumbersome for the purposes of the Antidumping Act.[142]

Nevertheless, in view of the economic theory behind antidumping, it seems clear that some injury test is not only desirable but mandatory. Without proof of injury to at least one existing or potential domestic concern there is no reason for depriving American consumers of merchandise at low prices.[143] The real question is whether the word "injury" requires some statutory qualification, such as "material," "substantial," or "serious,"[144] or whether the act should include more precise standards by which injury would be determined.

The Secretary of the Treasury's argument against enumeration of factors to be considered by the Tariff Commission in determining injury was simple: "Definitions are limitations."[145] But this is precisely why a definition or an exposition of matters to be weighed ought to be included in the act. The Tariff Commission found "injury" to exist in one case. On this decision the Joint Committee on the Economic Report commented:

> A recent decision on cast-iron soil pipe . . . has followed a line of reasoning which if applied universally could negate much of our reciprocal program of trade liberalization. In this remarkable case, the challenged imports constituted no more than four-tenths of one percent of domestic production of cast-iron soil pipe, and the domestic industry during the period of this importation had expanded its production, sales, capacity and prices. The Tariff Commission reached its conclusion regarding injury by deciding that the approximately 8 percent of national production located in California constituted a separate industry. But only one California producer who was represented at the hearings had shown losses during the period of imports, and these losses apparently were not the first he had experienced.[146]

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141. Simpson Bill, H.R. 5894, 83d Cong., 1st Sess. (1953).
142. H.R. REP. NO. 777, 83d Cong., 1st Sess. 6 (1953).
143. See 1957 TREASURY REPORT 19, where it is suggested that even if "fair value" were given a layman's definition, an injury test should nevertheless be included in the act, although it would naturally be less vital. *Cf.* BOGGS REPORT 96.
144. See statement of Professor Viner in *Hearings, supra* note 20, at 606. An attempt to include a "material injury" standard was reportedly made, but rejected by Congress, in 1953. Statement of Paul Kaplowitz, General Counsel, United States Tariff Commission, in *Hearings, supra* note 119, at 38; *cf.* GATT, art. VI, para. 6, which uses the words "material injury." A State Department memorandum has pointed out that, although the variation in GATT language was explicitly brought to the attention of Congress, that body did nothing about it. This inaction, the memorandum suggests, may perhaps be interpreted as congressional acquiescence in the "material injury" test. Memorandum from the Office of the Legal Advisor, in *Hearings Before the House Committee on Ways and Means on the Organization for Trade Cooperation*, 84th Cong., 2d Sess. 79 (1956).
145. 1957 TREASURY REPORT 22.
146. S. REP. NO. 1312, 84th Cong., 2d Sess. 27 (1956).

In the very first case which the Commission considered after passage of the 1954 amendments, a finding of injury was avoided only by virtue of a tie vote of the Commissioners.[147] That case concerned potash imported from East Germany. Potash imported from western European countries had been sold in this country at the same Treasury certified dumping price, but these imports escaped the imposition of antidumping duties by the unanimous vote of the Commission.[148] It seems clear that there were some Commissioners who felt imports from Communist countries were ipso facto injurious.[149] It is equally clear that at present there is no one who may gainsay the Commission's politico-economic theories, whether or not these theories coincide with the ostensible purposes of this legislation. As the Commission's determinations are apparently unreviewable,[150] it appears vital that some statutory "limitations" on the Commission's discretion be written into the act.

Congress has included just such a set of standards in the escape clause procedure.[151] That provision requires the Commission to take into consideration a downward trend in production, employment, prices, profits, or wages, or a decline in sales, an increase in imports, or a decline in the proportion of the domestic market supplied by domestic producers. One may seriously question whether the Commission could have justified its *Soil Pipe* decision[152] under similar standards. It is true that the escape clause procedure probably contemplates a more serious type of injury than that required by the Antidumping Act, since a finding under the former may then result in the modification of an international agreement to which the United States is a party. However, the difference might be clearly indicated by congressional statement, or implied from the omission of the word "serious" before injury (which word does appear in the escape clause). Particularly in view of past experience, this difference would not seem to justify leaving the determination of injury entirely to the Commission's whim.[153]

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147. United States Tariff Commission, Injury Determinations Under the Anti-Dumping Act 2 (1955).
148. *Id.* at 3.
149. *But cf.* Boggs Report 17, citing a 1933 Tariff Commission ruling "that the fact that certain imported goods produced in a Communist country might cause substantial injury to American industry did not, ipso facto, result in unfair competition in violation of section 337" of the Tariff Act of 1930.
150. See text at note 179 *infra.*
151. Trade Agreements Extension Act of 1951, § 7(b), 65 Stat. 74 (1951), as amended, 19 U.S.C. § 1364(b) (Supp. IV, 1957).

Section 337 of the Tariff Act, prohibiting methods of unfair competition in the import trade, permits findings only when these methods "substantially injure" an industry "efficiently and economically operated." 46 Stat. 703 (1930), 19 U.S.C. § 1337(a) (1952). Although the result of a finding is more drastic (total exclusion of the import), thus perhaps justifying more rigorous standards, a similar test would not be inappropriate in the Antidumping Act.
152. See note 138 *supra.*
153. H.R. 6006 would at least require the Commission to make public the reasons for

E. *The Scope of the Word "Industry"*

Closely related to the problem of indeterminate "injury" is the question of undefined "industry." Since giant corporations today produce an endless variety of related and unrelated products, is the "industry" here to be considered one of entire corporations, or only those parts of their operations producing goods in competition with those dumped? Or does "industry" consist of the totality of all domestic producers of competitive products, or only those within a specified geographic or economic proximity to the goods dumped? The *Soil Pipe* case, discussed above,[154] points up another difficulty, namely, is "an industry" injured when only certain producers of the same commodity within the same geographic community are adversely affected by the imports dumped? The same reasons for suggesting a more precise definition of the term "injury" would apply to the word "industry." The escape clause realistically considers an "industry" to mean portions or subdivisions of producing organizations manufacturing products, in commercial quantities, in competition with the imports in question.[155] And the Senate Finance Committee at one time suggested that injury in a specific geographic area may in some cases be sufficient for a finding of injury to "an industry" in the United States under the Antidumping Act.[156] Some such guide seems reasonable, although use of a standard gauged to a percentage of domestic producers or domestic production may be preferable. Mathematical precision cannot be achieved, but the *Soil Pipe* determination presents a strong argument for adopting at least some limitation on the Commission's absolute discretion.

F. *Antidumping Assessment*

Upon a finding of injury by the Tariff Commission, the Secretary of the Treasury is directed to make public the Commission's and his own findings[157] and then levy an antidumping duty on the imported merchandise.[158] Once the fair value and injury tests have been passed, discretion ceases.[159] No extenuating or national security considerations (*e.g.*, stockpiling of strategic materials) may be interposed.[160]

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its findings, be they affirmative or negative. Heretofore purely formal statements have been issued, indicating only the results of the Commission's investigations. But as the Commission is not required to follow its own precedents, this is not an adequate substitute for statutory standards. Even with a set of standards, escape clause procedure has not been free of uncertainty—largely because there is no indication of the relative weight the Commission is to give the various factors it must consider. BOGGS REPORT 72.

154. See note 138 *supra*.

155. Trade Agreements Extension Act of 1951, § 7(e), 69 STAT. 166 (1955), as amended, 19 U.S.C. § 1364(e) (Supp. IV, 1957).

156. S. REP. No. 2326, 83d Cong., 2d Sess. 3 (1954).

157. 68 STAT. 1138 (1954), 19 U.S.C. § 160(a) (Supp. IV, 1957).

158. 42 STAT. 11 (1921), as amended, 19 U.S.C. § 161(a) (Supp. IV, 1957).

159. See United States v. Central Vermont Ry., 17 C.C.P.A. (Customs) 166, 172 (1929). See also statement of Assistant Secretary of the Treasury Rose, *Hearings*, *supra* note 119, at 40.

160. Compare the well-used provision in the escape clause authorizing presidential

Antidumping duties are then assessed on all imports of the type specified in the Secretary's finding, "entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping was raised by or presented to the Secretary. . . ."[161] In effect, this applies the duty to all imports of the type found dumped, retroactively to a date four months before the Secretary *began* his investigation. While this date may, of course, be years before the duty is declared applicable, such retroactive application has been upheld against constitutional objections.[162] In one opinion, Judge Learned Hand suggested that the possibility of retroactive application was apparent from the face of the statute and that importers, therefore, brought goods into the country at their own risk.[163] However, a recent unanimous opinion of a three-judge district court in the District of Columbia noted that "this seems rather unrealistic in the light of the fact that importers must usually fix prices and sell their goods as promptly as they can."[164] The latter court recognized that hardship to the importer was "apparent" but held that the customs courts have exclusive jurisdiction to pass on the constitutionality of the provision and so ordered dismissal of the importer's complaint.

Prior to 1954, antidumping duties were assessed against all goods of the type found dumped that had not been appraised by the Customs Bureau on the date the Secretary of the Treasury began his investigation into alleged dumping. This practice permitted retroactive assessment to an indefinite date, and duties were often imposed on goods imported many months or even years before the declared imposition, although their appraisal had been withheld for any number of reasons entirely unconnected with dumping.[165] The obvious injustice of this provision prompted the

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review, or even veto, of the Tariff Commission's recommendation. Trade Agreements Extension Act of 1951, § 7(c), 65 STAT. 74 (1951), 19 U.S.C. § 1364(c) (1952).

161. 68 STAT. 1139 (1954), 19 U.S.C. § 161(a) (Supp. IV, 1957), amending Antidumping Act of 1921, § 202(a), 42 STAT. 11.

162. Kreutz v. Durning, 69 F.2d 802 (2d Cir. 1934); Kleberg & Co. v. United States, 21 C.C.P.A. (Customs) 110, 71 F.2d 332 (1933); see Horton v. Humphrey, 146 F. Supp. 819, 821 (D.D.C.), *aff'd per curiam*, 352 U.S. 921 (1956).

163. Kreutz v. Durning, 69 F.2d 802, 804 (2d Cir. 1934).

164. Horton v. Humphrey, 146 F. Supp. 819, 820 n.2 (D.D.C. 1956). The provision of H.R. 6006, 85th Cong., 1st Sess. § 1 (1957), requiring the Secretary to publish notice of impending dumping investigations would, at least, put importers on notice that antidumping duties may be payable on goods imported up to, but not more than, 120 days prior thereto.

165. Indeed, the most common reason was mere delay in the work of appraisement for collection of ordinary duties. Prior to the adoption of simplified customs valuation procedures in 1956, the Bell Report found that on December 30, 1952, for example, there were some 723,077 unliquidated entries at customs collectors' offices—an amount equal to an entire year's imports. PUBLIC ADVISORY BOARD FOR MUTUAL SECURITY, A TRADE AND TARIFF POLICY IN THE NATIONAL INTEREST 47 (1953). The new procedures will undoubtedly speed appraisement, but many goods may still be fortuitously unappraised on the date of an antidumping imposition, and become subject to the special duty because of mere chance.

Treasury Department to suggest to Congress that it place a sixty day limit on the retroactive applicability of the duties. The Senate Finance Committee wrote into the act the present 120 day period.[166] But as was suggested at the 1957 hearings on H.R. 6006, "there is nothing sacrosanct about the period of 120 days."[167] The danger of retroactive application of antidumping duties would seem to be a greater threat to orderly trade than is the threat of spot dumping that may exist if retroactivity were entirely eliminated or limited to, say, sixty days.

The bulk of the remaining sections of the Antidumping Act are concerned with definitions of the operative terms by which the customs appraisers determine the exact dollar amount of the antidumping duty payable. These are technical details, by and large adequate to the task. However, two problems do arise here.

First, the antidumping duty to be assessed is generally the difference between the foreign exporter's sale price (or the United States importer's purchase price) and the product's "foreign market value," as that term is defined in the act.[168] As has been previously pointed out,[169] the present act requires that goods be "freely offered for sale" if their price in the exporter's home market is to constitute "foreign market value." H.R. 6006 would remedy this unrealistic standard by substituting for the present definition the Treasury Department's "fair value" measure. Essentially, this change would permit the Secretary to use the price at which the commodity is offered for sale in the exporter's home country in determining foreign market value, despite restrictions on its sale. In so doing, however, he would have to adjust the value to take into account the price-depressing effect of the restrictions. By leaving the value to be assigned to any given restrictions up to the absolute discretion of the Secretary or the Customs appraisers, this provision is one further invitation to the uncertainty with which the act is already sufficiently plagued.

A second problem arises from the fact that when foreign market value cannot be adequately determined (*e.g.*, where the foreign producer has no home market for his wares), the antidumping duty is measured by the difference between the importer's purchase price and the foreign producer's "cost of production." Although economists have suggested that this may be the most accurate method of determining whether or not a particular producer is engaging in predatory dumping,[170] the difficulties in gathering

166. S. Rep. No. 2326, 83d Cong., 2d Sess. 4 (1954).
167. Statement of John D. Rode, on behalf of the Association of the Customs Bar, in *Hearings*, *supra* note 15, at 225.
168. 42 Stat. 13 (1921), 19 U.S.C. § 164 (1952).
169. See text at notes 114-17 *supra*.
170. See, *e.g.*, Viner, Dumping: A Problem in International Trade 11 (1923).

adequate statistics for this purpose render the method impracticable, save as a last resort.[171] Nevertheless, when it is used, the law directs that additions to material, labor, and packing costs of ten per cent for "general expenses" and eight per cent for "profit" be made in arriving at the "cost of production." But some foreign manufacturers may fairly be seeking dollar markets, and therefore may be willing to accept lower profit margins. If their goods are produced exclusively for the American market (thus necessitating the use of the "cost of production" test) the mandatory eighteen per cent addition for "expenses" and "profit" may suggest an unwarranted imposition of antidumping duties.

G. *Review of Administration*

One of the most universal criticisms of the present Antidumping Act, and one which H.R. 6006 does nothing to correct, is its paucity of provisions either for "internal" or "external" review of administration. By internal review is meant a method whereby the administrators of the act themselves are directed periodically to consider the validity of outstanding orders. By external review is meant opportunity for recourse to executive or judicial agencies not engaged in the actual administration of the act.

Once an antidumping duty has been assessed, the act makes no provision for its revocation. Neither the Secretary of the Treasury nor the Tariff Commission is directed to consider existing duties in the light of new developments. Treasury Regulations permit persons to submit "detailed information concerning any change in circumstances or practice which has obtained for a substantial period of time" to the Commissioner of Customs, and the Commissioner is to give "due consideration" to such petitions.[172] However, since it is often difficult for private persons or firms to acquire the requisite "detailed information," it seems preferable to include a provision in the act for mandatory periodic review, similar to that which has been instituted by executive order for the escape clause.[173]

More important than such a system of self policing is, however, an adequate provision for Presidential or judicial review. The Joint Committee on the Economic Report soundly recommended that "at the very least, the President should be given authority to override Tariff Commission decisions when the national interest requires this."[174]

Judicial review presents a more serious problem. The present Antidumping Act includes a section authorizing review by the customs courts of

171. 1957 TREASURY REPORT 7.
172. 19 C.F.R. § 14.12 (Supp. 1956).
173. Exec. Order No. 10401, 3 C.F.R. 105 (Supp. 1952).
174. S. REP. No. 1312, 84th Cong., 2d Sess. 31 (1956).

"the determination of the appraiser . . . as to the foreign market value . . . and the action of the collector in assessing [the] special dumping duty."[175] Furthermore, the Judicial Code gives the customs courts exclusive jurisdiction to review "the decisions of any collector of customs, including all orders and findings entering into the same, as to the rate and amount of duties chargeable and as to all exactions of whatever character within the jurisdiction of the Secretary of the Treasury."[176] Lastly, Treasury Regulations permit suspension of liquidation of antidumping duties until a final decision has been reached on an importer's appeal for reappraisement.[177] While the Supreme Court has in the recent *Horton* case[178] affirmed a decision holding this to be both an adequate and exclusive remedy, the true "adequacy" of this system of review must nevertheless be questioned. The aforementioned provisions contain no language indicating that the determinations of injury by the Tariff Commission are subject to judicial review, even in the customs courts. Although the holding of the *Horton* case seems to suggest that an importer could challenge the Commission's finding before the customs courts through an appeal for reappraisement, a precise statement to that effect would do much to quiet fears of untrammeled administrative caprice.[179] The discretionary power of the Commission to hold public hearings[180] and the provision of H.R. 6006 requiring publication of the reasons for its decisions are inadequate substitutes.

A similar problem exists with respect to the Secretary of the Treasury's finding of dumping. Although on its face the Judicial Code seems to authorize customs court review of the Secretary's order, that court has consistently held this to be a matter of secretarial discretion;[181] review is generally

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175. 42 STAT. 15 (1921), 19 U.S.C. § 169 (1952).
176. 28 U.S.C. § 1583 (1952).
177. 19 C.F.R. § 16.21(b) (1953).
178. Horton v. Humphrey, 352 U.S. 21 (1956), *affirming* 146 F. Supp. 819 (D.D.C. 1956). The decision was consistent with earlier lower court holdings to the same effect. Cottman Co. v. Dailey, 94 F.2d 85 (4th Cir. 1938); Kreutz v. Durning, 69 F.2d 802 (2d Cir. 1934); *cf.* Morgantown Glassware Guild v. Humphrey, 236 F.2d 670 (D.C. Cir.), *cert. denied*, 352 U.S. 896 (1956).
179. See recommendation number 4 of the Standing Committee on Customs Law of the American Bar Association, to appear in 82 A.B.A. REP. (1957). It has been suggested that as Congress has the power to bar all imports, there is no constitutional right to have exclusionary determinations of the Tariff Commission or the other administrators of the customs laws reviewed by any court. *Cf.* Norwegian Nitrogen Products Co. v. United States, 288 U.S. 294 (1933); T. M. Duche & Sons v. United States, 36 C.C.P.A. (Customs) 19 (1948), *cert. denied*, 336 U.S. 931 (1949); T. M. Duche & Sons v. United States, 39 C.C.P.A. (Customs) 186 (1952), *cert. denied*, 344 U.S. 830 (1952). The theory that an antidumping duty is a penalty, rather than a tax, and thus constitutionally requires the "due process" of exaction by a court of general jurisdiction, has also been rejected. C. J. Tower & Sons v. United States, 21 C.C.P.A. (Customs) 417, 71 F.2d 438 (1934).
180. 19 C.F.R. § 208.4 (Supp. 1956).
181. See, *e.g.*, Kleberg & Co. v. United States, 21 C.C.P.A. (Customs) 110, 71 F.2d 332 (1933); United States v. Central Vermont Ry., 17 C.C.P.A. (Customs) 166 (1929); *cf.* Buttfield v. Stranahan, 192 U.S. 470 (1904).

limited to the correctness of the actual appraisement of the particular commodity on which an antidumping duty has been imposed.[182] A congressional statement that a finding of the Secretary, unreasonably contrary to the policies of the act, may be challenged in the customs court would be helpful.

IV. CONCLUSION

Identical issues of compatability with the obligation of GATT, and of "most favored nation" clauses of other commercial agreements to which the United States is a party, arise under the Antidumping Act as with the countervailing duty section of the Tariff Act.[183] Both GATT[184] and the American Antidumping Act[185] limit the size of antidumping duties to the margin of difference between the export and home consumption prices. In that limited sense the act may be considered remedial rather than punitive in operation. Nevertheless, it has been suggested that a margin of difference, say five per cent, be allowed between foreign home consumption and export prices before an imposition of the duties becomes mandatory.[186] This would render the act more flexible and would recognize the fact that many countries must export to the United States to maintain their economic stability. So small a margin would probably have at most slight effect on domestic producers, while contributing, on the other hand, to closing the ever expanding dollar gap.[187]

Because of the economic preeminence in which the United States finds itself today, it has both the opportunity and the obligation to provide leadership in the development of enlightened trade policy. Such a policy must recognize both the necessary interdependence of national economies and the fact that national wealth is created by production, not protection.[188] Orderly competition is the proven stimulus to increased productivity. Consistent tariff laws are the precondition for expanding trade. In general,

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182. See United States v. European Trading Co., 27 C.C.P.A. (Customs) 289 (1940); *cf.* United States v. Tower & Sons, 14 Ct. Cust. App. 421 (1927).

183. See text at note 79 *supra*.

184. GATT, art. VI(1).

185. Section 202, 42 STAT. 11 (1921), 19 U.S.C. § 161 (Supp. IV, 1957).

186. VINER, DUMPING: A PROBLEM IN INTERNATIONAL TRADE 264 (1923). Viner also urges limiting the maximum possible duty, and exempting from antidumping assessment merchandise already subject to a high import duty. Such provisions, and others existing in the antidumping legislation of some other countries, and of interest for comparative purposes, are set out, *id.* c. XIV. The two suggestions above do not seem consistent with an Antidumping Act designed primarily as a weapon against predatory price discrimination, and are therefore not suggested as desirable for inclusion in the American act.

187. See BOGGS REPORT 44.

188. See S. REP. No. 1312, 84th Cong., 2d Sess. 13 (1956). In this connection it is interesting to note that in 1919, when the Tariff Commission sent inquiries to American businessmen regarding the necessity for antidumping legislation, only 23 of 146 complaints of dumping received concerned price discrimination, and 97 were directed exclusively at mere heavy foreign competition. See HABERLER, *op. cit. supra* note 14, at 298.

United States trade laws (domestic and/foreign) are built on these premises. But the two statutes here considered, as presently drafted and administered, often seem to face in a direction contrary to this country's basic economic policy. In so far as they are so oriented, they derogate from the national interest. The relative desuetude of their provisions in recent years does not justify their retention as the potential hatchets of rear guard protectionism. It is to be hoped that 1958, heralded as the year for congressional review of American trade legislation, will see antidumping and countervailing duties assigned proper places in the legislative scheme.[189]

189. See Gardner, *Organizing World Trade—A Challenge for American Lawyers*, 12 RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 202 (1957).

(Whereupon, at 1:35 p. m., the hearing in the above-entitled matter was recessed, to reconvene on Friday, March 28, 1958.)

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