BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

U.S. Administration Of The Antidumping Act Of 1921

The Antidumping Act of 1921 is intended to protect U.S. producers from unfairly priced imports. Because of its complex provisions and because of a changed world economy, neither the Act nor its administration by the U.S. Treasury and the International Trade Commission effectively provide such protection.

This report notes problems and issues in administering the Act and discusses proposals to improve its effectiveness.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report on the Antidumping Act of 1921, as amended, notes problems and issues in administering the Act and discusses proposals to improve its effectiveness.

The review was requested by Senators H. John Heinz III, Birch Bayh, Howard M. Metzenbaum, John H. Glenn, and Jennings Randolph. Their designated contact for the review requested that the final results be reported to the Congress.

Copies are being sent to the Director, Office of Management and Budget; Office of the Special Representative for Trade Negotiations; Secretary of State; and heads of the agencies responsible for administering the Act.

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

U.S. ADMINISTRATION OF THE ANTIDUMPING ACT OF 1921

D I G E S T

The Antidumping Act of 1921, as amended, is costly, time-consuming and extremely burdensome to administer, primarily because its provisions are complex and some are imprecise. The act, as amended, provides for assessment of a special duty against importers to discourage dumping.

Background

Dumping is the practice of exporting goods at unfair prices; i.e., those construed to be lower than prices charged to buyers of the same or similar goods in the exporters' home market (and, since passage of the Trade Act of 1974, at prices below production costs). Although access to dumped goods may benefit consumers and dampen inflationary trends, it may cause the affected domestic industry to lose sales and possibly reduce production and employment.

The Act is administered by the

--Department of the Treasury and United States Customs Service, which determine whether imported goods have been sold at less than fair value, and

--International Trade Commission, which determines whether an industry is being or is likely to be injured or is prevented from being established by reasons of such sales.

If the Commission finds in the affirmative, Treasury assesses and collects dumping duties.

The long periods of time required to conduct investigations, and delays averaging 3 to 3-1/2 years in assessing duties after findings of dumping, make it

highly improbable that U.S. industry is being adequately protected by the Act.

The extent of protection is difficult to specify because there is no empirical evidence of what occurs concerning prices and/or quantities of merchandise imported during the various phases of antidumping investigations. Under Section 332(a) of the Tariff Act of 1930, the International Trade Commission has the authority to develop this evidence and to study the effects of the Act, but has never done so. (See ch. 2.)

COMPLAINTS ABOUT THE ACT

U.S. industry complains of the difficulty of obtaining information about foreign market values, the 6 to 9 months required for Treasury to make tentative determinations of dumping, and delays in assessing duties and has begun to seek relief from price discrimination through other legislation. Also some foreign producers have been investigated under the Antidumping Act as well as other statutes within a very short time. This has led them to complain of being harassed and placed in "double" or "triple" jeopardy. (See ch. 6.)

Moreover, members of the General Agreement on Tariffs and Trade complain that the United States is the only member whose antidumping law specifically overrides the Antidumping Code negotiated in 1967. Other major criticisms include failure to

- --require a sufficient degree of injury to industry,
- --consider the extent to which less than fair value sales are the cause of the injury,
- --provide for conducting dumping and injury investigations simultaneously,

--seek an early, practical solution to dumping, rather than encouraging full-scale dumping investigations to run their course. (See ch. 5.)

DIFFICULTIES IN ADMINISTERING THE ACT

Timely and effective administration of the Act are seriously hampered because of difficulties in:

--Making price adjustments where merchandise sold in the home market is different in style, quality, or other features from that exported.

--Meeting cost-of-production requirements for establishing foreign market values.

--Establishing foreign market values on imports from state controlled or centrally planned economy countries.

--Assessing duties on entry-by-entry comparisons with foreign market sales value at the time of purchase or export. (See pp. 22 to 37.)

--Distinguishing injurious effects of less than fair value imports from other low-priced imports.

--The lack of a generalized policy statement encompassing administrative procedures and standards for defining industry, injury, or the extent of the causal linkage that must exist between less than fair values sales and injury. (See ch. 4.)

GAO believes that Treasury bonding procedures to ensure recovery of dumping duties and insufficient interaction between Customs case handlers in Washington and agents abroad

do not facilitate efficient and equitable adminstration of the Act. (See pp. 31 to 33 and 37 to 39.)

RECOMMENDATIONS TO THE INTERNATIONAL TRADE COMMISSION

The International Trade Commission should

--establish a coding system for specifically identifying and monitoring imported merchandise subject to dumping and/or other trade legislation investigations and

--under authority of Section 332(a) of the 1930 Tariff Act, make wholesale price studies of merchandise subject to antidumping investigations, monitor such merchandise, and determine the effect of antidumping actions on industries and labor.

The collection of such data and adequate studies would provide more specific insights into problems of enforcing the Act and would help decisionmakers in developing a more responsive and effective Act. (See pp. 14 and 15.)

To help alleviate much of the concern expressed by U.S. and foreign producers and by members of the General Agreement Tariffs and Trade and to provide a more consistent basis for making injury determinations, the International Trade Commission should develop and adopt some generalized procedural rules and administrative guidelines for conducting injury investigations. Such rules and guidelines should provide for publication of the step-by-step procedures that are followed in reaching injury determinations, together with the types of information that are considered in those decisions. They should also provide for issuance, prior to the public hearing, of a non-confidential summary of information developed during the preliminary stage of the investigation so that

parties to an action will be more aware of what issues to address at the time of the public hearing. (See pp. 45 and 53.)

RECOMMENDATIONS TO THE SECRETARY OF THE TREASURY

To meet the need for better information and more comprehensive analysis of the effects of antidumping legislation, the Secretary should, as proposed in Senate Bill 2317, begin reporting annually to the Congress the results of the Treasury's actions to enforce the Antidumping Act. The reports, in addition to those topics covered in the bill, should include information on the extent and monitoring of price assurances obtained and statements of problems in administering the Act. (See p. 15.)

For more effective protection against unfairly priced imports, delays caused by preparation and issuance of master lists for duty assessments need to be reduced. Treasury is considering adopting procedures to collect estimated duties on import entries after findings of dumping have been established. It also plans to enforce existing procedures requiring that the best information available be used to determine duties when respondents fail to provide adequate information promptly.

The Secretary should expedite these measures and also modify Custom's procedures to require determinations and assessment of final dumping duties within 15 to 18 months after findings of dumping. Alternate times might be required for certain countries where refunds affecting price are made at the end of the accounting cycle.

A more uniform and standardized system of setting bonds to insure payment of dumping duties is necessary to prevent unfair and unequal imposition of requirements. The Secretary should instruct the Commissioner of Customs that bonding requirements should be uniformly applied by each Customs District Director. (See p. 40.)

Finally, the collection, analysis, and verification of information for a fair value determination could be expedited if qualified Washington case handlers were more actively involved in the procedure. The Secretary should have the Commissioner of Customs formalize a procedure requiring Customs case handlers, where appropriate, to work jointly with overseas Customs representatives to collect and verify data from foreign producers involved in dumping investigations. (See p. 39.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

The Congress should amend the Antidumping Act to provide for a 60-day preliminary investigation by the International Trade Commission immediately following the receipt of a petition alleging dumping. When indications of injury are found, a final determination could be held in abeyance no longer than 30 days following receipt of dumping margin estimates from the Treasury. Where no indication of injury is found within the 60-day period, the case should be terminated. (See p. 15.)

The Congress, after an adequate body of information on the effects of the Antidumping Act is developed, should arrange for an appropriate independent evaluation of the impact and relationship of other unfair trade practice statutes, with a view toward consolidating investigations and remedies into a single statute. (See ch. 6.)

Certain immediate changes to the legislation could improve the effectiveness and timeliness of its administration.

Section 205(b) of the Act should be deleted, and cases involving persistent and continuous below-cost sales should be referred for investigation under some other appropriate section of U.S. trade legislation. (See ch. 6.)

Section 205(c) dealing with alleged injurious imports from centrally planned economies should also be deleted and such cases should be handled under other appropriate provisions of trade legislation. (See pp. 27 to 31 and 41.)

Section 206(a), requiring the imposition of 10 and 8 percent minimums for general expenses and profits, respectively, in constructed value calculations, should be deleted from the legislation and profit and general expense percentages in fair value calculations should be made on a constructed value formula based on the general expense and profit experience of the foreign firm involved. (See p. 40.)

AGENCY COMMENTS

As agreed with the designated contact for the review formal agency comments were not obtained. However, GAO discussed this report with the agencies involved and made revisions where appropriate. The International Trade Commission expressed reluctance to adopt generalized procedural rules and administrative guidelines for conducting injury investigations and has indicated that it may wish to make detailed comments after a more thorough examination of the report. (See pp. 52 and 53.) Also, Treasury did not agree there was a need for changing present bonding practices and was opposed to recommendations deleting sections 205(b) and 205(c) from the Antidumping Act. (See pp. 42 and 43.)

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ABBREVIATIONS

CPE	centrally planned economy
EEC	European Economic Community
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
ITC	International Trade Commission
LTFV	less than fair value

CHAPTER 1

INTRODUCTION

Dumping is traditionally viewed as the export of goods at prices lower than those the exporter charges to home market buyers. Injury to the importing country's industry caused by such sales is remedied by the assessment of a special dumping duty to equalize price differences between the home country and the export market.

Dumping can be inadvertent or the result of rational business decisions to introduce a new product, test a new market, or reduce surplus or outdated inventories. It can be motivated by predatory intentions of eliminating competition to gain monopoly control. The practice can also be fostered by government policies aimed at maintaining employment levels, obtaining the foreign exchange needed to finance internal development, or helping to alleviate chronic balance-of-payments deficits.

The United States, other major Western trading nations, Japan, and Australia have adopted legislation to counter dumping practices and all are contracting parties to the Antidumping Code of the General Agreement on Tariffs and Trade (GATT). The Code, negotiated in 1967 during the Kennedy Round of multilateral trade negotiations, implements GATT Article VI, which recognizes that dumping is to be condemned and sets forth general principles relating to when and under what conditions dumping duties are appropriate. It also established a Committee on Antidumping Practices to examine antidumping actions by the contracting parties and to reconcile international differences.

Controversy over perceived differences between Code provisions and U.S. legislation has existed throughout the life of the Code. In 1968, the Congress determined that differences between interpreting and applying the provisions of the Antidumping Act of 1921 and those of the Code would be resolved in favor of the Act.

U.S. ANTIDUMPING LEGISLATION

U.S. antidumping legislation is contained in two separate acts--the Revenue Act of 1916 and the Antidumping Act of 1921, as amended. The Revenue Act of 1916 provides severe penalties for proven predatory dumping. However, because of a near impossible requirement of proving intent of the offender, the legislation has been rarely used.

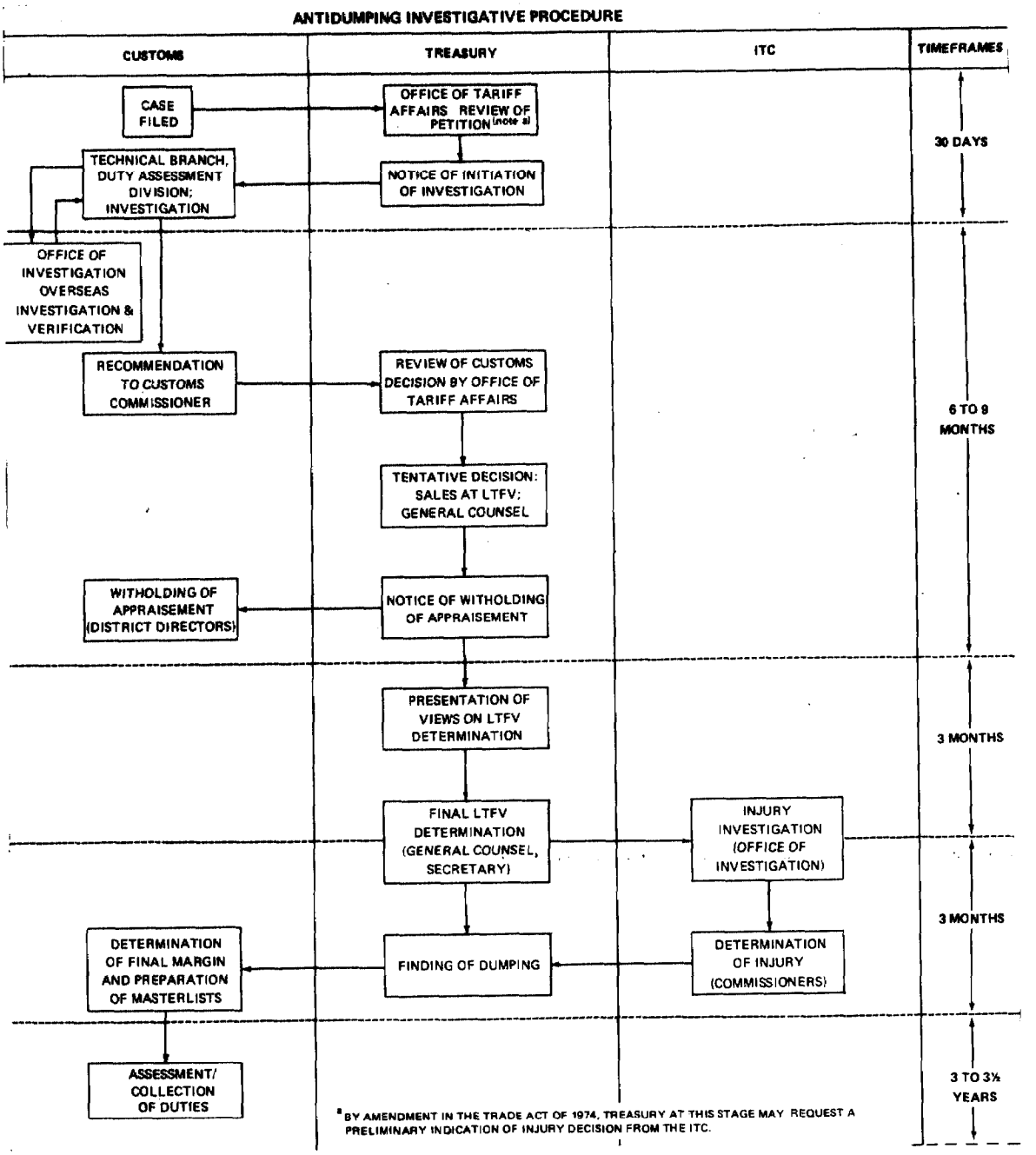
The Antidumping Act of 1921, as amended (Public Law 67-10), eliminated the intent requirement and made the determination of dumping an administrative action. Since 1954, it has been jointly administered by the Department of the Treasury and the International Trade Commission, (formerly the United States Tariff Commission). The Treasury and U.S. Customs Service, an agency of Treasury, investigate to determine whether goods imported into the United States have been sold at less than fair value. If such sales have occurred, the International Trade Commission (ITC) will determine whether they have caused or are likely to cause injury or have prevented an industry from being established. Chart 1 shows the investigative phases and timeframes.

Fair value is not defined, but less-than-fair value (LTFV) sales are construed to be those sales of imported goods at prices lower than the producer charges for the same or similar goods in the home market or third countries. If home market or third-country sales are found to be at prices below the cost of production, no foreign market value will be deemed to exist and a value will be constructed. Duty amounts as determined by the Treasury are intended to equalize the differences between foreign market value or constructed cost and the price at which goods are purchased for export to the United States.

Treasury, after initiating a formal investigation, has 6 months (9 months in complicated cases) to arrive at a tentative determination of whether LTFV sales have occurred--an additional 3 months are allowed to arrive at a final determination. If the tentative determination is affirmative, the Secretary orders the "withholding of appraisement" on imports of the merchandise in question. That is, the actual calculation of duties on the imports is suspended and all shipments on which appraisement is withheld are subject to special dumping duties. To protect potential revenues, the Director of each U.S. Customs district is empowered to require importers to post bonds to insure recovery of any ultimate dumping duties.

The basic philosophy and purpose underlying the Antidumping Act is not protectionism designed to bar or restrict U.S. imports but rather to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of U.S. industry. The Senate Finance Committee report on the Trade Act of 1974 (Public Law 93-618) stated in part that:

Chart 1


ANTIDUMPING INVESTIGATIVE PROCEDURE
CUSTOMS
TREASURY
ITC
TIMEFRAMES
CASE FILED
OFFICE OF TARIFF AFFAIRS REVIEW OF PETITION (note a)
30 DAYS
TECHNICAL BRANCH, DUTY ASSESSMENT DIVISION; INVESTIGATION
NOTICE OF INITIATION OF INVESTIGATION
OFFICE OF INVESTIGATION OVERSEAS INVESTIGATION & VERIFICATION
RECOMMENDATION TO CUSTOMS COMMISSIONER
REVIEW OF CUSTOMS DECISION BY OFFICE OF TARIFF AFFAIRS
6 TO 9 MONTHS
TENTATIVE DECISION: SALES AT LTFV; GENERAL COUNSEL
WITHOLDING OF APPRAISEMENT (DISTRICT DIRECTORS)
NOTICE OF WITHOLDING OF APPRAISEMENT
PRESENTATION OF VIEWS ON LTFV DETERMINATION
3 MONTHS
FINAL LTFV DETERMINATION (GENERAL COUNSEL, SECRETARY)
INJURY INVESTIGATION (OFFICE OF INVESTIGATION)
3 MONTHS
DETERMINATION OF FINAL MARGIN AND PREPARATION OF MASTERLISTS
FINDING OF DUMPING
DETERMINATION OF INJURY (COMMISSIONERS)
ASSESSMENT/ COLLECTION OF DUTIES
3 TO 3½ YEARS
a BY AMENDMENT IN THE TRADE ACT OF 1974, TREASURY AT THIS STAGE MAY REQUEST A PRELIMINARY INDICATION OF INJURY DECISION FROM THE ITC.

"the Antidumping Act does not proscribe transactions which involve selling an imported product at a price which is not lower than that needed to make the product competitive in the U.S. market, even though the price of the imported product is lower than its home market price."

Specific costs for administering the Act are not available, but based on the ITC budget and Treasury staff costs, we estimated costs for 1975 at $1.1 million; for 1976 at $1.4 million and for 1977 at $1.1 million. In 1978, however, these costs increased to $3.9 million, $1.9 million of which is attributed to administering the special trigger price mechanism for steel products (see p. 30.)

U.S. TRADE POLICY

Despite rapidly rising import levels and near chronic balance of trade deficits, the United States remains committed to an open and equitable world economic system in the conviction that countries benefit from the jobs and income that trade creates. As embodied in the Trade Act of 1974, U.S. trade objectives are:

"To promote the development of an open, nondiscriminatory, and fair world economic system, to stimulate fair and free competition between the United States and foreign nations, to foster the economic growth of, and full employment in, the United States * * *."

As one of the original 23 GATT signatories, the United States has worked for world trade expansion and has actively supported efforts to reduce tariffs and other barriers to trade through the rounds of multilateral trade negotiations held under the auspices of GATT. In the current Tokyo round, some 98 nations are striving to further reduce barriers to facilitate and expand trade in the 1980s.

On the other hand, the effect of rapidly rising imports on domestic industry cannot be ignored, and legislative provisions have been adopted to help alleviate injurious imports resulting from either fair or unfair trade practices. While orderly marketing agreements (which are negotiated quotas) are aimed at sheer import volumes, antidumping and countervailing duty legislation and Section 337 of the 1930 Tariff Act focus on merchandise imported under unfair conditions.

DUMPING IN A CHANGED WORLD ECONOMY

The issue of dumping has a particular significance for the United States in a world economy that has not fully recovered from the impact of unprecedented 1973 oil price increases and the recession that began in 1974. Problems of lagging growth rates and underutilized production capacity in certain industrial sectors of major trading nations are compounded by increased trade activities in countries with centrally planned economies and by developing countries' growing demands for a greater share of world manufacturing production and easier access to developed country markets for sales of their manufactured goods. Developing countries want to increase their share of world manufacturing production from about 9.3 percent in 1972 to 25 percent by the year 2000.

WORLD TRADE EXPANSION

From 1950 to 1977, world exports increased nearly 20-fold, and, as shown below, the most dramatic increases have occurred since 1970.

Year	Total world exports (billions)	Percent of increase
1950	$ 56.5	-
1955	84.5	49.6
1960	113.2	34.0
1965	165.4	46.1
1970	280.2	69.4
1975	795.7	184.0
1977	1,021.7	28.4

U.S. TRADE DATA

The size and depth of the U.S. market, which has regularly absorbed 12 to 14 percent of world imports since 1955, makes it an attractive marketing target. Annual imports rose from $40 billion in 1970 to $146.8 billion in 1977. In 1971, these rapidly increasing imports and a declining share of world exports caused the first U.S. trade deficit of this century--$1.5 billion. Deficits followed in 1972 ($5.8 billion), 1974 ($1.8 billion), 1976 ($5.7 billion), 1977 ($26.6 billion), and 1978 ($28.4 billion).

The U.S. share of world imports, however, has remained relatively unchanged since 1950, while its share of world exports has dropped significantly, as follows.

	Imports			Exports		
Year	United States	Worldwide	U.S. percent	United States	Worldwide	U.S. percent
	(billions)			(billions)		
1950	$ 9.0	$ 59.4	15.1	$ 10.3	$ 56.5	18.2
1955	11.6	89.2	13.0	15.5	84.5	18.3
1960	15.1	118.6	12.7	20.6	113.2	18.2
1965	21.4	175.5	12.2	27.5	165.4	16.6
1970	40.0	294.4	13.6	43.2	280.2	15.4
1975	96.1	815.9	11.8	107.6	795.7	13.5
1977	146.8	1,049.6	14.0	120.2	1,021.7	11.8

A general measure of the importance of trade to a nation's economy is the relationship of exports to gross national product; U.S. exports have yet to exceed a 7.0 percent rate, ranking far behind Canada's 20.9, Japan's 13.7, West Germany's 22.8, and the United Kingdom's 21.0 percent in 1976.

This measurement, however, does not consider the performance of U.S.-owned subsidiaries and affiliates abroad. Their sales to third countries in 1976 totaled $143.7 billion which, with the $115.0 billion in exports from the United States, accounted for about 28.6 percent of total world exports. As the U.S. share of world exports dropped from 16.6 percent in 1965 to 12.7 percent in 1976, the share represented by U.S. affiliate sales to third countries increased from about 3.6 percent to 15.9 percent. These affiliate sales to the United States from 1972 through 1976 accounted for about 30 percent of U.S. imports, a significant increase from 7.9 percent in 1965.

ANTIDUMPING ACTIONS

The Treasury Department initiated 71 antidumping investigations during 1975 through 1977 and found sales at less than fair value in 47 cases. From 1972 through 1975, less than one in five investigations initiated resulted in determinations of injury; however during 1976 and 1977 more than two in five investigations initiated resulted in injury determinations. ITC's rate of injury finding in the cases referred by Treasury has increased considerably since 1974, as shown below.

	Treasury			ITC			
Year	Cases initiated b/	LTFV sales affirmed (note a)	Percent	Cases referred	Injury affirmed	Percent	Percent of injury determinations to cases initiated
1977	21	16	76.2	16	9	58.3	42.9
1976	13	10	76.9	9	4	44.4	30.8
1975	25	21	84.0	13	4	30.8	16.0
	59	47	79.7	38	17	44.7	28.8
1974	11	6	54.5	6	1	16.7	9.1
1973	20	17	85.0	12	3	25.0	15.0
1972	32	23	71.9	20	7	35.0	21.9
	63	46	73.0	38	11	28.9	17.5
Total	122	93	76.2	76	36	47.3	29.5

a/Affirmative determinations by Treasury do not equal the number of cases referred to ITC because exporters often give assurances that LTFV sales will be terminated or prices will be adjusted. This happened in one case in 1976, eight in 1975, five in 1973, and three in 1972. (See app. I.)

b/Does not include 12 steel cases that were subsequently withdrawn due to implementation of the steel trigger price mechanism.

Rapidly rising import levels and trade deficits of the 1970s seem to have had no affect on the number of antidumping investigations initiated annually. Between 1955 and 1965, when annual imports generally were less than $20 billion, Treasury processed an average of 35 cases annually. In 1977, when imports reached $146.8 billion and the trade deficit totaled $26.6 billion, Treasury began 33 investigations, 12 of which were subsequently withdrawn pending results of the steel trigger price mechanism. However, Treasury has indicated that the cases are becoming increasingly complex as more and more firms are investigated in individual cases and 8 of the 38 cases initiated in 1978 involve very complex cost of production investigations.

SCOPE OF REVIEW

This review was made as a result of a November 1977 request from five Senators that we review the Antidumping Act of 1921, as amended, and the Treasury Department's administration of it. Since two U.S. Government agencies are involved, subsequent interest was expressed for a total systems analysis, including the role of the International Trade Commission and the international implications of the Act and its administration.

In the interim GAO responded to the five Senators, answering six basic questions about the Treasury Department's administration of the Act, 1/ and to a March 1978 request for additional information on this subject from the Chairman, House Committee on Ways and Means. 2/

This report considers these responses and seeks to identify and address a broad range of problems and issues associated with the Antidumping Act and its administration.

We discussed this report with the agencies involved and made revisions where appropriate.

We examined records and correspondence and interviewed officials at the International Trade Commission and Departments of Treasury and State. We talked with domestic and foreign representatives of private firms and trade, manufacturing, and importer associations and with attorneys representing both petitioners and respondents in antidumping actions. Our contacts abroad included U.S. and foreign government officials, European Economic Community Officials, GATT Secretariat officials, and U.S. representatives at the Multilateral Trade Negotiations.

Our work was carried out in West Germany, Belgium, Switzerland, England, Canada, Australia, Japan, and Hong Kong and in Washington, Baltimore, New York, and Minneapolis.

1/GGD-78-60, Apr. 14, 1978

2/GGD-78-109, Sept. 5, 1978

CHAPTER 2

EFFECTIVENESS OF ANTIDUMPING ACT IN PROTECTING U.S. INTEREST

The extent to which the Antidumping Act has protected U.S. industry from unfair prices of imported merchandise is difficult to specify. While there seems to be a general consensus that investigations create uncertainty in the marketplace, forcing some adjustments in prices and/or quantities, there is no empirical evidence of what actually occurs during the various phases of antidumping investigations.

Importers claim that investigations cause an increase in import prices, but the extent of such increases is difficult to measure because of other factors, such as inflation and fluctuation in currency exchange rates. It is also contended that Customs' withholding of duty value "appraisement" of import entries (6 to 9 months after investigations begins) causes importers to decrease their purchases or to seek alternate sources of supply from the exporter because of the uncertainty created over what price to charge for the dumped merchandise. 1/

U.S. industry claims that, until appraisement is withheld at the tentative determination of LTFV sales, exporters have license to itensify dumping. Although the Antidumping Act authorizes Treasury to retroactively withhold appraisement up to a period not exceeding 120 days prior to formal initiation of an investigation, Treasury does not exercise this authority. The LTFV imports that are ultimately determined to result in injury and imports that occur during the investigation escape duty assessment. Such imports cover a period of about 10 months, 4 months preceding formal initiation of the investigation and the 6 months required for Treasury to reach a tentative determination. The Act as administered, therefore, seems directed more toward remedying continuous dumping activities than detering sporadic or intermittent dumping.

Import statistics and pricing data needed to quantify and verify what happens during investigations are not readily available and identification numbers under which imported merchandise is recorded often include items other than those being traced, making adequate analyses all but impossible. Of 35 investigations conducted under the Trade Act of 1974,

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1/This would not be the case when transactions are carried out between interrelated firms and it has been estimated that about 50 percent of world trade is conducted between interrelated firms.

only 17 involved merchandise that was not combined with other items so that statistics were traceable. In 10 of these cases imports declined or remained constant during the LTFV sales investigation and in 7 cases imports increased.

Available statistics for 13 cases beyond the tentative determination stage (see app. II) are inconclusive and of questionable accuracy. For example, in the animal glue and inedible gelatin cases, statistics through May 1978 show no imports from Yugoslavia and Sweden during or since LTFV sales and injury determinations. Yet, as of June 1978, there were unliquidated entries of the merchandise from Sweden valued at $132,227 and from Yugoslavia valued at $576,548, thus indicating that the statistics do not include all entries processed.

Industry also feels that, because of the delays in duty assessment, (3 to 3-1/2 years and much longer in some cases) they are not afforded the protection against the injurious effects of price discrimination the duties were intended to provide. Moreover, representatives of steel, electronics and roller chain industries believe their industries have not been adequately protected since imports have continued at high levels.

Duties are directed toward equalizing prices between merchandise sold for home market consumption and that sold for export and may have no bearing on U.S. prices for domestically produced goods. For example, unless all sales are made below cost, exporters can avoid duties by lowering home market prices and/or raising export prices to remove any price differences. In the absence of an adjustment to the export price, the U.S. producers' competitive price position will remain unchanged and sales may continue to be lost to lower priced fair value imports. Any relief for industry in such cases, therefore, would seem to result more from temporarily reduced imports during the antidumping investigation.

In addition, foreign exporters could conceivably circumvent antidumping actions by increasing exports from production facilities in other countries or exporting components for assembly in third countries with subsequent export to the United States. Also, the lack of "arms-length" pricing policies between interrelated firms poses unique problems and allegedly has been used to avoid Treasury's recently established trigger price mechanism for steel imports.

LACK OF STUDIES ON THE ACT'S EFFECTIVENESS

Insofar as we could determine, no studies have been made of specific or overall effects of the Antidumping Act and its administration. One Treasury study in the mid 1950s ostensibly examined the Act's effectiveness, but did not assess specific results or whether the Act was accomplishing its intended objectives.

Although access to dumped merchandise may benefit consumers and dampen inflationary trends, it is held that consumers would be much more adversely affected in the long term if dumping of imports were allowed to reduce competition by putting U.S. industries out of business. Also, a July 1977 Library of Congress study on imports and consumer prices, though inconclusive, indicated that retail consumers do not reap much benefit from low-priced imports. Further analysis was recommended.

The ITC has authority to make such studies pursuant to Section 332(a) of the 1930 Tariff Act, which states:

> "It shall be the duty of the Commission to investigate the administration and fiscal and industrial effects of the customs laws of this country, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs laws, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its investigation as hereafter provided."

Such studies, however, have never been made on the subject of the effectiveness of the Antidumping Act.

RECENT PROPOSED LEGISLATION AMENDING THE ACT

In an effort to make the Act more effective, Senate bills 2317 and 3127, introduced in November 1977 and May 1978, respectively, proposed to shorten investigative timeframes and to remedy delays in duty assessment. However, these measures expired with adjournment of the 95th Congress.

Senate bill 2317 would have provided for cases to be referred to the ITC after Treasury's tentative affirmative findings of LTFV sales rather than at final determinations of such sales. This would have provided for concurrent investigations between Treasury and the ITC over the final 3 months of the investigation, thus reducing the investigative period by 3 months.

Senate bill 3127 would have shortened the present 6 to 9-month periods for tentative determinations of LTFV sales to 5 to 7 months and provided for concurrent investigations but would have lengthened the ITC investigation by one month to enable the ITC to decide injury based on Treasury's final margin determinations. The bill contemplated the possibility of restoring investigative responsibility to a single agency by calling for a GAO feasibility study, after enactment, for transferring Treasury's function under the Act to the ITC or consolidating both agencies' functions in another appropriate Government agency.

Senate bill 2317 would have required the collection of estimated duties after publication of a tentative determination of LTFV sales and 3127 would have provided for collection of estimated duties after a finding of dumping had been reached. As noted on page 39, Treasury is considering implementing procedures for collecting estimated duties after formal findings of dumping have been published and requiring enforcement of its procedures for making decisions on the best information available. While actual payment of estimated duties at the LTFV determination stage as proposed in Senate bill 2317 would undoubtedly have been a more effective dumping deterrent than the present withholding of appraisement and bonding procedures, any assessment of duties prior to an injury determination seems a further deviation from provisions of the GATT Antidumping Code.

Both bills would have required the amount of such duties to be based on the dumping margins determined in the investigative process. The margins developed at the tentative determination stage were proposed to be used by Senate bill 2317 and margins developed at the final determination stage were proposed to be used by Senate bill 3127. Margins in both stages are based on comparisons of individual export sales with weighted average home market values rather than on the practice used in dumping duty determinations where entry-by-entry comparisons are made with individual home market sales transactions at the time of purchase or export. While this change might have saved time and effort, as noted on page 36, such a method of comparison might not be fair to the foreign exporters because the comparative elements are not

similar. We believe that, if averages are to be used, average home market values to average export sales values determined for individual importers would provide a more equitable comparison.

Senate bill 3127 also would have tried to ensure that any unfairly priced imports entered during Treasury's tentative determination of LTFV sales did not escape duty assessment by requiring that appraisement of entries be withheld retroactively to the date the investigation was initiated. This, again, would expand the application of a provisional measure prior to a determination of injury. Although the proposal provided a more certain course of action, the extent to which Treasury's present authority to retroactively withhold appraisement may be a deterrent to any continued dumping is not known. As noted earlier, limited statistics show that, in 10 of 17 cases, imports declined or remained at constant levels during the LTFV sales investigation.

Another provision in Senate bill 3127 proposed that final duties and liquidation of import entries be accomplished within 15 to 18 months after appraisement of the entries has been suspended or a finding of dumping has been published. To facilitate Treasury's ability to meet this deadline, Senate bill 3127 proposed to allow foreign market values to be calculated on the basis of weighted averages over a period of time not exceeding 6 months. This would eliminate current time-consuming requirements for comparisons of individual import transactions with foreign market sales value at the time of import to establish dumping duty amounts. With appropriate provisions for refunds or credits, plus interest, for overpayments of estimated dumping duties, as proposed in Senate bill 3127, we see no reason for not adopting provisions for collecting estimated duties after a finding of dumping has been established. Neither do we see any reason for not imposing time limits on the final determination and assessment of duties, and we are recommending favorable action with some flexibility for dealing with countries posing accounting cycle impediments to universal application of time limits. (See p. 39.) However, for consistent and equitable application of procedures, we believe that, if weighted averages are to be used for foreign market values in establishing final dumping duties, they ought to be compared with similar weighted average sales values established for import entries of individual U.S. importers.

In addition, Senate bill 2317 proposed a significant step towards improving available information on Treasury's administration of the Act by requiring annual reports to the Congress on enforcement actions. The reports were to include, but not be limited to the

--amount of special dumping duties collected and not refunded;

--average length of time required for an investigation;

--number of cases considered;

--disposition of cases considered;

--number of follow-up actions conducted; and

--status of such investigations.

CONCLUSIONS AND RECOMMENDATIONS

Because the Antidumping Act has not deterred the surge in consumer electronics, steel, and roller chain imports, representatives of those industries have complained that their interests have not been adequately protected. Moreover, other industries (as noted in chapter 6) even though believing dumping is occurring, are searching for other avenues of import relief--some through Section 337 of the 1930 Tariff Act --and steel interests are asking for internationally agreed conditions to be established for that industry.

However, it is important to note that the Act was never primarily intended to stop or decrease imports but, rather, to stop unfair pricing discrimination by equalizing home market and initial import prices.

Insufficient information has been compiled on specific results of the Act, so it is not possible to weigh the Act's effect on a variety of U.S. interests. The wide range of problems and issues noted in this report point to a need for better information and more comprehensive analysis of the Act's effects. To this end, we recommend that the:

--International Trade Commission establish a coding system for specifically identifying and monitoring imported merchandise subject to dumping and/or other trade legislation investigations.

--International Trade Commission, under authority of Section 332(a) of the 1930 Tariff Act, make wholesale price studies of merchandise

subject to antidumping investigations, monitor such merchandise, and determine the effect of antidumping actions on U.S. industry and labor.

--Secretary of the Treasury, as was proposed in Senate bill 2317, begin reporting annually to the Congress on the results of Treasury's actions to enforce the Act; the reports, in addition to those topics covered in the bill, should include information on the extent and monitoring of price assurances and statements of problems in administering the Act.

The issue of simultaneous less than fair value sales and injury determinations was addressed to some extent by the Act's 30-day inquiry provision, which allowed Treasury to refer a petition to the ITC during the preliminary investigation for an evaluation of injury probabilities. However, it seems time is not adequate to meet the needs and the ITC claims that dumping margins are needed to determine the cause of injury.

Alternatively, a petition could be referred to the ITC much earlier in the investigation. The present 30-day preliminary inquiry provision might be extended to 60 days for a more indepth consideration of whether there is a reasonable indication of injury. The Treasury, upon receipt of a petition, could refer a copy to the ITC and both investigations could proceed concurrently . If the ITC finds no reasonable indication of injury within 60 days, the case could be terminated at that point. On the other hand, if indications are affirmative and if it is absolutely essential for the Commissioners to know dumping margins, the final phase of the injury determination could be held in abeyance until Treasury was able to develop a general range of margins, which could be perhaps 3 to 4 weeks before the tentative determination is published. In this event, the injury and LTFV sales determination would be decided almost simultaneously.

To improve the quality and timeliness of investigations and to bring the legislation into closer conformity with the GATT Antidumping Code, we recommend that the Congress amend the Antidumping Act to provide a 60-day preliminary injury investigation by the International Trade Commission immediately following receipt of petition. When indications of injury are found, final determinations can be held in abeyance until no later than 30 days following receipt of dumping margin estimates from the Treasury. Where no indication of injury is found within the 60-day period, the case should be terminated.

AGENCY COMMENTS AND OUR EVALUATION

International Trade Commission officials recognized the need to specifically identify merchandise subject to dumping investigations and agreed that ITC should monitor such merchandise and make the evaluations necessary to determine the effects of the Antidumping Act. Treasury officials also endorsed ITC evaluations of the Act's effects.

ITC officials, however, cautioned that developing an adequate coding system to specifically identify the imported goods subject to dumping might be costly. Discussions with Customs and Bureau of Census staff who would have to implement the system after it was devised by the ITC indicated that, even though only 15 to 20 products annually were involved, costs would depend upon the number of shipments processed. We, therefore, suggest that ITC select a trial period of perhaps a year to test the system's utility. This would provide a year of cases for analysis; a decision could then be made whether to continue applying the system to new investigations.

Neither ITC nor Treasury expressed any particular concern over amending the Act to provide for referring a case to ITC immediately following receipt of a petition. However, Treasury is considering a 45-day period and wants to ensure that a finding of dumping is established before injury to avoid the anomaly of finding injury where there has been no determination of LTFV sales. We believe our recommendation adequately avoids this situation.

Treasury also expressed no objection to reporting on its administration of the Act, but pointed out that antidumping data is currently included in annual reports to the Congress by the Office of the Special Representative for Trade Negotiations.

CHAPTER 3

PROBLEMS AND ISSUES IN TREASURY RESPONSIBILITIES IN ADMINISTERING THE ANTIDUMPING ACT

Department of the Treasury responsibilities in administering the Antidumping Act include both the determination of whether less than fair value sales of imported merchandise have occurred and the amount of special dumping duties to be assessed if the International Trade Commission concludes that such sales have caused or threaten injury to U.S. industry.

In an era of unprecedented and accelerating imports and a far different world economic structure than in the past, efforts to administer the Act are seriously hampered by inherent difficulties in

--meeting cost-of-production requirements for establishing foreign market values;

--striving to establish foreign market values on imports from state controlled or centrally planned economy countries where prices are irrelevant to market economy value concepts; and

--making price adjustments where merchandise sold in the home market is different in style, quality, or other features from that exported.

From U.S. industry's standpoint, the principal problems with the Act are the difficulties in obtaining the foreign market value information needed to meet petitioning requirements, time required for Treasury to make LTFV sales determinations, and delays in assessing duties after dumping has been established.

Although time limits of 6 to 9 months were imposed by the Trade Act of 1974 on LTFV sales determinations, no time limits have ever been imposed for determining special antidumping duties to be imposed and collected on dumped merchandise. Consequently, the U.S. Customs Service, a focal point for antidumping investigations and duty assessments, estimated in 1978 that it was 3 to 3-1/2 years behind in assessing duties.

PRELIMINARY INVESTIGATION

Normally, an antidumping investigation is initiated as a result of a complaint submitted to the U.S. Customs Service

on behalf of a domestic industry. Customs forwards a copy of the petition to Treasury's Office of Tariff Affairs and, after a 30-day preliminary investigation, gives the Office of Tariff Affairs a recommendation on whether to launch a formal investigation based on the support contained in the petition.

When there is substantial doubt as to the existence of injury, Treasury may refer the case to the International Trade Commission for a 30-day injury inquiry. If the ITC determines that there is reasonable indication of injury, the case is returned to the Secretary of the Treasury and a formal investigation of LTFV sales continues; if it determines that there is no reasonable indication of injury, the case is terminated. However, ITC staff stated that, due to the time limit at this stage, their investigation tends to be cursory and inconclusive.

PETITIONING PROCESS

Customs regulation 153.27 requires that an antidumping complaint contain

--general information about the petitioner;

--description or sample of the merchandise;

--identity of the country from which merchandise is being imported and the names of exporters and producers;

--home market price, export price, and any explanations for differences between the two; and

--injury information, including domestic production, sales, and prices over the most recent 3-year period; profit/loss statements; capacity utilization; volume and value of all imports of the merchandise; market share of the alleged LTFV imports; information relating to price depression or suppression caused by the alleged LTFV imports; unemployment in the petitioning firms; names and addresses of all U.S. producers of competitive products.

Petitioners complained that these requirements are too burdensome and cited difficulties in obtaining information

on foreign market sales values, particularly foreign cost of production.1/

Exporters and importers, on the other hand, tend to believe that petitioners are not required to provide enough information and that the 30 days does not permit adequate study of information submitted, particularly concerning injury of the domestic industry. Some believe that the lack of adequate attention to the injury question during LTFV sales determinations allows the investigation to run its course on what eventually prove to be unmeritorious cases. In this regard, the ITC failed to find injury in about 55 percent of the cases referred by Treasury during calendar years 1975 through 1977.

Customs casehandlers stated that, given the deadlines imposed on them, little can be done to improve the quality of the preliminary investigation. Customs agents abroad, however, believed that, since they are familiar with the foreign industries, their involvement at this stage might improve the preliminary investigations and this may reduce the number of formal investigations undertaken.

Self-initiated investigations

Although Customs regulation 153.25 provides for self-initiated investigations, in only one instance, (the stainless steel pipe and tube case) has Customs exercised this authority.

The opportunity for self-initiated investigations would appear to be afforded by a special Customs import invoice which is required on all products subject to ad valorem duties. The invoice provides for disclosure of the foreign market values of the merchandise in question and an explanation for any differences between that value and the price to the U.S. customer. Although these invoices would seemingly provide Customs with a preliminary indication that merchandise was being sold at LTFV, the disclosures apply only to products which are normally dutiable under the Tariff Schedules of the United States. Moreover, according to Customs, exporters are not required to provide this information and any price data

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1/An analysis of the petitioning process indicated that, although some firms have spent as much as $150,000 and 28 months to prepare a petition, the average timeframe and cost was 6.6 months and $30,159. Statistics were based on responses from 36 of 84 firms and trade associations surveyed through questionnaires.

provided would not be realistic due to the adjustments that are necessary to establish foreign market value. Additionally, Treasury officials hesitate to initiate an investigation on this information because of the absence of any evidence of a causal connection between LTFV sales and injury to a U.S. industry.

Steel trigger price mechanism

The steel trigger price mechanism which became effective in May 1978 is Treasury's first systematic effort to monitor imports and, possibly, self-initiate dumping investigations. Prices under the trigger price mechanism are based on information provided by the most efficient producers of steel (Japan). Steel imports which are below these prices trigger an inquiry to see whether a dumping investigation is warranted. As of December 31, 1978, Treasury had begun three investigations under this system, but one has been terminated. U.S. steel producers are not completely satisfied with the system and have adopted a "wait and see" attitude toward its effectiveness.

Although steel imports declined significantly in May and June, they increased from 1.4 million tons in June to 1.8 million tons in July, 1.9 million tons in August, and 2.0 million tons in November. This has caused doubt and concern in the steel industry about the trigger price mechanism's effectiveness. Steel producers have stated that the mechanism has had no effect on imports but believe it has had a firming effect on prices.

The mechanism is being plagued by the dollar's declining value in terms of the rate of exchange for Japanese yen. As the yen appreciates, the dollar cost of Japanese products increases, resulting in the need for adjusting prices upward. Since other major currencies have not appreciated as much as the yen against the dollar, a number of countries claim they can currently sell steel in the United States at fair value below the trigger price.

If imports continue to rise as the dollar depreciates against the yen, the steel industry may reinstitute dumping petitions they had withdrawn when the trigger price mechanism went into effect.

TENTATIVE AND FINAL DETERMINATION OF LTFV SALES

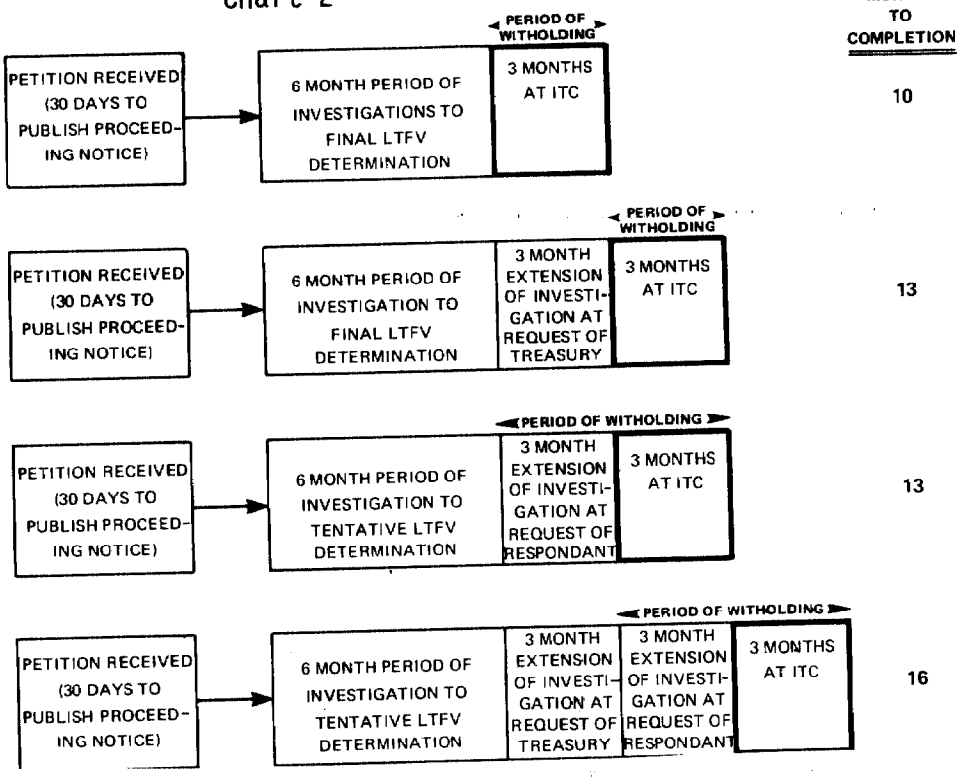
Once Treasury accepts a petition alleging sales at less than fair value, a formal investigation is begun and notice

of the investigation is published in the Federal Register. From the date of this notice, Treasury is statutorily required to reach a tentative determination of LTFV sales within 6 months (9 months in complicated cases).

During this segment of the investigation, Custom investigates both domestic and foreign prices of the imported goods and determines the margins of price differences between the two. Questionnaires are prepared for distribution by overseas Customs agents to foreign producers and exporters. (See p. 37.) Customs agents are responsible also for explaining the questionnaires to the recipients. These agents verify information contained in the completed questionnaires and send them to Washington for analysis by Customs analysts. Since the verifications are made before the analyses, Customs analysts often require clarification of data submitted or additional information which may also require verification.

The investigation may be extended either by the Secretary or at the request of both importer and exporter. An extension by the Secretary because the case is complex (usually a cost of production case) extends the investigation by 3 months to a total of 9 months, at the end of which a tentative determination is issued. However, if the respondents do not request an extension, this determination becomes final and the case is forwarded to ITC.

Chart 2 ANTIDUMPING TIME PARAMETERS



Fair value comparisons

In making a determination of LTFV sales, Treasury/Customs must establish a foreign market value to compare with the price at which the same or similar merchandise is sold for import into the United States. The value of the imported goods is based on the purchase price or the exporter's sales price 1/ and the basis for foreign market value is derived from the

--home market value, essentially the delivered price to wholesalers in the home market;

--third-country value (used in the absence of sufficient home market sales), the price to related or unrelated importers in third countries; or

--constructed value based on the costs of materials and fabrication and fixed percentages for overhead expenses and profit.

In fair value calculations, both the antidumping statute and Customs regulations require that adjustments be made for differences in merchandise, quantities sold, circumstances of sale, and for differences between the levels of trade. Discussions with U.S. producers and importers and with foreign exporters indicated several problems in these areas, most notably adjustments regarding differences in circumstances of sales and differences in merchandise.

Differences in merchandise

Foreign businessmen we talked with were of the opinion that Customs investigators often are not qualified to make the technical adjustments necessary to establish comparability between products sold in the foreign market and those sold in the U.S. market. However, U.S. producers stated that Customs worked closely enough with petitioners to arrive at what petitioners considered a reasonable estimation of a "like" product.

1/Purchase price is employed as a basis of comparison in an arms-length transaction when the U.S. importer is not related to the producer or exporter. The exporter's sales price is employed when the foreign producer maintains an affiliated company in the United States--the sale in the United States from the affiliate to an unrelated purchaser is used to begin determining the export sales value.

Fewer problems were noted where basic commodities, such as lead and zinc, were concerned. However, for industrial and manufactured goods, such as consumer electronics, bearings, etc., the definition of like products becomes much more intricate due to the modifications which are easily made to most manufactured products for consumer tastes and needs, climate differences in the export and home markets, etc. For example, an exporter of yarns told us that not only were there differences in the weight of the yarns being compared, but also there were substantial differences in the home and export market prices because of the higher cost of "beaming" the yarn for export market sales instead of placing it on bobbins for home market sales. Furthermore, the industry representative stated that in making price comparisons it was crucial that Treasury take into account the end use of the product. Textile industry representatives noted that prices charged for a product as a semi-finished material and those charged for the same product as a finished material are often vastly different.

Representatives of the Japanese television industry complained that Treasury analysts were not capable of making adjustments to prices based on product differences. They stated that their export and domestic TV sets contained several differences, including transistorization, electrical power requirements, cabinetry, etc., which the Treasury did not take into account.

Customs, however, quickly pointed out that electrical engineers assisted in the TV case and that the problem of arriving at a like product for comparison lies not so much with the investigators' technical expertise as with the foreign respondents' failure to promptly provide adequate information. Customs' view is that the burden is on the respondent to indicate clearly the exact differences between home market and export merchandise and the costs of these differences to the manufacturer. Customs expects the manufacturer to be able to explain and to document how these costs are calculated. Customs officials added that adjustments in fair value calculations for differences in merchandise generally are denied because casehandlers are unable to establish the existence of such differences or because amounts claimed for such differences cannot be verified.

U.S. sources, on the other hand, complain that adjustments for differences in the LTFV import and home market products should be based on differences in market value between the two products, not on cost differences. They also complain that they cannot obtain data on how Customs makes adjustments,

principally because of the confidentiality of information provided by exporters.

Customs also attempts to make adjustments for similar products with different end uses. Essentially, this amounts to comparing sales values of products having the same intended use in both the home (or third country) and export markets. Customs stated, however, that if a product is sold for one use in the United States and for a different use in the home (or third country) market, it is impossible to say whether any price difference is due to the differences in use or is simply price discrimination.

Circumstances of sale

Fair value comparisons are further complicated by disagreements over the identification and treatment of allowances arising from differences in commercial practices. Representatives of various industries in Europe, Canada, Japan, and Australia complained that U.S. legislation and regulations did not consider modern international business practices. In particular, controversy has developed over two aspects of Treasury regulations, which provide that:

--"differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a direct relationship to the sales which are under consideration; and,

--"in making comparisons using exporter's sales price, reasonable allowance will be made for actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States."

The representatives said that these regulations do not adequately consider possible cost differences between the domestic and foreign markets for advertising, distribution, and other selling and marketing expenses. The provision that cost be directly related to the sale under consideration does not make allowances for such things as salaries and expenses of sales staff, maintenance of distribution centers, most advertising costs, etc.; thus, the foreign market value is overstated. This is particularly controversial because an unrelated importer will usually purchase merchandise at the factory price plus factory profit and perhaps free-on-board costs, as illustrated by assumed costs and prices in the the example below.

Ex-factory cost	$100
Profit	5
Foreign inland freight	2
	107
Ocean freight duties	5
Total landed price	$112

Consider that the foreign producer, in marketing a product in the home market, incurs:

Ex-factory cost	$100
Profit	5
Foreign inland freight	2
	a/107
Sales staff	1
Commissions	1
Advertising	3
Distribution	2
Final sales price	$114

a/Producer's sales price and importer's purchase price.

The home market value is established by deducting from the $114 only those costs directly related to the sale, in this case, the $1 in direct sales commissions, which leaves a relatively high home market value of $113. The importer's total landed price is reduced to allow for transportation and duties. Treasury then compares the home market "fair value" price with the importer's purchase price, as illustrated below:

	Home market (Producer)	Export market (Importer)
Final sales price	$114	$112
Less commissions	-1	
	113	112
Less:		
Foreign inland freight	-2	-2
Ocean freight/duties		-5
Prices for comparison	$111	$105

When calculations are made on the basis of the exporter's sales price (related importer), allowances for selling costs are made only up to the dollar value of the selling costs for the same products in the U.S. market. The exporter's sales

price is defined by Treasury as the factory price plus or minus profits or losses for both the factory and the U.S. affiliate plus transportation costs, as shown below.

	Home market (Producer)	Export market (Importer)
Ex-factory cost	$100	$100
Factory profit	2	2
Affiliate profit		2
	$102	$104
Transportation	1	1
Duties		5
Selling expense	10	3
Final sales price	$113	$113

Based on these assumptions, the home market price and the export market price (to the first unrelated buyer) is the same--$113.

To determine the costs of marketing the product, Treasury reduces the exporter's sales price for expenses incurred by the importer in selling to an unrelated purchaser; the home market price is also reduced up to the same dollar value. Assuming that both the producer and the importer incur marketing costs of $10 and $3, respectively, the following calculations are made.

	Home market (Producer)	Export market (Importer)
Final sales price	$113	$113
Selling expenses	-3	-3
Transportation	-1	-1
Duties		-5
Total deductions	-4	-9
Prices for comparison	$109	$104

If the producer's full marketing costs of $10 were allowed, the home market value would be $102 and no dumping margin would be indicated. To the extent that prices in the home (or third country) market are higher by virtue of higher fixed expenses, there will be better opportunity for finding dumping margins. Foreign business interests complain that fair value calculations made in this manner do not recognize that costs

of doing business can be higher in foreign countries than in the United States.

Customs officials told us that expenses for marketing, advertising, etc., incurred for a particular sale are generally allowable adjustments to the home or third-market price; expenses incurred prior to the sale or which would have been incurred whether or not the sale was made are not allowed. The officials explained that basically they look at the function or service performed in determining allowable adjustments. Potentially allowable adjustments include guarantees, provision of technical assistance and servicing, and differences in credit terms and commissions. Adjustments which are routinely disallowed include rents, utilities, office supplies, salaries and wages, and fringe benefits. The line between allowed and disallowed adjustments, then, is drawn roughly between fixed and variable costs to a producer. (See app. III.)

Adjustments for circumstances of sale are quantified on the basis of the cost to the seller. Although Customs regulations provide that, where appropriate, the effect of these differences on the market value of the merchandise will be considered, officials explained that this is rarely practical because all merchandise is uniformly affected by circumstances of sale and it normally is not possible to isolate the effects on market value of each of these items.

Customs regulations permit the calculation of margins on a weighted-average basis, which amounts to determining a weighted-average home market value and comparing it with individual sales to the export market. This method of determining margins between home and export market sales tends to enlarge existing margins or to create margins where none existed. However, in determining margins for duty assessment, officials are required to compare import sales values on an entry-by-entry basis to individual home market values at the time of purchase or export rather than on weighted averages.

Constructed value

The complexities of fair value calculations are highlighted by the constructed value formula defined in Section 206(a) of the antidumping statute which requires that foreign market values be established by adding:

--"the cost of materials * * * and of fabrication or other processing * * * 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;

--"an amount for general expenses * * * not less than 10 percent of material and of fabrication costs;

--"an amount for profit not less than 8 percent of the sum of material and fabrication costs and general expenses; and,

--"the cost of all containers and coverings * * * and all other expenses incidental to placing the merchandise * * * in condition, * * * ready for shipment to the United States."

Treasury employs such a formula when the same or similar merchandise is (1) not sold in the home market, to third countries, or in sufficient quantities above cost to establish a home market value or (2) exported from a state-controlled economy country that controls its economy to such an extent that sales within it or to third countries preclude determination of foreign market value. The constructed value will be based on the exporter's own cost experience (for a state controlled economy country, it will be based on costs in a market economy country).

This constructed foreign market value is then compared with individual U.S. import transactions valued on the purchase price or exporter's sales price.

The major problem with the constructed value formula is the addition of 10 and 8 percent to the cost of production when smaller percentages may be normal to the trade in question. Foreign producers said that, in many cases, an 8-percent profit rate was extremely high and that constructed value rates should be determined case-by-case, on the basis of an average rate of return over a given period of time.

Cost of production

Section 321(d) of the Trade Act of 1974 amended the Antidumping Act of 1921 to include a cost of production clause [section 205(b)]. This amendment allows the Secretary of Treasury to determine whether home market sales are being made at less than the cost of production. If he determines that such sales are being made over an extended period of time and in substantial quantities and that the prices do not permit recovery of all costs within a reasonable time in the normal course of trade, the sales shall be

disregarded in calculating foreign market value. Eliminating below-cost sales increases the average sales value determined for the home market and the likelihood of an affirmative LTFV sales determination. If remaining sales do not provide an adequate basis for establishing foreign market value, Treasury will conclude that no foreign market value exists and resort to the constructed value formula which applies percentages for general expenses and profit.

Section 205(b) has little legislative history to clarify the intent of Congress. Congressional comment is limited to expressed concerns that, without the provision, sales below cost of production would escape the purview of the Antidumping Act. The Senate Finance and House Ways and Means Committees both stressed that, to be effective, the provision must involve sales over an extended period of time in substantial quantities that would not fully recover all costs within a reasonable time. These observations imply that application of Section 205(b) would be unusual.

Problems in implementing Section 205(b) include the difficulty in collecting and verifying cost data. Producers and exporters consider much of the information requested by Treasury highly confidential and sensitive and are thus hesitant to divulge cost data. We were told that this type of information often is not even divulged to the government in the country concerned. Treasury officials stated that because the information is highly sensitive, adequate verification of the data is at best difficult and often impossible.

Although cost accounting is a specialty field, outside experts have not been used for verifying and evaluating cost of production data. Customs has conducted training courses to improve staff qualifications. Even with highly trained technical staff, however, the time constraints placed on the verification phase would most likely preclude adequate evaluation, given the need for some familiarity with the production processes and accounting systems of the foreign firms.

Imports from centrally planned or nonmarket economies

For nonmarket or centrally planned economy (CPE) countries, Section 205(c) provides that if the country is controlled to an extent that a determination of foreign market value cannot be made, the Secretary of the Treasury shall determine the foreign market value, of merchandise on the basis of the normal costs, expenses, and profits as reflected by

--"the prices * * * at which such or similar merchandise of a non-state-controlled-economy country or countries is sold either (A) for consumption in the home market of that country or countries, or (B) to other countries including the United States;" or,

--the constructed value of the U.S.-produced merchandise in a non-state-controlled-economy country or countries.

Treasury regulations further state that:

--"The prices or the constructed value of the United States-produced merchandise generally will be utilized where sales or offers for sale of such or similar merchandise in any other non-state-controlled-economy country do not provide an adequate basis for comparison."

CPE prices are irrelevant to the traditional value concepts of market economy countries, because they are established by law or government dictate and are not related to cost of production, transportation, and marketing in the usual market economy sense, or sensitive to supply and demand factors.

Difficulties posed by CPEs are illustrated by the 1974 Polish golfcart case, for which Treasury spent a great deal of time and effort trying to determine whether Poland was selling this product at less than fair value. Treasury was unable to determine a home market price for the golfcart because it is manufactured strictly for export and was unable to use a third-market price because the only other producer (in Canada) had gone out of business. Treasury determined the quantity of labor, capital, material, power, overhead, etc., required to manufacture the golfcarts in Poland. It then decided to use a similarly developed market economy as a basis for determining the costs of these elements and accepted Poland's proposal to use Spain as the surrogate economy. By applying Spain's costs to Poland's production factors, Treasury will arrive at a constructed value price for comparison.

As previously noted, Treasury, as a final resort, can use prices or constructed value of U.S.-produced merchandise to arrive at the foreign market value of merchandise imported from CPEs. The use of these methods seems to be a radical departure from an original objective of comparing prices between goods sold in the home market and those sold for

export. It also raises the question of whether the United States should not seek some other remedy for dealing with injurious imports from CPEs.

WITHHOLDING OF APPRAISEMENT AND BONDING

When the Secretary of Treasury makes a tentative determination of LTFV sales (at either 6 or 9 months), a withholding of appraisement notice is published in the Federal Register and each Customs district is notified of the effective date and the tentative dumping margins. All imports from the date of withholding are subject to the assessment of special dumping duties. Basically, an appraisement withholding means that Customs officials withhold valuation of import entries for duty purposes, leaving importers uncertain over what prices to charge for their goods in order to recover their ultimate costs.

Once a withholding of appraisement notice has been issued, the statute provides for the posting of bonds, which Treasury views only as a means for protecting revenue. As noted in our April 1978 report, each Customs district director is authorized to determine the extent of additional bonding required, if any, to insure payment of potential dumping duties. In processing a subsequent entry, a director can either consider the bond under which the entry is made to be sufficient or consider it insufficient and require the posting of a single-entry bond in an amount that would assure payment of the potential dumping duties. An antidumping bond equal to the estimated value of the merchandise covered by the finding is required when the exporter's sales price is unknown.

Since each district determines bonding requirements independently, the imposition of bonds is inconsistent and, therefore, all importers are not treated equally in the bonding costs they must absorb. Our April 1978 report noted that Customs has no system for monitoring its districts' bonding practices and gave an example to illustrate the different bonding requirements, involving an importer who purchased merchandise from one source but imported it through eight districts. The dumping margin on this commodity was estimated at 22 percent, and the bonding requirement was handled in the following manner.

Port	Value of merchandise	Districts' determination
Boston	$ 316,303	Single entry bonds equal to 22 percent of value for estimated dumping duties.
Houston	114,042	One case - single entry bond equal to 22 percent of value. One case - single entry bond equal to 122 percent of value. Two cases - antidumping bond required because sales price unknown.
Los Angeles	274,600	No additional bonding required.
New York	4,595,888	Single entry bonds equal to 22 percent of value.
Norfolk	73,614	No additional bonding required.
Philadelphia	2,433,000	No additional bonding required.
Portland, Maine	120,297	Single entry bonds equal to 22 percent of value.
Savannah	562,551	No additional bonding required.

The report also called attention to the fact that $3,343,656 worth of merchandise entering through Los Angeles, Norfolk, Philadelphia, and Savannah was covered solely by the importer's regular entry bond, which had a face value of only $500,000 when the estimated liability for dumping duties on this merchandise was about $736,000.

This example shows how the inconsistencies in the bonding requirement cause a great deal of confusion for importers. Moreover, given the value of the regular entry bond and the estimated duty liability, it is clear that revenues in at least four districts were not protected.

Our report noted further that bonding requirements of the Antidumping Act have little effect on the price of goods found to have been sold at less than fair value, because the cost of antidumping bonds adds little to importers' costs. For example, a large surety company underwrites Customs bonds for only $1 per $1,000 of bond value for a single-entry bond. However, Treasury told us that very often importers must post collateral of up to 100 percent of the bonded amount.

A few foreign manufacturers stated that the bonding requirement could eventually cause them to cease exporting. Japanese television manufacturers stated that in Treasury's decision to liquidate entries of Japanese TV sets between 1972 and 1974, they (mostly subsidiaries of the manufacturers) were required to post 100-percent bonds. The problem, however, is that the total liability of a given firm under the bonding requirement could easily exceed the total worth of a company. Industry representatives pointed out that importers were finding it increasingly difficult to find a guarantor willing to provide large bonds to individual firms. Thus, if liability were to reach a point where a bond guarantee was impossible to obtain, importing would have to cease or import prices would have to be raised substantially.

Widespread situations of this sort might be more detrimental to the U.S. economy, importers, and consumers than the dumped merchandise, given the fact that withholding of appraisement and bonding applied to about 60 percent of Treasury investigations initiated during 1975-76, but only 35 percent of these investigations resulted in actual findings of dumping.

APPRAISEMENT OF ENTRIES AND DUTY ASSESSMENT

The following discussion on appraisement of import entries and duty assessment was contained in our April 1978 report.

When a finding of dumping is issued, special duties are assessed on an entry-by-entry basis on shipments from the date of withholding of appraisement. Appraising entries and assessing special duties creates a number of problems for Customs.

To obtain the information required to appraise shipments under the Antidumping Act, Customs follows essentially the same routine used for LTFV sales determinations. Questionnaires are sent to all exporters of the merchandise in the country covered by the finding. The questionnaire relates to home market (or third market) sales, U.S. export sales, and

circumstances relative to all sales, such as discounts, advertising, warranties, and distribution costs. This information is initially requested for the period from the withholding of appraisement to the date of the questionnaire, which usually covers a period of 6 to 12 months.

Exporters normally have 30 days to respond, with possible extensions of 30 days. If the information from the questionnaire is complete, it takes approximately 2 months to determine the special dumping duties. This time frame depends on the number of manufacturers and the complexity of each individual transaction.

To ensure that entries subject to dumping duties are properly processed, Customs gives its field offices appraisement instruction, called master lists, outlining the various calculations and/or price adjustments that must be made to determine the appropriate amount of dumping duty. A master list covers each shipment of merchandise by a particular manufacturer which was purchased or exported during a specified time period.

During the appraisement process, the purchase price or the exporter's sales price for each transaction is compared to the home market price or constructed value on the date of purchase or export to calculate the dumping duty. Customs may not use any weighted average to arrive at home market price as it does in making tentative or final determinations of LTFV sales.

To comply with the requirement that dumping duties be assessed on price comparisons at the time of export or purchase, the master lists must be revised periodically and exporters are asked for updated information at periodic intervals, usually every 6 months or every year.

Assessment of dumping duties

When a master list is issued, the field offices appraise the entries covered by it and determine the amount of the special dumping duty. In each case, the importer of record is notified of the dumping duties. However, as shown below, the extent of the appraisement delay is disclosed by the backlogs in the issuance of the master lists.

Master List Backlog

Year	Number of manufacturers	Number of master lists published	Backlog
1970	52	0	52
1971	96	13	83
1972	146	24	122
1973	264	85	179
1974	298	47	251
1975	370	161	209
1976	392	158	234
1977 1/	450	151	299
1978 1/	505	64	441

Backlog figures for 1977 had not been determined when the report was issued. 1/ Customs officials gave the following explanation for the backlog.

--The Trade Act of 1974 placed statutory deadlines on all new antidumping and countervailing duty cases; officers handling the cases were also responsible for preparing master lists, but casework was given priority. The Act placed special emphasis on previously neglected countervailing duty cases, and during 1975, personnel were required to work on 40 active countervailing duty cases and were diverted from master list work.

--From July 1975 through May 1976, personnel had to handle eight complex automobile cases in addition to all other antidumping and countervailing duty caseloads; work on master lists during this time virtually ceased.

As a result of this backlog, Customs has fallen about 3 to 3-1/2 years behind in the assessment of dumping duties. Recognizing the problem, Customs:

--Temporarily assigned 16 additional operations officers in May 1977 to work on updating master lists.

1/We obtained 1977-78 data from Customs after our first report containing this information was issued. We were informed that the reason that the number of published master lists dropped during 1978 was because of the emphasis given to work on the T.V. case. Customs hopes to have master lists up to date by the end of March 1979 (see app. VI).

--At the same time, reorganized and established a new group that works exclusively on master lists and augmented its permanent staff by seven positions to keep master lists current.

--Is using a computer to automate part of the case analysts work, such as data transcription and simple arithmetic functions; automation will also eliminate time consuming manual typing of the master lists.

--Now requires exporters to adhere to the established cut-off dates for submitting information; in the past, this has been a significant cause of delay in the assessment process.

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Lengthiness of the appraisement and duty assessment process has resulted in charges by U.S. industry that Treasury is not effectively administering the antidumping legislation and protecting U. S. interests. Foreign interests, on the other hand, complain that the process is extremely burdensome for them as it requires a great deal of time to prepare the data submitted to Customs. Additionally, foreign firms stated that Customs has changed its formula for calculating margins at this stage, thereby negating any price adjustments which exporters may make to guard against continued dumping. Aside from any price adjustments made by the exporter to eliminate margins after completion of the LTFV determination, these differing techniques may also partially explain why margins tend to diminish between the LTFV determination and duty assessment phases. 1/

The requirement for transaction-by-transaction comparison of home market and export sales at the duty assessment phase is principal cause for the delay in fixing liability for dumping duties. While these calculations may be complex, tedious, and time consuming to make, any move toward assessing duties based on individual import transactions with weighted average

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1/Our September 1978 report noted that the dumping duty statistics being submitted were based on margins for bonding purposes set at the time of withholding of appraisement and might not represent current margins. The estimated dumping duty of $148.4 million on shipments of elemental sulphur from Mexico was based on a margin of 73 percent, but Customs estimated the margin at 3-1/2 percent.

values of home market sales seems to raise questions of basic fair and equitable treatment of U.S. importers.

In addition to the time spent in making large numbers of these complex calculations, Treasury has also attributed much of the delay in assessing duties to the lack of incentive for exporters and importers to provide prompt, complete, reliable, and responsive information. To provide this incentive Treasury recently announced it is considering amending regulations to require deposits of estimated dumping duties on import entries after publication of dumping findings and enforcing procedures for using the best information available when importers or exporters fail to respond promptly with complete and accurate information.

OVERSEAS INVESTIGATIVE PROCEDURES

Data used to determine whether LTFV sales are occurring is collected from foreign producers and exporters by questionnaires which require responses concerning

--total sales in all markets;

--sales to the United States;

--sales to the home market; and

--sales of merchandise to the United States which is not sold in the home market.

An additional section is added when sales are allegedly being made at below the cost of production. Foreign firms have 30 days to respond, but Customs will generally grant extensions upon request.

Foreign business and U.S. Government officials stated that verifying the information in the questionnaires was a problem because of (1) the length of time required to verify cost data, (2) Customs representatives' lack of qualifications to do difficult cost accounting work, and (3) the voluminous data required to adequately support information in the questionnaires.

Verifications are made by Customs agents abroad who are also responsible for more than 30 other functions, including smuggling and fraud detection which are accorded high priority. The purpose of the verification is to ensure that the information received is reliable, supportable and adequately explained. There are no guidelines concerning what

part or how much of the received information is to be verified, although Customs is currently developing minimum verification standards. Verifications are generally made in one- or two-day visits to the respondents, and Customs does not view verifications as audits of financial records. Treasury's General Counsel commented in the January 13, 1978, Federal Register that:

> "it has not been the past practice of the Customs Service--nor, indeed, would it be possible in view of the time restrictions imposed by the law and the resources available for investigating antidumping complaints--to conduct what an accountant would regard as an 'audit' of respondents' operations. And the Antidumping Act imposes no such obligation on the Treasury Department in implementing the law."

Customs agents therefore rely on the firms' statements of complete cost information. In reviewing support for cited figures, agents examine the cost allocation formula and methods of calculation used. They are not obliged to determine the appropriateness of methods used but are expected to check that calculations are correct. Appropriateness and other analysis, such as manufacturers' claimed adjustments, are the perogative and responsibility of the Customs analyst in Washington. Basically, the information is confirmed through copies of invoices, letters of credit, bills of lading, packing expenses, evidence of bank interest, purchase orders, etc.

Discussions with Customs agents indicated that the easiest records to verify are those related to purchases and shipping. Often, however, agents are required to verify records relating to capacity utilization, inventory valuation, advertising expenses, depreciation allowances, indirect costs, and allocation of costs between product lines. These records are the most difficult to verify and, according to one agent, the most susceptible to manipulation and falsification.

Verification becomes significantly more difficult when a cost-of-production determination is involved. Customs agents reported that they were very much at the "mercy" of the companies involved when computing costs for product variations, general expenses, overhead, and such indirect costs as utilities, management, staff time, etc. These verifications are essentially a cost analysis of source documents, and the agent has little alternative but to rely on reasonable explanations offered by the firm about its accounting transactions.

Many of our Customs contacts believe that verifications would be more effective if Washington case handlers with specialized experience and familiarity with particular cases participated in the verification with the overseas agent, who is familiar with a country's industry and commercial practices. Other staff have been temporarily assigned to assist agents on a few select cases in the past, but the practice has not been systematically employed. However, some Customs officials are not in favor of using case handlers in overseas verifications.

We believe more involvement of qualified case handlers ought to significantly reduce the number of requests for additional information and the consequent return trips to the foreign firms for verification of that information. A verification team of this sort would not only alleviate some problems in the verification procedure, but might also help overcome some complaints voiced by foreign officials about the present procedure.

CONCLUSIONS AND RECOMMENDATIONS TO THE SECRETARY OF THE TREASURY

While case handlers occasionally have been temporarily assigned to assist Customs agents abroad in data verifications, we believe a formal and systematic procedure is needed. Therefore, we recommend that the Secretary of the Treasury develop and implement a procedure for Customs Service case handlers, where appropriate, to work jointly with overseas Customs agents to collect and verify data from foreign producers involved in dumping investigations. Such a procedure should either state the type of cases that would be exempted or clearly identify the case conditions, e.g., types of product, existence of below-cost sales, or the numbers of countries and firms involved that must be present for the procedure to be used.

We also believe that verification of data could be facilitated by the issuance of minimum verification standards outlining the procedures for verification and we urge the timely completion and distribution of those standards that we understand are being developed. We believe that both of these procedures would greatly facilitate the verification process.

Delays of 3 to 3-1/2 years in preparing and issuing master lists for duty assessments need to be reduced for more effective protection against unfairly priced imports. To reduce these delays, Treasury is (1) considering procedures for collecting estimated duties on import entries

after a finding of dumping has been established and (2) requiring more consistent enforcement of existing procedures for determining dumping duties on the best information available when delays are encountered due to respondents' and importers' slowness in providing adequate data. We urge the Secretary of the Treasury to expedite implementation of these measures, and recommend that he also modify Customs procedures to require the determination and assessment of final dumping duties within 15 to 18 months following findings of dumping. It is recognized that alternate timeframes might be required for certain countries where price adjustments are made for preferred customers in the home market at the end of the accounting cycle.

Customs district directors use their own discretion when setting bonding requirements to ensure recovery of dumping duties, which results in uneven and inequitable treatment of importers. Even though the cost of bonds ($1 per 1,000 of imports) do not represent a major cost element of imports, 100 percent collateral to obtain bonds has been required in some cases. Any excessively high bonding requirements could conceivably have a significant detrimental effect on smaller firms' business. Therefore, we recommend that the Secretary have the Commissioner of Customs require that bonding requirements be uniformly applied by each district director.

CONCLUSIONS AND RECOMMENDATIONS TO THE CONGRESS

Several provisions of the U.S. Antidumping Act exacerbate the critical time factor of investigations and have been the source of a great deal of criticism of the United States in international forums. We believe that the following changes in the Act should facilitate more timely and effective enforcement.

Section 206(a) requires the imposition of 10 and 8 percent minimums for general expenses and profits, respectively. Such minimum percentages are controversial and considered unrealistic, since many firms subject to investigations may not have profit margins anywhere near 8 percent. Additionally, such minimum requirements can unduly inflate the foreign market value of the product concerned. We recommend that the Congress delete these minimum percentages from the legislation and that profit and general expense percentages in fair value calculations be made on a constructed value formula based on general expense and profit experience of the foreign firm involved.

On the cost of production issue, GATT members believe that sales below cost should be considered as being in

the ordinary course of trade in the market situation of the country of origin and should be included in Treasury's foreign market value calculation.

Under the Act, home market sales at a loss over an extended period of time are disregarded and, if Treasury believes that remaining sales in either the home or third country markets are not sufficient to establish the home market value the value will be constructed. Eliminating below cost sales increases the value of those remaining sales made above cost. While persistent and continuous below cost sales cannot be overlooked from the U.S. perspective, profitable enterprises do make below cost sales for rational business purposes.

Sections 205(b) and (c) have caused Customs case handlers some unique problems in attempting to calculate fair value. Verification of data is difficult because of its confidential nature. Moreover, the time required for less than fair value sales investigations has been one of the more critical elements in the antidumping process from the standpoint of U.S. industry. The difficulties in implementing the legislation's cost-of-production provisions and trying to establish foreign market values for imports from centrally planned economy countries only exacerbates the critical time factor. Additionally, the use of U.S. or third country production costs to determine the foreign market value of CPE products seems a radical departure from legislation originally intended to equalize price differences between merchandise sold for home market consumption and merchandise sold for export. We believe that problems involving CPEs or below-cost sales could be better handled under other U.S. trade legislation. We recommend therefore, the Congress delete Sections 205(b) and 205(c) from the Antidumping Act. Persistent below-cost sales should be referred to an appropriate agency for solution under provisions of other trade legislation.

AGENCY COMMENTS AND OUR EVALUATION AND MATTERS FOR CONSIDERATION BY THE CONGRESS

Treasury agreed there is a need for more joint participation of qualified Washington staff with overseas agents in verifying information submitted by respondents, but stated that such efforts would require additional funds and staff.

If costs of such an effort are prohibitive, the present usual practice of conducting verifications before Washington case handlers have an opportunity to evaluate information

submitted by respondents ought to be discontinued. We therefore believe that an alternative suggested during our review should be adopted; i.e., Customs procedures should be revised to provide for case handler review of respondent submissions before verifications are made. This would allow case handlers the opportunity to determine whether additional information or clarification of certain items is needed and whether any special attention should be devoted to a particular area of the information supplied during the verification process. This should also reduce the need for follow up visits to the respondents' facilities.

Treasury disagreed that there is a need for Customs to change present bonding practices and believed that Customs district directors should continue independently setting bond requirements based on their judgment of importers' capabilities to pay potential dumping duties. According to Treasury, the district directors' authority to deal separately with importers is not limited to antidumping actions but extends to all areas of trade and, therefore, our recommendation would affect much broader areas than antidumping. Treasury also indicated that requiring uniform procedures for antidumping bonds would only create additional revenues for bonding agencies and provide no further needed protection for Federal revenues.

While it is not our intention to increase importer costs, we believe that, if bonding is to be required, it should be applied equally to all importers. We seriously question a system that allows bonds to be required of an importer for shipments through one district when the same importer may enter the identical goods through another district free of such requirements. Moreover, we see no benefits to a system that tends to penalize with additional costs small importers of marginal financial condition who may be already competing at a price disadvantage with financially stronger firms who do not have to bear such costs. However, since our recommendation, as Treasury indicated, is focused only on antidumping bonding procedures, the entire issue of Customs district bonding practices may warrant additional study.

Treasury also expressed disappointment over our recommendations to the Congress that sections 205(b) and 205(c) be deleted from the Antidumping Act. While acknowledging the additional problems encountered and time needed in making these types of investigations, Treasury believed that not enough experience had been acquired in implementing these provisions to warrant their deletion at this time and suggested that a future decision might be more appropriate. Moreover, Treasury argued that an equivalent amount of

time would be required to conduct cost-of-production investigations under other provisions of U.S. legislation and that deletion of the provision relating to CPEs would result in a situation where the only real alternate remedy for dealing with injurous imports from those countries would be quantitative restraints--a remedy which Treasury adamantly opposes.

Because cost-of-production determinations can be such critical factors in establishing foreign market values in antidumping cases, it is doubtful that they would receive the same time and attention under other legislative provisions which do not depend on such values for either investigations or remedies. For example, a mere demonstration of substantial below-cost sales might be sufficient to justify injury investigations under other legislative provisions.

Because of the special nature of CPE country marketing systems and pricing policies, remedies for injurious imports from those countries might very well require some form of quantitative restraint and/or import price agreement.

In any event our recommendations to the Congress were directed toward removing provisions that significantly impede the timely administration of the Antidumping Act and result in questionable determinations.

CHAPTER 4

PROBLEMS AND ISSUES IN ITC DETERMINATIONS OF INJURY

After being notified by the Secretary of the Treasury that foreign merchandise has been sold in the United States at less than fair value, Section 201(a) of the Antidumping Act requires that the International Trade Commission determine within 3 months whether an industry in the United States is being or likely to be injured or is prevented from being established because of the LTFV imports.

FUNCTIONS OF THE COMMISSION

The International Trade Commission is an independent agency created by Act of Congress in 1916 as the U.S. Tariff Commission. In 1975, the Agency's name was changed to the ITC by the Trade Act of 1974.

As a factfinding agency, the ITC has broad powers to study and investigate all factors relating to U.S. foreign trade; its effect on domestic production, employment, and consumption; and the competitiveness of U.S. products.

ITC's decisionmaking body consists of 6 Commissioners appointed by the President and confirmed by the Senate for 9-year terms. The Commission staff numbers about 350 individuals in various disciplines, including attorneys, economists, commodity analysts, and investigators. The staff's primary function is to gather facts, evaluate data, and provide the Commissioners with the expertise required to carry out their responsibilities. The functions may be divided into the following five broad categories.

1. Investigating eligibility for and recommending appropriate import relief for domestic industry.

2. Investigating unfair practices in import trade under Section 337 of the Tariff Act of 1930, dumping actions, and countervailing duty actions when they involve nondutiable merchandise.

3. Providing the President, Congress, other Government agencies, and the public with technical information on trade and tariff matters.

4. Assisting in the development of uniform statistical data to achieve comparability of import, export, and domestic production statistics.

5. Conducting studies on trade and tariff issues relating to U.S. foreign trade.

PROCEDURAL PROBLEMS IN ADMINISTERING THE ANTIDUMPING ACT

The Act gives the ITC broad discretionary powers to conduct "such investigation as it deems necessary". The Act does not define "industry" or "injury" nor does it establish the extent of causal linkage that must exist between less than fair value sales and injury. Moreover, the Congress has refrained, over the years, from providing any legislative guidance for defining key factors and has chosen to preserve maximum latitude and flexibility for the Commission to decide these questions according to the facts of each individual case.

Neither has ITC developed any type of procedural guides setting forth standards for defining industry, injury, and the link that must exist between less than fair value sales and injury. Consequently, the Commission has not established any predictable record regarding the nature of information needed to support an injury determination so that prospective petitioners might have a basis for evaluating the merits of their particular cases and which might discourage unmeritorious actions. Moreover, given present procedures, neither petitioners nor respondents are aware of the nature of the information gathered by the Commission in support of or challenging an allegation of injury. Such information is contained in the staff report, including both confidential and nonconfidential information developed during the course of an investigation, which is used by the Commissioners in making their determination of injury or non-injury. However, a nonconfidential summary of this report is not available to the general public until after the Commissioners have made their determination. Thus, petitioners and respondents are generally unaware of how to prepare for addressing the issues that will be covered during the public hearing. (See app. V.)

On January 17, 1978, the Commission published in the Federal Register advance notice of proposed rulemaking with regard to the possible adoption of interpretive rules and policy statements to serve as guidelines in construing the Antidumping Act and to advise the public of the Commission's policies in administering the statute. Public comment and

suggestions were received from only two parties--one favoring and one opposing such rules. At the present time, the ITC posture is divided concerning the adoption of interpretive rules--implementation would require a majority vote. Consequently, no further attempt has been made to pursue the interpretive rules and policy statements.

Defining industry

While U.S. legislation does not give specific guidelines as to how industry should be defined, a report by the Senate Committee on Finance dealing with the Trade Act of 1974 stated that:

> "* * * the industry is a national industry involving all domestic facilities engaged in the production of the domestic articles involved."

Two primary elements considered by the ITC in defining industry are product comparability and regional markets.

Industry defined along product lines

An analysis by the ITC staff of the characteristics of products determined to be sold at LTFV is necessary to determine a product's comparability with U.S. products and the scope of the U.S. industry concerned. ITC's analysis of product comparability is analogous to Treasury's determination of a like product; however, in the latter case, Treasury is comparing the LTFV import to a comparable product in the country of origin (or a third country), whereas ITC compares the LTFV import to a product produced in the United States.

Problems encountered at this stage of the analysis are similar to those encountered by Customs case handlers in determining a like product for comparison. ITC investigators must take into account differences between the LTFV import and the U.S. product in quality and in technical features and such related terms of sale as credit, warranties, servicing, delivery schedules, etc. Like their Treasury counterparts, ITC investigators are criticized for not having the technical competence to make the adjustments which are necessary. However, the 3-month timeframe statutorily imposed on ITC injury investigations may, at times, require ITC to limit the adequacy of its product comparisons.

The Commissioners utilize the staff's investigation of comparable products in reaching their determination of which U.S. facilities producing these products comprise the "industry" and often do not arrive at a common definition.

If industry is defined narrowly so as to include only a few facilities affected by LTFV sales, the likelihood of a Commission finding of injury is greater than if "industry" encompasses a larger number of facilities. For example, in a 1977 case involving railway track maintenance equipment from Austria, three Commissioners defined the relevant domestic industry narrowly to consist of "facilities in the United States used in the production of ballast regulators and tampers" while two other Commissioners defined the industry more broadly to include "facilities in the United States devoted to the production of railway track maintenance equipment." The three Commissioners with the more narrow interpretation found that the U.S. industry was being injured by the LTFV imports while the latter two Commissioners, using a broader interpretation, found that no injury to the industry existed. In another case originally decided in 1974, the Commissioners found a likelihood of injury from LTFV sales of primary lead metal from Australia and Canada and defined the relevant industry to include two groups of facilities: (1) mines and mills producing lead bearing ores or concentrates and (2) smelters and refineries that produce primary refined lead metal. Upon reconsideration of that determination in 1976, the Commission added a third group of facilities--smelters and refiners of secondary lead metal--and declined this time to find injury or the likelihood of injury. How an industry is defined along product lines has, therefore, an important impact on the outcome of injury determinations.

Industry defined along geographic lines

In addition to defining the relevant domestic industry along product lines, ITC has occasionally confined its definition of the domestic industry to only those firms within a particular geographic region, rather than considering all national facilities engaged in the production of a given product. In basing determinations on a regional concept, the Commission has generally supported the theory that injury to a portion of national industry may constitute injury to the whole industry throughout the country.

The most problematic aspect of this theory is the difficulty of linking regional injury to national harm. Proponents of this theory argue effectively that one or more firms in a region attempting to compete with large numbers of LTFV imports could be seriously impacted. However, if these firms comprise but a small portion of the national industry, it is difficult, if not impossible, to conclude that the national industry has been harmed.

Although the statute requires ITC to make its determination based upon "an industry in the United States", the Commission may consider a "regional" industry if two criteria are met.

1. Domestic producers of an article are located in and serve a particular regional market predominantly or exclusively.

2. The LTFV imports are concentrated primarily in the regional market.

In its report on the Trade Act of 1974, the Senate Finance Committee agreed with the ITC's market segmentation principle but chose to preserve the Commission's flexibility in stating:

> " * * * each case may be unique and [the Committee] does not wish to impose inflexible rules as to whether injury to regional producers always constitutes injury to an industry."

An example of how ITC employs this market segmentation principle is found in the Gilmore Steel case which involved a petition alleging that imports of carbon plate steel into the Pacific Northwest was injurious to industry in that region.

Japan complained because the ITC, despite alleged injury only to the region, determined that the national industry was injured, requiring eventual imposition of duties on nationwide imports of carbon plate steel. In this instance ITC found that one of its criteria for confining its determination to the regional market had not been met, i.e., the bulk of less than fair value imports must be concentrated in the region in question. Instead ITC found that only a small portion of imports were going into the Pacific Northwest, and thus it used the national industry as the basis for determining injury.

In an earlier case, Japan complained that, although the ITC found injury to a regional market, antidumping duties were imposed on all imports to the United States. The Japanese stated that this was inconsistent with the Code. However, neither U.S. Customs regulations nor the antidumping legislation contemplate that, in a case of regional harm, duties should be imposed only at ports of entry within the regional market. Not only would such

an arrangement be a virtual administrative impossibility but also it would allow legal avoidance of duties, thereby obviating the protective effect of dumping duties. Such action would be unconstitutional. 1/

In 1976, the ITC also considered whether domestic industry was being or was likely to be injured from imports of hollow brick and tile from Canada, used principally in the Pacific Northwest in the construction of reinforced walls for buildings, such as motels, churches, and schools. Although all six Commissioners agreed on a finding of no injury, there was no unanimity in how to define the relevant domestic industry. Three Commissioners considered the "industry" as all hollow-brick manufacturing facilities in the Pacific Northwest. One Commissioner extended this definition to include all hollow-brick production facilities in the entire United States. Another Commissioner disagreed with limiting the industry to those facilities producing hollow brick and found the "industry" comprised all U.S. facilities engaged in the production of ceramic brick.

Defining injury

ITC's criteria applied to conditions in U.S. industry for the purpose of identifying injury include the following.

--Price depressions of the impacted competitive products.

--Price suppressions--e.g., although domestic production costs have increased, competition from LTFV imports precludes price increases.

--Market penetration by LTFV imports.

--Documented lost sales of domestic manufacturers to the LTFV imports.

--Operation of domestic production facilities at less than normal capacity.

1/Article I, Sec. 8, clause 1 of the Constitution states that "* * * all Duties, Imposts and Excises shall be uniform throughout the United States * * *." It was implicit in Imbert Imports, Inc. v. United States, 475 F.2d, 1189, 1192 (CCPA 1973) that a countrywide uniform assessment of antidumping duties is a constitutional requirement and mandatory under the Antidumping Act of 1921.

--Plant closures and unemployment.

--Lost profits.

The ITC is also legislatively required to determine, if an industry is not injured during the timeframe concerned, whether there is a threat or likelihood of injury or whether an industry is prevented from being established because of LTFV imports. Although prevention of establishment is not often an issue, in examining likelihood of injury the ITC considers whether LTFV imports are increasing and whether the exporters have the capacity to continue exporting in the same or greater quantities. Commissioners have also indicated that the size of the dumping margin (average price difference determined by Treasury) influences whether or not they vote for injury.

There have been indications that some firms have pursued unmeritorious cases hoping that, by chance rather than legislative entitlement, they would get an affirmative finding. On the other hand, firms lacking sufficient resources, may not have pursued meritorious cases because of the uncertainty over how the Commissioners will apply the facts. The most troublesome and frequently raised issue in an injury investigation involves the degree of injury necessary for a finding of dumping and the extent to which LTFV sales are the cause of that injury.

The International Antidumping Code requires that injury to an industry be material. The Code further stipulates that the dumped imports have to be demonstrably the principal cause of the injury. In U.S. law, the term "injury" is unqualified by adjectives such as "material" or "serious." Moreover, U.S. law does not require that injury from LTFV imports be weighed against other factors which may be contributing to injury to an industry. The words "by reason of" express a causation link but do not mandate that dumped imports must be a principal, major, or substantial cause of injury.

Under the Antidumping Act as originally enacted, the Treasury Department was charged with the dual task of determining LTFV sales and injury. It initially followed the standard requiring "material injury," and for many years antidumping cases were infrequent and affirmative injury findings few.

Testifying before a congressional committee in 1954 on the question of transferring the injury determination function from Treasury to the ITC, the Commission's general

counsel indicated that the ITC would continue Treasury's interpretation of "injury" as material injury unless the Congress by statutory amendment directed otherwise.

After the ITC was given the responsibility for injury determinations in 1954, it followed the material injury standard until 1967 when, in the matter of Cast Iron Soil Pipe from Poland 32 Fed. Reg. 12925 (1967), it presented the standard that injury meant any injury that was more than de minimus. One Commissioner in that decision stated that he would find injury whenever there was harm sufficient to justify the time and expense of an investigation. This case marked a trend toward a more liberalized interpretation of injury and moved the ITC in the direction of making more affirmative injury findings.

The Senate Finance Committee, in its report on the Trade Act of 1974, considered what degree of injury was required under an antidumping proceeding and stated that "[i]njury must be a harm which is more than frivolous, inconsequential, insignificant, or immaterial."

Defining the causal link between LTFV sales and injury

The Antidumping Act requires that, to find in the affirmative, ITC must find injury "by reason of" LTFV sales. For some time, it followed the rule that LTFV imports must play a significant part in causing injury before dumping duties are levied. In 1968, ITC further facilitated the making of an affirmative injury finding in the case of Pig Iron from East Germany, Czechoslovakia, Romania and the U.S.S.R., 33 Fed. Reg. 14, 664 (1968). For the first time, it considered the cumulative injurious effect from each of the countries involved rather than trying to separately measure the effects of dumped imports by individual countries. This decision laid the foundation for a causation theory under which a finding of mere contribution to injury is enough to lead to an affirmative finding of injury.

ITC coupled the "more than de minimus" standard with the "mere contribution to injury" test in Ferrite Cores from Japan, when it determined that when "more than a de minimus part of the entire injury was caused by the LTFV imports, a determination of injury must ensue even though other factors contributed demonstrably to the damage sustained." Indeed, the "relevant importance of such injury to industry caused by other factors is irrelevant." Thus, "the relationship between LTFV sales and injury must be merely identifiable."

CONCLUSIONS AND RECOMMENDATION

The Act does not define "industry" and does not indicate whether that term comprises only those facilities engaged in the production of the identical or nearly identical product or whether other facilities producing items which are competitive with or substitutable for the LTFV products are also to be included. The ITC has not consistently applied interpretations of the Act. Moreover, although the Act refers to "industry of the United States," on occasion the ITC has found injury on the basis of an examination of only the industry in a particular region of the United States. If regional industries may be considered exclusively under certain circumstances, a clear statement of this policy would be helpful in assuring consistent and equally supportable determinations. Early decisions of the ITC interpreted injury to mean material injury, continuing the practice of the Treasury Department, which until 1954 was charged with making the injury determinations. Starting in 1967, ITC has used a standard of "more than de minimis." Although several commentators have described this as a change and/or "emasculation" of the material injury standard, ITC asserts that there has been no shift in its decision and that it has consistently interpreted injury as material injury; i.e., "more than de minimis."

The legislation's failure to quantify injury as to materiality or significance is matched by the ITC's failure to explain what will tip the scales in favor of an affirmative finding of injury. In addition, the Act's requirement that injury be "by reason of" LTFV sales does not specify whether LTFV sales must be the sole, principal, significant, contributing, or identifiable cause of the injury. By aggregating sales and other factors in some decisions but not in others, the Commission has not acted to clear up this ambiguity.

The legislation's ambiguity on the injury question is the most troublesome and frequent issued raised by GATT members. This controversy might be mitigated to some extent if the ITC developed a general policy statement and procedural guidelines for implementing the legislation. We believe such an action would assist ITC staff in their investigations, aid the Commissioners in reaching their decisions, and result in more precedent-setting determinations, thereby giving principals better information for evaluating the merits of their contemplated actions. Moreover, the ITC General Counsel believes this could be done without giving the impression of constituting legislative rulemaking with binding effect.

The apparent disadvantage of promulgating these rules and statements is that they could be taken as limiting ITC's flexibility in deciding cases. The limitation on flexibility is a major concern to some Commissioners. Three Commissioners said that they were opposed to interpretive rules because they would be too restrictive; however, one of those Commissioners thought that procedural rules would be in order. Another Commissioner believes that the increased knowledge to be gained by the public of its chances in a case would outweigh any lost flexibility. According to a former Commissioner, there is far too much flexibility and discretion in ITC's injury determinations. He believes that guidelines should be drawn up to aid in these determinations.

We believe standards are needed and, therefore, recommend that the International Trade Commission develop and adopt some generalized procedural rules and administrative guidelines for conducting injury determinations. Such rules and guidelines should provide for publication of the step-by-step procedures followed in reaching injury determinations, together with the types of information considered in those decisions. They should also provide for issuance, prior to public hearing, of a nonconfidential summary of information developed during the preliminary stage of the investigation so that the parties to an action will be more aware of what issue to address at the time of the public hearing.

The Commission indicated in a letter of March 8, 1979, that it may wish to make detailed comments after a more thorough examination of this report.

CHAPTER 5

CONFORMITY OF U.S. LEGISLATION AND PRACTICES WITH PROVISIONS OF THE GATT ANTIDUMPING CODE

GATT signatories have complained that U.S. antidumping legislation and practices are inconsistent with the GATT International Antidumping Code. Japanese, Canadian, European Economic Community, and Swedish representatives to Antidumping Committee meetings have expressed the view that several important aspects of U.S. antidumping laws and regulations have not been brought into conformity with the Code, thus violating Article 14.

Major issues criticized by GATT contracting parties include claims that U.S. legislation and practices do not:

--Require a sufficient degree of injury to be established in order to support a valid finding of dumping.

--Provide for conducting less than fair value sales and injury determinations simultaneously, thus allowing provisional measures (the withholding of customs appraisal) to be applied without examining the adequacy of the evidence of injury.

--Employ a fair basis for accepting sales at a loss in computation of foreign market value.

--Adequately resolve differences relating to allowances for price and product comparability.

--Provide flexibility in accepting price undertakings (agreements between Treasury and the exporter guaranteeing that future import prices and/or quantities will be at agreed levels) or otherwise permitting authorities to seek early, practical solutions to dumping but, instead, encourage full-scale investigations.

GATT authorities told us that, although the United States is the only signatory whose domestic legislation overrides the Code, the legislation of some other signatories also does not adequately conform with the Code on certain provisions.

BACKGROUND OF THE CODE

The Code was negotiated as an executive agreement and was intended to provide greater uniformity and certainty among GATT signatories in their antidumping practices. The United States signed the Code agreement on June 30, 1967, and it went into force on July 1, 1968. The Congress has, however, limited the extent to which the Code might be implemented by enacting the Renegotiation Amendments Act of 1968 (Public Law 90-634), which instructs the Treasury Department and the International Trade Commission to give effect to the Code only insofar as it is not inconsistent with the Antidumping Act. Thus, any discrepancies between the provisions of the Code and the Antidumping Act of 1921 would be resolved in favor of the Act.

APPLICATION OF ANTIDUMPING ACTIONS

The United States, United Kingdom, Canada, and Australia have used antidumping measures frequently; others, such as Japan, Sweden, Switzerland, and Germany, have seldom used such measures. The difference appears to be a matter of "tradition." Some of the latter countries have dealt with dumping in different ways. Japan, for example, until the mid-1960s had quantitative restrictions on imports which effectively obviated the problem of dumping in its domestic market. Japan has had antidumping legislation since 1920 and revised it in 1968 to conform to the Code; however, until late in 1978, Japan never applied it against any country.

For most countries, antidumping actions are relatively new, since the GATT Antidumping Code--on which most countries' antidumping legislation is based--has existed only since 1968. Once countries gain experience with such procedures, the number of actions is likely to increase and, in fact, have increased during the last 2 or 3 years.

PROBLEMS AND ISSUES UNDER THE ANTIDUMPING CODE

Article 17 of the Code provided for establishing a Committee on Antidumping Practices composed of GATT representatives. The Committee normally meets once a year to discuss matters pertaining to the provisions of the Code.

In 1975, the Committee decided to draw up an analytical inventory of problems and issues arising under the Antidumping Code and its application by GATT members. It was believed that such an inventory would better enable members to focus on the issues involved in this area and to resolve disputes

over differences in antidumping regulations and practices. The inventory has been updated several times, most recently in March 1977.

At a special Committee meeting in April 1978, a list of eight major issues was developed, based on the latest analytical inventory compiled by the GATT Secretariat for the Committee.

1. Definitions of "material injury"
2. Causality of injury
3. Sales at a loss, including concept of dumping
4. Allowances relating to price and product comparability
5. Price undertakings
6. Regional protection
7. Initiation and reopening of investigations
8. Explanation and reconsideration of decisions

The following sections discuss some of these and other issues, particularly as they relate to discrepancies between the U.S. legislation and the Code and to other signatories' criticisms of U.S. antidumping regulations and practices. (For recent developments see app. VI.)

Degree and cause of injury

Article 3(a) requires that injury to an industry be material and that the dumped imports be demonstrably the principal cause of the injury. The Antidumping Committee's analytical inventory of problems and issues has several criteria for determining injury, but its definitions have caused disagreement. These include whether material injury must be "substantial," whether material injury can be established where market penetration is minimal, and whether elasticity of demand can result in small margins of dumping being materially injurious. Therefore, the problem with degree of injury is the lack of a common interpretation of "material" with regard to the term "injury."

Several signatories have criticized U.S. legislation and practice for allowing too small a degree of injury, making

it easier to substantiate a finding of injury. Additionally, they believe that the U.S. position on how causality is determined will not be clarified until the U.S. legislation includes the "principal cause" provision of the International Antidumping Code.

Definition of domestic industry and regional protection

The term "domestic industry" in Article 4 of the Code refers generally to domestic producers as a whole of like items or to producers whose collective output of the items constitutes a major portion of total domestic production. The U.S. Antidumping Act refers to "an industry in the United States," but does not define what constitutes an industry in terms of product or number of firms involved.

The most troublesome issue in the GATT forum is the U.S. use of a market segmentation concept, where one large market like the United States or the European Community may have several distinct submarkets for certain products and/or producers, to define the parameters of an affected industry.

The issue in most complaints is not that the United States employs a regional concept of industry in injury determinations but that injury to a regional market may be construed as injury to a national industry and require the imposition of duties at all ports of entry. (See p. 48.)

Withholding of appraisement

Article 11 of the Code prohibits the retroactive assessment of dumping duties except in cases where a determination, not a threat, of material injury is made. The U.S. Antidumping legislation allows for retroactive assessment of dumping duties in cases where a determination or threat of injury is made.

To prevent merchandise that is imported during the course of an investigation from being appraised by Customs officials and escaping subsequent imposition of dumping duties, Congress enacted the provisional measure known as "withholding of appraisement" which is issued when Treasury arrives at a tentative determination of LTFV sales. After a withholding notice is issued Customs officials can release the merchandise only if (1) at the discretion of a Customs District Director, a bond is posted to assure payment of estimated dumping duties, (2) duties are paid, or (3) the withholding of appraisement order is terminated.

All entries during the withholding period are subject to dumping duties and since the withholding covers a period when injury has not been determined, its effect is to retroactively assess dumping duties. When injury investigations disclose no injury but conclude that injury is likely to occur if LTFV sales persist, it is contended the effect has been to assess duties on imports that have caused no injury. Foreign objections to this retroactive assessment of dumping duties and other procedures under the Antidumping Act led to the negotiation of the GATT International Antidumping Code.

In an effort to abide by Article 11 of the Code, the Secretary of the Treasury attempted to avoid making retroactive assessments of dumping duties on certain merchandise subject to likelihood of injury determination, but was stopped in the courts.

Constructed value and cost of production

Among the issues listed in the GATT Committee's analytical inventory of issues are those dealing with the use of a constructed value formula and the disregarding of below-cost sales in calculating foreign market value.

Article 2(d) of the Code provides that:

> "When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country * * * the margin of dumping shall be determined by comparison * * * with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profits shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin."

U.S. legislation (sec. 206a) makes similar provisions for constructing the value of foreign goods, with one problematic difference, the imposition of fixed percentages for general expenses and profit. (See p. 27.) The U.S. practice of applying to materials and fabricating costs a minimum of 10 percent for general expenses plus 8 percent of that sum for profit in constructed cost determinations has been criticized as being unrealistic. One European country official characterized the assumption by the United State that all European firms realize an 8-percent profit as "foolish." In contrast, the Australian legislation does

not specify percentage additions for administrative costs and profit margins; rather, the government minister determines the percentages on an industry-to-industry basis. In the view of most GATT signatories, this allows for more equitable treatment of the exporter.

Although not specifically provided for in the Code, section 205(b) of the U.S. Antidumping Act provides for disregarding, in certain situations, below-cost sales in the home market.

The issue is whether sales at a loss in the exporter's home market should be considered as "sales in the ordinary course of trade" for purposes of comparison with the prices at which the merchandise is exported. Both the United States and Canada have been criticized by other GATT signatories for not accepting as the normal home-market value those prices which are determined to be at less than cost. Non-acceptance of below-cost sales for price comparisons leads to establishment of a higher foreign market value than would have existed otherwise or to a constructed price when sufficient sales above cost do not provide an adequate basis for determining a home market value.

Specifically, Japan and the European Economic Community (EEC) have disputed Section 205(b) of the Antidumping Act, which provides for disregarding home market sales at a loss over an "extended period of time" in LTFV calculations, on the basis that such sales most often should be considered in the "ordinary course of trade" in the "market situation of the country of origin" to be in keeping with Article 2 of the Code.

Systematic and continued sales below the cost of production, according to a U.S. representative, however, could not be regarded as "in the ordinary course of trade." Canada has expressed views similar to those of the United States when criticized by Japan for not accepting sales at a loss over an extended period of time.

Some former U.S. Treasury officials we spoke with in Europe thought that the cost of production provision was useful only as a last resort. At best, they felt that Customs agents have neither the time nor experience to adequately verify information submitted by exporters. They doubted that U.S. manufacturers would readily allow foreign representatives to have similar access to proprietary business data.

Nonconcurrent investigations of LTFV sales and injury

The United States does not conduct pricing and injury investigations simultaneously, as called for in Article 5(b) of the Code. Other signatories believe the U.S. system, under which ITC conducts its injury investigation after Treasury has submitted a finding of LTFV sales, causes the United States to apply provisional measures (the withholding of Customs appraisal) without examining the adequacy of the evidence of injury, contrary to Article 10a.

Other signatories, except Canada, have a single agency conduct both pricing and injury investigations concurrently. One European country official, for example, criticized the U.S. procedure of determining LTFV sales and injury by two separate processes, noting that it entails much wasted time and cost for all involved. The signatories emphasized that GATT and EEC antidumping provisions provide for determining very early in the investigative process whether injury exists.

The official U.S. position set forth in GATT is that changes in the U.S. legislation under the Trade Act of 1974 bring the United States into compliance with the Code. The Antidumping Act now provides for a preliminary referral to the ITC for a 30-day evaluation of the injury question if the Secretary doubts that there is injury. This has been seen as a step toward conformance with the Code, but some signatories regarded it as insufficient because it does not allow adequate consideration of the evidence of injury.

A U.S. representative to the Antidumping Committee also told us that the 30-day referral was not adequate for simultaneous LTFV and injury investigations. Former Treasury Department officials we spoke with in Geneva thought that, although it is necessary to "get a fix on" LTFV sales before judging injury, more could and should be done to determine injury earlier in the process. They believe that handling by a single agency would make antidumping investigations more efficient.

Price undertakings

Article 7 of the Code provides for terminating antidumping proceedings upon receipt of a voluntary undertaking by the exporters to revise their prices to eliminate the margin of dumping or to stop exporting to the area at dumped prices if the authorities concerned consider this practicable.

The U.S. antidumping legislation is silent on price undertakings, but Treasury will accept price assurances only when the dumping margin is "minimal." This has been criticized by some signatories who contend that this practice is too rigid and does not allow an early resolution of the investigation. The United States contends that Article 7(a) of the Code clearly leaves acceptance of undertakings to the discretion of the authorities involved. GATT officials agree that there is no obligation in the Code for national authorities to accept price undertakings and that Article 7(a) is "permissive."

The EEC emphasizes reaching a satisfactory solution as quickly as possible, rather than going through a full-scale dumping investigation. Thus, price and/or quantity undertakings are sought both as early as possible and throughout the process, unless either party has no interest in terminating the investigation. This approach, it is believed, not only saves time and money but also avoids an adversary relationship, in which punitive action is sought, by providing for a meeting of minds between the parties involved.

The Code and U.S. trigger price and basic steel price systems

The April 1978 Committee meeting was also a forum for discussing the U.S. trigger price mechanism for steel imports, the EEC basic steel price system, and their conformity or lack thereof with the Code.

Several questions were raised at the meeting about how the trigger price mechanism works, but there were no particular questions of its conflicting with the Code. Some European officials expressed "disappointment," however, that the United States has continued several steel antidumping cases after putting the mechanism into effect.

In the view of GATT Secretariat antidumping officials, the trigger price mechanism is adequately justified under Articles 5 and 8(d) of the Code. There is no automatic application of provisional duties under the trigger price mechanism; it may simply result in the initiation of formal investigations.

There was criticism of the EEC's basic price system, under which provisional duties can be applied immediately upon entry of designated steel products at less than basic price. The Japanese strongly questioned the system's conformance with the Code, particularly the application of provisional duties without the determination of injury.

The Secretariat's interpretation of Code Article 8(d) is that provisional duties should not be applied unless injury has been examined for each case. The system does not appear to meet this criteria. GATT officials noted, however, that this interpretation has not been "officially" established by the Antidumping Committee.

EEC officials have expressed satisfaction with the way the basic price system has been working and even some surprise that more antidumping cases have not resulted from its application. An official at the U.S. Mission to the EEC told us, however, that quite a number of actions were brought when the system first went into effect and that this "encouraged" steel producers to make bilateral marketing agreements with the EEC.

Many representatives at the April Committee meeting stressed that basic pricing should be applied sparingly and selectively. Such action requires a market situation in which there are many suppliers of the same or very similar products. However, the Code would not in itself inhibit applications of basic pricing systems to other industries.

Other issues

There are sometimes major differences of opinion as to how much information should be fed back to interested parties regarding the criteria and data used in reaching pricing, injury, and duty assessment decisions. The U.S. procedures seem to be more open than those of the EEC, but some Code signatories have complained that U.S. time limits on investigations can restrict exporters' opportunities for expressing views and submitting appropriate documentation.

Provisions for review of dumping case decisions are not consistent among all members, according to GATT officials. Both Canada and the United States have been criticized regarding this issue.

Multinational dumping is not really a new question, but there is greater awareness of it today. The primary problem involves the relationship of language in Code Article 2(a) regarding "ordinary course of trade" and the possibility for less-than-arm's-length transactions between entities of a multinational corporation in determinations of price comparisons.

Effect of antidumping problems on trade relations

The inflexibility of U.S. practices, plus the opinion of other signatories that U.S. legislation does not adequately

conform with the Code may have a negative impact on U.S. trade policy in general. There is no unanimity of opinion, but a former U.S. representative to GATT told us that the U.S. antidumping position has hurt the United States on other trade policy matters and in the current multilateral trade negotiations. However, several U.S. officials we spoke with believe that U.S. antidumping actions have not significantly affected trade and country relations. Antidumping actions are just one of many trade activities that can sometimes strain trade relations.

A United Kingdom official of the Department of Trade agreed that antidumping actions do not have a significant effect on trade between most countries. He noted, however, that Eastern European countries and Japan may be exceptions, since they have sometimes seemed obsessed with avoiding antidumping actions. Other Code signatories who already have implemented its provisions might construe the U.S. liberalization of the injury standard as a repudiation by the United States of the Code. This in turn, could trigger retaliatory application of foreign antidumping laws against U.S. companies. Some contend that the liberalization in applying the injury standard reveals a tendency to distort the Antidumping Act's basic concern for fairness of competition, a pro-competitive policy. The argument is that industries in the United States can now avail themselves of the Antidumping Act to resist foreign competition when the competition inflicts only ordinary business injury on rival business concerns. The mere existence of anti-price discrimination laws produces some chilling effect on price competition, but when distorted the effect is more onerous.

CHAPTER 6

OTHER TRADE LEGISLATION

OVERLAPS ANTIDUMPING ACT

The Antidumping Act is only one of several legislative measures intended to protect U.S. industry from injurious import competition. This chapter discusses Section 337 of the Tariff Act of 1930 which applies to injurious imports from unfair trade practices (including unfair pricing) and Section 201 of the Trade Act of 1974, which is intended to provide relief from increasing volumes of imports. Unlike antidumping actions, however, remedies recommended under Sections 337 and 201 are subject to Presidential review and approval.

The Antidumping Act and Section 337 give U.S. industry alternate approaches for dealing with unfair pricing practices. We noted two cases of overlapping investigations between the Antidumping Act and Section 337. In rejecting ITC recommendations on the Section 337 case involving stainless steel pipe and tubes, the President called attention to the need for avoiding duplication in administering the unfair trade practice laws. Generally, however, the petitioner will select the statute he anticipates will provide the most certain and prompt results. For example, the American Institute of Steel Construction, Inc., in a January 24, 1978, letter to ITC discussing how it decided whether to file a dumping allegation under Section 201 of the Antidumping Act or a complaint under Section 337 stated that:

> "Information which would be of a type necessary to file a complaint under Section 201 of the Antidumping Act, 1921, as amended, which requires that a petition to be considered to have been received in acceptable form should include information indicating a loss of sales, actual or anticipated, or price depression or suppression by reason of the alleged sales or offers for sales of less than fair value imports is difficult and might be in some instances impossible for private parties to obtain. Experience has proven in the steel industry that sometimes the petitions are not disposed of for matters of several years. Hence, Section 337 becomes a logical and immediate route for the fabricated structural steel industry to pursue if it is to survive."

PROVISIONS UNDER SECTION 337 AND THE ANTIDUMPING ACT

Section 337, couched in very broad language, prohibits unfair competition and has been used primarily to protect against infringements on patent or trademark rights. There is a body of opinion that Section 337 could handle any alleged problem arising in a dumping case. Although there is no unanimity on this point among ITC Commissioners, some believe that all dumping actions could effectively be handled under Section 337.

The International Trade Commission is required to investigate any alleged violation of Section 337 on complaints under oath or upon its own initiative. Section 337(a) provides for ITC to investigate alleged unfair methods of competition and unfair acts in the import of articles into the United States or in their sale. This section further provides that violations of Section 337, "shall be dealt with, in addition to any other provisions of law, as provided in this section."

ITC must complete investigations under this statute within 1 year (18 months for more complicated cases). Section 337(c) provides that each determination of a violation of Section 337 shall be made on the record after notice and opportunity for a hearing in conformity with the adjudicatory process of the Administrative Procedure Act. Corrective actions include issuance of cease and desist orders or orders excluding articles from entry into the United States. Such action is subject to disapproval by the President under Section 337(g) for policy reasons.

It should be noted that the legislative history of Section 337 indicates that ITC's jurisdiction was intended to prohibit all forms of unfair import competition, including "dumping in the ordinary accepted meaning of the word." Further, Congress did not limit the broad scope of ITC's jurisdiction under Section 337 in the amendments contained in Section 341 of the Trade Act of 1974. Section 337(b)(3), added by the 1974 Trade Act, requires that the Secretary of the Treasury be notified when the matter under investigation may come within the purview of the Antidumping Act but is not a substantive limitation on ITC's jurisdiction.

INVESTIGATIONS UNDER SECTION 337 AND THE ANTIDUMPING ACT

Two complaints filed by industries alleged violations of Section 337, which, it was argued, were also within the

purview of the Antidumping Act. In the case of Certain Color Television Receiving Sets, (No. 337-TA-23), the commodity under investigation was subject to an outstanding finding of dumping (T.D. 71-76). In the case of Certain Welded Stainless Steel Pipe and Tube, (No. 337-TA-29), the commodity under investigation had been the subject of antidumping proceedings in 1972 which had been discontinued on the basis of price assurances.

In both instances, the complainants alleged that the imports, in addition to restraining trade and commerce in the United States, were injuring industry by predatory pricing.

On October 18, 1976, an action was filed in the U.S. District Court for the District of Columbia seeking to enjoin ITC from investigating imports of the color television receivers. The ITC investigation concerned an alleged predatory price scheme resulting in below-cost and unreasonable low-cost pricing. Plaintiffs argued that ITC lacked jurisdiction over this allegation since predatory pricing was within the "exclusive jurisdiction" of Treasury in its administration of the Antidumping Act.

Appended to the plaintiffs' memorandum of points and authorities was a September 24, 1976, letter from the Treasury Secretary advising ITC that there was an outstanding finding of dumping concerning the television receivers and that it should refrain from investigating matters within the purview of the Antidumping Act. Nevertheless, the District Court on November 12, 1976, granted the ITC motion to dismiss the action, holding, among other things, that "nothing in the papers or argument before this Court shows that the Commission proceeding is in excess of the Commission's jurisdiction under 19 U.S.C. 1337(a)." The case was successfully concluded on July 29, 1977, with the issuance of consent orders.1/

The welded Stainless Steel Pipe and Tube Case was concluded on February 22, 1978, on the basis of an ITC determination of a violation of Section 337. However, on April 22, 1978, the President disapproved ITC's action, in part on the basis of "the need to avoid duplication and conflicts in the administration of the unfair trade practice laws of the United States."

1/Agreement as to a course of action decided by a court or Federal agency without admitting innocence or guilt.

ITC's interpretation of the present possible overlap of jurisdiction between the two agencies is as follows.

> "Section 337(b)(3) requires the Commission to notify the Secretary of the Treasury when it has reason to believe that the matter of a section 337 investigation may come within the purview of the Antidumping Act or section 303. The Commission may, pursuant to section 337(b)(1), suspend its section 337 investigations pending the outcome of any such proceedings, the Commission may consider the evidence obtained and, when appropriate, take official notice of the findings in continuing with its section 337 investigation as the facts warrant. If the only matters alleged in section 337 investigation fall clearly within the purview of the Antidumping Act or section 303, then action taken under either of those statutes may dispose of the alleged unfair trade practices and the resultant injury. (Certain Color Television Receiving Sets; U.S. International Trade Commission memorandum, investigation No. 337-TA-23; Commission memorandum opinion, at 12; Nov. 22, 1976.)"

ITC did not suspend its investigation of the steel case despite the antidumping proceeding before the Treasury Department, a fact specifically noted by the President in disapproving ITC's action. The decision not to suspend the investigation was due in part to circumstances peculiar to the investigation, including the motion to suspend that was made on the basis of asserted hardship to counsel and not on the basis of the policy expressed by the Commission in its investigation.

SECTION 201 OF THE TRADE ACT OF 1974

Section 201 of the Trade Act deals with relief from injury caused by import competition. ITC, upon (1) request of the President or the Special Representative for Trade Negotiations, (2) resolution of either the House Committee on Ways and Means or the Senate Committee on Finance, (3) its own motion, or (4) filing of a petition by an entity representing industry, is required to investigate whether a product is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing a like or directly competitive product. The investigation must be completed in a maximum of 6 months after the date the petition is filed or otherwise initiated.

In making its determination, ITC is to take into account all economic factors which it considers relevant, including, the significant idling of productive facilities, the inability to operate at a reasonable level of profit, and significant unemployment and underemployment within the industry. For purposes of this statute, the imports must be a "substantial cause" of serious injury or threat thereof. During the proceedings ITC should hold public hearings and give interested parties an opportunity to present evidence and be heard. This constitutes informal rulemaking. When ITC has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of the Antidumping Act of 1921, Sections 303 or 337 of the Tariff Act of 1930, or other remedial provisions of law, it should promptly notify the appropriate agency so that action may be taken.

If ITC finds that imports are a substantial cause of serious injury (or threat thereof) to an industry, the President is required, with certain exceptions, to provide some form of import relief--duty increases, tariff-rate quotas, quantity restrictions, orderly marketing agreements, or, under appropriate circumstances and upon recommendation of ITC, adjustment assistance. Under this statute, the President can also choose not to provide import relief when he determines that it would not be in the national economic interest. However, Congress can override a Presidential decision not to provide import relief by a majority vote.

In the Citizens Band Radios from Japan case, the U.S. industry sought import relief under Section 201 rather than the Antidumping Act because it noted that:

> "Even retail prices are well below costs of U.S. production, and may have comprised 'dumping' by foreign manufacturers in a number of instances--although the cost and time required to prove such allegations and lack of U.S. access to evidence regarding foreign manufacturing costs preclude the ravaged U.S. industry from establishing that case."

Section 201 was considered to provide the quickest results and fastest relief. However, an industry representative declared that antidumping action would not be ruled out, should 201 action fail. We were told that Section 337 was not considered because historically it was used for patent violations and that in the first real attempt to obtain relief from unfair trade practices under Section 337 (Stainless Steel Pipe and Tube), the President rejected ITC's recommended action.

CONCLUSION AND MATTER FOR CONSIDERATION BY THE CONGRESS

While it may be entirely appropriate for U.S industry to seek relief under alternative legislative remedies under differing sets of conditions, care should be exercised to ensure that the various statutes are not used for counter-productive purposes, such as harassing foreign competition. From the standpoint of efficient use of resources it is also questionable to foster conditions which allow identical sets of facts to be investigated simultaneously under different pieces of legislation. Although we have not had the opportunity to examine this issue in depth, we believe it is an area in need of congressional attention. After an adequate body of information on the effects of the Antidumping Act is developed, the Congress should arrange for an appropriate independent evaluation of the impact and relationship of other unfair trade practice statutes with a view toward consolidating investigations and remedies into a single statute.

APPENDIX I

ANTI-DUMPING ACTIONS INITIATED FROM 1972 - 1977 (note a)

Commodity					Less than fair value sales determination			Injury determination			Elapsed time
					Final						
Calendar years 1972-74	Country	Petition accepted	Notice of proceeding	Tentative	Yes	No	Yes	Likely	No	(months)
Canned pears	Australia	12/02/71	1/21/72	8/25/72	11/29/72	-	-	3/01/73	-	15
Printer blankets	England	11/23/71	2/11/72	9/15/72	-	11/29/72	-	-	-	12
Stainless steel wire rods	France	12/09/71	2/17/72	1/04/73	4/06/73	-	7/24/73	-	-	20
Cord clothing	England	1/24/72	3/15/72	11/02/72	-	1/15/73	-	-	-	12
Manual hoists	Luxembourg	2/02/72	3/15/72	9/28/72	12/28/73	-	-	-	3/29/73	14
Pig iron	Brazil	3/06/72	4/12/72	11/21/72	-	3/07/73	-	-	-	12
Record changers	England	3/17/72	4/15/72	11/02/72	-	1/09/73	-	-	-	9
Vinyl film	Brazil	4/18/72	5/18/72	1/17/73	4/17/73		-	7/18/73	-	16
Vinyl film	Argentina	4/18/72	5/18/72	1/17/73	4/17/73	-	-	7/18/73	-	16
Stainless steel plots	Sweden	4/25/72	5/26/72	1/31/73	1/31/73	-	5/01/73	-	-	12
Auto splash guards	Canada	12/21/71	3/02/72	8/14/72	-	10/06/72	-	-	-	9
Elemental sulphur	Canada	1/21/72	2/24/72	4/19/73	7/20/73	-	-	10/19/73	-	22
Aluminum ingots	Canada	4/07/72	5/13/72	2/20/73	5/14/73	-	-	-	8/15/73	17
Stainless steel pipe, milled	Japan	11/01/71	1/14/72	[b]1/26/72	(Discontinued 11/17/72)	-	-	-	-	13
Roller chain, non-bicycle	Japan	12/27/71	2/19/72	8/25/72	11/29/72	-	3/01/73	-	-	14
Impression fabric or man-made fibers	Japan	1/05/72	2/24/72	11/15/72	2/13/73	-	-	-	5/14/73	16
Neopentyl glycol	Japan	1/25/72	3/15/72	[c]6/29/72	(Discontinued 8/28/72)	-	-	-	-	7
Baby strollers, collapsible	Japan	2/17/72	3/15/72	9/15/72	12/13/72	-	-	-	3/12/73	13
Slide fasteners and parts	Japan	5/08/72	6/08/72	1/29/73	-	4/06/73	-	-	-	11
Permanent magnets	Japan	5/09/72	6/08/72	12/12/72	-	3/15/73	-	-	-,	11
Electronic ceramic packages	Japan	5/16/72	6/20/72	[b]1/24/73	(Discontinued 5/01/73)	-	-	-	-	11
Deformed steel bars	Mexico	6/08/72	7/08/72	2/16/73	5/22/73	-	-	-	8/24/73	15
Ceramic glazed wall tile	Philippines	6/28/72	7/28/72	2/09/73	5/14/73	-	-	-	8/10/73	13
Steel wire rope	Japan	7/11/72	8/18/72	3/09/73	6/05/73	-	9/07/73	-	-	14
Synthetic menthionine	Japan	7/27/72	8/31/72	2/12/73	2/12/73	-	5/14/73	-	-	9
Surgical rubber gloves	Austria	7/28/72	8/31/72	3/28/73	-	5/31/73	-	-	-	10
Electronic separating or sorting machines	England	8/14/72	9/15/72	2/28/73	6/05/73	-	-	-	9/07/73	13
Microwave ovens	Japan	8/11/72	9/21/72	3/28/73	-	5/17/73	-	-	-	10
Stainless steel sheet and strip	France	8/24/72	9/22/72	3/30/73	7/02/73	-	-	-	10/11/73	14
Germanium point contact diodes	Japan	8/21/72	9/23/72	3/23/73	6/27/73	-	-	-	9/26/73	13

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Commodity Calendar years 1972-74 (cont.)	Country	Petition accepted	Notice of proceeding	Less than fair value sales determination			Injury determination			Elapsed time (months)
				Tentative	Final Yes	Final No	Yes	Likely	No	
Calcium pantothenate	Japan	10/20/72	12/06/72	6/05/73	9/06/73	-	12/10/73	-	-	13
Polymerized chloro-butadiene (poly-chlorprene rubber)	Japan	11/14/72	12/16/72	6/11/73	7/31/73	-	10/31/73	-	-	12
Iron and sponge iron powders	Canada	12/07/72	1/19/73	7/17/73	10/17/73	-	-	-	1/18/74	14
Polypropylene strapping	Japan	12/20/72	1/19/73	7/12/73	-	9/10/73	-	-	-	8
A-B-S plastics	Japan	1/02/73	2/07/73	7/02/73	10/04/73	-	-	-	1/09/74	12
Expanded metal of base metal	Japan	1/12/73	2/26/73	8/31/73	8/31/73	-	11/30/73	-	-	11
Rubber thread (natural and synthetic)	Italy	1/22/73	2/26/73	[b]8/28/73	(Discontinued 11/15/73	-	-	-	-	10
Metal punching machines	Japan	1/23/73	2/26/73	8/06/73	10/05/73	-	-	-	1/10/74	11
Mandelic acid	England	1/09/73	3/09/73	[b]9/27/73	(Discontinued 1/11/74)	-	-	-	-	12
Liquid sprayers	Japan	1/23/73	3/09/73	10/10/73	1/14/74	-	-	-	4/15/74	15
Liquid sprayers	Korea	1/23/73	3/09/73	[d]10/10/73	(Discontinued 12/12/73)	-	-	-	-	10
Primary lead metal	Australia	2/16/73	3/16/73	7/31/73	10/09/73	-	-	1/10/74	-	10
Primary lead metal	Canada	2/16/73	3/16/73	7/20/73	10/09/73	-	-	1/10/74	-	10
Mandelic acid	Japan	2/14/73	3/22/73	[b]10/03/73	(Discontinued 11/11/74)	-	-	-	-	21
Upholstery spring wire	Japan	3/12/73	4/12/73	[c]8/06/73	(Discontinued 10/23/73)	-	-	-	-	8
Racing plates (horseshoes)	Canada	3/08/73	4/13/73	7/31/73	10/23/73	-	1/24/74	-	-	10
Picker sticks	Mexico	3/28/73	5/02/73	11/05/73	2/05/74	-	5/06/74	-	-	13
Regenerative blower/pumps	W. Germany	4/16/73	5/18/73	11/20/73	2/22/74	-	-	-	5/22/74	13
Papermaking machinery	Canada	3/05/73	8/24/73	5/14/73	-	8/14/74	-	-	-	17
Manufactured hand tools	Japan	8/20/73	9/25/73	3/21/74	6/17/74	-	-	-	10/29/74	14
Photo albums	Canada	9/10/73	10/15/73	-	[e](Discontinued 6/14/74)	-	-	-	-	9
Tapered roller bearings	Japan	10/31/73	12/04/73	6/05/74	9/03/74	-	-	1/23/75	-	15
45 RPM adapters	England	01/08/74	2/15/74	8/09/74	-	10/11/74	-	-	-	9
Welt work shoes	Romania	02/05/74	3/15/74	12/13/74	3/12/75	-	-	-	6/13/75	16
Portable electric typewriters	Japan	2/14/74	3/20/74	2/19/74	3/18/75	-	-	-	6/19/75	17
Transit car slats	Brazil	2/04/74	4/03/74	9/30/74	-	12/31/74	-	-	-	11
Lock-in amplifiers	England	4/17/74	5/17/74	12/31/74	4/01/75	-	-	-	7/02/75	14

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Commodity	Country	Petition accepted	Notice of proceeding	Less than fair value sales determination: Tentative	Less than fair value sales determination: Final: Yes	Less than fair value sales determination: Final: No	Injury determination: Yes	Injury determination: Likely	Injury determination: No	Elapsed time (months)
Calendar years 1972-74 (cont.)										
Electric golf carts	Poland	6/07/74	6/14/74	3/12/75	6/11/75	-	9/16/75	-	-	16
Chicken eggs in the shell	Canada	6/11/74	7/12/74	1/08/75	-	4/10/75	-	-	-	10
Vinyl clad fence fabric	Canada	9/27/74	10/29/74	4/24/75	7/24/75	-	-	-	10/24/75	14
Non-powered mechanics tools	Japan	8/05/74	9/05/74	6/02/75	8/29/75	-	-	-	12/02/75	16
Non-powered precision measuring tools	Japan	8/05/74	9/05/74	6/02/75	-	8/29/75	-	-	-	13
Radial ball bearings	Japan	11/02/74	12/23/74	6/18/75	-	9/18/75	-	-	-	10
Calendar years 1975-77										
Birch 3-ply doorskins	Japan	12/12/74	1/13/75	7/09/75	10/10/75	-	1/12/76	-	-	13
Rechargeable sealed nickel cadmium batteries	Japan	12/24/74	1/24/75	7/21/75	-	10/22/75	-	-	-	10
Water circulating pumps	Sweden	2/25/75	3/26/75	9/26/75	-	1/05/76	-	-	-	10
Butadiene acrylonitrils rubber	Japan	2/26/75	3/27/75	9/22/75	12/29/75	-	-	-	4/05/76	13
Water circulating pumps	England	4/25/75	5/21/75	11/21/75	2/26/76	-	5/27/76	-	-	13
Polymethyl methacrylate	Japan	5/16/75	6/16/75	12/18/75	3/24/76	-	-	-	6/25/76	13
Acrylic sheet	Japan	6/19/75	7/21/75	1/16/76	4/29/76	-	7/26/76	-	-	13
Ski bindings	Austria	6/24/75	7/23/75	2/23/76	5/28/76	-	-	-	9/02/76	14
Ski bindings	Switzerland	6/24/75	7/23/75	2/23/76	5/28/76	-	-	-	9/02/76	14
Ski bindings	West Germany	6/24/75	7/23/75	2/23/76	5/28/76	-	-	-	9/02/76	14
Bricks	Canada	6/24/75	7/23/75	1/23/76	4/29/76	-	-	-	8/04/76	13
Automobiles	W. Germany									
Automobiles	England									
Automobiles	France									
Automobiles	Belgium	7/08/75	8/11/75	[f]5/11/76	(Discontinued 8/13/76)					13
Automobiles	Sweden									
Automobiles	Italy									
Automobiles	Japan									
Automobiles	Canada									
Knitting machines	Italy	7/15/75	8/15/75	5/17/76	8/24/76	-	-	-	12/01/76	17
A. C. adapters	Japan	9/19/75	10/07/75	4/02/76	-	7/07/76	-	-	-	9
Tantalum capacitors	Japan	9/24/75	10/17/75	4/20/76	7/22/76	-	-	-	10/29/76	13
Portland cement	Mexico	10/16/75	11/21/75	5/21/76	8/31/76	-	-	-	12/03/76	13

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Commodity Calendar years 1975-77 (cont.)	Country	Petition accepted	Notice of proceeding	Less than fair value sales determination: Tentative	Final: Yes	Final: No	Injury determination: Yes	Injury determination: Likely	Injury determination: No	Elapsed time (months)
Industrial vehicle tires	Canada	11/13/75	12/19/75	5/24/76	-	8/13/76	-	-	-	9
Melamine	Japan	11/14/75	12/19/75	6/14/76	9/17/76	-	12/30/76	-	-	14
Automobile body dies	Japan	1/21/76	2/26/76	[b]8/27/76	(Discontinued 12/20/76)	-	-	-	-	1
Digital scales	Japan	3/08/76	3/31/76	9/28/76	-	1/06/77	-	-	-	10
Clear sheet glass	Romania	3/09/76	4/08/76	1/10/77	1/10/77	-	-	-	4/12/77	13
Swimming pools	Japan	3/18/76	4/21/76	12/23/76	3/28/77	-	6/29/77	-	-	15
Multi-metal lithographic plates	Mexico	3/24/76	4/27/76	-	(Terminated 6/24/76)	-	-	-	-	2
Monsodium glutamate	Korea	4/12/76	5/14/76	11/12/76	-	2/14/77	-	-	-	10
Pressure sensitive plastic tape	Italy	4/08/76	5/14/76	2/14/77	5/20/77	-	8/31/77	-	-	17
Steel drum plugs	Japan	5/05/76	6/11/76	12/08/76	3/11/77	-	-	-	6/17/77	14
Pressure sensitive plastic tape	W. Germany	8/05/76	8/30/76	2/25/77	6/03/77	-	-	-	8/31/77	13
Paving equipment parts	Canada	9/03/76	10/07/76	4/12/77	4/12/77	-	7/07/77	-	-	10
Railway track maintenance equipment	Austria	9/23/76 & 10/01/76	11/01/76	5/03/77	8/10/77	-	11/11/77	-	-	13
Saccharin	Korea	10/20/76	11/29/76	6/02/77	9/08/77	-	-	-	12/09/77	13
Saccharin	Japan	10/20/76	11/29/76	6/02/77	9/08/77	-	-	-	12/09/77	13
Inedible gelatin and animal glue	Yugoslavia	12/23/76	1/26/77	7/26/77	7/26/77	-	10/29/77	-	-	10
Inedible gelatin and animal glue	W. Germany	12/23/76	1/26/77	7/26/77	7/26/77	-	10/29/77	-	-	10
Inedible gelatin and animal glue	Netherlands	12/23/76	1/26/77	7/26/77	7/26/77	-	10/29/77	-	-	10
Inedible gelatin and animal glue	Sweden	12/23/76	1/26/77	7/26/77	7/26/77	-	10/29/77	-	-	10
Impression fabric	Japan	2/07/77	3/15/77	9/16/77	12/23/77	-	3/28/78	-	-	14
Ice hockey sticks	Finland	3/02/77	3/16/77	9/21/77	12/23/77	-	-	-	3/28/78	13
Stainless steel pipe and tubing, welded	Japan	3/02/77	3/30/77	1/13/78	4/18/78	-	-	-	7/27/78	16
Carbon steel plate	Japan	3/08/77	3/30/77	10/06/77	1/06/78	-	4/18/78	-	-	13
Polyvinyl chloride sheet and film	Taiwan	2/24/77	4/01/77	10/07/77	1/10/78	-	4/12/78	-	-	13
Viscose rayon staple fiber	Austria	3/03/77	4/12/77	[g]10/13/77	(Discontinued 1/17/78)	-	-	-	-	11
Motorcycles	Japan	6/08/77	7/15/77	4/19/78	8/08/78	-	-	-	11/31/78	18
Viscose rayon staple fiber	Belgium	6/17/77	7/22/77	1/17/78	4/24/78	-	9/18/78	-	-	15

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Calendar years 1975-77 (cont.)	Country	Petition accepted	Notice of proceeding	Less than fair value sales determination: Tentative	Less than fair value sales determination: Final		Injury determination			Elapsed time (months)
					Yes	No	Yes	Likely	No	
Sorbates	Japan	7/18/77	8/23/77	2/24/78	6/16/78	-	-	-	9/13/78	13
Portland hydraulic cement	Canada	8/02/77	9/08/77	3/08/78	6/28/78	-	-	-	9/25/78	14
Methyl alcohol	Brazil	8/11/77	9/16/77	-	(Terminated 10/26/77)	-	-	-	-	2
Steel wire rod	France	9/12/77	10/19/77	(Extention of investigatory period, 5/02/78)	-	-	-	(Petition withdrawal 7/18/78)	-	8
Carbon steel sheet	Japan									
Carbon steel plate	Japan	9/20/77	10/25/77	(Terminated [h] 3/01/78)	-	-	-	-	-	5
Carbon steel pipe and tubing	Japan									
Carbon steel structurals	Japan									
Steel wire rope	Korea	9/27/77	11/01/77	8/15/78	-	11/27/78	-	-	-	14
Audible signal alarms	Japan	10/11/77	11/16/77	5/16/78	-	7/14/78	-	-	-	9
Steel wire strand	Japan	10/17/77	11/23/77	5/31/78	8/28/78	-	11/22/78	-	-	13
Steel wire strand	India	10/17/77	11/23/77	5/31/78	5/31/78	-	-	-	8/25/78	10
Cold-rolled and galvanized steel sheet	Belgium	10/25/77	12/02/77	(Terminated 8/21/78)	-	-	-	-	-	10
Cold-rolled and galvanized steel sheet	France	10/25/77	12/02/77	(Terminated 8/21/78)	-	-	-	-	-	10
Cold-rolled and galvanized steel sheet	W. Germany									
Cold-rolled and galvanized steel sheet	Italy	10/25/77	12/02/77	(Terminated 8/21/78)	-	-	-	-	-	10
Cold-rolled and galvanized steel sheet	Netherlands									
Cold-rolled and galvanized steel sheet	England									
Carbon steel wire rod	England	11/17/77	12/22/77	(Terminated 7/18/78)	-	-	-	-	-	8
Pneumatic marine fenders	Japan	11/23/77	12/28/77	7/5/78	-	9/29/78	-	-	-	10
Steel wire nails	Canada	11/21/77	12/21/77	7/10/78	11/6/78	-	-	-	2/1/79	14
Total cases 1972 -77			134		85	25	23	7	41	

a/Date petition accepted is date it is considered to be in proper form by the U.S. Customs Service and the Treasury; publication of proceeding notice is date anti-dumping proceeding notice is published in the Federal Register; and injury determination is date ITC issues its determinations.

b/Sales of LTFV minimal in terms of volume of export sales involved and/or formal assurances received that there would be no future sales at LTFV.

c/Exporters gave formal assurances that they terminated sales to the United States and sales would not be resumed.

d/Discontinued with respect to Korea; proper country of origin determined to be Japan.

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e/Discontinued on basis of minimal dumping margins in relation to total sales combined with manufacturer's assurances that it would not sell at LTFV.

f/Discontinued due to receipt of certain specialized commitments from the automobile exporters who had sales at LTFV, including certain unique circumstances found to exist during the investigation and steps taken to reduce or eliminate extent to which prices to the United States were lower than home market prices.

g/Investigation reopened 3/1/78 to enable U.S. Customs Service to conduct thorough analysis of production costs.

h/Petitioner withdrew petition without prejudice based on effective implementation of steel trigger price mechanism.

APPENDIX II

AVERAGE MONTHLY IMPORT STATISTICS
FOR SELECTED COMMODITIES DURING THE
SEPARATE PHASES OF ANTIDUMPING INVESTIGATIONS

	Unit of measure	Preceding LTFV		During LTFV		During injury		Following injury	
		Quantity (000 omitted)	Percent of total imports	Quantity (000 omitted)	Percent of total imports	Quantity (000 omitted)	Percent of total imports	Quantity (000 omitted)	Percent of total imports
AFFIRMATIVE INJURY DETERMINATION									
Impression fabric of man-made fiber/ Japan	pounds	15	93.7	16	84.2	9	90.8	not	available
Animal glue and inedible gelatin/ Netherlands	pounds	27	20.1	20	15.3	53	57.2	66	46.9
Animal glue and inedible gelatin/ W. Germany	pounds	13	9.7	16	12.2	15	27.9	23	15.9
Animal glue and inedible gelatin/ Sweden	pounds	1	0.1	0	0	0	0	0	0
Animal glue and inedible gelatin/ Yugoslavia	pounds	16	11.9	0	0	0	0	0	0
Melamine in crystal form/ Japan	pounds	667	85.2	300	90.9	0	0	0	0
Pressure sensitive plastic tape/ Italy	sq. yards	726	13.3	755	11.1	599	22.1	509	22.1
NEGATIVE INJURY AFFIRMATIVE									
Cement/Mexico	pounds	27,202	6.3	42,347	14.0	19,673	5.5	42,282	13.8
Bricks/Canada	1,000 SBE	93	100.0	91	89.2	82	80.4	66	89.2
Tantalum electrolytic fixed capacitor/ Japan	each	1,167	18.7	1,573	16.7	3,710	27.6	4,056	29.5
Saccharin/Japan	pounds	186	71.5	187	70.3	198	73.0	156	60.3
Saccharin/S. Korea	pounds	47	18.1	65	24.4	61	22.6	77	29.7
Pressure sensitive plastic tape/ W. Germany	sq. yards	1,356	24.9	1,480	21.8	735	27.1	810	35.2

APPENDIX III

EXAMPLES OF PRICING ADJUSTMENTS SUBMITTED BY MANUFACTURERS FOR MERCHANDISE SUBJECT TO FINDING OF DUMPING

Commodity/Country	Nature of adjustment	Amount requested	Amount approved	Time required to respond (note a)
Japan:				
Roller chain	Circumstances of sale—inland freight costs from manufacturer's plant to home market customers.	Varied from 15 yen to 635 yen depending on destination	Approved actual amount claimed for deliveries to each customer.	8-1/2 months
Roller chain	Circumstances of sale—interest expense—home market sales are usually paid by promissory note. Export sales generally require immediate cash payment.	1.76 percent for 1st year of sales.	1.76 percent	8-1/2 months
		2.91 percent for 2nd year of sales.	2.91 percent	8-1/2 months
Roller chain	Circumstances of sale—expenses of sales activities—cost of salesmen's salaries, retirement allowances, travel, entertainment, etc.	1.59 percent for 1st year of sales.	Claim disallowed for both years. Manufacturer did not satisfactorily demonstrate that these expenses were directly related to sales in question.	8-1/2 months
		1.51 percent for 2nd year of sales.		8-1/2 months
Roller chain	Circumstances of sale—advertising expenses incurred for home market sales.	.35 percent for 1st year of sales.	Disallowed because of failure to demonstrate direct relationship to sales.	8-1/2 months
		.11 percent for 2nd year of sales.		8-1/2 months
Roller chain	Circumstances of sale—warehouse expense—home market sales are distributed from a warehouse whereas export sales are distributed from the plant.	Varied from 0 to 945 yen, depending upon size of chain involved.	Disallowed because of failure to demonstrate direct relationship to sales.	8-1/2 months
Roller chain	Circumstances of sale—warranty expense—home market sales are given a 1-year warranty whereas export sales contain no warranty.	.29 percent for 1st year of sales.	.28 percent	8-1/2 months
		.21 percent for 2nd year of sales.	.0793 percent	8-1/2 months
Roller chain	Circumstances of sale—cost for packaging material and labor for export sales.	Amount claimed varied for each of 53 types of roller chains.	Approved	8-1/2 months
Roller chain	Similar merchandise—Additional manufacturing costs to cut chains for export to specified lengths.	1572 yen for 1st year of sales.	Considered irrelevant because sufficient sales of cut chain existed in home market to make valid comparison of prices.	8-1/2 months
		1948 yen for 2nd year of sales.		8-1/2 months

APPENDIX III

Commodity/Country	Nature of adjustment	Amount requested	Amount approved	Time required to respond (note a)
Canada:				
Steel jacks (fair value investigation)	Circumstances of sale—cash discount for home market customers.	1 percent	1 percent	13 months
Steel jacks (fair value investigation)	Differences in quantities	47 percent	45 percent	13 months
Steel jacks (last master list issued)	Differences in quantities	Quantity / Percent: 1-24 / 40; 25-49 / 43; 50-199 / 45; 200-over / 47	47 percent for all sales regardless of quantity.	10 months
Steel jacks (last master list issued)	Circumstances of sale—Federal sales tax.	12 percent	12 percent	10 months
Mexico:				
Elemental sulphur	Similar merchandise—additional manufacturing cost to reduce carbon content of sulphur to 15 percent.	15 pesos per metric ton	Disallowed	3 years, 3 months
Sweden: (note b)				
Portland cement	Circumstances of sale—technical expenses for assistance to home market customers.	1974 sales - 2.74 Krona	2.74 Krona	15 months
		1975 sales - 3.11 Krona	3.11 Krona	15 months
Portland cement	Circumstances of sale—sales and marketing expense.	1974 sales - 3.44 Krona	3.14 Krona	15 months
		1975 sales - 4.41 Krona	4.03 Krona	15 months
Portland cement	Circumstances of sale—advertising expense.	1974 sales - .57 Krona	.57 Krona	15 months
		1975 sales - .66 Krona	.66 Krona	15 months
Portland cement	Circumstances of sale—interest expense.	1974 sales - 2.86 Krona	2.86 Krona	15 months
		1975 sales - 3.01 Krona	3.01 Krona	15 months
Portland cement	Circumstances of sale—bad debts.	1974 sales - 0	-	-
		1975 sales - .02 Krona	.02 Krona	15 months
Portland cement	Circumstances of sale—warranty expense.	1974 sales - .74 Krona	.74 Krona	15 months
		1975 sales - 0	-	-
Portland cement	Circumstances of sale—transportation costs from manufacturer's plant to home market customers.	1974 sales - 1.95 Krona	1.95 Krona	15 months
		1975 sales - 2.5 Krona	2.5 Krona	15 months
Portland cement	Circumstances of sale—terminal operating expense.	1974 sales - 2.25 Krona	Disallowed	15 months
		1975 sales - 3.00 Krona	Disallowed	15 months
Portland cement	Circumstances of sale—internal technical department expenses.	1974 sales - 1.02 Krona	Disallowed	15 months
		1975 sales - 1.59 Krona	Disallowed	15 months
Portland cement	Circumstances of sale—other expenses.	1974 sales - 3.46 Krona	Disallowed	15 months
		1975 sales - 3.78 Krona	Disallowed	15 months

a/Time required to respond was measured from time manufacturers' pricing data received until a master list was issued or finding of dumping was published.

b/Amounts requested and approved are per metric ton.

APPENDIX IV

EXAMPLES IN WHICH POTENTIAL DUMPING DUTIES EXCEED BOND COVERAGE

Commodity/ country	Company	Face value of entry bond	Value of unliquidated merchandise (note a)	Estimated dumping margin (note b) (percent)	Potential dumping duties due	Unsecured potential duties
Japan:						
Methionine	A	$ 100,000	$ 624,658	50	$ 312,329	$ 212,329
Methionine	B	100,000	1,535,496	50	767,748	667,748
Methionine	C	2,500,000	18,107,423	50	9,053,711	6,553,711
Mexico:						
Sulphur	D	1,500,000	40,919,737	73	29,871,408	28,371,408
Sulphur	E	75,000	104,472,198	73	76,264,704	76,189,704

a/Merchandise not secured by additional bonding that would guarantee payment of potential dumping duties.

b/Reflect dumping margin for bonding purposes set at time of withholding of appraisement and may not represent current margins.

JUDICIAL REVIEW

Section 169 of the Antidumping Act provides for review of determinations of foreign market value, purchase or exporter's sale price, and assessment of the special dumping duty in the United States Customs Court, the Court of Customs and Patent Appeals, and ultimately, by writ of certiorari, 1/ the United States Supreme Court. The Antidumping Act does not provide for direct review of ITC determinations of injury, whether affirmative or negative, 2/ but the courts do review ITC's determination of what "an industry in the United States" is that suffers from threatened or actual injury.

However, under the Trade Act of 1974, a U.S. manufacturer, producer, or wholesaler can now directly challenge a determination that foreign merchandise is not being, nor likely to be, sold in the United States at less than its fair value. In an affirmative determination of dumping, the importer may not appeal or challenge the decision until dumping duties are actually assessed and paid. Since the Customs Service has a backlog of assessments in antidumping cases as noted on page 34, the importer in many cases may be unable to challenge the finding of dumping for 3 to 3-1/2 years after Treasury's final determination of dumping. However, a challenge of an affirmative dumping finding may be obviated in cases where foreign exporters or domestic importers avoid the assessment of a dumping duty by either increasing the price of merchandise in future shipments to eliminate dumping margins or discontinuing further exports of the merchandise to the U.S. market.

1/A petition filed by a party seeking review of a case in the U.S. Supreme Court.

2/But see SCM Corporation v. United States, C.R.D. 78-2 (Cust. Ct. May 11, 1978) where the Customs Court held that it had jurisdiction to review a negative injury determination brought pursuant to 19 U.S.C. 1516(c) (1976).

RECENT DEVELOPMENTS CONCERNING THE ANTIDUMPING CODE AND U.S. ADMINISTRATION OF THE ANTIDUMPING ACT

Following discussions of the contents of our draft report, Treasury advised us of the following recent developments.

GATT ANTIDUMPING CODE

Significant amendments to the Code were agreed upon ad referendum at the meeting of the GATT Committee on February 27 and 28, 1979. Essentially, they bring the Code into alignment with the Subsidies/Countervailing Duty Code that has been negotiated in the multilateral trade negotiations. Among the changes that affect our report are

--deletion of the "principal cause of injury" test;

--adoption of the principle of disaggregation of causes of injury to bring the Code into closer harmony with ITC practices;

--inclusion of an expanded procedure for the acceptance of undertakings and assurances as a basis for discontinuing investigations (but which expressly does not by its terms authorize quantitative restraints as a basis for discontinuance.)

Treasury anticipates that the amended Code will be presented to Congress together with the other Codes being negotiated in the MTN and to propose amendments to the Act to implement the new version of the Code.

In addition, the consensus paper on sales at a loss indicates the countries that presently apply antidumping measures believe that a "sales at a loss" provision, modeled on section 205(b) of the Antidumping Act, is an indispensable element of future antidumping measures.

Treasury believes that its strong opposition to discontinuing dumping cases on the basis of "quantity assurances" has at least prevented the express inclusion of such a provision in proposed revisions to the Antidumping Code. It would not want to see such a provision in the U.S. law.

ADMINISTRATION OF THE ANTIDUMPING ACT

The Commissioner of Customs has recently brought 25 additional import specialists to Washington from the field in order to bring all master lists up to date. It is his hope that by the end of March 1979 all master lists for which information is currently available will be up to date.

The suggestion that reports from foreign companies be sent to Washington for review prior to verification has also been implemented.

In January 1979, Treasury published an Antidumping Proceeding Notice concerning Carbon Steel Plate from Belgium, France, the Federal Republic of Germany, the Netherlands, and the United Kingdom, 44 FR 2053 (Jan. 9, 1979), based on a petition filed by Lukens Steel Company that expressly claimed injury from sales above trigger prices but below the exporters' "fair value." As the same product from Japan was under a finding of dumping published earlier in the year in the "Gilmore" case, 43 FR 22937 (May 30, 1978), and Treasury had self-initiated proceedings against exporters of this product that were selling it below trigger prices from Poland, Spain, and Taiwan, 43 FR 49875 (1978), prosecution of this limited complaint was not regarded by Treasury as inconsistent with its "trigger price mechanism." The self-initiated proceeding concerning Spain was terminated, as was the investigation based on Lukens' petition concerning the United Kingdom, 43 FR 54315 (1978), 44 FR 11285 (1979). A final LTFV determination has been published concerning the product from Taiwan, 44 FR 9639 and a tentative determination has been published concerning Polish plate, 44 FR 7005 (1979).

After Treasury's responsibility to waive countervailing duties expired on January 2, 1979, it accepted bonds instead of such duties, pending congressional action to extend the waiver authority. During that period, Treasury learned that a number of bonding companies required the posting of 100-percent collateral from particularly small importers.

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