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Statement of

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before the

Subcommittee on Commerce, Consumer, and Monetary Affairs,

House Committee on Government Operations

on

The Antidumping Act of 1921

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to summarize our March 15, 1979, report on "U.S. Administration of the Antidumping Act of 1921" (ID-79-15). The report dealt with problems and issues in administering the Act under amended provisions contained in the Trade Act of 1974. A number of recommendations were made to improve legislative provisions and their timely administration by the Department of the Treasury and the United States International Trade Commission.

The Trade Agreements Act of 1979, which will become effective on January 1, 1980, repeals the Antidumping Act of 1921, and the new Antidumping provisions will be included in Title 7 of the Tariff Act of 1930 (Sections 731-778). These provisions make changes in most of the areas where

we identified problems regarding antidumping legislation and its implementation. If the new provisions are properly implemented by the Department of Commerce and the International Trade Commission, the intended improvements we envisioned in the effectiveness and administration of the antidumping legislation should be accomplished.

We are aware, Mr. Chairman, that these hearings are focused on the U.S. steel industry. It was due to the seriousness of the problems faced by the steel industry, that the Treasury implemented the steel trigger price mechanism in early 1978. This mechanism was the first systematic effort by the Treasury to monitor imports and, where indicated, to self-initiate antidumping investigations. It essentially eliminates, for the steel industry, the requirement to file a petition alleging that imported merchandise is being dumped in the U.S. market. Although our report does not deal with the specifics of the trigger price mechanism or its effectiveness, the report's message is relevant to the U.S. steel industry because that industry faces the same administrative and investigative procedures as does any other industry upon formal initiation of an antidumping investigation.

While we will be happy to respond to any questions you may have on other matters contained in the report, we would like to concentrate this morning on recommendations in the areas of

--reducing the time for investigating whether goods have been sold at less than fair value;

--developing information on the impact of antidumping legislation and its effectiveness in protecting U.S. producers from unfairly priced imports;

--reducing delays in assessing dumping duties; and

--improving administrative practices.

TIME REQUIRED TO MAKE AN INVESTIGATION AND ASSESS DUMPING DUTIES

A critical problem associated with antidumping legislation was the time required to conduct investigations and to determine and assess the proper amount of dumping duties. Under the Trade Act of 1974, the Treasury had 30 days to consider whether a petition warranted an antidumping investigation and was allowed 6 months (9 months when cases were complicated) to make a tentative determination of whether sales of imports had been made at less than fair value (LTFV); i.e., at prices lower than those at which the same or similar goods were being sold in the exporter's home market or to third countries. An additional 3 months was allowed for the Treasury to reach a final determination. Then, if the Treasury's final determination was affirmative, the case was referred to the International Trade Commission, which had 3 months to investigate

whether a domestic industry had been or was likely to be injured by reason of such sales. If the Commission found that an industry had been or was likely to be injured, a finding of dumping was issued, but no time limits were legislatively imposed for the determination and assessment of dumping duties. Consequently, the U.S. Customs Service, which also plays a major role in antidumping investigations, was 3 to 3-1/2 years behind in assessing duties at the time of our review.

Recommendations reduce less than fair value investigative timeframes

To help reduce the overall timeframe for making antidumping investigations, we recommended that petitions be filed with the International Trade Commission at the same time they are filed with the Treasury so that the Commission could make a preliminary determination within 60 days of whether there was a reasonable indication of injury.

We intended this procedure to eliminate most of the 3-month period following the Treasury's final determination that imports had been sold at less than fair value before a final determination could be made. It was also intended to provide for a more indepth consideration by the Commission of whether there is a reasonable indication of injury than is allowed for special referral under current provisions. Under these provisions the Treasury

may refer a case to the International Trade Commission for a 30-day injury inquiry when there is substantial doubt as to the existence of injury.

Since the Commission claimed that dumping margins; i.e, the difference between the home market value and the export market price, were needed to establish the causal link between less than fair value imports and injury, our recommendation allowed the Commission to hold final determinations in abeyance no later than 30 days following receipt of dumping margin estimates from the Treasury.

The new legislation, which adds Section 732 to the Tariff Act of 1930, effectively responds to our recommendation in that a copy of the petition is required to be filed with the International Trade Commission on the same day that it is filed with the administering authority. Also, Section 733 allows the Commission 45 days to make a preliminary determination on the injury question. If the determination is negative, the antidumping investigation is to be terminated.

To help reduce the time required to determine and assess antidumping duties, we recommended that the Secretary of the Treasury establish time limits of 15 to 18 months following a final determination of dumping; however, we recognized that flexibility might be needed

to deal with special commercial practices in some countries. Section 736 of the amended Tariff Act provides that the administering authority publish an antidumping order within 6 days after receipt of an affirmative determination of injury from the International Trade Commission. The order is to direct Customs officers to assess antidumping duties within 6 months after the administering authority receives satisfactory information on which to base an assessment, but in no case is time to exceed

--12 months after the end of the manufacturer's or exporter's annual accounting period within which the merchandise is entered or withdrawn from the warehouse for consumption, or

--in the case of merchandise not sold prior to being imported into the United States, 12 months after the end of the manufacturer's or exporters annual accounting period within which merchandise is sold in the United States to a person other than the exporter.

These provisions effectively respond to our recommendations.

Recommendations for reducing delays in duty assessment

To help reduce the time required to begin the assessment and collection of duties, we recommended that the Treasury implement procedures it had under consideration for collecting estimated duties on import entries after findings of

dumping had been established. We also suggested the Treasury use the best information available when encountering slow responses in providing information needed for determining the amounts of duty. The new legislation in section 736(a)(3) requires the deposit of estimated antidumping duties after a final affirmative finding of dumping has been made. For not more than 90 days after publication of the antidumping order, however, the administering authority may permit the posting of a bond or other security in lieu of the deposit of estimated antidumping duties. To do this, a number of specific conditions have to be met--essentially these identify the goods and the conditions under which they qualify for this waiver treatment.

These changes should satisfy the intent of our recommendations.

Recommendation to delete Section 205(b) and (c) from the legislation

Because of the length of time required and the additional problems encountered in conducting LTFV investigations under Section 205(b) of the Antidumping Act of 1921, dealing with the cost of production determinations, and 205(c) of the same Act, dealing with alleged LTFV sales from centrally-planned economy countries, GAO recommended that these sections be deleted from the legislation and the problems be dealt with under other appropriate legislative provisions.

The Treasury, although recognizing the complexities and time-consuming nature of such determinations, disagreed with our recommendation relating to Section 205(b). The Treasury stated that these provisions preserved relative comparative advantages and prevented foreign industries from "exporting unemployment." In Treasury's view, these provisions were, therefore, important elements of the antidumping legislation. Similarly, the Treasury also opposed deletion of Section 205(c) on the grounds that the only alternatives for preventing LTFV sales from state-controlled economies would be the use of quantitative restrictions and/or minimum import price agreements.

GAO recognizes and supports the contentions outlined by the Treasury that U.S. industry must have some avenue open to protect itself from persistent below-cost sales and sales from state-controlled economies where prices are not related to traditional market value concepts. We also recognize that these contentions have gained greater acceptance within the GATT and have been incorporated into the antidumping statutes of other trading nations; e.g., the EEC, Canada, Australia. Our recommendations to the Congress, however, were directed toward removing provisions that were extremely difficult to implement and significantly impeded the timely administration of the Act. Sections 205(b) and 205(c) of the Antidumping Act have been reenacted as Sections 773(b) and (c) of the Tariff Act of 1930.

We believe that one final point is noteworthy. Recent amendments to the Antidumping legislation, as outlined in the Trade Agreements Act of 1979, shorten timeframes to LTFV investigations. Given this shortened timeframe, it would seem that the administrative problems surrounding Sections 205(b) and (c) may be exacerbated, although an assessment of this potentially will not be possible for some time.

DEVELOPING INFORMATION ON THE ACT'S EFFECTIVENESS

Industry's general dissatisfaction with the effectiveness of antidumping legislation and its administration in protecting U.S. producers were largely based on general perceptions and theory and were not based on in-depth studies or analyses.

To provide some empirical evidence of what actually occurs during various phases of antidumping investigations and some insights on the effects of the Act and its administration, we recommended 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, and

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

We have been advised that the Commission has taken no actions to implement these recommendations at this time. We understand that some attention was being given to determining the procedures needed for adequately identifying imported merchandise; although the need to develop implementing procedures for the new legislation suspended this effort.

The Treasury expressed support of this recommendation in responding to the Chairman of the Committee on Government Operations on our report's recommendations and stated its hope for obtaining a monitoring system of its own that would also track imports in which antidumping proceedings have been initiated.

We have also recommended that the Treasury begin reporting annually to the Congress on the results of its actions to enforce the legislation. We envisioned that this would include specific information on the

--amount of antidumping duties collected and not refunded;

--average length of time required for an investigation;

--number of cases considered and the disposition;

--extent and monitoring of price assurances;

and

--problems in administering the Act.

The Treasury had no objection to this recommendation, but pointed out that information on administration of the Antidumping Act was included in annual reports to the Congress by the Office of the Special Representative for Trade Negotiations. These reports do contain some information but not all that we had requested, particularly with regard to the amount of antidumping duties collected and extent and monitoring of price assurances. However, implementation of the new legislation is likely to improve data availability on these points, since it prescribes the collection and reporting of such data.

IMPROVING ADMINISTRATIVE PRACTICES

Recommendation to amend section 206(a) of the legislation

We recommended that Congress amend section 206(a) of the Antidumping Act(now Section 773(e) of the Tariff Act), which requires that 10 and 8 percent minimums for general expenses and profits, respectively, be placed on calculations of sales at LTFV when Treasury uses a constructed value

formula for such calculations. We suggested that, rather than applying these arbitrary minimum percentages, the Treasury calculate general expenses and profits on the actual experience and past performance of the industry in question. Our recommendation stemmed from our conclusion that these minimum percentages would not always reflect the actual cost and profit experience of the industry in question. Additionally, in our view, because constructed value calculations of LTFV sales by definition require a cost of production analysis, substantial additional time would not be required to determine the general expense and profit experience of the industry in question. We believe that the use of general expense and profit figures determined in this fashion can unduly inflate fair market values used in LTFV determinations.

The Treasury Department disagreed with our position, stating that the law required such minimum percentages in order to avoid sanctioning "an unrealistic continuation of a total absence of profits." The Treasury further stated that, since the 8-percent profit figure is a pre-tax calculation on the sum of the fabrication and general expenses of an industry, the effective after tax-profit figure is closer to 3 to 4 percent.

We continue to believe that rather than arbitrary minimum percentages, the Treasury should calculate general

expenses and profits on the actual experience and past performance of the industry in question. In those obvious instances where an unrealistic continuation of a total absence of profits exists, the presence of some form of subsidy is indicated, and problems of this nature could be handled under the countervailing duty sections of the Tariff Act of 1930.

The injury determination

Our report noted several problems with both the legislation and ITC's administration of the Act with reference to injury determinations. The Antidumping Act does not clearly define the terms "injury" and "industry," does not quantify the amount of "injury" to the industry sufficient to authorize relief, and does not clarify the degree of causal link between LTFV sales and injury claimed "by reason of" such sales. Moreover, we noted that ITC's administration of the injury determination was not consistent in defining what constituted an industry in any given case and what factors were most important in determining that an industry had been injured by reason of LTFV imports. With regard to ITC's public hearing on the question of injury to an industry, we noted that both parties, because of the lack of clarity discussed above, cannot adequately prepare statements or documentation for their cases.

We recommended that ITC clarify certain sections of the legislation and ITC's administrative procedures by

issuing a general policy statement and procedural guidelines for conducting injury determinations. We anticipated that such rules would include an outline of

1. the step-by-step procedures used by ITC in reaching determinations, and
2. the types of information considered in such determinations.

Moreoever, we recommended that ITC prepare a nonconfidential summary of information developed during the preliminary stages of investigations to allow interested parties to prepare for the oral hearing conducted during the investigation.

ITC's response of May 11, 1979, to the House Committee on Government Operations indicates that ITC was not supportive of our recommendation to clarify or define the terms "injury" or "industry" because the Antidumping Act "directed the Commission to exercise informed judgment on a case-by-case basis." Furthermore, ITC pointed out that, as we had stated in our report, "the Congress has refrained from providing legislative guidance for defining key factors and has chosen to provide maximum latitude and flexibility for the Commission to decide these questions according to the facts of each individual case." Finally, the Commission argued that any actions on its part to define key factors in an injury determination should be held in abeyance because the Multilateral Trade Negotiations (MTN) implementing legislation was likely to

include indicative criteria appropriate for a general policy statement.

As indicated by the Commission, the Trade Agreements Act of 1979 does address the issues of concern in our report. Sections 733(a) and 735(b) of the Tariff Act state that a standard of "material" injury will be used, and Section 771(7) provides factors to be considered by the Commission in determining whether material injury exists. This section outlines the economic factors which should be addressed in assessing the impact of allegedly dumped imports on the affected industry. The legislation also defines the factors to be considered in determining the impact of alleged LTFV sales. Moreover, section 771(4) clarifies the definition of industry and the criteria to be used by the Commission in defining industry on a regional or national basis for purposes of an injury determination. The legislation defines the term "like product." In addition, sections 777(a) and (b) provide that during the course of an investigation, nonconfidential submissions may be disclosed by the Commission to interested parties, and confidential information may be made available under protective order. Mr. Chairman, we believe that the Trade Agreements Act of 1979 clarifies issues of concern noted in our report and will facilitate and improve the consistency of ITC determinations of injury.

Uniform bonding requirements

We recommended that the Secretary of the Treasury have the Commissioner of Customs require that bonding requirements imposed at the time of a tentative determination, be uniformly applied by each district director. In its comments on our report to the Government Operations Committee, the Treasury disagreed with our recommendation, stating that such requirements are predicated on the importer's ability to pay potential dumping duties. Additionally, since district directors' authority to deal independently with importers extends to all areas of trade, the Treasury believes that it would be inconsistent to implement such a revision only in the case of dumping. Moreover, the Treasury stated that it is unaware of any instance when dumping duties have not been paid because of inadequate bonding.

In providing the suspension of liquidation of entries when a preliminary finding of dumping is made, under the Trade Agreement Act of 1979, the administering authority may require, in lieu of the imposition of estimated duties, the imposition of a bond or other security to ensure collection of estimated duties. This has been left to the discretion of each individual Customs district director. Although the issue of uniform bonding requirements is not specifically addressed, we assume

that the imposition of such requirements and the amounts of the bonds will also be left to the discretion of district directors.

Since our recommendation, as stated by the Treasury, focuses only on antidumping bonding procedures, the entire issue of Customs district bonding practices may warrant additional study.

In conclusion, Mr. Chairman, the changes made to the legislation and its administration represent actions responsive to our recommendations. We would be pleased to address any questions you or members of the Subcommittee may have.