

UNITED STATES TARIFF COMMISSION

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

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



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UNITED STATES TARIFF COMMISSION

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UNITED STATES TARIFF COMMISSION
Washington

[AA1921-52/55]

September 25, 1968

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

Determinations of Injury

On June 25, 1968, the Tariff Commission received advice from the Treasury Department that pig iron from East Germany, Czechoslovakia, Romania, and the U.S.S.R. is being, or is likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended. ^{1/} Accordingly, on that same date the Commission instituted Investigations No. AA1921-52 (with respect to imports from East Germany), No. AA1921-53 (Czechoslovakia), No. AA1921-54 (Romania) and No. AA1921-55 (the U.S.S.R.) under section 201(a) of that Act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

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

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

In arriving at its determinations the Commission gave due consideration to all written submissions from interested parties, all testimony adduced at the hearing, and all information obtained by the Commission's staff.

On the basis of the joint investigations, the Commission has determined that an industry in the United States is being injured by reason of the importation of pig iron from East Germany, Czechoslovakia, Romania, and the U.S.S.R., sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. ^{1/}

Statement of Reasons for Affirmative Determination
of Vice Chairman Sutton

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

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

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

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

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

Combined impact of LTFV imports governs

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

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

^{1/} That whenever the Secretary of the Treasury * * * , after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

(Underscoring supplied.) 42 Stat. 11.

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

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

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

^{1/} T.D.s 44716 through 44723.

^{2/} T.D.s 50035 through 50038.

^{3/} T.D. 50026.

^{4/} T.D. 52370.

^{5/} See T.D.s 54168 and 54199 rescinding in part the Secretary's finding (T.D. 53567) with respect to hardboard from Sweden.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Description and Uses

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

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

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

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

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

The Injured Industry

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

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

The Competitive Impact

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

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

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

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

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

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

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

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

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

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

Statement of Reasons for Affirmative
Determination of Commissioner Clubb

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

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

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

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

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

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

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

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

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

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

The Act, unchanged in substance since 1921, states that

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

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

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

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

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

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

"Mr. REED. . . . By section 2 of this bill there is inserted in this language the word 'materially' before the word 'injured.'

". . . Would not this change, to all intents and purposes, nullify the Antidumping Act?

* * *

"Mr. NICHOLS. Mr. Chairman, as I understand Mr. Reed's question, he asks whether this bill would detract from the provisions of the antidumping law, which requires the Secretary to take action in the event that injury to an American industry is threatened.

"The answer to that is that the bill would require him to take action in such a case, just as the present law does. There is no change effected in that respect.

"Mr. REED. What about the word 'materially' there? That is not in the Dumping Act.

"Mr. NICHOLS. If a material injury were threatened, he would take action, just as he would now. The only change in this language is to make it clear that he is not called on to take action in a case of an insubstantial injury or a de minimis injury.

"Mr. REED. Then it does change the dumping law.

"Mr. NICHOLS. We have never understood that the law required us to take action in the case of an insubstantial injury, and we have never done so. This is, in practical effect, declaratory of the existing law." Hearings on H.R. 1535 before Comm. on Ways and Means, 82nd Cong., 1st Sess. 53 (1951).

recommend it because

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

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

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

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

"Mr. Kaplowitz. . . . It is our understanding that the Treasury in administering the dumping statute has interpreted the word 'injury' as meaning material injury. If the Congress desires that this term be given any different interpretation, it should clearly express its intent.

* * *

"Mr. Byrnes. Another question. Going into this dumping provision, in your statement here you suggest that the Treasury interprets the word 'injury' to mean material injury. You raise some question as to whether Congress should not take some action to tell whoever is administering this whether they mean injury or material injury.

"What does the law say? The law says 'injury', doesn't it?

"Mr. Kaplowitz. Yes, sir, the law says 'injury.'

(Continued on next page.)

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

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

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

3/ Continued:

"Mr. Byrnes. That is the way the law will read after this bill is passed, is it not? It will still be just 'injury?'

"Mr. Kaplowitz. Yes, sir, if it is not amended.

"Mr. Byrnes. Why would the Tariff Commission be wedded to any prior interpretation of 'injury' that had been given in the past by the Treasury Department?

"Mr. Kaplowitz. I believe the answer to that is that in using such a term as 'injury', it would be assumed, I think normally, that Congress did not intend insignificant injury or very minor injury. Of course, it all depends on how you interpret the word 'material.'" Hearings on H.R. 9476, Ways and Means Committee, 83rd Cong., 2d Sess. 35-37 (1954).

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

'material injury' might be construed to mean that anti-dumping duties are to be applied only if the offending imports have a substantial, important, or possibly a serious effect on the economic status of the domestic industry involved.

* * *

"It is concluded that the particular facts of particular cases will justify in some instances a determination of injury where that injury is anything more than insignificant or insubstantial, and that in other instances the determination will require considerably more injury than that. To go to either of these extremes in defining the degree of injury required would be to take a rigid position on the side of the protectionists or the free traders which is not, it is believed, justified, either by the legislative history or by conditions as they exist today."

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

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

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

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

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

Statement of Reasons for Negative Findings
of Injury by Chairman Metzger

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

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

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

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

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

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

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

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

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

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

As stated by Senator Watson of Indiana:

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

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

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

3/ Continued

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

1/ The antidumping provision in the General Agreement on Tariffs and Trade, art. VI, par. 1--which was designed to be in accord with U.S. practice under the Antidumping Act of 1921, as amended--uses the term "material injury."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

^{1/} Value estimated on the basis of the average value of shipments as reported by the U.S. Department of Interior.

^{2/} American Iron and Steel Institute.

^{3/} Apparent consumption (production plus imports minus exports).

^{4/} Not available.

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

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

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

^{1/} Includes hot metal as well as cold pig iron.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1/ Includes Mozambique (see footnote 1/, table 6).

2/ Not representative.

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

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

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

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

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

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

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

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

Source: Compiled from information supplied by domestic producers.

Statement of Reasons for Negative Findings
of Injury by Commissioner Thunberg

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

