UNITED STATES INTERNATIONAL TRADE COMMISSION

NEW, ON-THE-HIGHWAY, FOUR-WHEELED, PASSENGER AUTOMOBILES FROM BELGIUM, CANADA, FRANCE, ITALY, JAPAN, SWEDEN, THE UNITED KINGDOM, AND WEST GERMANY

Negative Determination of "No Reasonable Indication of Injury" in Inquiry No. AA1921-Inq.-2 Under the Antidumping Act, 1921, as Amended

USITC Publication 739
Washington, D. C.
September 1975

UNITED STATES INTERNATIONAL TRADE COMMISSION

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United States International Trade Commission
Washington, D.C.

September 8, 1975

/ AA1921-Inq.-2/

NEW, ON-THE-HIGHWAY, FOUR-WHEELED, PASSENGER AUTOMOBILES FROM BELGIUM, CANADA, FRANCE, ITALY, JAPAN, SWEDEN, THE UNITED KINGDOM, AND WEST GERMANY

Commission Does Not Determine "No Reasonable Indication of Injury"

On August 7, 1975, the United States International Trade Commission received advice from the Department of the Treasury that, in accordance with section 201(c) of the Antidumping Act of 1921, as amended, eight antidumping investigations were being initiated with respect to new, on-the-highway, four-wheeled, passenger automobiles from Belgium, Canada, France, Italy, Japan, Sweden, the United Kingdom, and West Germany, and that, pursuant to section 201(c) of the Act, information developed during the preliminary investigation led to the conclusion that there is substantial doubt 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 automobiles into the United States. Accordingly, the Commission on August 8, 1975, instituted an inquiry, No. AA1921-Inq.-2, under section 201(c)(2) of the Act to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on August 19, 1975. Public notice of the institution of the inquiry and hearing was duly given by posting

copies of the notice at the Secretary's Office in the Commission in Washington, D.C., and at the Commission's office in New York City, and by publishing the original notice in the Federal Register of August 13, 1975 (40 F.R. 34027).

The Treasury Department instituted its investigation after receiving a complaint on July 8, 1975, from Congressman John H. Dent of Pennsylvania. A complaint was also received on July 11, 1975, from the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America-UAW. Treasury's notice of its antidumping proceeding was published in the Federal Register of August 11, 1975 (40 F.R. 33755-33-758).

On the basis of its inquiry with respect to imports of new, on-the-highway, four-wheeled, passenger automobiles from Belgium, Canada, France, Italy, Japan, Sweden, the United Kingdom, and West Germany--the subject of the antidumping investigations initiated by the Department of the Treasury--the Commission (Commissioners Leonard, Moore, Bedell, and Parker; and Commissioner Ablondi, in part) 1/ does not determine that

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1/ Commissioner Ablondi does not determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States from Japan, West Germany, and Italy; but determines that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States from Belgium, Canada, France, Sweden, and the United Kingdom. Commissioner Minchew determines that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States from all of the named countries.

there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

STATEMENT OF REASONS OF

CHAIRMAN WILL E. LEONARD

IN INQUIRY NO. AA1921-INQ.-2

The United States International Trade Commission (Commission) instituted Inquiry No. AA1921-Inq.-2 under section 201(c)(2) of the Antidumping Act, 1921, on August 8, 1975. The inquiry was to determine whether there is "no reasonable indication 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 certain new, on-the-highway, four-wheeled passenger automobiles. Such merchandise from Belgium, Canada, France, Italy, Japan, Sweden, the United Kingdom, and West Germany is the subject of pending Department of Treasury (Treasury) investigations under section 201(c) of the Antidumping Act, 1921.

If, as a result of the inquiry, the Commission determines affirmatively, i.e., that there is no reasonable indication of the requisite injury to a domestic industry by reason of the importation of the class or kind of merchandise the subject of the inquiry, then the pending Treasury investigations will be terminated. If, on the other hand, the Commission's determination as a result of the inquiry is negative, i.e., that it does not determine there is no reasonable indication of the requisite injury to a domestic industry by reason of the requisite cause, then the pending Treasury investigations will continue.

Determination

On the basis of the information available as a result of the inquiry, including the information received from the Treasury, I do not

determine that there is no reasonable indication 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 new, on-the-highway, four-wheeled, passenger automobiles which are the subject of the pending Treasury antidumping investigations.

Application of Information Available to the Statutory Criteria

Under section 201(c)(2) of the Antidumping Act, 1921, as amended (the Act), the Commission must determine whether there is no reasonable indication that a domestic industry is being or is likely to to be injured, or is prevented from being established, by reason of the importation into the United States of merchandise the subject of a Treasury investigation under the Act. Critical to such a determination is an evaluation of the underlined words in the preceding sentence in the light of the information obtained in the inquiry.

No reasonable indication... The first statutory phrase which needs to be examined is "no reasonable indication." It should be noted that the parties before the Commission in the inquiry have furnished varied interpretations of this statutory language. I am unable to subscribe to any of these interpretations completely.

It is necessary, of course, to be guided by the intent of Congress as to the meaning of the language employed in section 201(c)(2) of the Act, which sets out the responsibility of the Commission. In determining the meaning of specific statutory phrases by reference to Congressional intent, it is necessary to understand the purpose of Congress in enacting the statutory language and to understand the circumstances, of which Congress was aware, in which the Commission performs its functions as called for by the statutory language.

The legislative purpose in the enactment of section 201(c)(2) is stated at page 171 of Senate Finance Committee Report Number 93-1298, the report on the bill which became the Trade Act of 1974, as follows:

> The amendment is designed to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade.

The above quotation, while it sets out the purpose of section 201(c)(2), does not articulate the meaning to be given to the specific phrases employed by Congress within section 201(c)(2).

In order to better derive the meaning of the specific phrases, it is necessary to consider Congress' awareness of the extent and reliability of the information that would be available to the Commission. Congress indicates by the language in section 201(c)(2) that it is aware that the information transmitted from Treasury to the Commission will be "preliminary," the result of a brief investigation, and will include information of "possible" margins of dumping and the volume of trade. Indeed, Congress indicates an awareness that Treasury will not provide information of less than fair value sales, but rather only information as to "a preliminary indication ... concerning possible" less than fair value sales. In short, Congress was aware that the Treasury usually will not be able to supply significant concrete information to aid the Commission in carrying out its functions under section 201(c)(2). Further, in providing the Commission only 30 days in which to conduct its inquiry, Congress was aware that such a time limit would necessarily restrict the volume of information which could be collected by the Commission, as well as the testing of the reliability of such information and its consideration for the purpose of making a determination.

It is also important to consider what Congress requires of the Treasury at the time a matter is referred to the Commission under section 201(c)(2). Treasury is in the process of determining, by a summary investigation of no more than 30 days, only whether to "institute" a formal antidumping investigation under section 201(a) of the Act. It is clear by the language used in section 201(c)(2) that the most that is required of the Treasury is that it have information of "possible" sales at less than fair value. This is a rather minimal requirement, and must be remembered when ascertaining what Congress intends by the specific phrases used in section 201(c)(2) with respect to the Commission's functions thereunder involving the "injury" aspect of the Act.

Further, one should keep in mind what Congress does not require of the Commission under section 201(c)(2). Congress does not require the Commission, under section 201(c)(2), to find the requisite injury to a domestic industry as a result of the requisite cause that is required under section 201(a) of the Act. Also, Congress does not require the Commission, under section 201(c)(2), to determine whether it has reason to believe that there exists injury to an industry as a result of the necessary cause required by section 201(a) of the Act. On the other hand, Congress does not require the Commission, under section 201(c)(2), to determine whether the complaint filed with Treasury has sufficient allegations concerning injury and causation on its face so as not to be subject to an attack on the basis that it fails to state a "cause of action."

It is also to be noted that section 201(c)(2) is phrased in terms of the Commission finding no reasonable indication of the requisite injury due to the requisite cause in order for the investigation of the Treasury to be terminated; it is not phrased in terms of the Commission finding reasonable indication of such injury and causation in order for the investigation of the Treasury to continue. Indeed, if the Commission were to do nothing or were unable to make any finding, Treasury's investigation would continue. This choice of words must be presumed to be a considered choice so that the emphasis placed by Congress in section 201(c)(2) is not on a positive justification for the continuance of an antidumping investigation, but in effect on a justification for its termination.

From the above, Congress was aware that in carrying out its functions under section 201(c)(2) the Commission would be conducting a severe operation with blunt instruments, not designed for precise application. Congress must have realized that the economic analysis which the Commission employs during the course of its investigations under section 201(a) of the Act simply cannot be employed under section 201(c)(2).

However, Congress intends the Commission to look at the normal indicators of injury and causation that it looks at when conducting an investigation under section 201(a) of the Act. After considering these indicators, Congress intends the Commission to find, before making a determination of "no reasonable indication," an affirmative determination under section 201(c)(2), that the allegations made by the complainant before the Treasury and the information available as a result of the Commission's inquiry reveal the issues of injury and causation to be so clearly lacking

in substance that the resources of the Government should not be used to any further extent in considering the matter, and that trade should not be disrupted further by such consideration.

Industry... "An industry in the United States" for the purposes of the determination in this case under section 201(c)(2) consists of the producing facilities in the United States engaged in the manufacture of new, on-the-highway, four-wheeled, passenger automobiles, of which facilities the workers are an integral part. Nothing indicates that by using the phrase "an industry in the United States" in section 201(c)(2) of the Act, Congress had any intention that the industry referred to should be any different from the industry to be considered under section 201(a) of the Act. With respect to what is meant by "an industry" in section 201(a), the House Ways and Means Committee Report on the Antidumping Act, 1921, stated that the interest to be protected by the Act includes:

> our industries and labor against a now common species of commercial warfare of dumping goods on our markets at less than cost or home value. H.R. Rep. No. 1, 67th Cong., 1st Sess. 23(1921). (Emphasis added.)

Then, moreover, on the Senate floor, Senator McCumber articulated the following:

> The purpose (of the Act) is to allow the manufacturers in the United States to continue in business ... and to provide for the employment of American labor and American capital ... 61 Cong. Record, part 1, page 1022(1921). (Emphasis added.)

In the "Muriate of Potash Case," [1/] I stated (at p. 3) along with Commissioner Sutton, that:

> In protecting domestic industry, the Congress was concerned not only for the welfare of the owners of producing plants, but also for the welfare of the employees in such plants and the communities.

1/ Potassium Chloride (Muriate of Potash) From Canada, France and West Germany, U.S. T.C. Investigation Nos. AA1921-58, 59, and 60 (November, 1969).

> of which they are a part. These interests are inextricably tied together.

Moreover, Commissioners Clubb and Moore stated (at p. 23) in the same case that the Act protects various interests, including:

> not just the interests of the stockholders of the multinational corporations involved, but the interests of the workers in the U.S. plants as well.

Injury... The "injury" requirement found in section 201(c)(2) is worded the same as the injury requirement found in section 201(a) of the Act, that is, that a domestic industry "is being or is likely to be injured, or is prevented from being established." There is no evidence that Congress intended such language used in section 201(c)(2) to be interpreted differently from the same language found in section 201(a). However, it is to be noted that the Commission's function under section 201(c)(2) is not to find such injury, but to determine if there is no reasonable indication of such injury.

The information available as a result of the inquiry is certainly sufficient, in my opinion, to negate at this time a determination that "there is no reasonable indication" of the injury requirement of the Act being satisfied. The share of the U.S. market of the merchandise in issue accounted for by imports from the countries which are the subject of the pending Treasury investigations and the Commission's inquiry in this matter, taking account of U.S. factory sales, imports for consumption, and exports of domestic merchandise, is significant, amounting in the aggregate to 26.5 percent for the period January-June, 1975. Furthermore, there is uncontroverted evidence that the United States industry being considered is suffering severe unemployment at present. There have been estimates that such unemployment amounted to some 300,000 members of the United

United Automobile Workers Union in early 1975. Also there is information which would indicate that production by United States manufacturers of new automobiles has dropped significantly beginning in November 1973, and that such decline has continued in 1975.

Before proceeding further, it is appropriate to comment on the issue of cumulating the impact on a domestic industry of the imports in issue. Senate Finance Committee Report Number 93-1298, cited above, states (at p. 180) with respect to this question:

> A number of cases before the Commission have been concerned with the question of whether imports of comparable articles from different countries should be considered together or cumulated in making injury determinations. The issue arises in several different contexts, viz: (1) when Treasury determinations involving comparable imports from two or more different countries are simultaneously submitted to the Commission; (2) when Treasury determinations on comparable imports are submitted to the Commission at different times. Under consistent practice, affirmed by the U.S. Customs Court in City Lumber Co. v. United States (R.D., 11557, July 9, 1968; 64 Cust. Ct. 826 (1970); 311 F. Supp. 340 (1970); 457 F. 2d 991 (1972)) the Commission has considered the combined impact of less-than-fair-value imports in making injury determinations when the facts and economic considerations so warrant. Such result does not follow as a matter of law; it follows, on a case by case basis, only when the factors and conditions of trade show its relevance to the determination of injury.

Information available, as a result of the inquiry, with respect to pricing and markets of the merchandise in issue is such as to indicate that cumulation may be appropriate during the course of any full investigation under section 201(a) of the Act that may be conducted in the future. In any event, I simply do not have enough information on the factors and conditions of trade to warrant, at this early stage, a non-cumulation of the impact, and am therefore cumulating impact for the purpose of this determination.

By Reason of... Section 201(c)(2) requires the Commission to determine, before the pending Treasury investigation may be terminated, that there is no reasonable indication that the injury referred to above is "by reason of" the importation of the merchandise in question into the United States. Under the terms of section 201(c)(2), the merchandise in question in this determination refers to the merchandise as to which Treasury has instituted formal antidumping investigations to determine whether such merchandise is being or is likely to be sold at less than fair value. The information provided by Treasury to the Commission indicates a wide range of possible margins of dumping, and does not indicate that any particular type of automobile from any particular country named is not subject to such possible dumping margins. Therefore, in this determination, the phrase "such merchandise" as used in section 201(c)(2) consists of all automobiles imported into the United States which the Treasury has considered in its summary investigation.

Turning to the phrase "by reason of" in section 201(c)(2), again there is no basis to conclude that Congress intended this phrase to have any meaning different from the one given to the same phrase employed in section 201(a) of the Act; that is, the same degree of causality is expressed by the use of the identical phrase in both sections. Since the Commission, however, under section 201(c)(2) is dealing with only the merchandise the subject of Treasury's investigation, and is determining

if there is "no reasonable indication" of the requisite causal relationship, as opposed to dealing under section 201(a) with merchandise actually found by Treasury to be, or likely to be, sold at less than fair value and determining if the requisite causal relationship actually exists, the distinct determinations under these sections are totally different.

Senate Finance Committee Report Number 93-1298, cited above, states (at p. 180) with respect to the requisite degree of causation required by section 201(a), and thus also by section 201(c)(2):

> Moreover, the law does not contemplate that injury from less than fair value imports be weighed against other factors which may be contributing to injury to an industry. The words "by reason of" express a causation link but do not mean that dumped imports must be a (or the) principal cause, a (or the) major cause, or a (or the) substantial cause of injury caused by all factors contributing to overall injury to an industry.

That language, of course, does not mean that the Commission does not attempt to identify causes of injury to a domestic industry, but simply means that the cause attributable to imports sold at less than fair value, or possibly sold at less than fair value, need not be the principal cause, or major cause, or even substantial cause, but merely a cause.

Looking at the information available as a result of the inquiry, various possible causes of injury can be posited. These causes include at least the following: (a) the energy crisis; (b) the domestic industry's delayed reaction in responding to consumers' demands for fuel-efficient automobiles; (c) the recession; (d) ecological standards for automobiles; and (e) substantial penetration of the U.S. market by

automobile imports the subject of Treasury antidumping investigations. At this point in time, it is impossible for me to quantify each of these causes. However, I am unable to say that there is no reasonable indication that the importation of the merchandise in question possibly sold at less than fair value is not a cause of injury to the domestic industry. The information available, which includes the coincidence of the possible less than fair value sales with possible injury to the domestic industry, is sufficient to negate a determination at this time that "there is no reasonable indication" of injury or likelihood of injury "by reason of" possible less-than-fair-value imports.

Conclusion

On the basis of the above, I do not determine that there is no reasonable indication 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 certain new, on-the-highway, four-wheeled, passenger automobiles, which merchandise is the subject of pending Treasury antidumping investigations.

Statement of Reasons of Commissioners
Bedell and Parker

This inquiry is the second proceeding before the International Trade Commission under the provisions of section 201(c)(2) of the Antidumping Act, 1921, as amended. That section, which was added by section 321 of the Trade Act of 1974, entered into force earlier this year.

Since section 201(c)(2) has only recently become effective, we wish first to reiterate the views concerning the proper scope and application of the section that we gave in the first proceeding under it, 1/ and then give the reasons for our determination in the instant case.

The statutory provisions

Section 201(c)(2) of the Antidumping Act provides as follows:

> (2) If, in the course of making a determination under paragraph (1), the Secretary concludes, from the information available to him, that there is substantial doubt 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, he shall forward to the Commission the reasons for such substantial doubt and a preliminary indication, based on whatever price information is available, concerning possible sales at less than fair value, including possible margins of dumping and the volume of trade. If within thirty days after receipt of such information from the Secretary, the Commission, after conducting such inquiry as it deems appropriate, determines there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, it shall advise the Secretary of its determination and any investigation under subsection (b) then in progress shall be terminated. (Emphasis supplied.)

1/ United States International Trade Commission, Butadiene Acrylonitrile Rubber from Japan..., ITC Publication 727..., April 1975, pp. 3-6.

The foregoing section provides for an inquiry by the Commission early in the Governmental procedures that follow the filing of a dumping complaint with the Secretary of the Treasury. Within 30 days of such filing, the Secretary must decide both whether to institute an antidumping investigation and whether to take the action that triggers an inquiry by the Commission. The Commission's inquiry is thus conducted while the Treasury proceeds with the early stages of its investigation. Consequently, the end result of the Commission's determination is either to terminate an antidumping investigation in progress at the Treasury, or to permit it to continue. Since the determination to be made by the Commission (underscored above) is expressed in the negative, an affirmative determination that there is "no reasonable indication" of injury under the Act results in a termination of the proceedings before the Department of the Treasury, while a negative determination, i.e., the Commission does not determine that there is "no reasonable indication" of injury under the Act, permits the Treasury proceeding to continue.

In approaching the Commission's responsibility under section 201(c)(2), we are cognizant that the Senate Finance Committee desired to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade. We do not believe, however, that by virtue of the amendment to the Antidumping Act there was any intent that the procedure being established be used to weaken--or to deny U.S. industry--the protection of the Antidumping Act, by aborting a full investigation in the absence of a clear and

convincing showing that there is "no reasonable indication" that an industry in the United States is being or is likely to be injured by reason of the importation of merchandise possibly sold at less than fair value.

The case at hand

This inquiry is before the Commission as a result of advice received from the Treasury Department on August 7, 1975, that, during the course of determining whether to institute antidumping investigations with respect to new, on-the-highway, four-wheeled, passenger automobiles (hereinafter passenger automobiles) from Belgium, Canada, France, Italy, Japan, Sweden, the United Kingdom, and West Germany, it had concluded that there is substantial doubt 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.

In our judgment, the evidence before the Commission as a result of its inquiry does not provide a clear and convincing showing that there is "no reasonable indication" of injury or likelihood of injury to a U.S. industry by reason of the importation of passenger automobiles from the countries concerned. The domestic industry producing passenger automobiles is in distress as evidenced by recently decreased production, sales, and employment. Imported passenger automobiles from the eight countries that are now the subject of antidumping investigations by the Treasury Department have grown in volume and have supplied a rising share of the U.S. market.

Finally, the alleged margins by which sales were below fair value, as identified in the communication from the Treasury Department to the Commission, were in ranges having high upper limits. These matters are discussed briefly in the following paragraphs.

The sale of domestically produced passenger automobiles has been in a severe decline for many months. Factory sales of such vehicles in 1974 were sharply below those in five of the previous six years; the sales in 1974 were about a fourth lower than in 1973 (which had been a record year) and about 15 percent lower than in 1971 and 1972. Factory sales in 1975 have been at an even lower rate than in 1974, being down nearly a fifth in the first six months of the year. Retail sales of domestically produced passenger automobiles reveal an identical decline; such sales dropped sharply in 1974 and thus far in 1975. Employment in the manufacture of passenger automobiles has fallen sharply during the period of lower sales. Assembly plants and other production facilities have shut down for varying periods, and some shifts have been cancelled.

U.S. imports of passenger automobiles -- virtually all of which are from the eight countries now under investigation by the Treasury Department to determine whether their sales to the United States are or are likely to be at less than fair value -- have risen in recent years both in absolute terms and relative to sales of domestically produced vehicles. Imports of new passenger automobiles into the United States aggregated 2.6 million vehicles in 1974, compared with 1.6 million vehicles in 1968. Imports of passenger automobiles in the first half of 1975 were about a third smaller than in the corres-

ponding period of 1974, but retail sales of imported vehicles did not decline as inventories in the United States supported steady sales of imported vehicles in the face of declining demand and reduced sales of U.S.-made vehicles. Imported vehicles have significantly increased their market share in recent years. Based on sales at the retail level, imported vehicles from the eight countries under investigation for sales allegedly at less than fair value supplied 25 percent of the U.S. market in 1974 and 30 percent in the first half of 1975, while they had accounted for only 15 percent in 1968.

At the present early stage of the Treasury Department's antidumping investigation, information on the possible margins below fair value by which sales of passenger automobiles have been made by the countries concerned is highly imprecise and uncertain. The alleged margins reported by the Department in its communication to the Commission consisted of wide ranges. The upper limits of the ranges were high -- from 20 percent for Canada to 73 percent for West Germany. Dumping margins approaching these levels, if found by the Treasury, would represent sales substantially below fair value.

Conclusion

In our view, from the evidence before the Commission, a determination is not warranted that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of imports of new, on-the-highway, four-wheeled, passenger automobiles from the

countries now subject to antidumping investigations by the Treasury Department.

Statement of Reasons for Commissioner Ablondi

On August 7, 1975, the Department of the Treasury advised the United States International Trade Commission that the Department of the Treasury was initiating eight antidumping investigations with respect to new, on-the-highway, four-wheeled, passenger automobiles from Canada, Japan, West Germany, Belgium, Italy, the United Kingdom, Sweden, and France, and that information developed during a preliminary investigation "has led to the conclusion that there is substantial doubt whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of importation of this merchandise into the United States."

The relevant statutory language in section 201(c)(2) of the Antidumping Act of 1921, as amended by section 321 of the Trade Act of 1974, reads in part--

> If, in the course of making a determination under paragraph (1), the Secretary concludes, from the information available to him, that there is substantial doubt 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, he shall forward to the Commission the reasons for such substantial doubt and a preliminary indication, based upon whatever price information is available, concerning possible sales at less than fair value, including possible margins of dumping and the volume of trade. If within thirty days after receipt of such information from the Secretary, the Commission, after conducting such inquiry as it deems appropriate, determines there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, it shall advise the Secretary of its determination and any investigation under subsection (b) then in progress shall be terminated.

On the basis of the data available from the Department of the Treasury, the Commission hearing record, briefs filed by interested parties, and data obtained by our staff, I have determined that there is no reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of new, on-the-highway, four-wheeled, passenger automobiles from Canada, Belgium, the United Kingdom, Sweden, or France which allegedly have been sold at LTFV. At the same time, I do not determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of new, on-the-highway, four-wheeled, passenger automobiles from Japan, West Germany, or Italy which allegedly have been sold at LTFV.

The consideration of this case involves resolving a threshhold question as to whether the eight investigations initiated by Treasury are to be considered individually or cumulatively.

The question of whether the Commission should weigh the impact on a domestic industry of LTFV imports of the same product from each of several countries individually or collectively under the Antidumping Act has been considered frequently, and the Commission has the discretion to examine the particular facts of each case in order to make a determination of whether cumulative injury should be considered. 1/

1/ See, for example, Primary Lead Metal from Australia and Canada * * * Investigation Nos. AA1921-134 and 135, TC Publication 639, 1974; Pig Iron from East Germany, Czechoslovakia, Romania, and the U.S.S.R. * * * Investigation Nos. AA1921-52, 53, 54, and 55, TC Publication 265, 1968; Printed Vinyl Film from Brazil and Argentina * * * Investigation Nos. AA1921-117 and 118, TC Publication 595, 1973; and Senate Report No. 93-1298, p. 180.

In the instant inquiry, the myriad of differences between automobiles as to price, style, quality, and performance, to name only a few, precludes my finding of factors and conditions to warrant cumulating the imports from all eight countries. I have accordingly concluded that the impact of alleged LTFV imports from Canada, Japan, West Germany, Belgium, Italy, the United Kingdom, Sweden, and France should be considered independently for each country.

Under section 201(c)(2) we must assume, for the purpose of making our determination, the existence of LTFV sales. The Commission's jurisdiction is therefore limited solely to a determination of whether there is no reasonable indication of an injury or likelihood thereof to a domestic industry by reason of such sales from each of the countries.

Section 201(c)(2) of the Antidumping Act of 1921 is new legislation as a result of an amendment made by section 321 of the Trade Act of 1974. The instant case represents our second effort in discharging our responsibilities as set out in this new section.

The legislative intent in the enactment of section 201(c)(2) is clearly stated at page 171 of Senate Report No. 93-1298 as follows:

> The amendment is designed to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade.

If we are to give meaningful effect to the expressed intent of the Congress, we should eliminate investigations under section 201(a) when such investigations clearly are unnecessary because there is no reasonable indication that a domestic industry is being or is likely to be injured.

I have concurred with the majority determination with regard to Japan, West Germany, and Italy.

Japan

Information available to the Commission from a variety of sources indicates that automobiles from Japan have been sold in the United States at prices lower than those for domestic automobiles. The proportion of Japanese automobiles underselling U.S. automobiles at this early stage of investigation has not been established. The volume of imports which Japan provides has steadily increased to the extent that in 1974, imports from Japan accounted for 8.5 percent of the quantity of apparent U.S. consumption of new passenger automobiles. In addition, the U.S. market penetration of imports from Japan increased by 3.1 percent from 1973 to 1974, and indications are that it has increased in 1975. The increased volume of imports, the evidence of underselling, and the degree of market penetration require that the antidumping investigation continue as regards Japan.

West Germany

Information available to the Commission from a variety of sources indicates that at least some automobiles from West Germany have been sold in the United States at prices lower than those for domestic automobiles. Sales at less than fair value, when accompanied by evidence of underselling in the U.S. market and a volume of imports sufficient to possibly cause injury, preclude a finding of "no reasonable indication of injury." In 1974, imports from West Germany accounted for 6.7 percent of the quantity of apparent U.S. consumption of automobiles, and the U.S. market penetration in that year was higher than in many earlier years. The existence of the above factors requires the continuation of the investigation as regards West Germany.

Italy

Information available to the Commission from a variety of sources indicates that at least some automobiles from Italy have been sold in the United States at prices lower than those for domestic automobiles. In 1974, imports from Italy accounted for 1.15 percent of the quantity of apparent U.S. consumption of new passenger automobiles. The difference in degree of market penetration by Italy as distinguished from Sweden, the United Kingdom, Belgium, and France is slight. However, the U.S. market penetration of imports from Italy increased from 1973 to 1974, by an amount that was nearly equivalent to the entire market share of the next two smaller supplying countries. Total imports from Italy in 1974 were nearly 40 percent greater than total imports from the next

largest supplying country in the same year. This increase, combined with some degree of underselling, precludes a determination of no reasonable indication of injury at this time. The antidumping investigation as regards Italy should accordingly continue.

I have dissented with the majority determination with regard to Canada, Belgium, the United Kingdom, Sweden, and France.

Canada

In considering the Trade Act of 1974, the Senate Finance Committee received proposals to include statutory language regarding the concept of "injury." The Committee did not accept any proposal for the reason that the criteria for injury were ". . . adequately treated under existing practices and are best left to individual case determinations without additional statutory guideline." 1/ However, the Committee went on to state:

> . . . the Act is primarily concerned with the situation in which the margin of dumping contributes to underselling the U.S. product in the domestic market resulting in injury or likelihood of injury to a domestic industry. 1/

It would appear that underselling is an integral and necessary element of injury. The Commission has, in a number of instances, found that imports at less than fair value have not been injurious to the domestic industry when prices of the imported product are equal to or

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1/ Senate Report 93-1298, p. 179.

higher than prices for comparable domestic products. 1/ In its decision on Technical Vanillin from Canada, Investigation No. AA1921-26, the statement of reasons for the Commission's determination of no injury or likelihood thereof reads in part:

> The importation of an article sold "at less than fair value" is not ipso facto injurious. The sole exporter of Canadian technical vanillin has sold its product . . . to U.S. consumers at delivered prices equal to or higher than the delivered (or their equivalent) prices by the predominant U.S. producer of technical vanillin. . . . The importation of Canadian technical vanillin under such circumstances cannot be considered as injurious or likely to injure an industry in the United States. 2/

No evidence presented to the Commission during the course of this inquiry indicates any degree of underselling of domestic automobiles by automobiles imported from Canada, nor has such underselling been alleged. On the contrary, all evidence available to the Commission indicates that the overwhelming majority of automobiles from Canada are imported into the United States by the four largest automobile manufacturers in the United States, are identical to automobiles produced in the United States by the same manufacturers, and are identically priced to U.S. consumers.

1/ See, for example, Pocket Pencil Sharpeners, Tariff Commission Investigation under the Antidumping Act, 1921, as amended, August 29, 1955; Rayon Staple Fiber from Belgium, Investigation No. AA1921-18, TC Publication 19, 1961; Rayon Staple Fiber from Cuba, Investigation No. AA1921-20, TC Publication 23, 1961; Rayon Staple Fiber from West Germany, Investigation No. AA1921-21, TC Publication 24, 1961; Technical Vanillin from Canada, Investigation No. AA1921-26, TC Publication 88, 1963; Plastic Baby Carriers from Japan, Investigation No. AA1921-41, TC Publication 141, 1964; Brass Key Blanks from Canada * * * Investigation No. AA1921-71, TC Publication 392, 1971; and Hand Pallet Trucks from France * * * Investigation No. AA1921-95, TC Publication 498, 1972.

2/ Technical Vanillin from Canada, Investigation No. AA1921-26, TC Publication 88, 1963.

In the case at hand, therefore, I am of the opinion that there is no reasonable indication of injury or likelihood thereof by reason of imports from Canada.

Belgium, the United Kingdom, Sweden, and France

In considering the individual imports from Belgium, the United Kingdom, Sweden, and France I have assumed for the purpose of this determination that injury is manifested by all indicators except market penetration.

In the past the Commission has held that imports sold at less than fair value in the United States in insignificant quantities compared with the quantity of domestic consumption have not caused injury to a domestic industry. 1/ In expressing their views as part of the majority in the case of White Portland Cement from Japan, Investigation No. AA1921-38, Commissioners Dorfman and Talbot stated "The imports that entered at 'less than fair value' (LTFV) at no time amounted to as much as 1 percent of domestic consumption and could not in any circumstance have caused more than de minimis injury to the industry." 2/ In a number of other investigations under the Antidumping Act, 1921, as amended, the Commission has found no injury or likelihood thereof when imports sold at less than fair value constituted less than 1 percent of apparent U.S. consumption. 3/ While each case must be examined according to the

1/ See Cast Iron Soil Pipe from Australia, Investigation No. AA1921-35, TC Publication 124, 1964.

2/ White Portland Cement from Japan, Investigation No. AA1921-38, TC Publication 129, 1964.

3/ See, for example, Welded Wire Mesh from Belgium * * * Investigation No. AA1921-94, TC Publication 497, 1972; and Titanium Dioxide from Japan * * * Investigation No. AA1921-47, TC Publication 174, 1966.

individual facts peculiar to each, as regards automobiles, I have determined that import penetration by any one country of less than 1 percent of apparent U.S. consumption on a national basis is insignificant and could not warrant an injury determination. I am therefore of the opinion that there is no reasonable indication of injury or likelihood thereof from imports from Belgium, the United Kingdom, Sweden, or France.

Statement of Reasons for Affirmative Determination
of Vice Chairman Minchew

In accordance with new provisions of the Antidumping Act of 1921, 1/ the United States Department of the Treasury (Treasury) notified the United States International Trade Commission (Commission) on August 7, 1975, that it had "substantial doubt whether" the U.S. automobile 2/ industry "is being or is likely to be injured, or is prevented from being established, by reason of the importation" into the United States of automobiles from Belgium, Canada, France, Italy, Japan, Sweden, the United Kingdom, and West Germany. On August 8, the Commission instituted a summary investigation, required by the amended Antidumping Act of 1921, to determine whether "there is no reasonable indication"

1/ 19 U.S.C. 160. The relevant amendment to the Antidumping Act was made in section 321 of the Trade Act of 1974, 88 Stat. 2043, amending section 201 of the Antidumping Act. The relevant language reads as follows:

> (2) If, in the course of making a determination under paragraph (1), the Secretary concludes, from the information available to him, that there is substantial doubt 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, he shall forward to the Commission the reasons for such substantial doubt and a preliminary indication, based upon whatever price information is available, concerning possible sales at less than fair value, including possible margins of dumping and the volume of trade. If within thirty days after receipt of such information from the Secretary, the Commission, after conducting such inquiry as it deems appropriate, determines there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, it shall advise the Secretary of its determination and any investigation under subsection (b) then in progress shall be terminated.

2/ The specific industry under investigation, as described by the Treasury, is "new, on-the-highway, four-wheeled, passenger automobiles." This opinion will refer to them as simply "automobiles."

that the U.S. automobile industry "is being or is likely to be injured, or is prevented from being established, by reason of the importation" of the foreign automobiles. Under the statute, the Commission is allowed 30 days from the date of receiving the Treasury notification to complete its investigation.

On the basis of data available from the Treasury, the Commission hearing record, materials submitted by the parties, and other data obtained during the Commission's brief investigation, I have concluded that there is no reasonable indication that the automobile industry in the United States is being or is likely to be injured by reason of the importation of automobiles from Europe, Canada, and Japan allegedly sold at less than fair value (LTFV).

Section 201(c) of the Antidumping Act provides authority for a summary investigation formerly performed by the Commissioner of Customs under 19 C.F.R. 153.29. It removes to the Commission jurisdiction of the portion of the summary investigation pertaining to the question of whether there is a reasonable indication that a domestic industry is being or is likely to be injured or is prevented from being established by reason of alleged LTFV imports. The purpose of 19 C.F.R. 153.29 was to provide a review of the information submitted to the Treasury in a dumping complaint. The function of section 201(c) is similar. In fact, the Commission is not even required to hold hearings in its new summary determination proceeding; it is required

to conduct only "such inquiry as it deems appropriate." 3/ Section 201(c), therefore, was intended to provide a procedure for a summary determination of the sufficiency of the information submitted by the complainants. The mandate that the Commission must determine whether there is "no reasonable indication" should not be read to cast an affirmative burden on the importers of proving conclusively that there is "no reasonable indication" from any source that an industry is being or is likely to be injured or is prevented from being established by reason of the imports alleged to be sold at less than fair value. Casting such an impossible burden on the importers would make a proceeding under section 201(c)(2) meaningless. The Commission needs only to determine, from the petitioners' information and from whatever other information it has unearthed during its own inquiry, that there is "no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States."

Since this is only the second summary investigation and determination by the Commission under the amended statute, a working definition of the term "no reasonable indication" still is being developed. The standard of evidence clearly is different from that required for a full investigation. However, a very low standard for what constitutes "no reasonable indication" could lead

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3/ By supporting the holding of a hearing as a part of this investigation, I did not intend to shift the burden of establishing the minimum threshold of evidence of injury from the complainants.

to a negative finding in virtually every thirty-day investigation. Consequently, the standard must be considerably higher than a finding that new evidence added to present evidence possibly would show injury caused by LTFV imports.

The legislative intent in this section of the Antidumping Act, as stated at page 171 of the Senate Report No. 93-1298, must also be considered. The Senate Finance Committee said: "The amendment is designed to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade." In order to give meaningful effect to the expressed intent of Congress, the Commission, in cases where a substantial administrative burden and an impediment to trade are involved, should carefully scrutinize the evidence and the conclusions and inferences that may legitimately be drawn from it. Congress apparently felt that complainants must present sufficient evidence to support sustaining an investigation, not that respondents must establish reasons why the investigation should not go forward. Raising the standard of evidence to support the complainants' case accomplishes the Congressional purpose.

In the present case there are several prominent factors other than possible competition from LTFV imports which have contributed to the downturn now evident in the domestic automobile industry. A very important factor, which needs no elaboration, is the national economic recession, which has reduced the demand for virtually all consumer goods, including automobiles.

A gradual shift in consumer preferences to smaller and more fuel-efficient automobiles was accelerated by the 1973 petroleum crisis, which brought gasoline shortages, sharp increases in the price of gasoline, and consumer uncertainty about future supplies and prices of fuel. During 1970-72, small cars (compacts and subcompacts) accounted for approximately 36 percent of apparent U.S. consumption; during the first half of 1975, they accounted for more than 51 percent of U.S. consumption. Domestic manufacturers, meanwhile, were slow in accommodating the public's changing preferences. From time to time, the U.S. manufacturers have developed small cars, but those models have grown larger over the years to the point that they no longer meet the demand for small economy cars. Small cars comprised less than 25 percent of domestic sales of domestic automobiles before 1973.

These factors alone are sufficient to account for the economic downturn in the domestic automobile industry and for the present volume of imports of foreign automobiles. In order to justify the continuation of this massive investigation, therefore, the Commission should have before it some direct evidence showing that the injury is occurring "by reason of" imports alleged to have been sold at less than fair value. In this case the Commission has before it no direct evidence from which one could legitimately conclude or infer that the alleged injury is occurring by reason of possible LTFV sales of imported automobiles. Circumstantial evidence does exist, but circumstantial evidence in a case such as this should not be sufficient. There may be cases in which,

because of the limited resources of the complaining party or the smaller administrative burden and impact on trade involved, circumstantial evidence would be sufficient. That is not the case before us.

Determining causation requires a determination of the impact of sales of foreign cars on sales of domestic cars. Since the foreign cars compete in two fairly distinct classes, the Commission should examine these two classes separately to determine whether any domestic injury is occurring "by reason of" LTFV imports. Virtually all of the evidence presented to the Commission by both sides of this issue involved the impact of imported small cars, which account for at least 75 percent of the imports and which are more directly competitive with domestic models. Many of the imported luxury cars have characteristics that distinguish them from domestic models and that make price a less important consideration for domestic buyers. With so little evidence presented on the impact of these luxury cars, it seems clear that there is "no reasonable indication" of injury "by reason of" the importation of these luxury automobiles.

As for the likelihood of injury, there again is no indication of its existence by reason of LTFV imports. The domestic industry has been increasingly capable of meeting the demand for small vehicles. Domestic sales of domestic small cars in 1974 were higher than in any other year except 1973, a record year, and the U.S. share of the small car market has increased substantially in recent years from 46 percent in 1970 to 59 percent in 1974.

The introduction of new domestic subcompact models and recent indications that a growing number of domestic automobiles are in the same fuel-economy class as many of the more popular imports for all practical purposes eliminate the likelihood of injury to the domestic industry by reason of LTFV imports.

For these reasons, I determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

U.S. International Trade Commission.
New, on-the-highway, four-wheeled, passenger automobiles from Belgium, Canada, France, Italy, Japan, Sweden, the United Kingdom, and West Germany. Negative determination of "no reasonable indication of injury" in inquiry no. AA1921-inq. -2 under the Antidumping act, 1921, as amended. Washington, 1975.

36 p. 27 cm. (USITC Pub. 739)

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