104

THE IMPACT OF "SHORT SUPPLY" ON SMALL MANUFACTURERS

Y 4. SM 1: 104-75

The Impact of "Short Supply" on Sma...

HEARING

BEFORE THE

SUBCOMMITTEE ON PROCUREMENT, EXPORTS, AND BUSINESS OPPORTUNITIES

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

WASHINGTON, DC, MAY 2, 1996

Printed for the use of the Committee on Small Business

Serial No. 104–75

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ISBN 0-16-053419-4

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THE IMPACT OF "SHORT SUPPLY" ON SMALL MANUFACTURERS

THURSDAY, MAY 2, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PROCUREMENT, EXPORTS,
AND BUSINESS OPPORTUNITIES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10 a.m., in room 2359, Rayburn House Office Building, the Honorable Donald A. Manzullo (Chairman of the Committee), presiding.

Chairman MANZULLO. The Subcommittee will come to order. Today the Subcommittee will examine the impact of the short supply problem on small manufacturers. This is an unintended consequence of a trade policy that tries to protect one dimension of our industrial base without fully realizing the impact on other manufacturers, especially small to medium size firms.

Chairman Phil Crane's Temporary Duty Suspension bill aims to restore balance to that policy so that the impact on domestic users is also considered. H.R. 2822 strives to bring users of raw materials to the table in extremely rare circumstances when they can demonstrate that there is, effectively, a short supply of certain products. While there are no quotas or bans of imported products, raising the tariff level makes some high-value added products noncompetitive.

No one argues for the repealing of antidumping laws. Foreigners who engage in predatory practices designed to annihilate specific U.S. industries deserve punishment by hitting them squarely where it hurts: The pocketbook. But some flexibility has to be restored to the antidumping laws so that companies are not faced with such a Hobson's choice.

I yield for opening statements from the Ranking Minority Member, Mrs. Clayton of North Carolina, and then the Ranking Member of the Full Committee, Chairman LaFalce of New York. Mrs. Clayton.

Mrs. CLAYTON. Mr. Chairman, thank you for bringing this issue before us. We understand we do not have jurisdiction, but obviously as a Small Business Committee, we do have interest in that.

The concern and the desire in which the legislature which we are considering is certain to be commended. We do have some reservation about immediately trying to undue some of the laws that we have put in place to protect really in terms of American industry.

I would be open to questions to listening to so I can have opportunity to find both the pros and cons and would just urge our col-

leagues as we try to address a correction that we do not undermine the very basis in which some of these provisions were originally intended temporary as part of the antidumping of the GATT, a treaty that we just signed.

Thank you, Mr. chairman.

Chairman MANZULLO. Mr. LaFalce.

Mr. LAFALCE. Thank you very much, Mr. Chairman. I simply wanted to stop by because two of my esteemed colleagues are going to be here, and I wanted to welcome them, both Phil and Sandy.

Sandy, I know you had very short notice, so I appreciate your taking time at the last minute to give us your insight on these issues along with Phil.

Both of you have been forceful leaders in Congress for defending the rights of U.S. business and traders who daily must deal with the sometime unfair trade practices of the competitors.

I'd like to give a special welcome to Commerce Acting Assistant Secretary, Paul Joffe, who I remember testified before the Full Committee when I convened a hearing on trade issues that included dispute settlement. I know that you too juggled your schedule as well to be here given the short notice.

Mr. Chairman, finally, I'd like to thank you for accommodating my request to invite Mr. Levin and Mr. Joffe. For I believe it's important to provide a balance of perspectives on an issue, particularly when the issue involves such complicated trade laws.

Let me just make a general comment about the issue before the Subcommittee, that of providing a possible waiver to an antidumping or a countervailing duty ruling by the Commerce Department in cases of alleged short supply of a product.

I think it's important that we in Congress insure recourse to fair and strong trade laws for U.S. business where there are cases of unfair trade practices. Whether the concern is pricing at less than fair market value when prices are set below the production, or when foreign Government subsidized production that enabled an imported product to be priced below market value.

U.S. business must have confidence that U.S. trade laws will not allow such practices to continue. Congress should not take actions to weaken our trade laws, especially when we have just revised the laws to conform with Uruguay Round implementing legislation.

Second, I believe we should be wary of any provisions that might be used to circumvent the intent of U.S. antidumping and countervailing duty laws. After a sector of U.S. industry has spent time and money to redress an unfair practice, it would be demoralizing to have a ruling in favor of U.S. industry waived. We must keep in mind that antidumping duties are levied only in the amount that raises the price of an import to its fair market value.

Finally, I believe we must also be concerned about the additional workload we may be imposing on the Commerce Department when its resources have been reduced. Investigation and administration of antidumping and countervailing duty cases are inordinately labor intensive, costly and time consuming.

I fear that adding waiver capabilities to the determinations of these particular laws would necessarily take away time and attention devoted to investigating the dumping and subsidy petitions.

Mr. Chairman, I thank you again for allowing me to say a few words. Again, I welcome the witnesses.

Chairman MANZULLO. We're honored to be joined in our Small Business Committee by Congressman Amo Houghton from New York, who's on the Ways and Means Trade Subcommittee. I appreciate you being here.

Mr. HOUGHTON. Thank you very much. I had not planned on saying anything, but I appreciate very much being able to be here. I guess I have a piece of my skin in this whole process. Because having been in the glass ball like this for 40 years, I know how much it means to have American companies being able to count on their Government.

One of the problems that I've always seen, and maybe there's ways around it, is that when a company in an unknown foreign land knocks out a whole industry in the United States, and then throws itself on the Court of Justice, saying that there is no more supply in the United States and, therefore, it must be able to eliminate the tariff which has been put upon it for illegal action. I think that's just basically wrong.

Now, again, maybe there's a way around this thing. But I think that if you're going to be investing in this country, and trying to create jobs for American workers, with the recognition that a foreign country can destroy that without you being able to penetrate its market, and then say all those dumping duties which you've been levying on it should be eliminated. I think that's something we are very, very carefully looking at.

Furthermore, if I understand correctly, the Department of Commerce to which this law would apply, really doesn't want it. So, having said that and being totally impartial in my feelings, I will relinquish the podium.

Chairman MANZULLO. It goes to show the bipartisanship or trade issues. Mr. Crane.

TESTIMONY OF THE HONORABLE PHILIP M. CRANE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. CRANE. Thank you, Mr. Chairman. Let me reassure Amo that I share his concerns about knocking out American businesses through dumping practices, and that's why we have the antidumping laws on the books already; and this does not abolish the antidumping laws that would apply to countries engaged in the practice you just opined.

I want to congratulate you, Mr. Chairman, for having this hearing and to thank you for inviting me to participate. The concept of temporary duty suspension is something I very strongly support.

As you know, I introduced H.R. 2822, which you cosponsored, to give authority to Commerce to suspend the imposition of antidumping or countervailing duties temporarily on a limited quantity of a particular product needed by the American industry when users are effectively unable to obtain that product from U.S. producers. I believe that this legislation is extremely important to small businesses, which very often are the victims of trade protections extended to help large industries such as the integrated steel industry and the semiconductor industry.

Now, I am not saying that we should do away with the antidumping laws, Amo, but I am saying that we need to focus more on the impact that antidumping orders can have on downstream industries: U.S. companies that may source globally and purchase imported products.

It's extremely difficult for such companies, especially if they are small businesses, to compete if the U.S. industry does not produce the product they need. They have no alternative but to pay high antidumping duties.

What I have proposed is a very limited exception to the antidumping law based on the fact that under current laws, antidumping and countervailing duties are imposed on all covered products, even where there is no domestic production. Current U.S. trade laws simply do not provide adequately redress for American firms that need products subject to orders, but cannot obtain them from U.S. producers.

Mr. Chairman, I've heard from a large number of small businesses in my work on this legislation. They tell me that this limited exception will allow them to remain competitive. It would address situations in which a product is only temporarily unavailable, situations in which the domestic industry is not currently producing a product, but may wish to leave open the option of doing so in the future.

The temporary relief will encourage the domestic industry to develop new products. Since it will enable U.S. downstream users to stay in business in the United States until the U.S. industry begins to manufacture the needed input, thus, assuring that there will be U.S. customers for new products produced by the domestic industry.

The small businesses I have talked to are not looking for duty suspension and circumstances in which the respondent has been so successful at dumping that the U.S. industry has been driven and can no longer supply the product in question. They are not looking for a duty suspension if the product is available from U.S. producers but at prices that are merely higher than the price for the imported product, unless the price is so prohibitively high that it's effectively unavailable. Instead they're seeking a solution that would keep them in business, and at the same time, would not hurt the industry that sought the antidumping relief.

Mr. Chairman, dumping is no longer a domestic versus foreign issue. Instead, in the United States, there are U.S. companies who need strong dumping laws, but also there are U.S. companies, especially small businesses, that may be adversely affected by these laws in certain situations. So, I hope we can work together to help all U.S. companies, large and small.

Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you, Mr. Crane. Mr. Levin.

[Mr. Crane's statement may be found in the appendix.]

TESTIMONY OF THE HONORABLE SANDER M. LEVIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. LEVIN. Thank you very, very much. I appreciate the chance to be here, and I apologize to Mr. Crane and to all of you because

I am going to have to leave very shortly to go to a funeral. You have my written testimony. So, let me just, if I might, hit what I think are the major points.

I confess I have as much objectivity as my colleague, Mr. Houghton, on this issue. He and I have worked very closely together, but I do think we do have some objectivity. We worked on this issue a number of years ago, Mr. Chairman and other colleagues, as part of the discussions of the Uruguay Round. This was one of the most contentious issues, and when we were wrapping up the discussions within the American delegation in Geneva—and we were represented there on a bipartisan basis—a deal was struck. I think a balance was achieved. The short supply issue was fully aired, and what is essentially happening here is that those who participated in the agreement are trying to undo part of it.

When we handled the implementing legislation for the Uruguay Round, we also went into this and we reached an agreement on a bipartisan basis. Now not much after the ink has dried, there are some who want do alter it. I think it's okay if people want to air the issue, but I think we should remember the delicate balance that existed in debating and then creating and then implementing the antidumping provisions.

I remember vividly when we went before the press on a bipartisan basis after our discussions in Geneva. We had had some varying opinions in our ranks, but it was agreed that we were all going to go to the press conference and essentially support our American negotiations and negotiators and not try to argue out a specific position or another. We were working together for an overall agreement, and I think this legislation would upset that.

Second, I want to say that while those who propose short supply legislation say they're not trying to substantially alter the antidumping provisions, essentially they would. It is not a limited, small kind of exemption. When you look at the language in the proposal it uses the term "inappropriate." They're still making Mack trucks somewhere in this country, and this is an exemption that's large enough to drive one of them through.

It talks about duty suspension whenever "prevailing market conditions related to the availability of the product in the United States makes imposition of duties inappropriate." That is such a broad exception that it would entangle all of us, the Commerce Department and this Congress, in the implementation of that exception.

Commerce would be beset and besieged by endless petitions, and Members of Congress, would be asked, I'm sure, to intervene on behalf of one or another interest to try to help prove that the "inappropriate" language should be applied.

So I think it is not accurate to say that this proposal as presently written would not undermine our antidumping laws. It would, or most likely would, and that would not only be, I think, a violation of the spirit within which we worked several years ago, on a bipartisan basis, but it would be bad policy.

Third, I'd like to say this is not an issue between small and larger business. We've received a lot of communications from smaller business, and there's a reference to a number of these instances in my testimony. We received a letter from the Quanex Corporation's

steel tube entity with plants in Michigan and Texas, and Mr. Hill, who's the President of that group, spelled out what their problems had been and how much they had expended when large foreign conglomerates were exceeding dumping margins, in some cases, by 100 percent.

Remember: Companies, large and small, are competing with foreign conglomerates that often have subsidization from their countries; and we spell out large numbers of other instances where the antidumping laws have been essential. In many cases, these are smaller companies. There's a reference in my testimony to the dumping of garlic from China. It forced U.S. growers essentially to curtail their planting. That created what some people would say is a "short supply."

It was created by dumping, and most of these growers are small and so there was a duty imposed, and I suppose you could come in and say that it would be "inappropriate" for there to be a dumping duty even though suspension of the duty would benefit those who caused the injury in the first place.

My testimony also references the problems with cement. I know something of this issue and the efforts of Mexican entities to try to dominate the U.S. market. So, that's a third example why this language in the bill is inadequate. It isn't an issue of small business versus large — and I think it was regrettable when this hearing was set up that there wasn't provision for small companies who oppose this legislation to come and present testimony.

Last, let me just say, as the Commerce Department will testify, it is not true that the present law is inflexible. That just is not accurate. The Commerce Department, which has the responsibility for administrating the antidumping laws feels that it has adequate flexibility, and they will spell out in many respects how that flexibility exists.

So, look, I just think it would be a mistake to act. I think there is strong bipartisan opposition to this bill in Ways and Means. I believe that opposition is shared on a bipartisan basis within the Senate. My guess, if I might say so, is that it also includes the Majority Leader of the Senate.

We've worked hard to try to give American companies a fighting chance. We've operated on the assumption that American companies should be able to compete on the same basis as foreign companies compete here. We've operated on the assumption that that has not been true in many cases, and so we have as a Government said we don't want to have anything to do with making goods, but we want those who make goods, who grow the products, et cetera, to have an equal footing with their foreign competitors. That's all we want, here and there. I think it is a mistake to send a signal that we want to open the door to those who would compete unfairly. So, thank you very much, Mr. Chairman, I very much appreciate this opportunity——

Chairman MANZULLO. Sandy, can you stick around for 3 or 4 minutes so that we can ask questions?

Mr. LEVIN. Absolutely.

Chairman MANZULLO. All right. Perhaps we could have unique exchange of ideas. Phil, do you have a response to what Sandy said on the garlic items?

Mr. CRANE. I'd like to ask Sandy a question about the garlic. Are you saying that we never grew garlic in this country when the Chinese started exporting garlic here, and we learned from the Chinese that you can grow garlic here in the United States?

Mr. LEVIN. No.

Mr. CRANE. We were growing it here.

Mr. LEVIN. Yes.

Mr. CRANE. Well, this bill would not in any way suspend the antidumping provisions of the current law, if we are producing the product domestically. What it is does do, and assuming that we were not growing garlic here, but we discovered there's a market for garlic here in the United States; and the Chinese were exporting and dumping here, but our growers said, "Hey we can produce that same product." What it would provide is the flexibility for a temporary suspension of our antidumping laws until our growers have planted and produced the product. It's a year maximum. It can be as little as 1 month and — it can't be renewed for more than a year after a year's examination to see if, in fact, we do not have the domestic supplier here. But it's not something permanent that would disadvantage Americans. It's all predicated on the availability of that same product here.

Mr. LEVIN. May I just respond. Look at the language in the bill: "Prevailing market conditions relating to the availability of the product in the U.S. makes imposition of duties inappropriate." That means that when conditions were created by actions of others that affect the availability of the product in the market that they can reap the benefits of their own unfair trade practices, and that language is much too broad.

Commerce will tell you what the word "inappropriate," means. I can tell you as someone who once practiced law, I'd love to deal with terms like "inappropriate." The thing is it will lead to a flood of cases, and Commerce, as I said, would be besieged by this.

Mr. CRANE. Well, could I respond again to what Sandy just said? I have never once advanced the argument that the language of the legislation I dropped is flawless. I've spoken — and, in fact, last night I went to the steel manufacturers association reception at the Willard, and of course the Big Steel manufacturers were opposed to my legislation. But there were small business people who work as suppliers to the steel industry in a variety of capacities and who gave the exact opposite position. I told them, the opponents and the proponents side-by-side, that what I'd like to do is get them both at the same table and work on language that addresses what can be a very real problem to some small businesses in this country. The European Union took this same action last year.

So this basically just parallels the action that the European Union has already taken, and it's not designed to hurt any business, large or small. I'm sure you can find some small businesses that wouldn't be gung ho for this legislation, and you can find some large businesses that would be indifferent; but to the degree I know there is strong feeling on both sides.

I think sitting down together and negotiating, and if that word "inappropriate" in there is inappropriate from Sandy's perspective, then come up with satisfactory language that does focus on the problem, though.

Mr. LEVIN. We argued this out 2 years ago. We went into this thing thoroughly. It is a major issue. There will always be some people in this country who would benefit, for example, if there were no antidumping laws. I mean——

Mr. CRANE. A lot of people would benefit if there were no antidumping laws. That's not what my bill addresses.

Mr. LEVIN. There will always be some businesses in the U.S., because of the complexity of this issue, who would like it the other way by definition. Importers, for example, small or large companies that represent one side. Look at the disagreement we have between the producers and the retailers in this country. We have to try to reach some balance between them. Retailers would rather there be no restrictions whatsoever.

Mr. CRANE. Yes, but that's why we have antidumping laws on the——

Chairman MANZULLO. My 5 minutes is up. Sandy, it's 10:30, if you want to excuse yourself.

Mr. LEVIN. Unless we can settle this in the next 5 minutes.

Chairman MANZULLO. I'd like to take advantage of Congressman Levin's expertise on this.

Ms. CLAYTON. Well, I don't know if he can — they argued 2 years ago, and they're still arguing; and I don't think 5 more minutes is going to do it. But I did want him to speak from his perspective of the flexibility that he indicated is there that — and I gather it would be expounded once Commerce inserts an export rule would testify, but he indicated it was current flexibility; and I think that part of the argument is that that flexibility hasn't been used, but what is the flexibility that you suggested there?

Mr. LEVIN. In carving out the dumping provisions in the first place, the Department has flexibility; and when there are changed circumstances they have flexibility to alter. So, I would just urge that you would all listen carefully to what Commerce has to say, the people who actually work with these laws.

I don't think that they approach this with a biased perspective. Look, we've had disagreements with the Commerce Department. We had some when we were arguing out this issue during the Uruguay Round. There were varying perspectives within Commerce and within the USTR, and they didn't always 100 percent agree with each other.

So, I think they have some credibility when they say, as their testimony indicates, that they're not handcuffed and that the businesses, small and large, who feel that they would be injured by a dumping duty have a chance to be heard. If there are vastly changed circumstances, they can have another bite at the apple.

Mr. CRANE. Could I add something to that though? That is Commerce does not have the existing authority to provide temporary relief, and that's what this bill addresses. It can't permit the suspension of duties where the product is not available merely for a short period of time, and that can be resolved in less than 6 months, a growing season for garlic. So,——

Chairman MANZULLO. How did we go from steel to garlic?

Mr. CRANE. Well, Sandy injected the garlic into this discussion.

Chairman MANZULLO. Did they grow garlic in Michigan, Sandy?

Mr. LEVIN. I don't even take garlic pills, they're supposed to be good for your health. So, I don't have a vested interest in it.

I think we ought to look at these issues not simply in terms of what's made in our State because you have to have some kind of an equitable structure in this country that has applicability more than to the specific industry that is most affecting you. If we look at this too narrowly, we're going to end up, I think, with something that's probably bad for the country, and in the end, bad for yourself, for your own State or your own district.

Mr. CRANE. Well, now wait. Are you indicting Commerce in its application of this authority?

Mr. LEVIN. No, I think Commerce has done an excellent job.

Mr. CRANE. Well, no, I mean if this authority were there, would you condemn Commerce Department then for the application of a temporary duty suspension——

Mr. LEVIN. But Commerce makes it clear that what you're doing with this language is creating an exception that number one, isn't needed; and number two, is so broad that it's going to be unworkable; and number three, could seriously undermine the strength of our antidumping laws.

Mr. CRANE. Well, except that Commerce is not mandated to do anything. Under this bill, there's no obligation. They have the authority, but they don't have to apply it. It doesn't mandate that action be taken, and if they're over burdened with petitions, they can ignore that totally.

Mr. LEVIN. I thought you were not in favor of giving Government entities broad discretion that could be utilized in very uneven ways and which that entity itself doesn't want.

Mr. CRANE. It wouldn't be an application of an authority in an uneven way, unless Commerce would violate the guidelines of the authority.

Mr. LEVIN. I'll finish by saying, any time you give an agency the ability to take action based on the vague term "inappropriate," I think that is much too broad a delegation to that entity.

Mr. CRANE. Except if you're waiting for congressional relief, that's a lot longer timeframe too.

Mr. LEVIN. So, we'll settle this immediately.

Mr. CRANE. No, seriously, Sandy, I'd like to sit down with you and figure something out. I mean go through it; the words, intent, meaning as you interpret it, and make sure that your concerns are addressed. Because I assume you have some small businesses that are going to appear before you today that already have been effected, and in a real injurious way, and it's trying to address those targeted situations. As I said, it's not a mandate. It's something that Commerce can choose to apply or not to apply.

Mr. LEVIN. We're always glad, within the committee, to sit down and talk. But I just think people should understand not only the force of feeling on both sides, but also the history of this. I think to reopen this at this point is not a wise idea. But thanks for letting Ways and Means take so much time.

Ms. CLAYTON. I gather this has been introduced. Has Ways and Means considered this as now the hearing, which is more of an advocacy and it allows the record——

Mr. LEVIN. Mr. Crane is chairman of the Subcommittee, so I would defer to him.

Mr. CRANE. Well, we have had hearings only, and the hearings didn't focus exclusively on the short supply bill by any means. Other than that, I was at that hearing, but there were witnesses who testified as to their views, pro and con, of this legislation.

Mrs. CLAYTON. This is people both who opposed it and——

Mr. CRANE. Right. Both those who opposed and those who favored.

Ms. CLAYTON. I wish you'd take a page out of the — which would have businesses who would also oppose it as well as those who support it. Do you have that?

Chairman MANZULLO. We would have honored any requests on that.

Mrs. CLAYTON. Fine. Well, then open the record so that the record would at least reflect the ones that represent Levin and his — he had and just looking through the roster here, all of them are pro and I'm just suggesting in the balance of — and also if on exemplary or representing — claiming themselves who considering the bill, do you felt it wise and prudent to have both, small business both——

Chairman MANZULLO. The notice went out, and if anybody wanted to bring in somebody to speak that right was there. Mrs. Clayton, I will leave the hearing record open for 3 weeks. If you want to file any letters from any companies, that would be part of the record. That's fine with me.

Ms. CLAYTON. Thank you. We will take advantage of that.

Chairman MANZULLO. OK.

Mr. LEVIN. Well, thank you for all this time.

Chairman MANZULLO. We'll talk to you later. Mr. Bartlett, any questions to Mr. Crane?

Mr. BARTLETT. Thank you very much, Mr. Chairman. It's my understanding that the issue here is particularly important to small business. If you're in General Motors and you have a resource that is in short supply, and you can't continue your manufacture here in this country; we've got lots of places elsewhere that you can dig at manufacturing. That's not an option available to small business, and a system which is acceptable to big business because they have the option of manufacturing here or there or elsewhere; and they can live with it. It would put small business out of business because if there's just one small part of a — of a product that you cannot make because of a limitation of a resource, you're totally shut down. That's not true if you're a big business. So, it's very appropriate to be looking at this in the Small Business Committee.

Mr. Crane, how widespread is the problem from your input in the small business community? Is this a meaningful problem, are there meaningful shortages that short supplies that are impacting our small business community?

Mr. CRANE. I have had input, of course as Chairman of the Trade Subcommittee, from quite a number, sizable number; and small businesses have been the ones to be sure that communicated with me. I'd have to go back and check the records to be able to give you the exact number. But when you ask within the entire small business community, it's got to be a small percentage of all of our

small businesses. But to the degree it does affect and can put out of business some small businesses for the problems you just cited.

I'm suggesting it is a form of relief that can guarantee the survival of a business and I'll tell you something else too, it was a point somebody brought up last night. That while this product is lacking, we've had the capability of manufacturing it. Well, fine, manufacture it, and in the interim you've provided maybe 6 months of relief, and they're geared up, and now they're producing the product here.

Maybe big businesses can address some of these problems or other smaller business that aren't even aware that the problem exists; but in the interim, to provide a temporary form of relief like this to guarantee the survival of a small business that doesn't have that option of jumping the border, I really think is the best interest of all of our people.

Mr. BARTLETT. In looking, witnesses the filed for 6 months while they waited for someone else to make a——

Mr. CRANE. That's exactly the problem. You're talking about the time constraints and in effect being shut down until you get the alternative.

Mr. BARTLETT. I gather the challenge here is to craft legislation that is going to permit the Department to do this without opening a flood gate of the portions that will just swamp the——

Mr. CRANE. Well, they could get flooded with petitions. I'm sympathetic with Commerce's concerns on that point; but as I say, they are not mandated to take action on any one of those petitions. It's a flexible authority, if they're overburdened, and they don't have the personnel to do it, fine, you're taking maybe just nice layered case or two in the course of the year.

But they have that capability of providing that targeted relief for whatever timeframe they choose, and that's something that currently they don't have. They don't have that authority.

Mr. BARTLETT. So, your position is then that this provides to the Department an option that, in your view, they had ought to ask for because it permits them to be more flexible and more responsive to the needs of our small business community?

Mr. CRANE. Well, I think that they have not really thus far responded properly to some of the concerns expressed by some of those small businesses here that have been profoundly hurt.

Mr. BARTLETT. Thank you very much. Sandy said that they had the flexibility to do this. Is it too cumbersome under present legislation or are they just ignoring the options that they now have for response?

Mr. CRANE. No, they do not have existing authority, Roscoe, to provide temporary relief; and that's what this bill would do, is give them the authority for temporary relief. As I said, it could be a week, it could be month, it could be a year. It can't be more than a year or else they got to go back to the drawing boards again and say, "OK. Well, the problem still exists. We'll extend it another 6 months."

Mr. BARTLETT. So, this thing gives them the tool they don't now have——

Mr. CRANE. Don't now have.

Mr. BARTLETT. The problem was in craft in legislation that seems fair and reasonable to both sides.

Mr. CRANE. Well, that's why I say I'm more than happy and — Bill Archer has said this to the representatives of both those for and those against — that he wants to sit down with me and representatives from business on both sides and see how you can reasonably address it. I'm not saying the language in my bill is perfect, fine, but let's recognize that the problem does exist.

Mr. BARTLETT. Thank you very much. Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you.

Mrs. CLAYTON. Mr. Crane, you spoke about the temporary nature of the bill, but yet you have an opening provision that could be renewed the following year, do you see any inconsistency with that, is there any way you can——

Mr. CRANE. No, because——

Mrs. CLAYTON. Is it that——

Mr. CRANE. It's after their determination that you still don't have the product available here being produced domestically. That would have to be upon a thorough examination and outreach to check with various industries that might be involved to see if such a product is now being manufactured here, that it's here and it's available. It can meet the need out there in the marketplace. Then, fine, there's no need to continue an extension.

As I say, you could provide relief in crop growing situation for just one season. If we didn't produce the crop but suddenly we find out we have farmers that were interested, and we have the climate, and we could produce that crop; 6 months is probably all you'd need before they're in business.

Mrs. CLAYTON. There may be a shortage in some of the grains we have, would that apply as well to that, to the following line?

Mr. CRANE. Well, if you have, as I say, if you have a lack of availability that American businesses need to produce whatever they're producing, then a foreign exporter can fill that need and this can be, as I say, on a temporary basis, if the domestic businesses recognize hey, "there's an expanding market here, and we can produce to help fill it."

But I'm thinking of a catastrophe, now it's all about wheat. We're wiped out because of weather conditions in a single growing season, and apparently we are going to have some problems like that this year. But if we're all wiped out, then you could permit wheat exports to come into this country to fill our domestic needs, and — but that recognizes that come next year, that's history. Because next year we'll be back in business. I was just reminded here that it's less likely to be agricultural and it's more hightech fields that this would apply.

Mrs. CLAYTON. I agree that agricultural is kind of mucky ground, as you well know.

Mr. CRANE. It's very mucky.

Mrs. CLAYTON. Aren't you also from a farm in Tennessee?

Mr. CRANE. Yes, indeed.

Mrs. CLAYTON. You remember the cotton dumping, cause our cotton. That was going to be my next question, but you have a staff back there so they knew where I was going. So, thank you, I appreciate your response.

Mr. CRANE. Surely.

Chairman MANZULLO. Phil, I appreciate you taking your time to come.

Mr. CRANE. Well, thank you, and I appreciate you having these hearings on the subject and, as I say, we're strictly in the discussion stage. We haven't even contemplated trying to mark it up in Subcommittee, and I do think that our refinements in the language that can be made, but that's why I solicit the input.

Chairman MANZULLO. Appreciate it. That's why we're having this hearing.

Mr. CRANE. I appreciate that too.

Chairman MANZULLO. Thank you.

Mr. CRANE. Thank you, Mr. Chairman.

Chairman MANZULLO. Second panel. I'm going to ask Mr. Joffe to go first, and then there was a request that somebody had to be out of here by 11:30 to catch a flight. Who was that?

Mr. HOPP. I need to be out by approximately 11:30. I have a 12:30 flight.

Chairman MANZULLO. All right. I'll have you testify right after Mr. Joffe. Mr. Joffe, please.

[Mr. Levin's statement may be found in the appendix.]

TESTIMONY OF PAUL L. JOFFE, ACTING ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Mr. JOFFE. Thank you, Mr. Chairman. I greatly appreciate the opportunity to testify before the Subcommittee today. I would like to commend you and the Subcommittee for your interest in the unfair trade laws, which really are so vital to America's economic well-being.

The antidumping and countervailing duty laws safeguard our companies and workers from unfair pricing by foreign companies and from foreign government subsidies. In today's world, trade policy is a critical element of economic policy, and our laws addressing unfair trade are an essential part of the Clinton administration's trade policy. As we pursue increased access to markets abroad, we must maintain a level playing field to ensure that trade brings growth and an economy that generates jobs at home. Unfair trade is not genuinely free trade.

The trade laws are used by many small businesses, and I want to stress that because we heard earlier that there are small businesses concerned about how they apply, but of course the Subcommittee knows that there are many small businesses that rely on the trade laws. As you may know, we have recently overhauled our regulations very much with sensitivity to them being easier to use by small businesses.

I appreciate the opportunity to address the relationship between the antidumping law and downstream industrial users. I believe that industrial consumers do have an important role in antidumping proceedings, and I'll being glad to describe in the course of the hearing how that's taken into account. The Congress in the existing antidumping law, we believe, has struck the proper balance, recognizing that unfair and injurious trade practices affecting producers, including small businesses, and workers in our market must

be addressed. In a world of fierce competition we have to be vigilant to avoid undermining that delicate balance. We should not reopen the legislative debate from 2 years ago that led to this carefully crafted balance. Unintentionally, we believe this legislation would upset that delicate balance, and I'll be happy to explain why.

It's important to focus first on the reasons we continue to need dumping and subsidy laws. While we have made great progress in reducing trade barriers, problems really do remain.

Government subsidies can allow firms to sell below-cost. Other trade barriers, and cartels and monopolistic behavior abroad, can allow firms to reap high profits at home while selling at much lower prices in the United States.

With this background, I think the Subcommittee can understand why we have been so strongly opposed to proposals such as a short supply exception. Abandoning or weakening the trade laws in the world of imperfect competition, we believe, would amount to nothing less than unilateral disarmament.

A short supply legislative exception, we believe, would open a huge loophole. A foreign firm could dump to drive out U.S. competitors and benefit afterward from a short supply provision. Suspending the payment of duties could deter new investment by the injured U.S. industry.

We believe that a short supply provision would really be impracticable to administer. Commerce would be put in the position of deciding what prices, specifications, and quantities constitute short supply instead of letting the market place govern. In addition, a short supply exemption would be an administrative nightmare and would drain scarce resources away from careful implementation of the recent changes in the law. We also believe it would increase litigation costs and politicize trade cases.

Nevertheless, we are sensitive to the issue that has been raised. I think it can't be stressed too much that there are existing procedures that deal with the situation. As the debate has intensified over the last few years, we have focused in very carefully to be responsive to the concerns that have been raised. I want to indicate how our procedures do respond.

First of all, clarifications of investigation — of the investigations at the their early stage can avoid later supply problems.

Second, in general, in consultation with U.S. petitioners, existing orders can be narrowed through changed circumstances proceedings to exclude products not made in the United States. We have recently completed two such reviews, partially revoking one order regarding steel plate and another involving new steel rails, and we have others in the pipeline.

Third, our scope procedures have been used on many occasions to exclude products when importers have claimed a specific product is not available domestically, product coverage is unclear, and products have different physical characteristics and uses. We've done this numerous times with respect to ball bearings, for example.

Fourth and finally, the International Trade Commission considers the domestic industry's ability to supply a product in assessing whether the domestic industry is injured from dumped imports. It happens, with respect to steel users, there have been major in-

stances in which the ITC "went negative" as we say, meaning the orders didn't go forward.

For all these reasons, we feel strongly that a short supply exception is unnecessary and would only serve to undermine the vital purpose of the trade laws. Not because supply situations shouldn't be addressed, but because we do have the procedures under the existing law to deal with these situations.

Let me just conclude by saying that with the fading of the cold war, international rivalry has turned more and more to economics. This is no time to dismantle our defenses in the face of unfair foreign competition. To the contrary, industries and workers across America have a right to expect us to use every means at our disposal to preserve jobs and business opportunities by defending against unfair pricing practices. Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you. Mr. Hopp, with the Precision Metalforming Association. You're also the President of HK Metalcraft out of Lodi, New Jersey.

[Mr. Joffe's statement may be found in the appendix.]

TESTIMONY OF RAY HOPP, PRESIDENT, H.K. METALCRAFT, LODI, NEW JERSEY

Mr. HOPP. Thank you. Good morning, Mr. Chairman, members of Small Business Committee, and staff. I'm here in a dual capacity as Chairman of the Precision Metalforming Association, PMA, and president of HK Metalcraft Manufacturing Corporation, Lodi, New Jersey. I am testifying in support of the Temporary Duty Suspension bill, H.R. 2822, a bill which is vital to small business.

PMA represents some 1,400 members throughout the United States. The vast majority of PMA members are small businesses. The average number of employees of PMA members is 80. Our member companies are American manufacturers that use flat-rolled metal, especially sheet steel, to make thousands of different products that can be found in the American automobile, home, farm, and factories. Our industry employees over 300,000 workers and consumes about one-fourth of the steel produced in the North America.

HK Metalcraft produces spark plug gaskets in the United States. HK Metalcraft currently has 57 employees, and annual sales revenue of $9 million.

I am accompanied here today by our Washington counsel, Lewis Leibowitz, from Hogan & Hartson.

PMA strongly supports H.R. 2822. Such a provision would prevent harm to U.S. industrial producers that now are forced to pay potentially crippling dumping and countervailing duties on certain raw materials, such as steel products, that are not even available from domestic producers.

Metalformed products are now produced in a just-in-time manufacturing environment. A short supply exemption is fully consistent with the objectives of antidumping laws——

Chairman MANZULLO. Mr. Hopp, if I may interrupt, if you read your entire statement you'll go over your 5 minutes. So, I would ask to summarize and get to the gut of this, which is, if there is a short supply of steel.

Mr. HOPP. The issue is: That operating in a just-in-time environment, we cannot go through a long procedure to get materials. What just-in-time environment says is that we receive an order that has to be filled any place from 1 day to approximately 1 month. If the materials that we need are not available within that timespan, we cannot accept that order, and, therefore, cannot produce the products that our customers require.

In our case in particular, HK Metalcraft has experienced this problem first hand, and the need for temporary duty or short supply provision would be necessary.

We require the use of thin gauge steel of .015 to .017 material, and whenever possible, we would purchase that material domestically; but it is not always available. If we cannot get that material, we cannot supply our products, both domestically and worldwide.

HK Metalcraft now has 8 percent of — its spark plug gaskets are produced for the export market, and we would fully expect that in 19 — at the end of 1996 that that percentage will go up to 20 percent of the market. However, if we cannot get the materials that we require in a just-in-time basis, we will not be able to provide for both our domestic and international customers in a just-in-time basis. Without such a provision, costs could rise to the point where we would not be competitive in the world environment.

So what we are asking is that there be temporary suspension of the antidumping countervailing duties provisions. In such cases, as I've just outlined where we have to produce in a just-in-time environment so that can be able to get the materials that we need to be competitive.

Chairman MANZULLO. I didn't mean to cut you off. I just wanted to make sure you got out the heart of your message. You'll be with us until 11:30; is that correct?

Mr. HOPP. That's correct.

Chairman MANZULLO. All right. Thank you. Mr. Phillips.

[Mr. Hopp's statement may be found in the appendix.]

TESTIMONY OF JOHN PHILLIPS, VICE PRESIDENT (SALES), BERG STEEL PIPE CORPORATION, HOUSTON, TEXAS

Mr. PHILLIPS. I'm John Phillips, and I'm Senior Vice President of Berg Steel Pipe, which is a small business in Panama City, Florida, dealing with big business. We produce large diameter pipe for the energy sector, oil and gas. We support Representative Crane's bill because of the problems we're going to tell you about.

I have written testimony, and I just wanted it placed in the record, because I just wanted to tell you exactly how things are and not read it.

We have a problem because the domestic industry does not produce some of the requirements that we have in the pipe industry. One, is in-line ultrasonic tested plates. There is no plate mill in the United States that has in-line ultrasonic testing.

The specifications for large diameter DSAW pipe are getting more stringent all the time, and started with the Edison/New Jersey blow up.

We produce through — in API through 64 inch. We cannot get domestic plates, to produce 48 inch diameter and larger pipe. We've done this before the problems arose with trade cases, we brought

this in, and everything went fine, the domestic mills did not object because they didn't produce it.

In fact, we are — for the last several years — Bethlehem Steel's largest plate customer in the United States. What's happening now is we're losing business to foreign pipe manufacturers on pipe that needs — plate to be ultrasonic tested.

For large diameter pipe of 48 inch and above we're losing it to the foreign manufacturers. There's no way out unless we can get a temporary suspension to bring in imported plates.

VRA short supply procedures worked for us from 1989 to 1992. We never did anything illegally with the situation, and I think they'll solve the problem and work well today. It's just that simple. We need for the future, for the 200 workers that we have, to have a supply of these products. Our regular ordinary plates, we have no problem; and we're not tying to circumvent or take away from domestic industry. We will not hurt the domestic industry in any way. We're looking to help ourselves with something that's not produced in the United States, it's that simple.

Chairman MANZULLO. Well, thank you, Mr. Phillips.

[Mr. Phillips' statement may be found in the appendix.]

TESTIMONY OF GARY GREEN, SECRETARY/TREASURER, GARY DRILLING COMPANY, BAKERSFIELD, CALIFORNIA

Mr. GREEN. Thank you very much. My name's Gary Green. I'm here representing the International Association of Drilling Contractors, which virtually represents worldwide — it's a sole organization that represents, again, contracting services worldwide, vast majority of which are domestic small owned — small businesses owned here in the United States.

I'm also here representing my own family business. This is a business that was started by my father in 1954. We employ about a 184 people. We drill wells exclusively in California, geothermal, oil, gas, disposal wells, and water wells. We'll drill about a thousand wells every year, we'll drill over a million feet of hole in the ground. To do this, we need drill pipe.

Drill pipe is a unique steel product that we pump fluid under pressure down through the center of it and we roll it out that way, and we rotate it in the ground, and we wear out the outside, and there's only one domestic provider of drill pipe. To order a new string drill pipe these days will take the better part of a year.

The supplier will tell you you won't get it within 6 months, and the salesman representative will tip me off because they're hoping to make a sale in the future, just not today, and tell me, yeah, Gary, you better plan on waiting the better part of a year before you can get this drill pipe.

California is the fourth largest producing State in the Union, and our family business is a major contributor in California to be able to continue to produce at the levels that it does.

Domestic production that is not drilled or wells that are abandoned every barrel lost that way has to be replaced with a barrel coming in from a foreign market. Most likely, through a — someplace to a coast.

My cost on the drill pipe have escalated 5 percent a quarter for the last 5 quarters, which is an annual rate of something greater

than 20 percent. That's much larger than the current inflationary levels that we've seen for the last several years, and this is due to shortage. This is a cost that I cannot easily, if at all, recover in my contracting business.

I would like to urge you very much to pass H.R. 2822. We are not asking for favoritism. We don't want any unfair treatment. We like using domestic product, but until the domestic product can gear up to meet domestic demand, we would just like to be able to stay in business and keep our people working, and we need some kind of mechanism on a temporary basis to go and fill that need.

Now, I didn't come prepared to make a statement about garlic, because my business is oil and gas; and I'm talking about the specific use of the steel product. But since my home is the Central Valley in California where this product is in question, let me give you an unprepared statement.

I go and I talk to my farming friends Jeff Thompson, who grows garlic, and my friends consider him the best garlic grower in the southern end of the valley, and he refers me to go talk to Tom Akers.

Tom Akers is retired from Calcott. Calcott is the big major farmer co-op for exporting cotton to China. I ask Tom, I say, "What about this garlic situation and cotton? Garlic growers are worried about garlic coming in here." He said, "Gary, you got to realize that most of these farmers will trade crops or they cross crop. Most of the garlic growers also grow cotton. In the cotton market in Coon County is a huge market, and its huge amounts of cotton that are exported to China." I'll tell you what he told me. He said, "Anybody that thinks that they're going to protect garlic at the expense of jeopardizing retaliation for the shipping of cotton to China is pulling your leg."

Chairman MANZULLO. Well, that was interesting. My family has an Italian restaurant. It uses an abundance of garlic.

Mr. GREEN. My wife's first cousin has a little winery at the Wanda Sudalodo Trail and they make a great chardonnay.

Chairman MANZULLO. Mr. Harcke — is it Harcke?

Mr. HARCKE. Harcke.

[Mr. Green's statement may be found in the appendix.]

TESTIMONY OF RICHARD A. HARCKE, CEO, BRANFORD WIRE MANUFACTURING, MT. HOME, NORTH CAROLINA

Mr. HARCKE. Good morning to the members of the Subcommittee, and to you Mr. Chairman. We thank you for your leadership and organizing this hearing and cosponsorship of this legislation.

My name is Richard Harcke, and I am President and CEO of Branford Wire & Manufacturing Company in Mountain Home, North Carolina. My company is also a member of the American Wire Producers Association, better known as the AWPA, where I have served the association as a board member and chairman of the Stainless Committee.

Our 93 member companies operate more than 220 plants in 35 States, employing over 60,000 dedicated and productive American workers. We represent 70 to 80 percent of all wire and wire products made in the United States, estimated total annual shipments exceed $15 billion.

The average number of employees for AWPA wire drawing companies is approximately 230. While this average includes large companies that employee significantly more workers, they usually operate several small plants with less than a hundred workers, each in different States supporting different local economy.

The AWPA is part of a changing U.S. steel industry. U.S. wire manufacturers are entrepreneurial and efficient, we are creating U.S. jobs. The greater producers no longer do everything from melting steel to making nails.

The old image of "Big Steel" has been replaced by a mosaic of efficient energetic and state-of-the-art companies that can successfully meet the challenge of global competition.

Mr. Chairman, we respectively urge the members of the committee to support the passage of a Temporary Duty Suspension Act, H.R. 2822. The act will remedy the unintended effect of the trade laws that prevents the importation of raw materials that are not available from domestic sources.

Under the present law, there is no procedure which permits the timely temporary suspension of antidumping or countervailing duties where the domestic industry cannot supply U.S. manufacturers.

Let me emphasize that the AWPA is not attempting to weaken U.S. trade laws. We have worked closely with the U.S. rod suppliers to enforce trade laws and develop and expand the availability of American-made rod.

Nevertheless, the members of the AWPA and specifically, my company, have had considerable experience with both the unintended effect of dumping petitions on wire rod supply and with the administration of the short supply procedure during the VRA Program.

From 1992 to 1994, both the stainless and the carbon wire industries were severely affected by the lack of raw material during the trade cases filed against imported rod.

There are currently antidumping duties imposed on stainless wire rod from Brazil, India, and France, and there are only three domestic producers of stainless rod. These three mills are unable to supply the needs of all the U.S. stainless redrawers. Additionally, two of these three mills also make wire and compete in the wire market against Branford and other independent redrawers. This market restructure has a unique impact on the supply of rod. Under certain market conditions, rod mills may choose to manufacturer more wire, consuming their own rod production.

This further limits the amount of rod available to the U.S. redrawers. If the rod industry chooses wire production over rod sales, U.S. wire manufacturers must have the ability to source on the global market with the use of H.R. 2822.

When U.S. mills make a profitable business decision to consume rather than sell rod, they cannot be harmed by the imports abroad. The U.S. Government should have the ability to waive duties for U.S. wire producers who must have these raw materials to continue production, sales, and employment of U.S. workers and our customer's workers. Continued duties only provide importers of wire and wire products with an unfair trade advantage. The future

of our industry should not be left to the tactical objectives of petitioners.

Mr. Chairman, the members of AWPA have also had experience with short supply procedure during the VRA Program. For 6 consecutive calendar quarters, stainless redrawers of the AWPA requested and obtained special licenses to import specific grades of rod that were not available from domestic producers. In fact, the domestic producers the Commerce that such rod was not available in the U.S. market in sufficient quantities to meet domestic demand.

It is important to note that Commerce also opposed the VRA short supply procedure, but Congress ultimately enacted it into law. Nevertheless our experience was that Commerce was able to make these determinations in a prompt and fair manner.

Mr. Chairman and members of the committee, we respectfully ask that you carefully look beyond the rhetoric of Big Steel petitioners and consider the merits of H.R. 2822 and the benefits to all the sectors of the steel industry, the jobs of American workers, and, ultimately, our economy. Once again, Mr. Chairman, thank you very much for the opportunity to testify.

Chairman MANZULLO. Thank you very much. We're joined by Mr. Steve Chabot from Ohio. The House is not in session, and that accounts for the fact that we don't have more Members here.

[Mr. Harcke's statement may be found in the appendix.]

Chairman MANZULLO. Mr. Green, could you get a little more specific in exactly the particular type of product of which you had short supply and tell us what happened?

Mr. GREEN. Well, of all of tubular goods that we use in the oil patch, we call them Oil Country Tubular Goods, and there's a variety of products in the casing and tubing that the we wells are finished with, the large diameter high-quality steel pipes that are used to transport hydrocarbons around this country. I use less than 1 percent by weight of all of that — my industry uses less than 1 percent of all the weight of those tubular goods. It's a unique product that's called drill pipe, and we drill these wells like you drill a hole in you backyard——

Chairman MANZULLO. These are the big pipes that you see the rims?

Mr. GREEN. No. This is before you get to that point, when you're actually creating the hole in the ground.

Chairman MANZULLO. All right. The actual drill itself?

Mr. GREEN. The actual drill. This would be like your garden hose trying to drill a hole in your backyard. Under pressure, oil pumps maybe anywhere from 400 to 800 gallons per minute, somewhere between maybe 1,000 to 2,200 to 2,400 pounds down to the center of the pipe.

Chairman MANZULLO. As to this particular product, there's only one American manufacturer?

Mr. GREEN. That's——

Chairman MANZULLO. You've had need for additional pipe and not been able to get it?

Mr. GREEN. Yes. There are many contractors across this country that really need to be able to get drill pipe.

Chairman MANZULLO. There are, I presume, some offshore manufacturers of pipe?

Mr. GREEN. Offshore——

Chairman MANZULLO. That you can buy from——

Mr. GREEN. There's several foreign markets.

Chairman MANZULLO. What prevents you from buying that from them?

Mr. GREEN. Well, price for one thing. I can't afford it. But I can't go — the way of the existing law is, I have no standing. I have no ability to go and petition. I would have to either find a foreign supplier to petition or an importer to petition, because I've never been part of a——

Chairman MANZULLO. You can't just buy this particular type of pipe on the open market. It's not available for ordinary purchase?

Mr. GREEN. Yeah, I——

Chairman MANZULLO. Mr. Joffe, do you want to add to this?

Mr. JOFFE. Well, the — I'm interested in the Chairman's line of questioning. I'm wondering why the gentleman can't get the pipe and whether it's covered by an order——

Chairman MANZULLO. The statement was that it's available, but it's too expensive. What rates——

Mr. GREEN. I don't even know the price of everything. I don't know the duty. I have to put up all of this money, petition, and go through, probably about a year seeking advice of legal counsel.

Chairman MANZULLO. You'd only have to do that, Mr. Green, in the event that a complaint were filed saying that the foreign competitor were dumping in this country. You have a right to buy it, and if someone complains because the price is too low, then that puts the legal process into effect. Is that correct, Mr. Joffe?

Mr. JOFFE. Yes. I just ask the gentleman, is this pipe covered by an order so that there are duties on this pipe?

Mr. GREEN. I believe the answer is, yes. There is duty.

Mr. JOFFE. But you don't know?

Mr. GREEN. I'm sure there's duty.

Mr. JOFFE. Well, in a situation, if there is duty — Mr. Chairman——

Chairman MANZULLO. Would you be able to answer that question?

Mr. LEIBOWITZ. Yes, sir.

Chairman MANZULLO. Would you please identify yourself?

Mr. LEIBOWITZ. Yes, my name is Lewis Leibowitz, and I'm here on behalf of PMA and Berg Steel.

Chairman MANZULLO. I want to continue this one, go ahead.

Mr. LEIBOWITZ. There are orders in effect on Oil Country Tubular Goods from several countries. I think — and I'm not aware — whether what covers every country that covers that makes OCTG — or not, but there are lots of orders in effect on Oil Country Tubular Goods, generally. They include drill pipe, as well as well as the casing and tubing that Mr. Green referred to.

I think the problem that Mr. Green was describing is that if you do choose to buy that product subject to a dumping order, you can do it. It is lawful to do it and bring it in. But when you bring it in you must deposit the estimated antidumping duty with the cus-

tom service. That can be 40, 50, 60, 100, or 200 percent of the entered value of the merchandise.

You have no assurance at that time that you'll ever get that money back. You must go through a review procedure in order to determine the final amount of the duty, which is not completed for several years after you've made the importation.

So effectively, if the margin is high enough, practically speaking, domestic users cannot afford to take that kind of risk, and so don't import the pipe. There's one other problem that we have noticed, it's really up to the foreign producer to decide whether to sell in this market.

Many of them, and this is particularly true in OCTG, have decided simply not to bother with the U.S. market anymore, because the risks associated with putting up with administrative review procedures, which are complicated and expensive, are not worth the market share. So, they simply decline to sell into the United States. So, it's not even a matter of choice to get imports anymore, the foreign producer simply gets out of the market; and that has happened also.

So I think those are the two major sources of the difficulty.

Mr. GREEN. That's what I was trying to say.

Mr. JOFFE. I'm not sure whether the specific pipe that Mr. Green is interested in is covered by an order and why it is that there is uncertainty about that, because it would be very easy to determine that. We, in the course of the last number of days, when this issue has been before Ways and Means and this committee, have inquired around our agency to see whether anyone has ever approached us about a problem with short supply of drill pipe. We have not found that to be the case.

So if it was covered by an order and someone approached us, then we would go forward with the procedures that I described earlier to determine whether, under our procedures, an exception should be made.

And of course, as the Chairman indicated, if there were an order, it would be because there had been quite a bit of analysis and effort. Not only a finding of dumping at the Commerce Department, but the International Trade Commission would have had to have found that the U.S. industry, producers of that pipe, were being injured; and then we would not just put an arbitrary duty into place, as our responsibility is very carefully calibrated in statutes that this body has written over many decades.

Chairman MANZULLO. The duty is the difference between the dumped price and fair market price in the home country?

Mr. JOFFE. Precisely. So, after we — after we redress that price discrimination, the philosophy of the law is that the marketplace governs, not Government officials choosing between the producers and the customers.

Chairman MANZULLO. Let me ask you this follow-up question, because this really goes to the heart of the matter. How long does that process take?

Mr. JOFFE. Well, the process for making a determination to begin with, is one thing. The process for determining whether there should be an exception, would be something else. Is the Chairman

asking about the latter — how fast could we provide relief if the gentleman came to us?

Chairman MANZULLO. That would be correct.

Mr. JOFFE. Yes. The way that would work would depend on which of the several ways in which we could provide relief was used, but I'll give one example to try to be responsive.

Chairman MANZULLO. Let me set up a scenario. Mr. Green wants to purchase steel pipe from the American Corporation, and let's say it's a dollar a foot, I'm sure it's a lot more than. But available from a foreign country is the same type of drilling pipe, and it's $2 a foot. When you say "it cost more — "

Mr. GREEN. Well, we can't just——

Chairman MANZULLO. You just can't get it.

Mr. GREEN. We can't — well, one problem is we don't know about the duty when it comes in. I'm out there as a contractor competitively bidding my jobs, and I need to know what my cost are. We went through this review process to determine how much the duty is, and as a small business man, this is just more than I can cope with.

Chairman MANZULLO. Now, if there's an order in effect, it's because the foreign company was charging less than the American company. Is that correct, Mr. Joffe?

Mr. JOFFE. Well, it's because the exporter is selling at a lower price in the United States than it's selling to its own customers in its home market. Price discrimination, basically.

The theory of the law is that we shouldn't allow people behind trade barriers to reap monopoly profits at home that they then use to fuel price cutting that undercuts American producers in the United States. But we level the playing field and then a fair price is available to both sides so that U.S. producers have a fair price to compete against and U.S. customers are buying at a fair price.

Chairman MANZULLO. How often does the ITC overrule Commerce?

Mr. JOFFE. Well, it's not so much a matter of overruling, because either of us can go negative. But just to give you a rough example, in 1994 we initiated 59 cases, and in 1995 there were, let's see, 27 of those went negative, so that would be roughly a little more than — well, it would be roughly half.

Chairman MANZULLO. Roscoe, I just want to ask one more question, because I want to wrap this up.

Mr. Harcke, you said that there was a special type of material, not the carbon steel wire but something else——

Mr. HARCKE. Stainless steel.

Chairman MANZULLO. Some stainless steel. You applied to Commerce and got a waiver when there was a VRA on steel. Is that correct?

Mr. HARCKE. Yes, sir.

Chairman MANZULLO. How does that work, Mr. Joffe?

Mr. JOFFE. Well, at the time——

Mr. HARCKE. There is — excuse me. There is a distinction made there between a voluntary trade agreement, and a antidumping order.

Chairman MANZULLO. Right.

Mr. HARCKE. But the way it worked at the time was that due to quotas, the foreign — foreign manufacturers would decide what products to bring into this country.

Chairman MANZULLO. So, this was a waiver of the VRA?

Mr. HARCKE. That's correct.

Chairman MANZULLO. It wasn't any type of a waiver of the anti-dumping order. The argument against Mr. Crane's position is that there's no way to temporarily suspend something so that a company can get the product. The gentleman from Maryland.

Mr. BARTLETT. Thank you very much. The four gentlemen who represent the industry all have essentially the same problem. Mr. Hopp needs thin steel that may not be made here in large enough quantities.

Mr. Green needs drill pipe that is clearly not made in large enough quantities so that the price is now going up at 20 or 25 percent a year, and there's only one — apparently there is only one American manufacturer.

That it's difficult to get into this, because you would think that the competition would bring other people into the field, but there's still only one in this country. Is it difficult for others — I don't understand why the people aren't competing.

Mr. GREEN. Well, what happened to my business in this country 10 years ago, there was as many 4,500 drilling rigs budding and operating in this country. We've been in a tremendous depression. We oil industries lost a half a million jobs, that's 500,000. Today there's only between 600 and 700 drilling rigs operating in this country.

Mr. BARTLETT. So, the market is so small that it's only large enough for one producer in this country?

Mr. GREEN. Well, what happened in the drilling contract — the way I survived is I went to the U.S. sales, my competitors and bought my drill pipe. It wasn't new, but it was unused, and bought it at duress prices.

That market has completely dried up. Those rates are gone. That equipment has either been used or it's been shipped overseas, and it's only now that there is a demand for new product. There is one company that's giving up gradually trying to meet that. It's Grant PipeCo, they have a great product. They're a good company. The only problem is I can't wait for them.

Mr. BARTLETT. So, you need the temporary relief — Mr. Phillips needs wide plate that's just not made in this country.

Mr. PHILLIPS. Yes, sir.

Mr. BARTLETT. So, that you cannot meet a demand either in this country or overseas where you might be competitive if you have the wider plate so that you could make the bigger pipe.

Mr. Harcke needs a stainless steel rod that may or may not be available to him because the people who make it may consume it themselves that you have an erratic supply of stainless steel rod that's available to you.

Now, Mr. Joffe, these four people all have a common problem, they need a resource in their manufacturing process. That for one reason or another is not available in large enough supplies or is erratically available to them. If they come to you — if they come to you, how can you respond and how long would it take you to re-

spond and would they still be in business by the time you've responded?

Mr. JOFFE. Well, several of these folks have not come to us and if they do, we would consider their request in consultation with the petitioners, if there was an order in place——

Mr. BARTLETT. What do you mean by "order in place"?

Mr. JOFFE. Well, in order to impose duties we have to go through a process of determining that there's dumping, and the ITC does it through a process of determining that U.S. industry is injured.

Mr. BARTLETT. Well, none of these four cases is anybody accusing anybody of dumping, it's my understanding. It's not that somebody's dumping that's available and I think we can produce it, you just can't get it. So, we aren't talking about dumping here.

Mr. JOFFE. Well, we're talking about them needing a product they can't find. The bill only addresses a situation when there's a dumping duty in place.

Mr. BARTLETT. Well, you can't help them if there's no dumping?

Mr. JOFFE. If there's no dumping, their problem is not with us. Their problem is with the marketplace tight supply.

Mr. BARTLETT. But they are concerned because if they're going to go out and buy it now, there could be a tariff on it and they have to deposit somewhere up to 200 percent of the cost of the product to cover a maybe tariff in the future, and they can't get any effort, is my understanding.

Mr. JOFFE. Well, that's a hypothetical possibility of a tariff in the future. We would hope that the committee would not consider hypotheticals to be a reason to undertake this very radical——

Mr. BARTLETT. Mr. Green's intimidated from going out and buying a foreign product because he has been told that he is going to have to deposit — to make a deposit in lieu of the tariff that may be determined some time in the future, he doesn't know when.

Mr. JOFFE. Well, we hope that his anxiety will be relieved by the examples that we've given of how we can address that. To answer your specific question: If there is an order in place, we can in a few month's time make the changed circumstances determination; or in the process of determining whether an order should go into place, we have in a number of instances carved out exceptions — in supply situations where they would not be damaging to the petitioners who are seeking relief from the unfair price discrimination. So, the current procedure takes into account that there are interests on both sides.

Mr. BARTLETT. Excuse me. It just seems to me that — that unfair pricing is not a question for most of these people. They'd be delighted to buy it at what all American manufacturers are producing it for, offering it for.

So, the thing that your agency is set up to deal with doesn't appear to address their problem. They don't have a dumping problem. They just have a problem needing to buy a product that is not available here, and they can't buy it because the procedures that are imposed on them require them to deposit monies that make it prohibitively expensive.

Mr. JOFFE. Deposit only if there's a dumping action under way or an order in place. So, if it's purely fear of what might happen in the future, then their concern is not with us.

Mr. BARTLETT. Go out and buy the product they want now with no problem?

Mr. GREEN. No.

Mr. JOFFE. But that's not because of the law that we enforce.

Mr. BARTLETT. Well, why can't they go out and buy it then?

Mr. LEIBOWITZ. If I could clarify, all of the products that have been described this morning, as far as I know, are subject right now to antidumping duty orders.

Chairman MANZULLO. That means that there has been finding in the past that dumping, in fact, took place.

Mr. GREEN. Yes, that's correct.

Chairman MANZULLO. Mr. Joffe.

Mr. JOFFE. Well, if that were true. But the testimony of at least one of the witnesses says there is no order in place, and I'll be happy to cite it to the committee.

Mr. LEIBOWITZ. I'm not sure which one. Are we talking about cold rolled sheet and plate, carbon steel plate, Oil Country Tubular Goods and stainless wire rod? There are orders on all those products.

Mr. JOFFE. I'm aware——

Chairman MANZULLO. It's really important, because we're talking about two different things. While you're looking that up, Mr. Green——

Mr. GREEN. You need to understand that in the international marketplace, like for us, two possible steel mills to get drill pipe from in the past was Sumatoma and NKK, which is a division of Nepont. Well, Sumatoma, because they can't sell drill pipe in this country, and they have to go through all of this. They say it's just not worth it, they quit selling drill pipe.

Chairman MANZULLO. Now, why can't they sell it here?

Mr. GREEN. Because——

Chairman MANZULLO. Why won't they?

Mr. BARTLETT. Because of all of the — the market is understaffed, the justice department, the red tape it takes to do it, would be my guess.

Mr. LEIBOWITZ. It's because they're subject to an antidumping order.

Chairman MANZULLO. It's because they're subject to an antidumping order and the procedures intended there too makes it economic risk.

Mr. LEIBOWITZ. Doesn't justify selling in this market.

Chairman MANZULLO. So, Mr. Crane's bill would provide some type of a temporary suspension of that.

Mr. GREEN. Until the domestic industry, the domestic supplier gears up so that he can deliver — he can supply domestic demand.

Chairman MANZULLO. How do you judge that?

Mr. GREEN. Well——

Chairman MANZULLO. Somebody tell you they don't have anything to give you at this point, and that there's no supply. That's a simple answer.

Mr. LEIBOWITZ. Another way to measure it would be, for example, if the company that comes for help has 30 days worth of supply and they have a 12 month lead time in order to deliver it from your supplier. They have——

Chairman MANZULLO [continuing]. problems.

Mr. LEIBOWITZ. That's an easy way to measure it.

Chairman MANZULLO. Mr. Hopp.

Mr. HOPP. Very recently we where faced with a situation where we wanted to buy thin gauge low-carbon steel, and because the domestic mills were extremely busy, they wanted to sell thick low-carbon steel. So, that effectively, for low-carbon steel thin gauge market dried up. Because that product was being diverted to thicker materials. It was possible to buy——

Chairman MANZULLO. Sir, was it the thin gauge that was not subject to the order?

Mr. HOPP. Subject to the order because all materials are — all low carbon is considered low-carbon steel.

Chairman MANZULLO. OK. Mr. Joffe, did you find it?

Mr. JOFFE. No.

Mr. HOPP. If I could finish. We could have bought imported steel. The price would have gone from 33 to 38 cents, which is a sizable chunk. That would make us noncompetitive in supplying both our domestic and foreign customers.

So if I now have to wait for 3 or 6 months to get a decision, I'm out of business. So, I have to be able to buy quickly and easily and without this type of price increase involved. The reason that there is this price increase is the foreign supplier does not know if he is going to be subject to tariffs, so he has built that into his price. So, that if he is subject to tariff, it's in there, and if it's not — if he's not going to be subject to tariff then he's making windfall profit.

So the way you structured this says that if the domestic — if we would have to buy from a foreign supplier, you're really aiding him if you don't find against him and makes — makes the situation extremely good for him; and if you do find against him, then he's covered. But meanwhile, we go out of business.

Chairman MANZULLO. Mr. Joffe, did you find what you were looking for?

Mr. JOFFE. Yes, let me first say that, of course, even if a product is covered by an order what some folks who come to us are objecting to and requesting an exception for is, they object to paying the fair price that has been determined under the order. They can get the product abroad. They just want it cheaper. We understand that, but the law sets a level playing field at the fair price.

Chairman MANZULLO. Let me ask you a question: Why is it a level playing field exists when the tariff is set not because they're charging less in the United States, but because what they're charging somewhere else in the world. What does that got to do with the manufacturer here who wants to buy the product?

Mr. JOFFE. The philosophy there is that they shouldn't — the foreign producer — whether it's in Japan or Brazil or Korea or wherever, shouldn't be able to fuel predatory pricing in the United States behind barriers and monopolistic practices in those foreign countries where they get — where they reap supercompetitive profits, and then undercut our producers in the United States. So, if there's price discrimination going on, it's because there — it's very likely because that's what they're doing.

Chairman MANZULLO. Because this is a loss to American producers?

Mr. JOFFE. Well, it may be seeking to knock out our producers so they can expand the market share.

Mr. BARTLETT. Wouldn't that only be true if they were selling for less than our producers? You said that our manufacturers here didn't want to buy the foreign product because it cost more. Now, if it cost more, it certainly cannot be predatory pricing.

Your argument would only be good if foreign product were selling for less here than our native product.

Mr. JOFFE. Less than in their home market, and usually they're undercutting our producers as well, yes.

Chairman MANZULLO. Well, you can blow off foreign competition.

Mr. JOFFE. They simply have a duty imposed to the amount of the price discrimination. It may be 1, 2, 3, or 4 percent. It may be 50 or a 100 percent, it depends on the——

Mr. BARTLETT. Drive it up above the cost. I understand bringing it up to the cost of our native manufacturing, but why should it drive it above the cost?

Mr. JOFFE. I'm not sure I understand what you're talking about.

Mr. BARTLETT. You want to keep a level playing field with the tariffs. How do you create a level of playing field if the cost of the foreign goods is 20 percent more than the cost of domestic goods?

Mr. JOFFE. Well——

Mr. BARTLETT. The situation, you've just summed it. That they don't want to buy — they can certainly buy the foreign product, but they don't want to buy it because it costs more than the native product.

Mr. JOFFE. Well——

Mr. BARTLETT. They don't——

Mr. JOFFE. I thought the situation that these gentlemen are describing is where there are no U.S. products available and frequently it's because its been driven out by the dumping that's taken place.

Mr. BARTLETT. They're denying——

Mr. PHILLIPS. It was never produced here, it's never been done here.

Mr. HOPP. Before I leave, which I will have to get — or the domestic producer has said we want to stop producing this product, in my case, this thin gauge material, because I can produce heavier gauge material at a higher profit, so I don't want to produce thin gauge, therefore, it disappears.

Because this — takes much more to roll .20 material than it does to roll .60 material.

Mr. JOFFE. Well, we just made short supply exceptions in those types of situations for steel that is referenced in my testimony. So, if you have a situation in which the domestic industry is not interested in making the product, the domestic industry is as interested in their supplier relations as anyone — excuse me, their customer relations. So, we have in those instances been able to make exceptions.

Chairman MANZULLO. I thought the law prohibited Congress from making the exceptions.

Mr. JOFFE. No. The law prescribes a framework——

Chairman MANZULLO. Thank you Mr. Hopp. You are excused from the panel to catch your plane.

Mr. JOFFE [continuing]. within which we can make exceptions. We believe that the unfettered discretion of the Crane bill goes way too far.

Chairman MANZULLO. We had an incident in our district where a manufacturer was tried to get some flat steel. Steel for manufacturing of lawn mowers and they couldn't get it. We approached Secretary Brown and asked him if there could be an exception, and he said, "The law does not allow it."

Mr. JOFFE. The staff made us aware of that situation the other day, and while that took place before I was at the Department, so we don't know the precise facts of that situation, if someone comes to us with a situation like that, it is our procedure that we can make exceptions in the situations that I've described. Now, I don't know whether in that situation they explored and found that the circumstances were not such as would allow the kind of exception that we——

Chairman MANZULLO. Are these situations, Mr. Joffe, the exceptions, or is there nothing in the statute that's built right into the organic legislation?

Mr. JOFFE. There are — there's a statutory framework and under that, a regulatory framework that provides us with authority in the three or four instances that I mention in my testimony, which accommodates dealing with supply situations. By the way we are currently revamping our regs in implementing the recent Uruguay Round——

Chairman MANZULLO. What takes so long in making the exception? By that time, they're out of business.

Mr. LEIBOWITZ. Two quick points. I think this is very important what Mr. Joffe's been saying. It evidences, I think, a fair degree of flexibility on the part of the Commerce Department.

There are concerns that the law doesn't address the situations that would really help these people. If they thought the law would, they'd be there for the help. There is no provision in the regulations other than the changed circumstances reviews that Mr. Joffe referred to.

With changed circumstances, in the absence of good cause shown, which has never been shown as far as I'm aware, you have to wait 2 years after the order — goes into effect, in order to ask for a changed circumstances review.

If a product has never been made in the United States, there's no changed circumstance. The changed circumstance that you need to wait for is the disinterest of the petitioner. So, the petitioner needs to change his mind so we're no longer interested in having an order cover this product.

The time it took from the filing of the first case that was granted, which was done last year, was over a year from filing until relief was granted; and the filing didn't occur until 2 years after the order was entered. So, it takes too long under this procedure.

finally, the user, itself, could not file the application. The application was filed by the foreign producer who had to be approached to write a letter. So, these are all problems——

Chairman MANZULLO. So, you're saying that the consumer here does not have standing to change the anitdumping suit.

Mr. LEIBOWITZ. The law says they're not considered an interested party. I'm not — if Mr. — finally, of course, the relief was not temporary, it was permanent; which I think undermines one of the purposes of the law.

So if we can have, by regulation, temporary relief, promptly, and where the user, himself, could come in and ask for it, be treated as a real party to the proceeding, I think we could get somewhere.

Chairman MANZULLO. Mr. Joffe, did you want to comment on that?

Mr. JOFFE. Sure. We have proposed regulations. The closing period for the comments is May 15th, and we'll have a hearing on that.

The proposed regulations set out an outside limit of 270 days for a changed circumstances review, and we believe that in a relatively simple case, which would be relatively noncontroversial, we could do that type of review——

Chairman MANZULLO. In 7 to 9 months.

Mr. JOFFE. I was just going to say something like half of that.

Chairman MANZULLO. Mr. Joffe, you're a very reasonable person. It's obvious that you understand the field, and you have a heart for trying to give us appropriate response. Do you feel that the process is too slow, Mr. Joffe? I don't ask that saying that you're moving too slowly as a criticism, but do you feel there's a way to speed up the process?

Mr. JOFFE. Well, as I say, in canvassing our experts on this in preparation for this hearing, the rough sense that we got was that in a simple case, we could do a changed circumstances review of this sort in about 4 or 5 months.

We have proposed an outside limit in the regulations that's longer than that, because some of these cases can be very complicated. You can imagine — we heard earlier today the notion that we would be canvassing the country to asses availability, look into the details of whether the specifications are legitimate, consulting with the producers, and so on. So, in order to provide fair process to all parties, these things can be complicated, but that would be our hope.

Chairman MANZULLO. Did you want to say something, Mr. Phillips?

Mr. PHILLIPS. I just wanted to say that all these years we have tried with domestic mills to get them to put it in line ultra sonic testing for the plates for protection of the customers and ourselves. We are a convertor, we're not a steel manufacturer.

Bethlehem put in a prototype about a year and a half ago, maybe a year ago, and has gone no farther. If they put in a prototype, and then put in in-line UT, we really have no problem.

As far as wide plates go, U.S. Steel use to be able to produce plates 160 inches wide, but they've gone and concast another — rollings. There'd be no wide plates. But we can produce large diameter, probably ever produced in the United States again, because it's not economically feasible for him to do. That demand isn't that big. So consequently we have to look offshore.

Going back to the UT, all the common market countries that have plate mills all have UT, the Japanese also. They just have

never done it here domestically. They put their money in other things. It's a very important situation for our industry.

Chairman MANZULLO. Mr. Green has sat there and heard all these legalese, regulations, and laws, and all you know is that you're running out of pipe. All you care about is the fact that you need some pretty sophisticated drilling equipment, and you can't buy pipe. The people overseas won't sell it to you because of the problems involved with the dumping laws, and your domestic manufacturer can't supply you pipe.

Mr. GREEN. On a timely basis.

Chairman MANZULLO. So, here you are. You've come all this way from California to testify and what you want is some type of assurance that there will be an expedited process whereby you can get pipes so you can continue drilling. Is that correct?

Mr. GREEN. That's right. Listen, we believe in domestic products, we want the right people to thrive. We just hope that they would like us to survive, too.

Chairman MANZULLO. Now, with that in mind, Mr. Joffe, knowing the very unique circumstance that he has, is there anything that Commerce can do for him?

Mr. JOFFE. Well, we would have to meet with him as we would be happy to do and with his colleagues in the industry, and get into the details. I don't want to suggest to the Chairman that there's no controversy in these situations.

Chairman MANZULLO. No, I understand that. Everybody's working toward the same goal.

Mr. JOFFE. Well, and what I mean is as between the industries involved.

Chairman MANZULLO. I understand. But if they can't supply him, I mean, he's effectively been short-sheeted.

Mr. JOFFE. Well, let me give the Chairman an example of what I mean. One of the witnesses is talking about a particular — particularly wide plate used for large diameter pipe. We have heard from some sources that's there's concern about plate for large diameter pipe coming in without duties as a circumvention of an order on narrower plate.

Because the pipe — the plate would come in in the wide diameter and then be cut, so — and I'm not saying we have a position on it, it's just that when you get into the details of these situations, they can be controversial.

Another example is if somebody suggests that there's a particular spec that they need and that is not available in the United States, that could be used to circumvent an order. So if you say that we need some special testing done — I'm not saying that the witness is off base with that, we don't know — but if someone comes in and the Commerce Department is being asked to make a judgment as to whether this nuance is legitimate or not, and — so I just don't want the committee to think these are not controversial——

Mr. GREEN. Well, yeah, I was hoping we could get back to the question of what Paul could do for me here. "I'm from the Government, I'm here to help you."

Chairman MANZULLO. You'd be surprised, as a result of these hearings what can be done. That's one of reasons why we have these hearings. Mr. Joffe, is there any provision in the law or regu-

lations where you could recognize a very specific industry, that's having a very specific problem and set up an expedited procedure — in this very narrow category, that these dumping laws can be waived, because it's the only place to access the material?

Mr. JOFFE. Well, one of the problems with Mr. Crane's extremely broad legislative proposal, in contrast to the procedures that we have, is that in contrast to the steel VRA's, when we had a quota, of course, which is different than dumping duties — you couldn't get the product period — it's being suggested to us, in the context of this legislative debate, that we would be mandated to do this across all of U.S. industry, and I don't know on what basis we would choose among industries if we were pushed to do this more broadly.

But in answer to your specific question, if we find in a particular case that it's not controversial in the way that I described, we believe that these kinds of things can be done very quickly.

Chairman MANZULLO. Mr. Bartlett has a question——

Mr. BARTLETT. I have a question in another area. In our district is the largest aluminum reduction plant on the East Coast. One or 2 years ago they were really suffering because, as they told me, the Russians were dumping aluminum on the world market at less than their production cost.

Now, with your department and your charge to make sure that kind of thing doesn't happen, how could it happen?

Mr. JOFFE. Well, I believe that — and I'm not an expert on that aluminum situation. I believe in that situation that it was addressed. It sometimes takes time because our process that Congress put in the law has very detailed procedures that we have to go through because we don't want to prejudice anyone unless there's good proof of it.

But we do have many dumping actions, antidumping actions and orders that involve commodities from former Soviet states from Eastern Europe and that are similar to the problem that you just described, and we pursue those vigorously.

Mr. BARTLETT. So, a foreign manufacturer can dump here and get away with it until you have gone through you're procedures which may take months to determine whether or not that's an unfair price, in the mean time they have been predatory.

Chairman MANZULLO. That's a good issue here, Roscoe, and I'm glad you raised it.

Mr. JOFFE. Oh, it is. Let me give you the time line. From the date we bring a petition, there's a 160 days until we make a preliminary decision.

Chairman MANZULLO. Sales occur during that period of time?

Mr. JOFFE. Right. Correct.

Chairman MANZULLO. OK.

Mr. JOFFE. Once we make the preliminary decision, a bond is required; and the 75 more days until the final. Once the final is in place and the ITC — few more days until the ITC makes its decision and we get an order, then cash deposits go into place.

So Congress has set up sort of a rising scale of burden on the dumper. So, that until we know for sure and have an order in place, you don't have cash deposits, you only have a bond.

But from your constituent's standpoint, we want to have a way to go back and if we find that, yes, there is dumping going on; we want to have a way to go back and get those entries, as the customs technicians call them, get those entries and be able to have duties imposed on them. If it turns out that there's not dumping going on, then the matter is terminated.

Mr. BARTLETT. Well, it seems to me then that the longer your procedures take nobody can help you to reduce the time. The longer your procedures take the more it hurts our people and the more it benefits foreign companies.

Mr. JOFFE. Well, of course on the other side, you have some of the folks at the table today, saying that we should not be, in as many instances, imposing these — but let me say that Congress has sped up our deadlines and in recent legislation, imposed a tighter deadline on our process.

Mr. BARTLETT. Thank you very much.

Chairman MANZULLO. I have another meeting I'm 15 minutes late for, and I want to take this opportunity to thank you all for this very enlightening discussion.

You know his name now. Please feel free here to talk to Mr. Joffe. You'd be surprised what has happened as a result of some of these Subcommittee hearings where we've had Government officials sit with industry. They find a friend in the administration and a trusted friend in the industry, and people have sat down and been able to work out these problems.

So we encourage you to do that, and again the purpose of this hearing is to gather information on this bill. Thanks, again, for coming.

[Whereupon, at 12:30 p.m., the Subcommittee was adjourned, subject to the call of the chair.]

APPENDIX

STATEMENT OF CONGRESSWOMAN EVA CLAYTON
BEFORE THE SMALL BUSINESS SUBCOMMITTEE
ON PROCUREMENT, EXPORTS AND BUSINESS OPPORTUNITIES
HEARING ON "THE IMPACT OF SHORT SUPPLY"

THURSDAY, MAY 2, 1996

Mr. Chairman, today the Subcommittee on Procurement, Exports, and Business Opportunities stands convened to examine the impact on small business manufacturers of the trade problem known as "short supply." In particular, this Subcommittee will consider H.R. 2822, The Temporary Duty Suspension Act, which was introduced by our colleague Mr. Crane. Although this Committee does not have primary jurisdiction over this legislation, the issues raised by HR 2822 are significant enough to small business manufacturers that I believe that it is appropriate for this Subcommittee to fully debate the merits of this legislation. Accordingly, I would like to thank you Mr. Chairman for your leadership in bringing this matter to the attention of this Subcommittee.

As you are aware, Mr. Chairman, under current law in order to impose an anti-dumping order, the Commerce Department must find that a) dumping did in fact occur and b) the International Trade Commission must then find that the petitioning U.S. industry is being injured as a result of that dumping.

Moreover, Mr. Chairman, the anti-dumping petitioning procedure for the U.S. industry is sufficiently expensive and time consuming, that U.S. companies do not enter the process without intense deliberation and without strong factual evidence that can stand up to the rigors of U.S. law. In fact, Mr. Chairman, of the approximately 50 to 60 petitions brought before the Commerce Department last year, Commerce found that in over 80% of these cases dumping had occurred. However, of this 80% the ITC found that injury occurred in only in approximately 50% of these cases.
Furthermore, Mr. Chairman, under existing law and administrative procedures, there are sufficient mechanisms to redress the concerns of

both users and consumers alike. The Commerce Department has been diligent and even-handed in enforcing our nation's anti-dumping laws, striking the right balance between the needs of the small business manufacturer to gain access to particular products at a fair market price, and the need of U.S. suppliers of that product to compete against foreign suppliers without being driven out of business by "dumping."

H.R. 2822, Mr. Chairman, will allow companies who believe that they have been negatively impacted by an anti-dumping order to petition for a temporary waiver. These companies believe that the increase in prices caused by the imposition of the tariff are so high that it drives producers of that product out of the market and creates a "short supply" of that product in the market place. Proponents of this legislation argue that without flexibility in the anti-dumping laws, companies with specialized needs may not be able to compete with foreign companies in obtaining highly specialized products.

However, Mr. Chairman, I fear that rather than firming up our anti-dumping laws by giving Commerce discretion in imposing anti-dumping tariffs, H.R. 2822 will allow companies to skirt and undermine these laws by providing a loophole which allows foreign companies to continue to sell their product in the U.S. at a cost below the fair market price. In addition, Mr. Chairman, the process for determining "short supply" would be an administrative nightmare for the Commerce Department, pushing to exhaustion the already limited resources of that Agency.

Therefore, Mr. Chairman, I must say that under these circumstances, this legislation would seem to be redundant and unnecessary.

Nonetheless, Mr. Chairman, let us examine HR 2822 with the deliberation that it merits. However, let us not attempt to remedy the problems of a very small number of companies by destroying the delicate balance that the Commerce Department has struck between users and consumers alike.

Opening Statement of

HONORABLE JOHN J. LaFALCE
RANKING DEMOCRATIC MEMBER
Small Business Committee
Subcommittee on Procurement, Exports, and Business Opportunities
May 2, 1996

Mr. Chairman, I wanted to stop by to welcome the witnesses to this hearing, especially my colleagues Congressman Phil Crane and Congressman Sandy Levin. Sandy, I know you had very short notice, and I appreciate your taking time at the last minute to provide us with the wisdom of your long experience in trade matters. You both have been forceful leaders in Congress for defending the rights of U.S. business and traders who daily must deal with the sometimes unfair trade practices of their competitors.

I also want to give a special welcome to Commerce Deputy Assistant Secretary Paul Joffe who, I remember, testified before the full Committee when I convened a hearing on trade issues that included dispute settlement. I know you juggled your schedule as well to be here given the short notice.

Finally, Mr. Chairman, I want to thank you for accommodating my request to invite Mr. Levin and Mr. Joffe, for I believe it is important to provide a balance of perspectives on an issue, particularly when the issue involves complicated trade law.

I want to make a general comment about the issue before the Subcommittee, that of providing a possible waiver to an antidumping or countervailing duty ruling by the Commerce Department in cases of alleged short supply of a product.

First, I think it is important that we in Congress ensure recourse to fair and strong trade laws for U.S. business when there are cases of unfair trade practices. Whether the concern is pricing at less than fair market value when prices are set below the cost of production, or when foreign governments subsidize production that enable an imported product to be priced below market value, U.S. business must have confidence that U.S. trade laws will not allow such practices to continue. Congress should not take actions to weaken our trade laws, especially when we have just revised the laws to conform with Uruguay Round implementing legislation.

Second, I believe we should be wary of any provisions that might be used to circumvent the intent of U.S. antidumping and countervailing duty laws. After a sector of U.S. industry has spent time and money to redress an unfair practice, it would be demoralizing to say the least to have a ruling in favor of U.S. industry waived. We must keep in mind that antidumping duties are levied only in the amount that raises the price of an import to its fair market value.

Finally, I believe we must also be concerned about the additional workload we may be imposing on the Commerce Department when its resources have been reduced. Investigation and administration of antidumping and countervailing duty cases are inordinately labor intensive, costly, and time consuming. I fear that adding waiver capabilities to the determinations of these particular laws would necessarily take away time and attention devoted to investigating the dumping and subsidy petitions.

Mr. Chairman, thank you for allowing me to say a few words, and, again, welcome to all the witnesses.

OPENING STATEMENT OF CHAIRMAN DONALD A. MANZULLO
BEFORE THE SUBCOMMITTEE ON PROCUREMENT, EXPORTS,
AND BUSINESS OPPORTUNITIES
OF THE HOUSE SMALL BUSINESS COMMITTEE
May 2, 1996 10:00AM in Room 2359 RHOB

The Impact of `Short Supply' on Small Manufacturers

Today, the Subcommittee will examine the impact of the short supply problem on small manufacturers. This is an unintended consequence of a trade policy that tries to protect one dimension of our industrial base without fully realizing the impact on other manufacturers, especially small to medium size firms.

Chairman Phil Crane's Temporary Duty Suspension bill aims to restore balance to that policy so that the impact on domestic users are also considered. HR 2822 strives to bring users of raw materials to the table in extremely rare circumstances when they can demonstrate that there is, effectively, a short supply of certain products. While there are no quotas or bans on imported products, raising the tariff level makes some high-value products non-competitive.

No one argues for repealing anti-dumping laws. Foreigners who engage in predatory practices designed to annihilate specific U.S. industries deserve punishment by hitting them squarely where it hurts -- the pocketbook. But some flexibility has to be restored to the antidumping laws so that companies are not faced with such a Hobson's choice.

I yield for a opening statement from the ranking Minority Member, Mrs. Clayton of North Carolina, and I look forward to the testimony from our witnesses.

WAYS AND MEANS TRADE SUBCOMMITTEE CHAIRMAN PHILIP M. CRANE TESTIMONY BEFORE THE SUBCOMMITTEE ON PROCUREMENT, EXPORTS, AND BUSINESS OPPORTUNITIES OF THE COMMITTEE ON SMALL BUSINESS

MAY 2, 1996

Chairman Manzullo, I want to congratulate you for having this hearing and to thank you for inviting me to participate. The concept of temporary duty suspension is something I very strongly support. As you know, I introduced H.R. 2822, which you cosponsored, to give authority to Commerce to suspend the imposition of antidumping or countervailing duties temporarily on a limited quantity of a particular product needed by the American industry when users are effectively unable to obtain that product from U.S. producers. I believe that this legislation is extremely important to small businesses, which very often are the victims of trade protections extended to help large industries such as the integrated steel industry and the semiconductor industry.

Now I am <u>not</u> saying that we should do away with the antidumping laws. But I <u>am</u> saying that we need to focus more on the impact that antidumping orders may have on downstream industries -- U.S. companies that may source globally and purchase imported products. It is extremely difficult for such companies, especially if they are small businesses, to compete if the U.S. industry does not produce the product they need. They have no alternative but to pay high antidumping duties. What I have proposed is a very limited exception to the antidumping law, based on the fact that under current laws, antidumping and countervailing duties are imposed on <u>all</u> covered products, even where there is no domestic production. Current U.S. trade laws simply do not provide adequate redress for American firms that need products subject to orders but cannot obtain them from U.S. producers.

Mr. Chairman, I have heard from a large number of small businesses in my work on this legislation. They tell me that this limited exception will allow them to remain competitive. It would address situations in which a product is only temporarily unavailable -- situations in which the domestic industry is not currently producing a product but may wish to leave open the option of doing so in the future. The temporary relief will encourage the domestic industry to develop new products since it will enable U.S. downstream users to stay in business in the United States until the U.S. industry begins to manufacture the needed input product -- thus assuring that there will be U.S. customers for new products produced by the domestic industry.

The small businesses I have talked to are not looking for duty suspension in circumstances in which the respondent has been so successful at dumping that the U.S. industry has been driven out of business and can no longer supply the product in question. They are not looking for a duty suspension if the product is available from U.S. producers but at prices that are merely higher than the price for the imported product, unless the price is so prohibitively high that it is effectively unavailable. Instead, they are seeking a solution that would keep them in business and, at the same time, would not hurt the industry that sought the antidumping relief.

Mr. Chairman, dumping is no longer a domestic versus foreign issue. Instead, in the United States, there are U.S. companies who need strong dumping laws but also there are U.S. companies, especially small businesses, that may be adversely affected by these laws in certain situations. Let us work together to help all U.S. companies.

Thank you, Mr. Chairman.

TESTIMONY OF GARY GREEN ON BEHALF OF
THE INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS (IADC)
ON H.R. 2822
PROCUREMENT, EXPORT, AND BUSINESS OPPORTUNITIES SUBCOMMITTEE
U.S. HOUSE OF REPRESENTATIVES SMALL BUSINESS COMMITTEE

MAY 2, 1996

I am Gary Green, representing the International Association of Drilling Contractors (IADC), which is the sole organization representing virtually the entire global contract drilling industry, a very great percentage of which is comprised of small U.S. companies.

I am also representing our family-owned contract drilling business, Gary Drilling Company. Gary Drilling is a privately held family-owned California corporation with 17 rigs available for service. This is a business my father started in 1954 and continues to employ approximately 184 people and drills around 1,000 wells each year, almost exclusively in California. On average, Gary Drilling will drill over 1,000,000 feet of hole in the ground for the actual development in the field of oil, gas, water, geothermal, and disposal wells. This family-owned business is a significant contributor to California's ability to be the fourth largest crude oil producing State in the Union.

This ability is threatened by the lack of domestically available drill pipe. Drill pipe is a unique product used in drilling operations. The inside is worn down by the hydraulic fluid pumped through it and the outside is worn down by rotation in the earth. For drilling operations to continuously occur, a ready market for drill pipe must be available. The current lag time for filling an order for new drill pipe now approaches a full year. The demand for domestic drill pipe has pushed the price of new drill pipe up by 5% a quarter for the last 5 quarters. This is a compounded rate of increase that exceeds 20% annually. However, from our point of view, the drill pipe shortage is more a matter of supply rather than price.

These conditions are a new development that threatens the ability of our family-owned business to provide employment and perform drilling operations. Until the year 1995, drill pipe was available to us domestically and internationally. In early 1995, the International Trade Administration published proposed penalty tariffs on Oil Country Tubular Goods produced in several countries. The effect of that publication was to immediately impose price hikes of nearly 50% on foreign drill pipe. Of course, that soon created shortages, and the one domestic manufacturer continues to indefinitely extend delivery dates. Under the Voluntary Restraint Agreements for steel which expired in 1992, a short supply mechanism existed which provided relief in similar circumstances, and with no adverse consequences to the steel industry. When the domestic market for available supplies of drill pipe were exhausted, petition for foreign supplies could be made under the short supply procedure permitted by the VRA's. H.R. 2822 would restore what had been available to drilling contractors like Gary Drilling in times of, effectively, no supply.

There is only one manufacturer of finished drill pipe in the U.S. Imposing these restraints on domestic users of drill pipe without the ability to seek international supplies when the domestic market of drill pipe is not available is clearly poor public policy. Certainly these present conditions were not intended nor their adverse consequences on employment or energy production. Temporary suspension that allows access to international sources of drill pipe after being heard on a case-by-case basis by the International Trade Administration is certainly a fair mechanism. Drilling contractors like Gary Drilling must compete in a world that depends on a globally priced barrel of oil. Reducing injury from restricted domestic markets for employers such as Gary Drilling is in the interest of public good.

We fully support the application of antidumping and countervailing duty laws in situations where U.S.-made products face unfair competition form foreign goods that are dumped and hurt U.S. consumers, employees and their small business employers. However, I hope that the reciprocal of protecting U.S. consumers, employees and their small business employers form unwitting government-created shortfalls is also a necessary feature of our trade laws in providing a "short supply" mechanism.

I urge the Congress to pass H.R. 2822.

TESTIMONY
of
RICHARD A. HARCKE
PRESIDENT and CEO of BRANFORD WIRE & MANUFACTURING COMPANY
and
MEMBER of the AMERICAN WIRE PRODUCERS ASSOCIATION
before the
HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON PROCUREMENT, EXPORTS AND BUSINESS OPPORTUNITIES

May 2, 1996

Good morning to the members of the subcommittee and to you, Mr. Chairman, - we thank you for your leadership in organizing this hearing and for cosponsoring this legislation.

My name is Richard Harcke, and I am president and CEO of Branford Wire & Manufacturing Company in Mountain Home, North Carolina. My company is also a member of the American Wire Producers Association - the AWPA. I have served the association as a Board Member and Chairman of the Stainless Committee.

My company was founded in 1957 and employs 100 workers. We produce stainless steel and nickel wire for the fastener, spring, wire rope and medical industries. Branford is a significant part of the local economy and we pride ourselves on the use of local services and products.

The AWPA represents a significant and dynamic part of the American steel industry. AWPA active members are located in the United States and manufacture all types of steel wire and wire products. These products include barbed wire, wire strand, tire cord, mesh and fencing products, nails, springs and wire garment hangers. AWPA members purchase carbon, stainless and other alloy steel wire rod from domestic and foreign sources, and they process or "draw" the wire rod into wire which may then be further processed into wire products. Major consumers of wire and wire products include the automotive, agricultural and construction industries.

The AWPA also includes virtually all of the US and Canadian manufacturers of steel wire rod – the wire industry's basic raw material – as well as producers of wire and wire products in Canada and Mexico.

The 93 member companies of the AWPA operate 220 plants in 35 states, and they employ over 60,000 dedicated and productive American workers. These companies represent 70 to 80 percent of all US manufacturers of wire and wire products. It is estimated that the total annual shipments by AWPA members exceed $15 billion. The average number of employees for AWPA's wire drawing companies is approximately 230. While this average includes the large companies that employ significantly more

workers, they usually operate several small plants with less than 100 workers, each in different states, supporting a different local economy.

The member companies of the AWPA are part of a diverse and dynamic US steel industry. With the companies in our sister associations of steel mini-mills, pipe producers, cold finished bar manufacturers, and others, we have changed the face of the American steel industry. The steel industry long ago ceased to be a monolithic group of a handful of integrated steel producers. Instead, the steel industry today is a vibrant, diverse and innovative contributor to economic growth and prosperity in the United States. The old image of "Big Steel" has been superseded by a mosaic of efficient, energetic and state-of-the-art companies which can successfully meet the challenge of global competition.

SUPPORT OF THE TEMPORARY DUTY SUSPENSION ACT (HR 2822)

The AWPA endorses the Temporary Duty Suspension Act (HR 2822) and respectfully urges the members of this Committee to support its passage. The Act will remedy the unintended effect of the antidumping and countervailing duty laws that prevents the import of products that are not available from domestic sources. Under the present law, there is no procedure that permits the temporary suspension of antidumping or countervailing duties for narrowly defined products that cannot be supplied by the domestic industry.

The AWPA is a very active participant in the Temporary Duty Suspension Group, which is a coalition of many industries that support the need for this important legislation. Comments submitted by the Temporary Duty Suspension Group to the Ways and Means Committee thoroughly describe the intentions of HR 2822 and address the misunderstandings and concerns expressed by opponents of this legislation. We have not reiterated those points in these comments, but rather have focused on direct wire industry experiences that effectively illustrate the need for HR 2822 and have provided examples for the illustration of the ability to administer this provision, should it become part of US trade law. The AWPA fully supports and endorses the comments of the Temporary Duty Suspension Group.

Antidumping and Countervailing Duty Laws

HR 2822 is not an attempt to weaken the antidumping and countervailing duty laws. On the contrary, the AWPA has long supported the rigorous enforcement of US trade laws. Its members have used these laws in order to respond to unfairly traded or subsidized imports which have caused serious economic harm to the wire and wire products industry. Moreover, AWPA members source raw material primarily from US manufacturers of steel wire rod. The AWPA active members have worked closely with the domestic rod industry – now composed entirely of world-class and efficient mini-mills – to develop and expand the availability of American-made wire rod.

Further, the Temporary Duty Suspension Act will not obstruct the effective and rigorous administration of the current antidumping and countervailing duty laws. The Act can be invoked only if the specific product is not available from US producers. There is no injury to these domestic suppliers if they cannot provide the needed product to their customers in the US market. Therefore, the Temporary Duty Suspension Act does not weaken or undermine the remedies which are available under current antidumping and countervailing duty laws.

US Wire Industry Experience Illustrating the Necessity for Temporary Duty Suspension Procedure

The member companies of the AWPA which manufacture wire and wire products have had considerable experience with the unintended effect of antidumping and countervailing duty proceedings on the availability of certain types of wire rod. As President of Branford Wire & Manufacturing, I have had considerable experience with both the unintended effect of dumping petitions on wire rod supply, and with the administration of the short supply procedure during the "VRA" program.

During the antidumping investigations of carbon steel wire rod in 1993–94, the imposition of preliminary dumping duties prevented US manufacturers of steel wire and wire products from obtaining certain types of wire rod that were not available from domestic producers. In addition, the US market experienced severe shortages of even basic types of wire rod. Rod producers put their customers on allocation, canceled orders and postponed deliveries. The unavailability of wire rod threatened severe economic harm to a vigorous and profitable US wire industry, and it encouraged foreign competitors to target the US market for steel wire and wire products. Although the US International Trade Commission eventually made findings of no injury and terminated most of these investigations, this experience demonstrates the necessity for a mechanism to provide temporary relief when domestic consuming industries cannot obtain essential raw materials from sources in the United States.

Further, the petitioners in these carbon steel rod investigations amended the scope of their complaints to exclude some types of wire rod which were not available from producers in the United States. However, they did so only while pressuring those wire manufacturers, whose future depended upon the availability of such wire rod, to agree not to oppose the antidumping cases in general. This underscores the need for the Temporary Duty Suspension Act, which would give an independent and impartial governmental agency – in this case, the US Department of Commerce – the authority to make such decisions. The future of the domestic industry should not be held hostage to the tactical objectives of petitioners in antidumping and countervailing duty cases. Surely, it is in the commercial interest of all parties – including petitioners – that decisions relating to the domestic availability of needed products be made on the basis of the facts and in accordance with established administrative procedures. In fact, the largest US rod producer, who was a petitioner in this case, has expressed support for an amendment to the antidumping and countervailing duty laws which

"would provide authority for the Department of Commerce to grant 'short supply' authorization when a product is not produced domestically."

There are currently antidumping duties imposed on stainless wire rod from Brazil, India and France, and, there are only three domestic producers of stainless rod. These three mills are unable to supply the needs of all of the US stainless redrawers. Additionally, two of these three mills also make wire and compete in the wire market against Branford and other independent redrawers. This market structure has a unique impact on the supply of rod. Under certain market conditions, rod mills may choose to manufacture more wire, consuming their own rod production. This further limits the amount of rod available to the US redrawers. When the rod industry chooses wire production over rod sales, US wire manufacturers must have the ability to source on the global market.

When US mills make a profitable business decision to consume rather than sell rod, they cannot be harmed by the imports of rod. The US government should have the ability to waive duties for US wire producers who must have these raw materials to continue production, sales and the employment of our US workers and our customers' workers. Continued duties only provide importers of wire and wire products with an unfair trade advantage. The future of our industry should not be left to the tactical objectives of petitioners.

Precedent for and Administrability of a Temporary Duty Suspension Procedure

The members of the AWPA have also had experience with the administration of a program which successfully dealt with the non-availability of certain types of steel products from domestic producers. During the steel Voluntary Restraint Agreement program, stainless steel wire drawers were able to obtain special licenses from the US Department of Commerce for rod products which were not available from domestic mills. For six consecutive calendar quarters, AWPA members requested and obtained special licenses to import specific grades of stainless steel wire rod which were not available from domestic producers. In fact, domestic producers of stainless steel wire rod certified to the US Department of Commerce that such rod was not available in the US market, in sufficient quantities to meet domestic demand.

Further, it was the experience of the AWPA that the US Department of Commerce was able to make these determinations, in each instance, in a prompt and fair manner without placing an undue burden on its resources.

CONCLUSION

The AWPA respectfully requests the members of this Committee to support the Temporary Duty Suspension Act. This Act will remedy an unintended but harmful

effect of the antidumping and countervailing duty laws which prevents the importation of products which are not otherwise available from domestic producers. The Act will not weaken the antidumping and countervailing duty laws or cause harm to the US industries that seek relief from unfairly traded and subsidized imports. Rather, the Act provides a limited procedure which can be invoked only in those exceptional circumstances when a specific product is not available from domestic producers. In this way, the Act enables downstream manufacturers to obtain needed raw materials so that they can maintain their operations and compete successfully with foreign suppliers of the downstream product.

The member companies of the AWPA are concerned that the Congress and the House Committee on Small Business the full picture of the US Steel Industry, today, as you address the trade policy initiatives that affect this industry. There are many voices to consider. The decisions you make regarding trade policy should be made in light of the health and well-being of all the companies and employees that make-up today's steel industry.

TESTIMONY OF RAYMOND H. HOPP
CHAIRMAN, PRECISION METALFORMING ASSOCIATION
AND
PRESIDENT, HK METALCRAFT MANUFACTURING CORPORATION

SUBCOMMITTEE ON PROCUREMENT, EXPORTS, AND BUSINESS OPPORTUNITIES
HOUSE SMALL BUSINESS COMMITTEE

May 2, 1996

Good morning, Mr. Chairman, members of the Small Business Committee, and staff. I am here in a dual capacity--as Chairman of the Precision Metalforming Association ("PMA"); and as president of HK Metalcraft Manufacturing Corporation of Lodi, New Jersey. I am testifying in support of the "temporary duty suspension bill", H.R. 2822, a bill that is vital to small business.

PMA represents some 1400 members throughout the United States. The vast majority of PMA members are small businesses--the average number of employees of PMA members is 80. Our member companies are American manufacturers that use flat-rolled metal, especially sheet steel, to make thousands of different products that can be found in America's automobiles, homes, farms and factories. Our industry employs over 300,000 workers, and consumes about one-fourth of the steel produced in North America.

I am also president of HK Metalcraft Manufacturing Corporation of Lodi, New Jersey. HK Metalcraft manufactures spark plug gaskets and is the predominant spark plug gasket manufacturer in the United States. HK Metalcraft currently has 57 employees, and has annual sales revenues of $ 9,000,000.

I am accompanied today by our Washington counsel, Lewis Leibowitz of Hogan & Hartson.

PMA strongly supports H.R. 2822. Such a provision would prevent harm to U.S. industrial producers that now are forced to pay potentially crippling dumping and countervailing duties on certain needed raw materials (such as steel products) that are not even available from domestic producers. A short supply exemption is fully consistent with the objectives of the antidumping laws: if domestic companies cannot supply a product, there is no purpose served by the imposition of duties on that product.

Under current law, antidumping ("AD") and countervailing ("CVD") duties are imposed on a broad category of products without regard to whether all the products within this category are made domestically. Thus, particular products

that are or may become unavailable from domestic producers are included within the scope of an order. Clearly, imposing dumping and countervailing duties on products that are not available from domestic producers is bad policy. It hurts U.S. manufacturers who must compete globally, but does not reduce injury to any domestic industry.

AD/CVD orders can substantially affect the availability and price of imported products in the U.S. The impact can be especially great in situations where the purchaser of these imported products is a small business, such as PMA members.

Small business purchasers tend to buy small volumes of highly specialized goods. My company is a good example of this. If small buyers need imports, as many of them do, they can be left stranded after a trade case, by foreign suppliers that decide that the cost of defending against an antidumping or countervailing duty investigation or review outweighs the possible profits on sales to the U.S. Where a foreign producer chooses not to participate in an investigation, the Department of Commerce applies an adverse inference against such a producer and imposes a prohibitive margin.

The duties associated with those orders will cause costs to rise. PMA members, which tend to be small businesses with little market leverage, are squeezed between the rising costs of raw materials and their inability to pass those costs on to their customers, which often are major industrial companies such as the Big Three automakers, themselves engaged in major cost-cutting and totally unwilling to accept price increases.

Alternatively, foreign producers (or U.S. importers) decide that they cannot accept the uncertainty of not knowing exactly how much duty will actually be required on imported products (a determination that can often take years) and simply cease marketing products subject to antidumping or countervailing duty orders. This occurs more frequently where the volumes of imports involved are not that significant--as will tend to be the case with small businesses. Where U.S. manufacturers are unable to obtain needed inputs from the only possible source, this may very well drive them out of business.

HK Metalcraft has experienced, first hand, the need for a "temporary duty" or "short supply" provision. The prime component of our spark plug gaskets is thin gauge (.015" - .017") sheet steel. Whenever possible, HK Metalcraft purchases thin gauge steel from domestic sources. On occasion, however, HK Metalcraft is unable to buy domestic steel because its domestic source for thin gauge steel diverts production to thicker gauge steel (.020"), which is more profitable to produce. When this happens, HK Metalcraft is left with no option but to purchase steel from foreign sources (usually Japan).

At one point the thin gauge steel that HK Metalcraft needs was swept up in the broad antidumping duty investigation on hot-rolled steel from Japan. If this case had been successful, HK Metalcraft's operations would have been severely hampered. As noted, HK Metalcraft is frequently unable to obtain thin gauge steel from domestic sources. Because the market for thin gauge steel is relatively small, we were very worried that our Japanese supplier would decide that it simply wasn't worth the burden and uncertainty imposed by an antidumping duty order to continue shipping thin gauge steel to the United States. Alternatively, the costs for this foreign steel would have increased. In either event, in the absence of a temporary duty suspension provision for products unavailable in the U.S., HK Metalcraft's operations could have been severely hampered, and no domestic steel producer would have received any benefit.

HK Metalcraft sells a substantial number of its spark plug gaskets to export markets. Currently HK Metalcraft sells 8 percent of its spark plug gaskets to export markets; at full production for year end 1996, this percentage will rise to 20 percent. A temporary duty suspension provision is important to enable HK Metalcraft to continue to compete abroad. Without such a provision, HK Metalcraft's costs for raw materials could increase, making it impossible to compete with foreign producers of spark plug gaskets who do not have to pay such duties.

Current law would not have addressed HK Metalcraft's problem with the supply of thin-gauge steel. Under current law products may be excluded from the scope of antidumping or countervailing duty orders on a permanent basis, based on the concurrence of the petitioners. Permanent exclusion would have been inappropriate in this case because, from time to time the domestic industry does produce thin gauge steel when the demand for thicker gauge steel is down.

By contrast, Rep. Crane's bill allows for temporary suspension of antidumping and countervailing duties on particular products. This temporary suspension would allow companies like mine to at least apply for permission to obtain the thin gauge steel that it needs from foreign sources until such a time as the domestic industry begins to produce it again. Domestic producers would have an incentive to produce because they would receive the benefit from the antidumping duty law once they start to produce.

H.R. 2822 is particularly important for small business because small business is not in a position to absorb additional costs; small business does not have the reserves necessary to "stick it out" on the off-chance that the U.S. domestic industry will one day begin to manufacture a needed product. The net effect is that small business either goes out of business or moves offshore.

Thank you for providing us this opportunity to testify today. We would be happy to address any questions you might have.

TESTIMONY OF PAUL L. JOFFE
ACTING ASSISTANT SECRETARY OF COMMERCE
FOR IMPORT ADMINISTRATION
BEFORE THE HOUSE SUBCOMMITTEE ON PROCUREMENT, EXPORTS, AND BUSINESS OPPORTUNITIES
OF THE HOUSE COMMITTEE ON SMALL BUSINESS
May 2, 1996

Thank you for inviting me to testify before this Subcommittee today. I would like to commend the Subcommittee for its interest in the unfair trade laws, which are so vital to America's economic well-being.

The antidumping and countervailing duty laws safeguard our companies and workers from unfair pricing by foreign companies and from foreign government subsidies. These practices can undercut our firms, steal market share, drive our companies out of business, and throw people out of work. In today's world, trade policy is a critical element of economic policy, and our laws addressing unfair trade are an essential part of the Clinton Administration's trade policy. As we pursue increased access to markets abroad, we must maintain a level playing field to ensure that trade brings growth and an economy that generates jobs at home. Unfair trade is not genuinely free trade.

The trade laws are used by many small businesses, who are often the only U.S. firms that still make certain products domestically. Examples include farmers and auto parts manufacturers. As you may know, we have recently overhauled our regulations and practice to implement the Uruguay Round legislative changes and to further President Clinton's and Vice President Gore's

Reinvention Initiatives. The proposed regulations are designed to promote vigorous enforcement and fair administration of the trade laws. In drafting the proposed regulations, we paid particular attention to the needs of small and medium-sized businesses. For example, we have harmonized rules for investigations and reviews, and we have consolidated procedures for antidumping and countervailing duty proceedings to make them more user-friendly and accessible. We have streamlined the rules governing the submission of information, and we have rewritten the rules to explain complex terms in clear, layman's language. In addition, in order to make information available to everyone, Import Administration now maintains a World Wide Web home page that provides all the public information and documents a small business would need to participate in a trade case.

I appreciate the opportunity to address the relationship between the antidumping law and U.S. downstream industrial users. I believe that industrial consumers have an important role in antidumping proceedings, and we have recognized that in our recently proposed regulations. The Congress in the existing AD law has struck the proper balance, recognizing that unfair and injurious trade practices affecting producers, including small businesses, and workers in our own market must be addressed. In a world of fierce competition, we have to be vigilant to avoid undermining that delicate balance. We should not reopen the legislative debate that led to this carefully crafted balance. Let me just take a minute to explain why it would be a great mistake to weaken the law with a short supply exemption as proposed in some bills that have been introduced.

It is important to focus first on the reasons we continue to need dumping and subsidy laws. While we have made great progress in reducing trade barriers through the Uruguay Round and the NAFTA, problems remain. The home markets of many of our trading partners remain partially protected and closed. Subsidies remain a fact of life in certain segments of our trading partners' economies. Some of our foreign trade is with nonmarket economy countries. Some foreign governments continue to tolerate or encourage anticompetitive behavior by their companies.

Government subsidies can allow firms to sell below-cost. Other trade barriers, and cartels and monopolistic behavior, can allow firms to reap high profits at home while selling at much lower prices in the U.S. For this reason alone, the antidumping law is especially important. Abandoning or weakening the trade laws in a world of imperfect competition would amount to nothing less than unilateral disarmament.

With this background, I think this Subcommittee can understand why we have been so strongly opposed to proposals, such as a short supply exception, including H.R. 2822, which undermine the effectiveness of the laws addressing unfair trade. Such an exception would open a huge loophole – a foreign firm could potentially dump to drive out U.S. competitors and then benefit from the short supply provision. Suspending the payment of duties could deter new investment by the injured U.S. industry, thereby retarding the recovery of the U.S. industry and undermining the effectiveness of the law.

A short supply provision would be impracticable. Commerce would be put in the position of deciding what prices, specifications, and quantities constitute "short supply." In addition, a short supply exemption would be an administrative nightmare and would drain scarce resources away from careful implementation of the recent changes to the law. Such a provision would also increase litigation costs and politicize trade cases.

Existing procedures are adequate to deal with legitimate concerns regarding supply without undermining the law:

1. Clarifications of investigations at their early stages can avoid later supply problems. For example, in the recent polyvinyl alcohol case, the petitioner amended the scope of the petition to specifically exclude PVA in fiber form in response to customer concerns over supply. Industrial users can greatly assist in this process by making their views known early in the investigation.

2. In general, in consultation with U.S. petitioners, existing orders can be narrowed through changed circumstances proceedings to exclude products not made in the U.S. We have recently completed 2 such reviews, partially revoking one order regarding steel plate and another involving new steel rails.

3. Our scope procedures have been used on many occasions to exclude products when importers have claimed a specific product is not available domestically, product coverage is unclear, and products have different

physical characteristics and uses. We have done this numerous times with respect to ball bearings, for example.

4. Finally, the ITC considers the domestic industry's ability to supply a product in assessing whether the domestic industry is injured from dumped imports. For example, with respect to silicon carbide from the PRC, the Commission reached a negative determination in part because the domestic industry was incapable of satisfying all demand. In addition, as part of the new sunset review procedures, the ITC will consider changing production and supply patterns in deciding whether injury is likely to continue or recur if the order is revoked.

For all of these reasons, we feel strongly that a short supply exception is unnecessary and would only serve to undermine the vital purpose of the trade laws.

With the fading of the Cold War, international rivalry has turned more and more to economics. This is no time to dismantle our defenses in the face of unfair foreign competition. To the contrary, industries and workers across America have a right to expect us to use every means at our disposal to preserve jobs and business opportunities by defending against unfair pricing practices.

SANDER M. LEVIN
12TH DISTRICT, MICHIGAN
COMMITTEE
WAYS AND MEANS
SUBCOMMITTEES
HUMAN RESOURCES
OVERSIGHT

Congress of the United States
House of Representatives
Washington, DC 20515

Testimony of the Hon. Sander Levin

On The Impact of "Short Supply" On Small Manufacturers

**Before the House Committee on Small Business
Subcommittee on Procurement, Exports, and
Business Opportunities**

May 2, 1996

Thank you, Mr. Chairman, for giving me this opportunity to testify about the impact of proposed short supply legislation on small manufacturers.

Short supply proposals were thoroughly reviewed just two years ago during consideration of the implementing legislation for the GATT Uruguay Round Agreements and were rejected by bipartisan majorities in both the Ways and Means Committee and the Senate Finance Committee.

The rejection of the short supply proposal was a key factor, as recognized by both Republican and Democratic Members at a recent Ways and Means hearing on the subject, in bringing about the overwhelming bipartisan majorities that approved the implementing legislation in both Houses.

H.R. 2822 is headed for the same fate as the proposals two years ago, since the Clinton Administration and the Senate Majority Leader are likely to strongly oppose it.

And for good reason. The antidumping laws are the first, and in many cases the last, line of defense against foreign unfair trade practices. The purpose of the trade laws is to provide a remedy against foreign unfair trade practices equal to the amount of the foreign subsidy or dumping margin. This guarantees that the affected imports are priced fairly, but it does not limit the quantity of imports which may enter the United States. Moreover, as the Commerce Department will

explain later in the hearing, current law already provides regulatory flexibility to administer the antidumping and countervailing duty laws to address possible no supply situations.

Any provision which grants the Department of Commerce the authority to waive antidumping or countervailing duties is therefore unnecessary to ensure an adequate supply of product. Rather, such a provision would have the perverse effect of rewarding those foreign companies that have successfully driven U.S. producers out of business through dumping or subsidies by denying U.S. companies the relief needed to allow them to invest in new plant and equipment.

The Uruguay Round Agreements and the implementing legislation made extensive changes to the dumping laws. The ink on the proposed regulations carrying out these changes is barely dry. It is premature to consider amending this law given the complex interaction of the many changes so recently and painstakingly made. It will be a period of years before we have solid evidence of how well these laws are working and whether any further changes are necessary or appropriate.

H.R. 2822 also is beset with serious technical problems. For example, it would allow duty suspension whenever "prevailing market conditions related to the availability of the product in the United States make imposition of duties inappropriate." This is an impossibly vague set of standards that would surely be invoked and litigated in every single antidumping suit, needlessly raising litigation costs.

And because the Commerce Department would have unbridled discretion in interpreting this vague language, Members of Congress ultimately would be lured into reviewing each of these decisions, hopelessly politicizing the process and adding lobbying expenses on top of litigation expenses.

The Import Administration was created, and was given precise trade-agreement and statutory guidelines, in order to insulate the administration of these laws from political considerations. This system has worked reasonably well, as recognized by even the sternest critics of the Commerce Department, and we should preserve it.

Despite the strong case to be made against H.R. 2822, today's witness list does not include a single company opposed to the bill! That's very surprising, because with very little leg work my staff identified small businesses in Michigan and other states, some represented on today's private sector panel, who strongly oppose H.R. 2822.

Quanex Corporation's steel tube group, with plants in Michigan and Texas, is a perfect example of why we need to preserve the effectiveness of the antidumping laws and why we must reject weakening proposals like H.R. 2822. The President of the tube group, James Hill, told me that he spent $600,000 on antidumping litigation last year to defend his small Texas division from large foreign conglomerates who were found to have dumping margins exceeding 100 percent in some instances.

The problem is that conglomerates like Argentina's Siderca -- which controls over 10 percent of the world tube market as compared to the fraction of a percent represented by Quanex -- enjoy sanctuary home markets protected by high tariffs. Siderca uses its monopoly profits at home to underwrite its operations abroad, allowing it to dump in the U.S. and drive otherwise competitive American firms out of business. H.R. 2822 could force Quanex out of certain product lines either by allowing dumped imports or by increasing its litigation costs to prohibitive levels.

Similar stories could be told by California garlic growers, Texas cement makers, Oklahoma oil country tubular goods manufacturers, Connecticut wire rod companies, Maine salmon farmers, honey producers from around the nation, and countless other small businesses.

These small businesses should be here testifying today to make the case against H.R. 2822. Then you would hear about massive dumping of garlic from China in 1993 that forced small U.S. growers like The Garlic Company in California to cut their expected 1994 losses by planting fewer crops, creating what some would call a short supply situation. Should the 376-percent duty -- THREE HUNDRED AND SEVENTY-SIX PERCENT -- have been "temporarily suspended" here? The California growers emphatically say that they likely would be out of business today if H.R. 2822 had been law in 1993.

You would also hear how existing law worked to exempt certain products from a proposed dumping duty because of no supply concerns. In that case, the 215 employees of the Connecticut Steel Corporation in Wallingford, Connecticut, along with employees at similar wire rod manufacturers in the U.S., were threatened by dumping from Japan and other nations. During the preliminary phase of the dumping case, two separate products (high tensile tire cord quality wire rod and valve spring wire rod) were removed from the scope of the antidumping petition because questions were raised about the ability of industry to provide these products. Today, the petitioning companies oppose H.R. 2822 because it would undermine the effectiveness of the antidumping laws.

And you would hear about small Texas cement makers and others whose antidumping duties against unfairly imported Mexican product have been the target of an expensive lobbying campaign falsely claiming that there is a "short supply" of cement. In this case, Mexico's CEMEX apparently has been trying to force a political settlement, first with the Bush and now with the Clinton Administrations. The Texas companies forcefully oppose H.R. 2822 in part because they know the pressure for such backroom political deals would only grow once the door is open to the unbridled discretion permitted under the bill.

On behalf of these small businesses, and on behalf of countless others, I urge you in the strongest terms to support effective U.S. trade laws and reject weakening amendments like H.R. 2822.

In closing, I might add that the Commerce Department's recent efforts to greatly streamline its procedures in these cases ought to be a boon to small business in particular, making it easier and less costly to use all aspects of the law, including the existing provisions designed to address possible no supply situations.

STATEMENT OF JOHN R. PHILLIPS
SENIOR VICE PRESIDENT-SALES
BERG STEEL PIPE CORP.

SUBCOMMITTEE ON PROCUREMENT, EXPORTS, AND BUSINESS OPPORTUNITIES
HOUSE SMALL BUSINESS COMMITTEE

May 2, 1996

Good morning. I am John R. Phillips, Senior Vice President-Sales of Berg Steel Pipe Corp. ("Berg"). Berg is based in Panama City, Florida. Berg employs approximately 200 workers in its Panama City, Florida plant for the production of large diameter steel pipe for oil and gas pipelines and offshore platforms. The sales office, with five employees, operates out of Houston, Texas.

I am accompanied today by our Washington counsel, Lewis Leibowitz of Hogan & Hartson.

Berg strongly supports the temporary duty suspension ("TDS") bill introduced by Congressman Crane (H.R. 2822). H.R. 2822 would allow the Department of Commerce to suspend antidumping and countervailing duties temporarily, and for a limited quantity, on products needed by American industry when they are not available from U.S. producers. This provision could prove vital to the health and competitive position of U.S. companies that rely on imported components and raw materials, as well as their workers and communities. It is particularly important to small businesses, many of whom cannot participate effectively in trade cases.

Under current law, antidumping and countervailing duties are imposed on a broad range of covered products; in deciding what products are covered, the Commerce Department does not even consider whether specific products are made in the U.S. Imposing dumping and countervailing duties on products that cannot be obtained in the U.S. hurts American manufacturers, but does not help any domestic industry.

We support a temporary duty suspension provision because it would allow Berg to be competitive in circumstances where now we are not. Let me explain.

The primary raw material for the large diameter steel pipe that Berg produces is steel plate. Usually, Berg buys the plate it needs to make pipe from domestic suppliers. Sometimes, however, Berg's customers specify requirements that domestic producers of plate cannot meet. When this happens, only imported plate can be used. Berg must pay applicable antidumping and countervailing duties on imported plate even if it is not available in the United States. These additional antidumping and countervailing duties often cause Berg to lose business to imported pipe. When Berg cannot obtain plate domestically, the sale is lost to a foreign pipe producer.

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For example, on many of our sales, customers require that all plate be ultrasonically tested throughout its length. We expect this requirement to be even more common in the future. No U.S. plate supplier currently performs such testing. We have been after our domestic supplier to install the needed equipment for the last five years, to no avail. Thus, currently Berg has no option but to use foreign plate if it wishes to bid for this business--making Berg's bid price far higher than bids from foreign pipe makers. As a result, Berg has lost orders. Berg has had similar experience with respect to extra-wide plate (plate for pipe sizes over 48 inches in diameter), which also is unavailable to us from domestic producers.

We do not have a procedure under current law that would provide relief to Berg in these situations. We would not want the antidumping and countervailing duty orders permanently revoked, because our supplier might lose the incentive to invest in this equipment. There is no reason, however, that Berg should have to lose business in the interim. Mr. Crane's bill provides a mechanism to suspend antidumping or countervailing duties temporarily on imported ultrasonically tested plate until the U.S. supplier is able to provide Berg with that product. This would allow Berg to competitively bid on the projects which require such testing and would not harm U.S. plate producers in anyway.

Some have argued that temporary duty suspension in these circumstances would deter needed investments. To the contrary, our domestic suppliers have had antidumping relief since 1993 and have not installed ultrasonic testing equipment. We think that the temporary relief provided by H.R. 2822 will encourage the domestic industry to develop new products because it will enable U.S. downstream producers to maintain their business in the United States until the U.S. industry begins to manufacture the needed input product. This will ensure that there will be U.S. customers for new products produced by the domestic industry. Once the domestic industry begins to manufacture a particular product, the relief afforded by the bill is terminated and the protections of the antidumping duty order are fully reinstated.

Small businesses can be especially hard hit by the unintended consequences that antidumping and countervailing orders have on downstream users. Small businesses typically do not have the leverage to pass on increased product costs to their customers, nor do they have the reserves to stay in business for prolonged periods when their costs are arbitrarily increased.

For all the foregoing reasons, we respectfully ask your help and support in passing HR 2822.

Thank you for this opportunity to appear before you today. I will be happy to answer any questions.

MOTOROLA

June 4, 1996

The Honorable Donald Manzullo
U.S. House of Representatives
426 Cannon House Office Building
Washington, DC 20515

Dear Congressman Manzullo: Don

Thank you for your interest in our views on the short supply. I appreciate this opportunity to make our position part of the record of your hearing.

Motorola opposes so-called short supply legislation. Such legislation would permit purchasers to avoid antidumping orders and obtain unfairly priced dumped foreign products, thereby eroding market prices and injuring U.S. suppliers who are attempting to produce products in this country. Certainly, small businesses that are having a hard time finding a U.S. supplier should be assisted, but that assistance should be to help them find a good U.S. supplier, not to help foreign producers sell dumped goods.

The government should promote the establishment of U.S. supplier data banks to provide information to small U.S. companies in need of particular components. A small business in Illinois that cannot find a U.S. supplier for a particular component should be able to go to an electronic bulletin board or clearing house (perhaps set up by a trade association) to find a U.S. supplier in Nevada, for example, that is able to provide the component. With quickly developing Internet and World Wide Web capabilities, this should not be difficult. In any event, the small U.S. business always has the option of buying foreign-produced products without any antidumping restriction or costs, so long as the foreign products are not sold at predatory, dumped prices.

Again, thank you for your interest. Please let me know if you have questions regarding this issue.

Sincerely,

Joann Riccolo
Vice President and Director
Federal and State Relations

UNITED STATES HOUSE OF REPRESENTATIVES

Small Business Committee

Subcommittee on Procurement, Export and Business Opportunities

Statement of Motorola, Inc.

Submitted for the Record

Motorola participates in three industries that have been the target of devastating dumping in the past -- pagers, cellular phones, and semiconductors. In each instance, the antidumping law has been activated to prevent such behavior, fair market conditions have been restored, and U.S. companies have returned to vigorous health and success. Because H.R. 2822, the Temporary Duty Suspension Act, would undermine the objectivity, due process, and the discipline that have marked the antidumping law, Motorola strongly opposes the provision.

Motorola opposes H.R. 2822 primarily because it would undermine the objective fair-minded character of the antidumping law and inject politics and policy vagaries into the law. The proposed Temporary Duty Suspension Act gives the Commerce Secretary the power to let certain companies ignore an antidumping order whenever he decides that "prevailing market conditions" make this a good idea. The provision establishes no standards for the Secretary, so he can favor whatever companies he chooses, and he can do so for years. The right to appeal to the courts is also omitted. Thus, America's antidumping statue is changed from a fair-minded law based on the application of specific legal criteria and procedural requirements designed to ensure due process, into a subjective, possibly political, tool to carry out an administration's policy objectives. Ironically, in the political battle to have the Secretary exercise this power, the U.S. industries that are subject to the most devastating dumping would have the least chance of preventing the

dumping that is destroying them, because they will be less robust and influential, and thus less able to mount political support to resist duty suspensions.

A second, related problem with the Temporary Duty Suspension Act is that it could reward dumpers, particularly those who have succeeded in driving U.S. producers out of a particular market segment. Duty suspension could also prevent domestic industries from ever being able to produce the product which is alleged to be in short supply, by allowing dumping to continue, and thereby denying those industries the relief needed to invest in necessary plants and equipment. While proponents of H.R. 2822 argue that a temporary suspension would end as soon as domestic production begins, the very suspension could in fact prevent domestic production from ever developing.

Third, H.R. 2822 is unnecessary. Mechanisms already exist under which the Department of Commerce considers requests to adjust, limit, or eliminate existing antidumping and countervailing duty orders based on allegations that a particular product is not available domestically. The Department of Commerce can adjust the scope of an order during the course of an investigation; this often occurs when a previously-defined like product is not produced in the United States. Alternatively, an existing order can be adjusted during a scope determination. Furthermore, an interested party may petition for review of an order based on changed circumstances. The International Trade Commission can also exclude "niche" products as part of its injury determination. Unlike the proposed temporary duty suspension provision which would rely solely on the Department of Commerce's discretion, these statutes and regulations provide standards by which the decisions of the Department of Commerce or the International Trade Commission may be judged.

Fourth, H.R. 2822 would create a chaotic process in which the temptation to abuse the law and twist the truth would be irresistible. A company seeking to purchase dumped goods would have every incentive to try to manipulate its supply specifications so that they do not match the U.S. products available and then to seek a duty suspension. Thus, the suspension mechanism provides a readily available loophole for purchasers of unfairly traded imports which are actually substitutable for domestic products. Moreover, each time a purchaser decides to narrowly tailor its specifications so as to exclude U.S. products -- even those which are ostensibly fungible -- the Department will be faced with the complex and difficult task of trying to decide whether or not existing products are substitutable or not. The Department simply does not have the resources to do this.

Finally, the whole precept behind H.R. 2822 misconstrues the purpose of the antidumping laws. The purpose of the antidumping laws is not to exclude imports. Rather, the trade remedies are meant to correct unfair practices both here and abroad, which harm U.S. industry. Antidumping laws provide a remedy to unfair pricing which often results from closed home markets or private anticompetitive practices. The goal is to keep the imported products coming into the U.S. at fair competition prices and to ensure that U.S. companies can compete here and abroad. Granting even temporary exemptions for unfairly traded products undermines those goals.

TUBULAR CORPORATION OF AMERICA
14530 WUNDERLICH SUITE 202, HOUSTON TX 77060 (713) 893-6192 FAX (713) 537-8022

May 31, 1996

The Honorable Don Manzullo, Chairman
Subcommittee on Procurement, Exports, and
Business Opportunities
Committee on Small Business
U.S. House of Representatives
B 36 Rayburn Building
Washington D.C. 20515

Dear Congressman Manzullo:

I have enclosed herewith for the Subcommittee a copy of our comments on issues related to short supply in response to the recent hearing held by the Subcommittee on May 2, 1996

These comments are submitted by Tubular Corporation of America (TCA) located in Houston, Texas and Muskogee, Oklahoma. As a processor of steel pipe and tube products, TCA employs 150 employees at our manufacturing facility in Muskogee, Oklahoma.

I have provided our views on the impact of the proposed legislation (H.R. 2822) which would provide for a "short supply" measure in the unfair trade laws. In brief, TCA opposed this proposal and instead would argue that current unfair trade laws provide companies with adequate resources to seek remedies in these unique situations

In the interim, if you or our staff have any additional questions about these comments please feel free to contact me at (713) 893-6192. Thank you for allowing me this opportunity to submit these comments on this important issue.

Sincerely,

Thomas P. McGrann (tv)

Thomas P. McGrann
President and Chief Executive Office

Written Comments to the House Small Business Committee
Subcommittee on Procurement, Exports and Business Opportunities
On Proposals on Short Supply and Their Impact on U.S. Small Businesses
Subcommittee Hearing - May 2, 1996

Submitted by
Thomas P. McGrann, President and Chief Executive Officer
Tubular Corporation of America
14530 Wunderlich, # 2020
Houston, Texas 77069
(713) 893-6192

May 31, 1996

Thank you Mr. Chairman and members of the Subcommittee on Procurement, Exports and Business Opportunities for this opportunity to provide written comments for the hearing record on the issue of "short supply" and its impact on small businesses.

While I was unable to appear in person on May 2, 1996, I wanted to submit these comments on behalf of ***Tubular Corporation of America (TCA)*** and its 193 employees. TCA is a small business which processes steel pipe and tube products, known as oil country tubular goods (octg) for a variety of customers. The majority of our product is used by the energy industry for oil drilling and exploration. TCA's manufacturing plant is located in Muskogee, Oklahoma and has its corporate office in Houston, Texas.

I wanted to highlight TCA's views on issues related to "short supply" and specifically to the ***Temporary Duty Suspension Act, H.R. 2822.*** First, I would like to state for the record that TCA opposes H.R. 2822. As I understand, this bill would permanently alter the U.S trade statutes by allowing the Department of Commerce broad discretion to exclude certain products from antidumping and countervailing duties. Furthermore, this issue was debated in great detail and rejected during the debate over the Uruguay Round Implementing Act in 1994.

The short supply provision as outlined in H.R. 2822 is not necessary. Instead, I would argue that most of the points raised by the proponents of H.R. 2822 are untrue. First and foremost, the imposition of unfair trade duties can not create shortages of supply because it only effects prices of imports **not quantities.** Second, there are sufficient mechanisms in current U.S. law, namely "scope" and "changed circumstance" provisions that provide parties with opportunities to remedy no supply situations. I would directly refer to the most recent decision issued in early 1996 on cobalt steel plate. In that instance, the Commerce Department administered the law and removed the product from the scope of the case. Finally, the language in H.R. 2822 would not reduce unfair trade practices. Instead, I believe that it would erode and eviscerate the U.S. trade laws. Rather than discipline those who commit unfair trade practices, this provision would reward those who engage in these types of business practices.

Without strong U.S. unfair trade laws, scores of U.S. companies would be at a loss. Take for example our industry. Over the past decade, the U.S. pipe and tube industry has fought foreign unfair trade practices by using the unfair trade laws. Since 1984, these companies have filed over 75 trade cases challenging unfair trade practices. The majority of these cases involved antidumping petitions. For many years, those of us linked closely to the energy industry were plagued with surging imports, flat markets and decreased demand. In 1994, numerous producers of oil country tubular goods filed cases against imports from seven countries alleging unfair trade practices. In July of 1995, the Commerce Department announced final dumping margins and the International Trade Commission (ITC) ruled in favor of the U.S. petitioners. For the first time in nearly 15 years, the industry was able to regain its footing and compete in the global market.

As a result, TCA today has been able to rebound and achieve gains in areas which previously were depressed.

The other point that is important to address focuses on the "myth" of short supply. If a product as listed by the company is **truly** in short supply, there are adequate mechanisms to handle the request. If on the other hand, a party raises the specter short supply on a "proprietary specification" it is critical that careful review is provided. If H.R. 2822 is passed, there will be numerous requests by companies to seek short supply. In my opinion these requests are simply a way in which to avoid paying "fair prices" on substitute products available in the U.S. market. Instead, citing short supply, the party will ask for duties to be removed from subject products. Simply put, the battle seems to be between supporters of H.R. 2822 who are complaining about the prices of fairly traded products and those of us in the industry who remain firm in allowing the trade laws to prevail in these situations.

I recognize that there are other arguments that have been made by proponents of H.R. 2822 and there will probably be more issues raised. However, I firmly believe that it is important that Members of the Subcommittee understand how the current laws work and resist changes to the laws which would alter the intent of current laws and ultimately weaken the ability of U.S. companies to compete in the global market.

Thank you for providing Tubular Corporation of America (TCA) with this opportunity to provide these comments on the issue.

TORRINGTON
Part of worldwide Ingersoll-Rand

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STATEMENT OF
DAVID D. GRIDLEY
DIRECTOR OF SALES AND GOVERNMENT AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

Department of Commerce Proposed Antidumping Regulations
and Other Antidumping Issues

APRIL 23, 1996

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on the Commerce Department's proposed antidumping regulations, as well as other current issues with regard to antidumping law. I offer the following comments on behalf of the Torrington Company, a subsidiary of Ingersoll-Rand Company.

Torrington is the world's leading producer of needle roller bearings and is the largest domestic full-line producer of antifriction bearings in the United States. Torrington began as a producer of needle bearings, which are used in a variety of products from outboard motors to spacecraft. In the 1980s, Torrington acquired the Fafnir bearing company, which was the leading U.S. producer of ball bearings. The company operates state-of-the-art facilities in Connecticut, producing precision bearings for aerospace and other critical applications. Torrington produces commodity bearings of all types in its plants nationwide, as well as in Torrington's subsidiaries around the world. We welcome the opportunity to offer our perspective on the Commerce Department's proposed antidumping regulations and on other important aspects of antidumping law.

I. Torrington's Experience With U.S. Antidumping Law

The Torrington Company has been a petitioner and active participant in proceedings involving the antidumping and countervailing duty laws. The bearing industry has experienced a prolonged period of excess capacity and targetted dumping by many foreign bearing companies. The domestic bearing industry has been seriously harmed in the past by extraordinary levels of dumping that forced many U.S. producers to reduce capacity, lay off workers, fall behind competitively and in too many cases, go out of business or sell assets at seriously depressed levels. The enforcement of the U.S. trade laws in the last eight years have been helpful to U.S. producers by reducing the magnitude of the unfair trade practices.

At the same time, Torrington's experience with antidumping law demonstrates some of the current problems with the law or its enforcement. Most importantly, many of our foreign competitors continue to dump at significant margins of dumping year after year. While the existence of the orders means that importers will pay antidumping duties, the importers are generally related to the foreign producers. The effect has been in many situations no positive impact in the marketplace as related party importers absorb the dumping duties and are, presumably, reimbursed in one way or another by the foreign parent organization. The lack of a meaningful reimbursement

regulation to date and the failure of Congress to implement our international right to treat the absorption of duty as a cost to be deducted in determining the level of dumping are two of the reasons for the partial relief received to date.

Similarly, Torrington's efforts to prevent evasion of these orders have been partially unsuccessful. For example, Torrington brought a second dumping case against 14 additional countries in 1991, in an effort to limit foreign producers from shifting production from country to country while continuing the severe dumping practices. The International Trade Commission's negative preliminary injury determination ended these cases, basically ignoring the evasion that was occurring and penalizing domestic producers for engaging in the very activity contemplated by the first set of antidumping orders -- reinvesting in America. The result of the negative determination by the ITC was that much reinvestment was put in jeopardy, and further reinvestment was postponed or eliminated because of the frustration of the price correction in the market.

With this experience in mind, allow me to offer a brief perspective on some of the Department's proposed regulations.

II. Department of Commerce Proposed Antidumping Regulations

At the outset, Torrington wishes to commend the extensive effort of the Department of Commerce in preparing these proposed regulations. Both before and subsequent to the promulgation of these regulations, the Department has sought significant input from the public. The comments which follow, like Torrington's critiques throughout this process, are intended to facilitate the development of regulations that will make the administration of the law transparent, predictable and effective.

U.S. antidumping law must be structured and administered in such a way that foreign companies which are dumping product into U.S. markets have little or no incentive to evade the law. Torrington has observed numerous methods by which foreign producers create loopholes in antidumping orders.

The proposed regulations begin to address two issues of primary importance to domestic companies: scope rulings and circumvention of antidumping duties. *See* Proposed Regulation 351.225. Unfortunately, the proposed regulations do not go far enough in preventing foreign producers from evading antidumping orders as potential liability is dependent upon whether product has been suspended from liquidation. Proposed Regulation 351.225(l).

The purpose of a scope ruling is simply to clarify which products have been covered by an existing antidumping order. Accordingly, such a ruling should be made as rapidly as possible and product found to be covered by an order should be covered from the first importation - *not* from the date of a preliminary scope decision. If changes are needed to U.S. customs laws to permit reliquidation, such changes should be made. Otherwise, U.S. law creates an incentive to evade antidumping duty orders. Such evasion pays handsomely for foreign producers and importers and makes relief illusory. The same principle should be applied in circumvention situations, at least to the extent arguably consistent with WTO obligations.

In addition, in Torrington's experience, circumvention often occurs through distribution channels. For example, Commerce often treats home market sales to unrelated exporters

as though these sales are to "resellers." These "resellers" are then able to obtain their own antidumping margins, which are based in part on the acquisition cost of the good. Under this "reseller rule," dumping margins can "disappear" when the product comes to the United States even though any reasonable analysis would confirm that a significant part of the purchases by the company are intended for export. Commerce regulations do not address this problem.

A potentially related issue involves the "Roller Chain" rule. Under this prior agency practice, Commerce would disregard the imports if they represented less than one percent of the value of the product eventually produced. The rule in effect insulated certain purchasers from antidumping duty liability even if such purchasers constituted the largest share of imports and an important potential market for U.S. producers. When combined with the "reseller" issue reviewed above, the two potential evasion problems presented the potential to drastically reduce the value of dumping orders for many domestic producers. The Uruguay Round Agreements Act changed the "Roller Chain" practice. 19 U.S.C. 1677a(e). This statutory change provides Commerce with great flexibility to assure that the law is not evaded by foreign producers. Proposed regulation 351.402(c)(3) does <u>not</u> contain the same flexibility, which could present practical problems in particular cases. Any final regulation should reflect the great flexibility built into the statute on this issue.

Duty reimbursement is another method by which foreign producers frequently attempt to avoid compliance with U.S. antidumping law. When producers cover the cost of the antidumping duty paid by the importer, the unfair trade practice continues unabated. How a foreign producer chooses to reimburse will vary on the creativity of the foreign producer and the breadth of product line. For example, a major Commerce study showed that U.S. subsidiaries of foreign bearing companies received large extensions of credits from foreign parents following the antidumping orders. <u>See</u> U.S. Dep't of Commerce, Bureau of Export Administration, <u>National Security Assessment of the Antifriction Bearings Industry</u> 36-42 (Feb. 1993). Similarly, concerns were raised during one or more administrative reviews that transfer prices should be examined to determine whether transfer prices were below cost, effectively permitting funds to be transferred from parent to importing subsidiary and also resulting in the undercollection of cash deposits. These and many other options exist and have undoubtedly been used by companies covered by dumping orders to support continued dumping in the U.S. marketplace.

On several occasions, Torrington has asked the Department to investigate reimbursement, and has attempted to give the Department relevant factual information. However, domestic companies simply do not have the data or the resources to fully investigate whether (and to what extent) reimbursement is occurring. Only the Department can make such an undertaking. While the proposed regulation marks a movement from past agency practice on the issue of reimbursement, the movement does not go anywhere near far enough in seeing that reimbursement does not occur or, if it occurs, is negated. Proposed Regulation 351.402(f). Specifically, in its proposed regulation, the Department expands its definition of duty reimbursement to capture reimbursement through related importers and reimbursement of countervailing duties. 60 Fed. Reg. at 7,332. However, there is no indication that Commerce will adopt a more realistic approach to determining when reimbursement occurs. Without a more expansive construction, the reimbursement regulation will remain largely an empty promise of effective relief.

One of the most crucial aspects of an antidumping investigation for domestic parties is the Department's accumulation of complete information from foreign producers. Because U.S. producers do not have discovery rights or other investigatory powers, the Department's data collection process is the only means of gathering the sales, financial and production data crucial to showing evidence of dumping.

Not surprisingly, Torrington's experience suggests that antidumping decisions (of the Department and the International Trade Commission) improve when these agencies have complete - rather than selected - data on foreign producers. Torrington is more than willing to assist the Department in its efforts to reduce the cost of investigations. However, reductions in data collection often result in placing critical issues in jeopardy, and the agencies risk losing their ability to administer the law properly.

III. Other Antidumping Provisions of Particular Importance

Torrington's own experience makes clear that U.S. antidumping law must promote the granting of early relief. The ITC should be encouraged to more aggressively use threat of material injury provisions and to take into account evasion/ circumvention issues in considering follow-on cases. Let me provide some history of our cases and the problems facing the bearing industry.

In the 1970s and 1980s, the worldwide bearings market was characterized by significant excess production capacity. A number of large foreign bearing companies pursued aggressive market share expansion programs, operating from home markets where foreign competition was relatively limited or non-existent. Companies like Torrington that were dependent for most of their volume from the U.S. market were caught in a cross-fire as these companies were aggressively dumping into the United States in a battle for increased market share. Torrington and other U.S. producers bore the brunt of this battle.

The result was near-catastrophe for the U.S. industry: many U.S. producers suffered plant closures, lay-offs, R&D cuts, and reduced compensation to workers. Between the late 1970s and mid-1980s, the industry closed 30 plants, laid off 13,000 employees, and lost $1 billion in capacity.

In response to this extraordinary problem, antidumping and countervailing duty cases were filed against nine countries. After its initial investigations, the Commerce Department established dumping margins of more than 100 percent on many bearing products. As a result of the issuance of orders on a significant part of the imports, domestic producers experienced some price relief in the marketplace. Companies like Torrington took action that was consistent with the perceived restoration of fair prices in the market -- they reinvested as cash flow permitted. Foreign producers also expanded capacity in the U.S. However, the price relief was only partial. While imports dropped from the nine countries, imports surged from a number of other countries, almost all of which had subsidiaries of one or more of the companies found to have been dumping in the original cases.

Facing a deterioration in market prices because of the shifting situs of dumping and the resulting threat to reinvestment commitments made and planned, Torrington was forced to file a second set of antidumping cases cases in 1991 against 14 additional countries. Despite the obviousness of the evasion that was taking place and the potential for destroying the reinvestment that had been made following the

issuance of the orders, the second case was dismissed by the International Trade Commission at the preliminary injury stage. The fact that domestic companies had started to reinvest and add back employees was held against them by the Commission even though the circumvention or evasion of the orders put in jeopardy the very reinvestment the law is intended to promote. While the Commission's decision was upheld by the Court of International Trade as within its authority to make, such decisions by the ITC frustrate the ability of domestic industries to obtain effective relief and reduce the ability or willingness of domestic producers to reinvest. Considering the interest of some members of the Committee in H.R. 2822, an outcome where relief is delayed (and reinvestment is discouraged) is counterproductive as it retards the ability of domestic producers to supply product in the United States.

Stated differently, U.S. antidumping law should safeguard that relief is available to domestic industries _early_. Threat determinations should be more readily available so industries need not wait until they are competitively behind to bring cases. Such an approach will minimize economic dislocations both for manufacturers of products and for their customers.

Similarly, U.S. antidumping law should provide incentives for foreign producers to abide by U.S. law. Currently, because of the problems of duty absorption, reimbursement of duties and inability to deduct duties not passed through as a cost in determining dumping liability, as well as the generally prospective nature of scope and circumvention findings, the system encourages minimal compliance by foreign producers. Minimal compliance can drastically reduce the effectiveness of orders and frustrate the ability of companies to reinvest. Some of the problems can be addressed through regulations. Others may require Congressional action.

One suggestion would be to distribute dumping and countervailing duties actually collected to the petitioners to cover investments in plant, equipment, technology, R&D and people during the life of an order. Providing compensation (_i.e._, disbursement of duties actually collected) should create a powerful incentive for foreign producers to price fairly. Failure to price fairly would result in partial coverage of harm through the disbursement of duties collected. Similarly, a compensation provision would reduce the risk of reinvesting where foreign producers refuse to stop dumping.

Torrington encourages both the Department of Commerce and the Congress to consider establishing clear and meaningful standards with regard to duty absorption. As permitted under the WTO, U.S. law should treat dumping duties that are absorbed by a related party importer (rather than passed on to its customers) to be treated as a cost and deducted from constructed export price in determining dumping duties owed. Importers that absorb the cost of antidumping orders have in effect frustrated the intent of the orders. Treatment of such duty absorption as a cost is consistent with our international obligations under the WTO. Indeed, Article 9.3.3 of the GATT 1994 Antidumping Code permits all WTO signatories to treat antidumping duties as a cost in determining dumping liability when the duties are not passed on to customers in the importing country. Such a provision is part of current European Union antidumping law and applies to U.S. exports to the European Union covered by antidumping orders. U.S. producers are entitled to the full measure of relief envisioned by our international rights.

IV . H.R. 2822 - Temporary Duty Suspension Act

Torrington has previously expressed its opposition to H.R. 2822, the Temporary Duty Suspension Act. See Letter from Robert T. Boyd and David D. Gridley to the House Committee on Ways and Means re Miscellaneous Trade Proposals (March 1, 1996). Rather than reiterate this entire argument, allow me to stress several crucial issues:

First, and most importantly, careful attention to many of the problems outlined above will help to address the concerns of those industries seeking "temporary duty suspension" as provided in H.R. 2822. Users of dumped products under existing law enjoy the false market signals of dumped imports for too long before corrected market signals emerge. Such false market signals can result in users of dumped merchandise making erroneous investment and other decisions with resulting multiple levels of misallocation of resources. Early and effective relief will both reduce the erroneous contraction of capacity and supply and prevent erroneous expansion by users in situations where competitiveness is premised upon dumped pricing of inputs.

Second, temporary duty suspension would discourage reinvestment by domestic producers, as Torrington and other producers would be deprived of the market signals to know that reinvestment would be justified.

Third, an antidumping duty order never creates a shortage of product. An order does not regulate quantity; it merely requires foreign producers to sell and U.S. importers to pay a fair price for foreign merchandise. Hence, H.R. 2822 is a solution for a non-existing problem.

V. Conclusion

The Torrington Company commends the Department of Commerce on the major efforts made to date to solicit views and consider concerns of the public with the regulatory scheme for antidumping and countervailing duty laws. Torrington will be submitting views to Commerce as part of its notice and comment process. While much of what has been proposed appears acceptable and satisfies various criteria important to Torrington (i.e., making relief effective, predictable and available to industries regardless of size), there are areas where the proposed regulations need modifications.

At the same time, there are a host of issues not addressed by the regulations or existing law that hamper the ability of injured domestic industries to obtain relief early and to safeguard against the construction of U.S. law encouraging evasion of any antidumping orders. These issues should be addressed promptly. Addressing the problems which make relief partial and late would address some of the underlying concerns of users. There is no need for H.R. 2822, which does not address the underlying problem of misallocation of resources caused by dumping.

Again, thank you for the opportunity to testify.

Before the
Subcommittee on Procurement, Exports, and Business Opportunities
House Small Business Committee

STATEMENT IN OPPOSITION TO
TEMPORARY DUTY SUSPENSION LEGISLATION (H.R. 2822)

SUBMITTED ON BEHALF OF

AMERICAN BEEKEEPING FEDERATION, INC.; AMERICAN HONEY PRODUCERS ASSOCIATION; BICYCLE MANUFACTURERS ASSOCIATION OF AMERICA, INC.; COALITION FOR FAIR ATLANTIC SALMON TRADE; COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION; COPPER & BRASS FABRICATORS COUNCIL; FOOTWEAR INDUSTRIES OF AMERICA, INC.; FRESH GARLIC PRODUCERS ASSOCIATION; LEATHER INDUSTRIES OF AMERICA, INC.; MUNICIPAL CASTINGS FAIR TRADE COUNCIL; NATIONAL PASTA ASSOCIATION; SPECIALTY STEEL INDUSTRY OF NORTH AMERICA; SPECIALTY TUBING GROUP; TANNERS' COUNTERVAILING DUTY COALITION; VEMCO CORPORATION; AND VERSON, DIVISION OF ALLIED PRODUCTS CORPORATION

<u>Summary</u>

1. The above-named parties, which include numerous small businesses, oppose the temporary duty suspension legislation (H.R. 2822) because they believe it will create an enormous loophole in the remedies provided under the countervailing duty and antidumping statutes by giving the Commerce Department the discretion to waive duties assessed on unfairly traded goods.

2. The antidumping and countervailing duty laws do not create "short supply" conditions because these statutes do not impose quantitative restraints on the volume of imports from the country at issue; they merely impose offsetting duties.

3. A temporary duty suspension provision would reward importers that have benefitted the most from dumping and subsidization. Moreover, the short supply exception would allow unfairly low prices to continue, thus effectively preventing U.S. companies from renewing production of such products.

4. Enactment of H.R. 2822 will create enormous administrative difficulties, requiring government staff to dispose of numerous requests for duty suspension and to determine whether product specifications are reasonable.

5. Nothing in the World Trade Organization's Antidumping and Subsidies Codes requires or even envisions a short supply mechanism.

6. Now is not the time to consider a short supply amendment since such a provision was vigorously debated and defeated on a bi-partisan basis during the passage of the Uruguay Round implementing legislation in 1994.

7. Enactment of H.R. 2822 will have an adverse effect on the federal deficit because it will reduce the amount of antidumping and countervailing duties collected.

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May 8, 1996

Before the
Subcommittee on Procurement, Exports, and Business Opportunities
House Small Business Committee

STATEMENT IN OPPOSITION TO

TEMPORARY DUTY SUSPENSION LEGISLATION (H.R. 2822)

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FOOTWEAR INDUSTRIES OF AMERICA, INC.
FRESH GARLIC PRODUCERS ASSOCIATION
LEATHER INDUSTRIES OF AMERICA, INC.
MUNICIPAL CASTINGS FAIR TRADE COUNCIL
NATIONAL PASTA ASSOCIATION
SPECIALTY STEEL INDUSTRY OF NORTH AMERICA
SPECIALTY TUBING GROUP
TANNERS' COUNTERVAILING DUTY COALITION
VEMCO CORPORATION, AND
VERSON, DIVISION OF ALLIED PRODUCTS CORPORATION

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Before the
Subcommittee on Procurement, Exports, and Business Opportunities
House Small Business Committee

STATEMENT IN OPPOSITION TO

TEMPORARY DUTY SUSPENSION LEGISLATION (H.R. 2822)

On behalf of a broad range of domestic industries supportive of strong trade laws, which include many small businesses, we wish to express our vigorous opposition to H.R. 2822, a bill that would provide the Department of Commerce with the discretion to temporarily suspend antidumping and countervailing duties if the agency determines that prevailing market conditions related to the availability of the product in the United States make imposition of such duties "inappropriate."

This statement is submitted on behalf of the following domestic companies and industries: the American Beekeeping Federation, Inc.; American Honey Producers Association; Bicycle Manufacturers Association of America, Inc.; Coalition for Fair Atlantic Salmon Trade; Committee to Preserve American Color Television; Copper & Brass Fabricators Council; Footwear Industries of America, Inc.; Fresh Garlic Producers Association; Leather Industries of America, Inc.; Municipal Castings Fair Trade Council; National Pasta Association; Specialty Steel Industry of North America; Specialty Tubing Group; Tanners' Countervailing Duty Coalition; Vemco Corporation; and Verson, Division of Allied Products Corporation.

These industries firmly believe that H.R. 2822 will create an enormous loophole in the remedies provided under the countervailing duty and antidumping statutes. Under current U.S. law, AD/CVD duties must be imposed on dumped and subsidized imports that have caused, or threatened to cause, injury to an American industry. The proposed legislation would permit importers to avoid the duties assessed after exhaustive and expensive administrative proceedings on the claim that a particular product is not available in the U.S. market.

However, contrary to the assumption underlying this legislation, the antidumping and countervailing duty laws do not create "short supply" conditions. These statutes do not impose a quota that limits the volume of imports from the country at issue; instead, a special duty imposed on dumped and subsidized goods. Because the remedy is a tariff and not a quantitative restraint, U.S. customers are not denied access to foreign goods nor are they limited in the amount of imports they can buy; they are just required to pay a fair price for them.

In addition, creation of a short supply exception jeopardizes the remedial purpose of these laws. Imports sold at unfairly low prices frequently force U.S. companies out of a particular product line. If AD/CVD duties are suspended for those products, importers that have benefitted the most from dumping and subsidization will be rewarded.

But perhaps most significantly, the short supply exception will allow unfairly low prices to continue and thereby thwart U.S. companies from renewing production in those products. If the foreign producer's price remains at the dumped or subsidized level, the marketplace will not send the proper "signals" to the U.S. manufacturer to let him know that he can be competitive on a particular product. For example, if a U.S. producer's cost for an item is $110 and a foreign producer benefitting from dumping or subsidies sells the same good in the U.S. market for $90, the U.S. company will assume that it cannot compete in that product line. But if the fair value of the import is actually $125 and AD or CVD duties are imposed to ensure that the product sells in the U.S. market at that price point, the U.S. company -- realizing that its $110 product can compete with a $125 import -- will be given a market signal to make the necessary capital investment to produce this particular product. Clearly, companies will not be willing or able to make substantial investments in plant and equipment if imports continue to be sold at subsidized or dumped prices.

Further, enactment of this legislation will create enormous administrative difficulties. There is no question that importers will make numerous requests for duty suspension, forcing Commerce to devote substantial resources to ensuring that no U.S. company in a particular industry could -- or would -- produce the sought-after product. Nor is it clear how Commerce could be certain that it had not overlooked a potential manufacturer. If the government relies on a Federal Register notice to alert U.S. companies about a short supply request, it is unlikely that small and even medium size companies will get actual notice of the issue. As a result, Commerce staff could make a short supply finding when there might be American firms ready and willing to produce the item alleged to be unavailable.

The availability of such relief would also provide opportunities for abuse. It is not hard to imagine certain importers devising commercially unreasonable specifications in order to guarantee that no U.S. company will be found capable of producing the item. Federal bureaucrats will be faced with the impossible task of determining whether commercial specifications are reasonable. Indeed, the Department of Commerce has recently made it clear to Members of Congress that it does not want nor feel it needs the authority provided in H.R. 2822.

In addition to the substantial administrative burden that this legislation would impose on the Executive Branch, it is also important to remember that, although the United States bases its unfair trade laws on the World Trade Organization's Antidumping and Subsidies Codes, neither code requires or even envisions a short supply mechanism. Thus, there is nothing in the United States' international obligations that compels enactment of this legislation.

Further, even if such a proposal was advisable on the merits (which we do not believe), now is not the time for its consideration. A short supply amendment was hotly debated during the passage of the GATT implementing legislation in 1994 and was opposed by the Administration and soundly rejected by both the House Ways and Means Committee and the Senate Finance Committee on a bipartisan basis. It should not be reconsidered so soon after that thorough examination of this controversial issue. To the contrary, adoption of a short supply provision will require re-consideration of several issues that proponents of stronger trade laws abandoned as part of the compromises that facilitated enactment of the GATT implementing legislation.

Finally, the Subcommittee should also consider the budgetary impact of H.R. 2822. Revenues from antidumping and countervailing duties are contributed to the general treasury of the United States. In a time of budget crisis, it does not make sense for the United States to forego any of the hundreds of millions of dollars in revenues generated by the collection of AD/CVD duties.

For the reasons set forth above, the domestic industries submitting this statement strongly oppose passage of H.R. 2822. We greatly appreciate the opportunity to express our views on this important issue. Thank you.

Comments of Micron Technology, Inc.
in Opposition to H.R. 2822
Temporary Duty Suspension Legislation

Submitted to the Subcommittee on Procurement, Exports, and Business Opportunities
House Committee on Small Business

May 6, 1996

Micron Technology, Inc. ("Micron"), wishes to take this opportunity to submit comments in opposition to H.R. 2822, in conjunction with the Subcommittee's hearing on "the impact of short supply" on small manufactures held on May 2. H.R. 2822 would permit the Department of Commerce to temporarily suspend antidumping or countervailing duties when "prevailing market conditions related to the availability of the product in the United States make imposition of duties inappropriate". In brief, Micron believes that this provision would severely undermine the efficacy of the U.S. antidumping law. It would create enormous discretion to suspend duties, resulting in the complete politicization of trade cases. It would undermine the basic function of the dumping law -- i.e., to send fair pricing signals to manufacturers and capital markets. It would actually reward predatory dumpers. And, finally, it is not needed to address the problems it is purportedly intended to cure. This provision must not be adopted.

Micron is a leading manufacturer of dynamic random access memories ("DRAMs"), and static random access memories ("SRAMs"). These products represent the main memory in a variety of electronics products including personal computers. Micron also produces other semiconductor parts, board-level products and system-level products. Micron's design, wafer fabrication, assembly, test and marketing functions are located at its Boise, Idaho facilities, where Micron employs approximately 6,000 people. Micron is also building a fabrication facility in Lehi, Utah.

Micron Technology can speak with great authority on how the antidumping laws impact small businesses. In the mid-1980's Micron was a small business trying to compete in the burgeoning memory semiconductor market. Micron and other U.S. DRAM producers were targeted for extinction through dumping by the Japanese DRAM producers. Dumping was halted only after dumping investigations were initiated. In essence, Micron owes its continued existence in the United States to the antidumping law. This dumping threatened U.S. operations and drove U.S. competitors either out of business or into offshore production. Micron is proud of its status as one of the few remaining U.S.-owned companies that manufactures and assembles DRAMs entirely in the United States. The antidumping law played the critical role in helping ward off predatory pricing, and afforded Micron the opportunity and ability to reinvest in its technology, its people, and its future.

The semiconductor industry, and the DRAM industry in particular, is especially sensitive to price volatility. Pricing not only impacts a company's cash flow and profit margins, but also directly affects its ability to reinvest in new technology and equipment, hire and train skilled personnel, and expand capacity. In a highly capital intensive industry such as semiconductors, predatory unfair pricing can be fatal, as was seen in the 1980s when seven out of nine U.S. DRAM producers were forced out of business by Japanese producers. Although the semiconductor industry has experienced unprecedented demand over the past several years, recently, price declines have begun to accelerate. This softening is exacerbated by massive growth in chip production capacity, particularly in Korea and Taiwan. The continued health of the U.S. semiconductor industry depends on the existence of a dumping law that is strong and predictable.

As the Committee may be aware, the issue of whether or not U.S. antidumping and countervailing duty laws should contain a short supply provision was considered and rejected by both Houses of Congress only one and a half years ago. The legislation implementing the changes in the WTO Antidumping Code contained many new provisions, many of which weakened the law from the standpoint of Micron and other American companies who use those laws. Moreover, many of the provisions advocated by American companies, such as Duty as a Cost and Compensation, were not included in the new law. Overall, however, a rough balance was struck, and the legislation was adopted. Given that the U.S. dumping law underwent a thorough re-examination in both the House and Senate such a short time ago, it is entirely premature to reopen the law now. The new provisions adopted by Congress have not had sufficient time to be tested, nor has the Commerce Department adopted final regulations implementing these provisions. It is also important to note that there is nothing in the WTO Antidumping or Countervailing Duty Codes that requires, or even mentions, a measure like the Temporary Duty Suspension provision.

The Temporary Duty Suspension provision implies that dumping orders create shortages of products. This is simply untrue. The imposition of an order does not affect the availability of a product. An importer always has the option of buying from foreign producers, even those subject to an order; it must simply buy at a non-dumped price. Proponents of short supply argue that dumping duties are so high as to restrict supply, and compare the level of duties under U.S. dumping law to Smoot-Hawley tariffs. The comparison is not a valid one, but in those cases where high antidumping duties were found in initial investigations, it was often because respondents did not respond or were uncooperative in investigations, resulting in the use of "best information available". The revised Antidumping Code, however, dramatically changed the circumstances under which "best information available" can be used; and in fact the use of best information available by the Commerce Department has dropped sharply since the new law went into effect. This has led to a significant drop in margin levels, since respondents are now given every possible chance to cooperate. Moreover, while duty deposit levels in antidumping investigations might, in some instances, be high, our prospective duty system always gives foreign respondents an opportunity to eliminate the duties if they

stop dumping. A review of the level of margins in administrative reviews, in fact, shows very low dumping margins.

The Temporary Duty Suspension provision would also give the Commerce Department broad and undefined discretion in deciding whether or not an order stays in place. The United States Congress domestically, and our trade negotiators internationally, have worked hard to make the antidumping law as transparent, objective and predictable as possible. The Temporary Duty Suspension provision would, in essence, make the imposition of duties optional. In addition, the provision would undoubtedly lead to a total politicization of the proceedings. Those industries wielding the most influence in Washington would achieve the best outcomes. Small and medium-sized industries would be less likely to get the relief due them. Moreover, foreign policy considerations would likely dictate whether an order stays in place or is suspended. It is also extremely problematic that the Department of Commerce would be given such enormous discretion to suspend duties and that such suspension decisions would not even be subject to judicial review. It is both telling and important that the administering authority itself, the Commerce Department, is strongly opposed to being given the discretion permitted in the Temporary Duty Suspension provision.

While proponents of the Temporary Duty Suspension provision have worked hard to make it sound as benign as possible, it is really just the opposite. First, it would entirely short circuit the way the dumping law is intended to work. Often, industries that have been subjected to injurious dumping have curtailed production, or in some instances, may have ceased production of some product lines, because their costs restrained them from selling down to the dumped price. Once an antidumping order is in place, and prices return to normal levels, those same producers receive the proper pricing signals from the marketplace. They ramp up production in those products where they can be competitive, they re-enter product lines they may have left due to dumping -- U.S. investment is encouraged and more U.S. jobs are created.

Perhaps the most insidious thing about this proposal is that it would actually end up rewarding the most predacious sellers -- if a foreign producer forces competitors in the U.S. out of business, it will actually create the shortages that it will then be rewarded for by receiving a duty waiver. This is nonsensical. In considering the legitimacy of the Temporary Duty Suspension proposal, it must be kept in mind that it is not possible to get an antidumping order unless one can show that the industry in question has been suffering injury as a result of dumped imports for a three year period. A petitioning industry usually needs to show significant red ink -- lost jobs, lower sales, reduced investment. Thus, the industries that finally obtain an order (i.e., they have shown both dumping and injury), really do need relief. It is simply inappropriate to create a loophole in the law that would deny this relief.

It is also important to note that this provision is totally unnecessary to solve the problems its sponsors say that it is intended to address, i.e., those rare instances when an antidumping duty covers a product that no U.S. producer makes or has any intention of

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making. Under such circumstances, products not made here are often removed from the scope of an antidumping petition during the investigative stage of an antidumping case, and before an order goes into effect. If a product becomes subject to an order, but is not made here, it may be removed from the scope of an order through two other existing mechanisms: a scope determination or a changed circumstances review. In two recent changed circumstances decisions, Commerce removed specific products from an antidumping order based upon the fact that they were not produced in this country. (See, New Steel Rail, Except Light Rail, From Canada, 60 Fed. Reg. 61538 (Dep't Comm. 1995)(Initiation and Preliminary Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Review and Intent to Revoke Order in Part), and Certain Cut to Length Carbon Steel Plate From Canada, 60 Fed. Reg. 61536 (Dep't Comm. 1995) (Initiation and Preliminary Results of Changed Circumstances Antidumping Administrative Review and Intent to Revoke Order in Part).

The Temporary Duty Suspension provision could also lead to substantial abuses. In the semiconductor industry, there can be very subtle and very technical differences between certain microelectronics devices. It would be very simple for an importer who wanted to continue to buy a chip at a dumped price to claim that the particular specifications of that dumped chip made it the only one it could use in making its own downstream products. By narrowly defining what it says it needs to have, an importer would have control over the issue of availability. The Commerce Department would also be put in the position of having to determine whether to take the importer's word, or whether another closely substitutable product would be sufficient in that application. This would create an administrative nightmare for the Commerce Department, and also open the door to the potential of "political influence." The Commerce Department could not possibly maintain the expertise to determine issues related to the substitutability of products across the hundreds or thousands of product lines covered by antidumping and countervailing duty orders.

The Temporary Duty Suspension Provision would also significantly increase the costs of bringing antidumping cases. Often years pass and hundreds of thousands of dollars (or more) are spent before U.S. producers can obtain relief from unfairly traded imports which hurt our industries. (Usually an industry has to have been suffering injury for some time before it can even make a showing of injury at the ITC.) It would be very unfair to U.S. producers who have made the commitment of time and resources to defend themselves from unfairly traded products, to then give the Department of Commerce complete discretion to suspend duties. The legal argumentation related to short supply petitions themselves would also be very expensive.

Finally, as a political matter, it is important for Congress to realize that the consensus in this country for expanding free trade agreements is based, in significant part, on the ability of our industries to seek recourse from unfairly traded and injurious imports under our trade laws. If Congress acts to weaken the trade laws, this consensus will deteriorate. We cannot expect to enter into free trade agreements *and* eliminate the dumping law at the same time.

For the reasons outlined above, Micron strongly opposes the adoption of H.R. 2822.

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May 15, 1996

The Honorable Donald Manzullo
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B-363 Rayburn House Office Building
Washington, D.C. 20515

Re: Written Testimony Of The Southern Tier Cement Committee Pursuant To The May 2, 1996 Hearing On The Impact Of "Short Supply" On Small Manufacturers

Dear Chairman Manzullo:

Pursuant to the May 2, 1996 hearing of the House Small Business Subcommittee on Procurement, Exports and Business Opportunities (the "Subcommittee"), I respectfully submit written testimony on behalf of the Southern Tier Cement Committee (the "Committee"). The testimony addresses the Temporary Duty Suspension Act (H.R. 2822) and the relationship between the antidumping law and U.S. downstream industrial users.

INTRODUCTION

The Committee is a coalition of the 25 U.S. cement producers listed on Exhibit 1. Together, these producers represent 65% of total U.S. production capacity and 75% of the capacity in the southern tier states extending from California to Florida.

According to the May 2, 1996 hearing notice, the Subcommittee intended to examine the impact on U.S. downstream users, particularly small manufacturers, of so-called "short supply" situations. Such situations are allegedly caused by the imposition of antidumping duties on imported raw material inputs. Accordingly, this testimony will focus on the relationship between the antidumping law and U.S. downstream industrial users of gray portland cement. Before doing so, however, the Subcommittee should consider the very positive impact that antidumping orders have on upstream suppliers. Dumping hurts not only the firms and workers of the affected U.S. industry, it also hurts the firms and workers of the upstream industries that supply raw materials and equipment and build new plants for the affected industry. Under current law, the impact of dumping on upstream suppliers is totally ignored.

The unchecked dumping of cement in this country is contrary to the long-term interests of U.S. consumers. If H.R. 2822 became law, an ad hoc political process would replace the existing non-partisan, impartial administrative process. Foreign producers, foreign governments, their U.S. customers, and their Congressional supporters would vigorously lobby the White House, the State Department and the Commerce Department ("Commerce") to suspend antidumping duties for whatever reasons seem

plausible to the uninformed. If the political pressure succeeded, the suspension of antidumping duties would stifle much needed capital investment to maintain and expand production capacity and would allow foreign interests to capture our markets, to the long-term detriment of U.S. cement consumers.

Our industry has had a very disturbing preview of the effects that distorted short supply claims can have on the process. CEMEX, the Mexican cement monopoly, has been attempting to fashion a political end-run of the antidumping order on cement for five years. Its most recent tactic involved false and wildly exaggerated charges that the antidumping order was causing a cement shortage. CEMEX lobbied Commerce and the Administration to revoke the order, even without the encouragement of H.R. 2822. The cement industry's experience should provide the Subcommittee a real world perspective for assessing the concept of temporary duty suspensions.

THE ANTIDUMPING ORDER ON MEXICAN CEMENT

The experience of the U.S. cement industry since the early 1980's vividly demonstrates how the dumping of unfairly priced imports decimated a basic U.S. industry, and how that industry is now on the path to recovery as a direct result of the effective enforcement of our existing trade laws. Before turning to the industry's actual experience, however, let me describe gray portland cement and its market characteristics.

Cement is the binding agent in concrete, which is used in virtually all construction projects. It is quite literally the foundation upon which our country has been built. Cement is a fungible commodity that sells on the basis of price. It is produced in a capital intensive manufacturing process characterized by high fixed costs. Capital intensive industries, like cement, are under significant pressure to operate at high levels of capacity utilization in order to absorb fixed manufacturing costs. In addition, the demand for cement is highly cyclical, tracking regional construction cycles across the country. These industry fundamentals cause significant swings in supply/demand conditions and the industry's profits and losses over the course of the construction cycle.

Historically, the U.S. cement industry has made money at the peak of the cycle and lost money at the bottom of the cycle. Rising capacity utilization rates during cyclical expansions push cement prices and operating earnings upward, providing the cash flow for capital investments to maintain and expand capacity. During the contraction phase of the cycle, prices decline and capacity utilization rates fall. Depressed profits and cash flows at the bottom of the cycle will not support the capital investment needed to maintain and expand the domestic industry to meet U.S. demand.

As an example, during the 1980/1982 recession, cement demand dropped by 24% and the industry's capacity utilization rate fell to 68%. This downturn was followed by a strong economic recovery from 1983 to 1989 in which cement consumption increased 40%. Unlike previous expansions, however, the U.S. cement industry did not benefit from this recovery. The industry lost money throughout this

expansion because unfairly priced cement imports displaced domestic production and prevented the natural recovery of prices and profits which were desperately needed by domestic cement companies in order to offset the losses incurred during the 1980/1982 recession.

Foreign cement producers had substantial excess capacity in their home markets during the 1980's. They exported cement to the U.S. market at prices well below their home market prices and, in some cases, below their costs. As shown on Exhibit 2, from 1981 to 1988, landed import prices fell 24%, from approximately $45 per ton in 1981 to a low of only $34 per ton in 1988. In effect, foreign producers used the profits generated in their protected home markets to subsidize low priced exports to the U.S. This predatory pricing enabled them to gain a substantial share of the U.S. cement market at the expense of U.S. producers. As shown on Exhibit 3, the penetration of cement imports steadily increased from less than 5% of the U.S. market in 1982 to almost 20% by 1987.

This massive intrusion of dumped imports drove down cement prices in the U.S. and severely weakened the financial condition of the industry. As a result, the industry was forced to shut down 10% of its productive capacity, as depicted on Exhibit 4. Cement companies also reduced their employment base by over 20%. In addition, many U.S.-owned firms were forced to sell cement plants to cash rich foreign producers at substantially discounted prices. From 1975 to 1990, foreign ownership of the U.S. cement industry increased from 5% to 65%.

The economic viability of the industry depended on gaining some relief from dumping. At great cost, the Committee organized cement producers in the southern tier states from California to Florida to file antidumping petitions against Mexico, Japan and Venezuela. Fortunately, these actions were successful and resulted in a significant decline in unfairly priced imports after the imposition of duties in 1990 and 1991.

With unfairly traded imports in check, the industry is now beginning to realize the benefits which normally take place during cyclical expansions. The recovery in cement demand since the 1991 recession has resulted in a steady increase in the industry's capacity utilization rate from 81% in 1991 to approximately 90% currently. The resulting improvement in supply/demand conditions has paved the way for a recovery in cement prices from the depressed levels of the 1980's.

The improvement in the industry's profitability and returns has led to a resurgence in capital spending and job creation. At present, numerous capital projects are underway to build new capacity, expand existing capacity and upgrade present facilities. A few examples are listed on Exhibit 5. For the first time in almost 10 years, the industry has announced the construction of new cement plants to replace aging capacity and to meet increased demand.

The temporary suspension of antidumping duties could re-open the floodgates for unfairly priced cement imports at the peak of the cement cycle during periods of high capacity utilization. The cement industry must achieve price and profit gains at the top of the cycle to drive capital investment and job creation. The passage of

H.R. 2822 would have a disastrous impact on the industry's willingness to invest. If the industry can't count on the enforcement of our trade laws to prevent dumping at the peak of the business cycle, it would simply be too risky to undertake significant capital investments. If our industry doesn't earn profits at the peak of the cycle, it doesn't earn any profits at all.

A healthy domestic cement industry is in the long-run best interest of producers, downstream consumers and upstream suppliers. The downstream consumer of cement arguably would receive a short-term benefit from the price depression caused by unfairly priced imports. That price depression, however, would not only suppress new investment to expand and modernize U.S. production capacity, but would also cause further disinvestment as experienced during the 1980's. This loss of new and existing investment would hurt cement producers, their workers and upstream suppliers. The short-term pricing benefit to cement consumers would be more than offset by the long-term pricing detriment resulting from lower domestic production capacity and less cost-efficient plants.

It also would be contrary to cement consumers' long-term interests to become dependent on dumped imports. A finding of dumping means the foreign dumper has higher profits at home than on its exports to the U.S. It only exports to utilize excess capacity it cannot absorb on home market sales. During periods of peak demand at home, the foreign dumper will have no incentive to export to the U.S. It simply is not beneficial for U.S. consumers to become reliant on dumped foreign cement since these imports will

only be readily available when the cement cannot be sold in the more profitable home markets of the foreign producers.

Thus, temporary suspension of duties could have a long-term adverse impact on both U.S. cement producers as well as the downstream consumers that depend on a readily available supply of the product from modern and cost efficient plants.

PROVIDING FOR DISCRETIONARY SUSPENSION OF ANTIDUMPING ORDERS WOULD POLITICIZE THE PROCESS

Unlike previous short supply amendments, H.R. 2822 would provide Commerce with exceptionally broad discretionary authority to suspend antidumping duties without any statutory criteria or judicial review. Commerce would have the authority to suspend duties in any period in which Commerce determines that "prevailing market conditions" make the imposition of duties "inappropriate". Such a vague standard is an invitation for political intervention.

If enacted, H.R. 2822 would necessarily politicize the process by opening the door for extensive lobbying activities by respondents, foreign governments or any other parties that would benefit from the suspension of duties. Lacking the objective underpinnings of statutory guidelines and judicial review, Commerce's decisions would be tainted with political influence, whether actual or perceived. H.R. 2822 would also undermine the credibility of the United States with its international trading partners

because countries exhibiting the gravest foreign policy concern at a particular moment in time would be rewarded with suspended duties.[1]

Congress has labored over the years to ensure that agency decisions in antidumping cases are based on the facts presented and the application of detailed statutory standards. H.R. 2822 is contrary to this longstanding policy and would inevitably politicize Commerce's decision making process. In fact, Commerce strongly opposes H.R. 2822, both because of the extreme cost and difficulty in administering such a provision and because the enormous grant of discretion will encourage virtually every importer to seek exemptions from antidumping orders and pursue extensive lobbying campaigns in an effort to influence Commerce's decisions.

Our industry has experienced firsthand how foreign producers will expend substantial sums of money in an attempt to engineer a political fix to a legally valid antidumping order. CEMEX, the Mexican cement monopoly, has been pursuing a massive lobbying campaign over the past five years to remove the antidumping order through political means. CEMEX has gained the support of many members of Congress

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[1]In commenting on the intent to isolate antidumping decisions from political influence, the U.S. Court of Appeals for the Federal Circuit recently stated:

> Antidumping duties are not simply tools to be deployed or withheld in the conduct of domestic or foreign policy. In particular, the independent status of the International Trade Commission was intended to insulate the Government's decision to impose antidumping duties from narrowly political concerns.

Federal Mogul Corp. v. U.S., 63 F.3d 1572, 1581 (Fed. Cir. 1995).

and some governors by making false claims of a cement shortage. CEMEX used statistics showing that cement demand in the U.S. exceeds domestic productive capacity together with references to increasing cement prices to make the argument that the antidumping order against Mexico was creating cement shortages throughout the country. In fact, however, U.S. cement producers were operating with excess production capacity (approximately seven percent in 1994 and 10 percent in 1995) and imports from other countries[2] entered the U.S. in sufficient quantities to fill the gap between domestic production and demand in 1994 and to create a substantial surplus in 1995. CEMEX cited a handful of supply problems in a few local markets during the seasonal peak of construction activity in the summer of 1994 and proclaimed a crisis for the U.S. construction industry. CEMEX's self-serving cynicism is underscored by the fact that it told Congress that the antidumping order caused exorbitant price increases, but it certified to the U.S. International Trade Commission that the order has had absolutely no impact on U.S. cement prices.

What CEMEX has consistently failed to mention is that any capacity shortfalls in 1994 were largely the result of a decade of dumping which forced the industry to close approximately 10 percent of its capacity. Suspending duties against CEMEX under the auspices of a perceived short supply situation as envisioned by H.R. 2822 would threaten ongoing expansion projects, would cause domestic cement capacity

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[2]Cement is a fungible commodity made in virtually every civilized nation. World cement supplies are increasing, as shown on Exhibit 6.

to contract, and would exacerbate the very capacity shortfall upon which CEMEX's rhetoric is based.

CONCLUSION

The existing dumping laws have been a very effective deterrent to unfairly priced cement imports. Their effective administration has allowed the reemergence of free market conditions to balance supply and demand. The adoption of the temporary duty suspension act would upset this balance in the favor of foreign producers that would dump cement into U.S. markets without fear of retaliation in their protected home markets. The short-term advantage gained by the consumer in the form of lower prices would be more than outweighed by the adverse long-range effects on product availability caused by disinvestment in U.S. productive capacity. Both the industry and the downstream cement users would lose over the long-term.

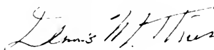
The U.S. industry has suffered significant injury at the hands of dumped imports. The effective enforcement of our trade laws has allowed the industry to recover and again supply the needs of the American construction industry. This is not the time to weaken remedies against unfairly traded imports by creating loopholes for the worst foreign offenders -- those that dump with impunity and thereby destroy the domestic industry's ability to invest in new plants and equipment needed to produce a competitive product. Enacting H.R. 2822 and similar proposals to dilute U.S. antidumping law would

go a long way toward destroying the fragile consensus for free trade that exists in the United States today.

For all of these reasons, we respectfully request that the House Small Business Subcommittee on Procurement, Exports and Business Opportunities take no further action in support of this injurious legislation.

If you have any questions or would like additional information, please let me know.

Sincerely,



Dennis M. Thies
Southern Tier
Cement Committee

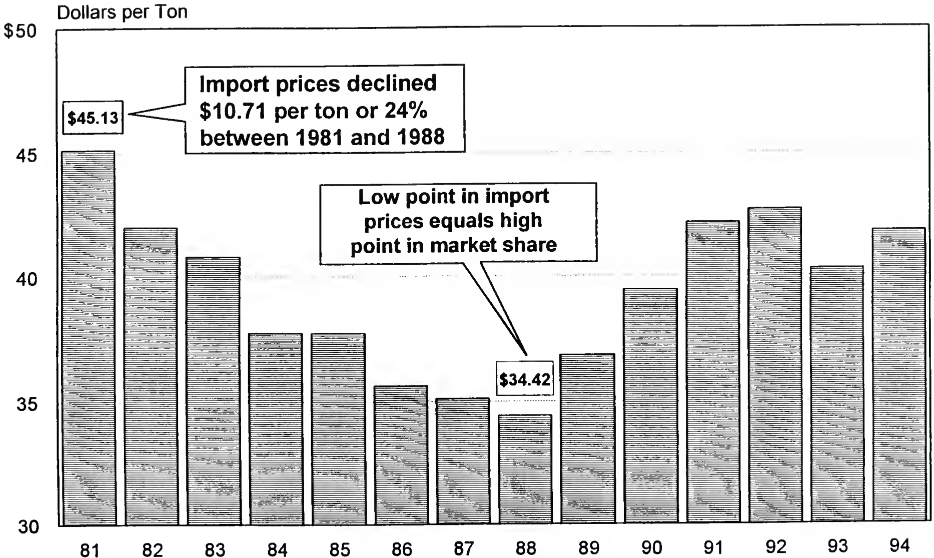
THE SOUTHERN TIER CEMENT COMMITTEE

Company/Headquarters	Plant Locations	
Alamo Cement Company San Antonio, TX	San Antonio, TX	
Arizona Portland Cement Co. Glendora, CA	Rillito, AZ	
Ash Grove Cement Company Overland Park, KS	Chanute, KS Durkee, OR Foreman, AR Inkom, ID	Nephi, UT Louisville, NE Clancy, MT Seattle, WA
Blue Circle Marietta, GA	Atlanta, GA Harleyville, SC Sparrows Point, MD	Calera, AL Ravena, NY Tulsa, OK
Calaveras Cement Co. Walnut Creek, CA	Redding, CA Monolith, CA	
California Portland Cement Co. Glendora, CA	Colton, CA	Mojave, CA
Florida Crushed Stone Co. Leesburg, FL	Brooksville, FL	
Florida Rock Industries Inc. Jacksonville, FL	Gainesville, FL	
Giant Cement Company Harleyville, SC	Harleyville, SC	
Kaiser Cement Corp. Pleasanton, CA	Cupertino, CA	
Lafarge Corporation Reston, VA	Alpena, MI Davenport, IA Fredonia, KS Grand Chain, IL Independence, MO	Paulding, OH Tampa, FL Whitehall, PA

Exhibit 1

Company/Headquarters	Plant Locations	
Lehigh Portland Cement Company Allentown, PA	Gary, IN Leeds, AL Mason City, IA Mitchell, IN	Union Bridge, MD Waco, TX York, PA
Lone Star Industries Stamford, CT	Cape Girardeau, MO Greencastle, IN Sweetwater, TX	Oglesby, IL Pryor, OK
Medusa Corporation Cleveland, OH	Charlevoix, MI Clinchfield, GA	Demopolis, AL Wampum, PA
National Cement Co. of Alabama, Inc. Birmingham, AL	Ragland, AL	
National Cement Co. of California, Inc. Encino, CA	Lebec, CA	
North Texas Cement Company Dallas, TX	Midlothian, TX	
Phoenix Cement Company Phoenix, AZ	Clarkdale, AZ	
Riverside Cement Company Diamond Bar, CA	Riverside, CA	Oro Grande, CA
RC Cement Co., Inc. Bethlehem, PA	Stockertown, PA Chattanooga, TN	Festus, MO Independence, KS
RMC Pleasanton, CA	Davenport, CA	
Southdown, Inc. Houston, TX	Louisville, KY Pittsburgh, PA Fairborn, OH Brooksville, FL	Knoxville, TN Lyons, CO Odessa, TX Victorville, CA
Tarmac America, Inc. Medley, FL	Medley, FL	
Texas Industries, Inc. Dallas, TX	New Braunfels, TX Midlothian, TX	
Texas-Lehigh Cement Company Buda, TX	Buda, TX	

Table A. Delivered Import Prices

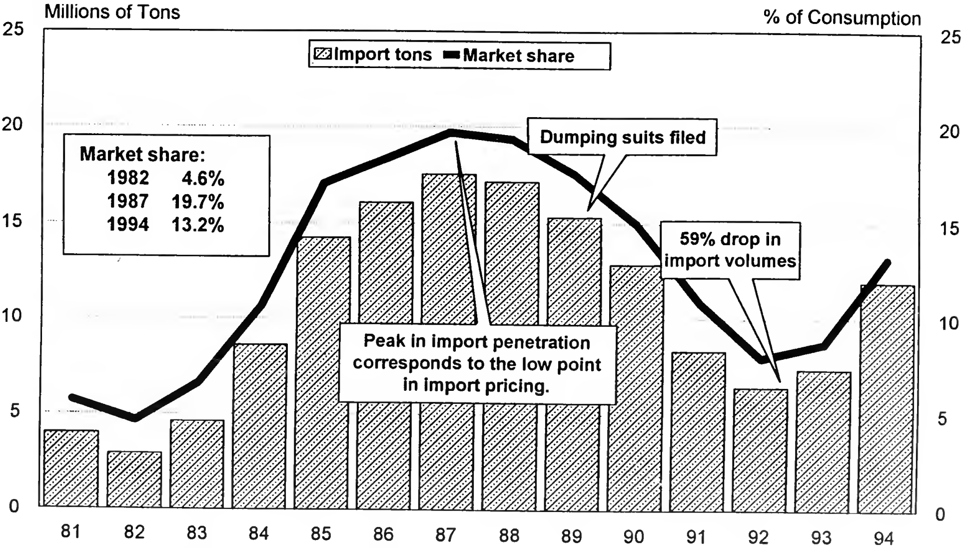


Source: Bureau of Mines Mineral Yearbooks and Department of Commerce Official Import Statistics.

Exhibit 2

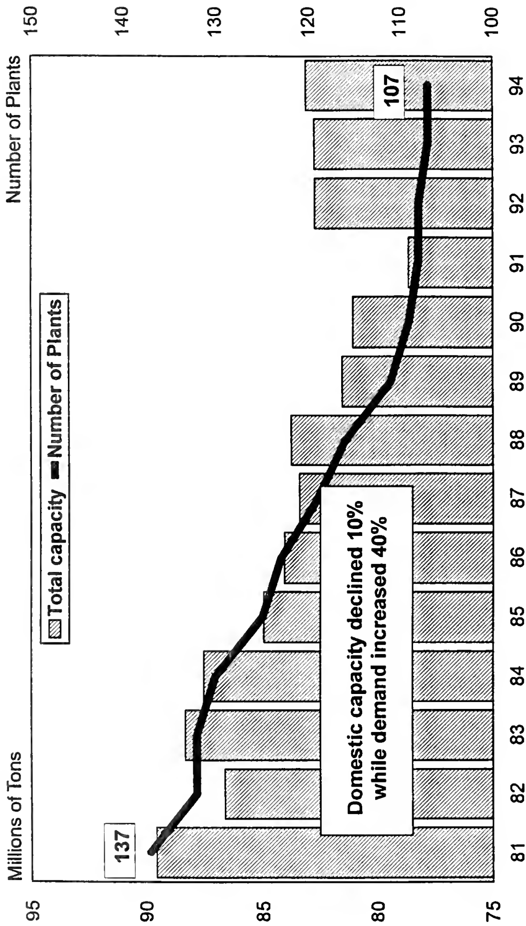
Exhibit 3

Table B. Import Volumes & Market Share



Source: Bureau of Mines Mineral Yearbooks and Department of Commerce Official Import Statistics.

Table C. U. S. Clinker Capacity



Source: PCA Plant Information Summary, 1994.

Exhibit 4

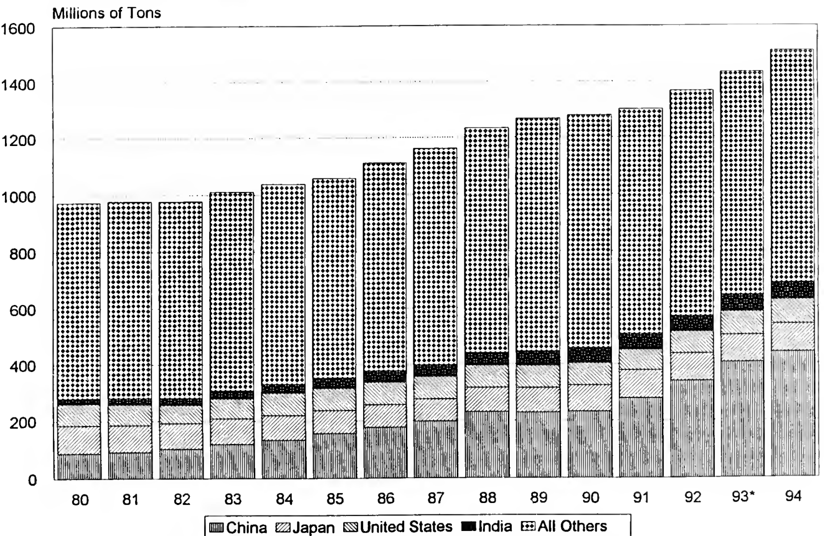
Recent Capacity Expansion Investments In The U.S. Cement Industry

Company	Investment Project
Ash Grove	Increasing capacity of Leamington, UT plant from 650,000 to 825,000 tons. Increasing capacity of Durkee, OR plant from 500,000 to 900,000 tons (est. $85 million).
Blue Circle America	Installing new finish mill to increase cement grinding capacity at Roberta, AL plant ($22.5 million).
Capitol Aggregates	Installing new finish mill to increase cement grinding capacity at San Antonio, TX plant.
Florida Crushed Stone	Building second kiln at its Brooksville, FL plant to double clinker capacity (est. $60 million).
Florida Rock Industries	Building 750,000 ton plant near Gainesville, FL (est. $100 million).
Holnam	Doubling capacity of its Devil's Slide, Utah plant to 700,000 tons by replacing the existing wet kiln with a dry kiln (est. $75 million). Modernizing and upgrading clinker coolers in Midlothian, TX, Theodore, AL, and Santee, S.C. plants. Replacing raw mill separator with high-efficiency separator at Theodore, AL plant.
Lafarge	Investing $135 million in a new facility at an existing cement plant site near Kansas City, MO, increasing capacity by 400,000 tons annually. Modernizing heating and cooling processes in Davenport, IA and Fredonia, KS plants to increase production and reduce fuel consumption. Investing $9.7 million in modernization of Paulding, OH plant.

Exhibit 5

Lehigh Portland Cement	Modernizing and expanding project at the Union Bridge, Maryland cement plant, increasing capacity from 1.0 to 1.5 million tons. ($180 million) Upgrading kiln preheater and clinker cooling systems at Leeds, AL plant. Upgrading Macon City, IA plant to increase capacity.
Lone Star Industries	Investing $15.5 million in a new finish mill and storage facilities at Greencastle, IN plant, increasing cement capacity by 11 percent.
Medusa	Modifying preheater kiln system at Clinchfield, GA plant, increasing cement capacity by 6 percent.
National Cement	Installing a 2,100-tons per day clinker cooler in Lebec, CA cement plant.
Riverside Cement	Centralizing control rooms for gray and white cement plants.
Roanoke Cement	Investing $37 million to modernize Roanoke, VA cement plant and expand capacity from 1.0 to 1.2 million tons.
Southdown	Investing $48 million in expansion and modernization of Fairborn, OH cement plant, increasing cement capacity by 120,000 tons per year.
Texas Industries, Inc.	Buying more than 3,400 acres with limestone deposits adjoining Midlothian, TX cement plant.

Table D. World Cement Production



*According to the International Cement Review's "Global Cement Report," world cement capacity was 1,491.1 million short tons in 1993. As shown above, world cement production in 1993 was 1,432.6 million short tons. This leaves an excess cement capacity of 58.5 million short tons for that year.

Source: Bureau of Mines, Cement Annual Report.

Exhibit 6

THE NEW YORK TIMES, TUESDAY, APRIL 16, 1996

Big Steelmakers Shape Up

U.S. Mills Win Back Business at Home and Abroad

Last year, the Bethlehem Steel Corporation exported 500,000 tons of steel from its plant along the Chesapeake Bay.

By JOHN HOLUSHA

SPARROWS POINT, Md — Richard Moore was laid off from the Bethlehem Steel Corporation's sprawling mill here in 1981, one of tens of thousands of workers shed by the American steel industry as it fought to cut bloated costs and fend off surging imports.

Now, after a nearly 15-year stint selling auto parts, Mr. Moore is back on the job, one of 400 production workers hired here last year, the first new arrivals since 1979. More are expected to be hired soon.

"The work here is dirtier, hotter, more dangerous and strenuous" than the sales job, Mr Moore said during a brief break. But, at $24 an hour in base pay and benefits, it is also "much better than what I was doing," he added.

The return of Mr Moore and his colleagues — and others like them at steel plants around the country — marks the return as well of an industry that was nearly given up for dead in the United States a decade or so ago.

Slimmer now and better run, American steelmakers are taking back more and more pieces of their domestic business from competitors in Japan and other countries. And at levels not seen for half a century, they are going abroad with a vengeance, more than holding their own on foreign turf in terms of quality and price, even with the added expense of shipping.

Last year, they shipped 7.1 million tons of steel slabs, sheets and structural beams to foreign countries, nearly doubling the 3.8 million tons exported in 1994. It was the best export performance since 1940, according to the American Iron and Steel Institute, the princi-

Continued on Page D5

Less Labor

American steel mills have become much more productive in recent years, and are now more efficient than those of other major producing countries. Figures are the hours of work required for each metric ton of cold-rolled steel sheet shipped by major mills

UNITED STATES

In 1975 12.49

In 1990 5.40

In 1995 4.42

OTHER COUNTRIES IN 1995

JAPAN 4.49

FRANCE 4.61

GERMANY 4.69

BRITAIN 4.71

Source: Paine Webber

The New York Times

Big Steelmakers Shape Up, Winning Business at Home and Abroad

Continued From First Business Page

pal industry trade group And orders are booming this year.

As explanation of why he expects to stay on this time around, Mr Moore pointed to the fact that the tin-plating line he works on had sold its full 1996 production capacity by mid-March Last year, Bethlehem exported 500,000 tons of steel from the plant here, along the Chesapeake Bay about 12 miles southeast of Baltimore That is up from just 50,000 tons the year before. All in all, the performance last year and the strong orders so far this year "confirm that the U.S steel industry has become competitive on a world basis," said Peter F Marcus, a metals analyst at Paine Webber.

To be sure, the United States still imports more steel than it exports, at least partly because so many outmoded mills have been closed that the domestic industry cannot fully supply the market. Imports totaled 24.4 million tons last year. And the bulk of the hiring here and at other plants is to replace retiring workers, not to add to the payroll.

Still, in one basic category, hot rolled sheet steel, the United States has been a net exporter since last June And overall employment in the industry — now thought to be around 170,000 — has begun to increase as the first few of nearly a dozen new mills scheduled to open by the end of the decade have started production. Taken together, the numbers show just how far American steelmakers have come in changing their old ways, analysts and industry executives say.

Those ways were marked by a full plate of inefficiencies: overstaffing, outmoded production processes and poor quality control. Foreign steelmakers, led by the Japanese and the Europeans, saw their chance and moved in. But there were domestic threats to the steel giants as well, from so-called mini-mills, upstart operators that turned out low-cost steel from scrap rather than from raw materials. And some foreign companies bought plants in the United States and began to revamp them.

Eventually, the big American steelmakers got serious about survival. They slashed payrolls, shuttered the most antiquated of their hulking mills and spent billions on new technology and equipment.

With costs down and quality up, the industry has been positioned of late to take advantage of currency swings that have made American products cheaper abroad. Besides making American steel itself more attractive to foreign markets, the relative weakness of the dollar has helped many domestically made products, from cars to appliances, that contain steel. And that, in turn, has given the American steelmakers a chance to retake at least some of their home ground.

Noting that the Chrysler Corporation is exporting steel to Europe to make Jeeps there and that cars containing American steel are being exported in larger numbers than they used to be, Michelle Applebaum, an analyst with Salomon Brothers, said: "The Rust Bowl in the United States has become competitive again. The steel market is the primary beneficiary of the new competitive heartland in the United States and is stronger than it has been in decades."

Stung by the mini-mills, the giants now are imitating them.

The evidence of the shift is striking in sheet steel, the biggest category and a major component of cars, building materials and appliances. At the beginning of 1995, Ms Applebaum said, imports accounted for a net market share (subtracting exports) of 17 percent. But by the end of the year that figure was down to 5 percent. "That means that a full 12 percent share was given back to the U.S. market," she said, equaling twice the output of one large steelmaker, Inland Steel Industries.

One measure of efficiency is the amount of labor it takes to produce a given quantity of steel. According to Mr. Marcus, the average integrated mill in the United States requires 4.42 hours of labor to produce a metric ton, or 2,200 pounds, of steel. That compares with 4.49 hours in Japan, 4.69 in Germany and 4.71 in Britain. Twenty years ago, when far more labor was required, Japan was the leader, at 11.36 hours, followed by the United States, at 12.49

Steel executives say exports provide a long-term opportunity, though shipments are likely to vary from year to year, depending on domestic demand Because it costs about $50 a ton to ship steel overseas, the profit margin is less than in a domestic sale. But because blast furnaces must be run continuously, disgorging ton after ton of molten pig iron, manufacturers like having an alternative market if demand falls at home.

"Right now, the domestic market is more attractive, so our exports will probably be less this year than in 1995," said Paul Wilhelm, president of the U.S. Steel Group of the USX Corporation. U.S. Steel exported 1.5 million of the 11.4 million tons of steel it made last year. But the company is a permanent player in the export business, with long-term overseas accounts, Mr. Wilhelm said.

John J Connelly, the president of U.S. Steel International Inc, added, "We see this as an ongoing 4 to 5 percent of our business through thick and thin"

And while the cheap dollar helps keep that market open, industry experts say, there are other factors.

"Currency has an effect, but in the end if you are low-cost, high-quality and meet customer expectations, you will get business," said Curtis H Barnette, Bethlehem Steel's chairman

This newfound efficiency and quality will have increasing importance in coming years as the new mills begin opening in this country If products from the new mills can push out imports rather than cannibalize older mills, as has been the case in the past, jobs at places like Sparrows Point look like a better long-term bet.

All the start-ups are patterned on mini-mills, which have small, highly efficient work forces The Nucor Corporation, the mini-mill leader, can make steel at some of its mills with less than half an hour of labor a ton

But the mini-mills may no longer enjoy the big advantage over traditional mills that they had in the past, some experts say In part, that is because the traditional mills have become so much more efficient

Another reason has to do with the production process of most mini-mills. They have to live with the impurities in the recycled materials they use, and the price of high-quality scrap has been rising. Integrated mills, because they work from raw materials, can better tune the chemistry of their products.

Exports in 1995 were the highest in more than half a century.

Because the price of scrap is likely to keep rising as new mini-mills add to demand, many companies are investing in ways to separate iron from ore that do not involve blast furnaces, which are costly to build and operate. Nucor, for example, is converting ore into iron carbide, a form of the metal that can be added to scrap.

As the mini-mills lose some of their edge, the slimmed-down integrated mills should be able to hold their own better on the domestic front, analysts predict.

At Sparrows Point, the changes have been profound In the 1950's and 60's, it was more like an independent empire than a factory The mill employed about 30,000 people and there was a company town, complete with company-owned housing, stores and schools. There was even a police force and a semi-professional football team

In the late 60's, the company decided to end this paternalistic system and to gradually close down the town. New mill buildings swallowed the remains of the town, and the workers who stayed on the payroll moved to Baltimore and the surrounding area.

"There was a high school where the blast furnace is now," sai Duane Dunham, the president o Bethlehem's Sparrows Point divi sion.

Over the last decade, Bethlehen poured in $1.6 billion for improve ments. Everything in the mill i automated and run by computer, al lowing only a few people to contr the movement of vast amounts o material by watching wall-sized di plays. Today the plant employs jus 3,250 people and can make 3.5 millio tons of steel a year, about one-thir of its capacity in the old days.

The attitude of the employees an their union, the United Steelworker of America, has changed as well. A the tin plate plant to which Mr Moore is assigned, for instance, th rigid union work rules of the pas have become flexible.

"We are all cross-trained, so w can fill in for people who are no here," said Brenda Matthews, one o the new workers, adding that littl distinction was made between me and women. "Women do the sam jobs as men," she said, with on exception: Only the men load th heavy bars of tin needed in the ele tinplating process.

Even some of the veterans ar whistling a new tune. James Henso has been at Sparrows Point for 2 years, mostly as an operator of tractor that moves coils of stee steel prior to shipment.

"In the old days, we had peopl chasing coils all over the place," h said, waving at a warehouse that i easily as long as three football field "Now it is all on computer and w are shipping to our customers on just-in-time basis Every tractor op erator has a computer and every co is logged in It's better this way"

THE JOURNAL OF COMMERCE THURSDAY APRIL 25, 1996

OPINION

When steel is in 'short supply'

BY HANS MUELLER

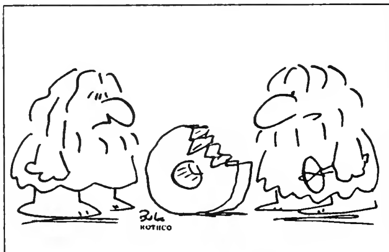
Late last year, Rep. Philip Crane, R-Ill., introduced a bill that would allow the Department of Commerce to lift anti-dumping duties temporarily on products unavailable from domestic sources. Rep. Crane's proposal, known as the "short supply" bill because it would suspend duties for goods in short supply, sparked a storm of protest from several congressmen, some industry groups and Commerce itself. Yet, approval of the bill would represent a small step toward restoring the balance of market power between producers and consumers in some key U.S. industries, especially steel.

Domestic steel producers have been among the most vocal opponents of Rep. Crane's bill. That's hardly a surprise since the steel industry accounted for more than half of all anti-dumping petitions filed during the last 15 years. (Dumping complaints are filed when a company believes a foreign producer is selling its goods in the United States at unfairly low prices). In some steel products, such as plate steel and galvanized coils, steelmakers hold considerable power over their own customers.

In comments submitted last month to the House Ways and Means Subcommittee on Trade, steel users forcefully expressed their support for the proposed legislation. According to the Steel Service Center Institute, "America's downstream manufacturers are just one component away from disaster. However mundane the missing piece. . . its unavailability can bring the manufacturing process to a sudden halt and cripple sales."

The American Wire Producers Association is similarly emphatic; it attributes market losses by its members to the imposition of preliminary dumping duties on carbon steel wire rod in 1993-94, with wire product sales going instead to foreign competitors. The Precision Metalforming Association, whose members employ 50% more workers than the entire steel industry, asks why high tariffs are imposed on goods that U.S. industry needs but domestic producers cannot supply.

Existing anti-dumping rules are to a large extent the result of the steel industry's past lobbying efforts. Lawyers for the big U.S. steel producers worked hard in the 1970s and 1980s to make the law more producer-friendly and to have enforcement procedures tilted in their favor. By contrast, the much larger American steel-consuming sector, including small users and export-oriented firms, was never cohesive enough to offset the steel producers.



'I can fix it, but I'll have to order parts.'

Massive trade complaints filed in 1992 led to punitive duties, many prohibitively high, on 3 million tons of imported plate and galvanized sheet steel. The resulting trade disruptions aggravated already existing supply problems brought on by strengthening demand, and limited domestic steelmaking capacity. During the 1994 boom, steel producers were forced to ration supplies to their customers. Greatly extended delivery periods or outright cancellations made it difficult for manufacturers to stay schedule. Steel users were obliged to turn to new and often unreliable producers from Russia and Ukraine.

Two favorable developments kept the situation in 1994 from becoming critical. First, by a margin of one or two votes, the International Trade Commission cleared several million tons of imported steel of injury charges. Also, the delayed economic recovery in Europe and Japan allowed American steelmakers to buy huge quantities of foreign-made, semi-finished steel for processing in their own mills.

The agencies administering U.S. trade law, including the Commerce Department, show little concern for the effect their actions have on U.S. markets. The question of whether those seeking import relief are capable of meeting demand is deemed irrelevant.

The ITC holds a similar view. "It must be remembered," wrote ITC Vice Chairman Janet Nuzum and Commissioner David Rohr, "that the purpose of the anti-dumping and countervailing duty laws is not to protect consumers, but rather to protect producers. . . So it should not come as a surprise that the economic benefits of the remedies accrue to producers, and the costs accrue to consumers."

In the 1950s and 1960s, U.S. trade officials derided several Latin American countries for adopting policies aimed at barring the import of any product that could be obtained from local producers. Two decades later, the United States is fully behind a U.S. policy that may block imports regardless of the domestic availability of like products. At least the Latin Americans were pursuing a well-defined objective of industrial expansion with their trade policy. Imports were reduced only at the rate domestic products became available. The U.S. policy on steel imports does not offer even that much.

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EDITORIAL

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and Commercial
Founded in 1827 by Samuel F.B. Morse

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The short-supply bill

A STORM IS GATHERING in the corridors of Washington. In the eye of it is not the balanced budget or abortion, but a modest legislative proposal to suspend anti-dumping levies on products in short supply. Not surprisingly, the battle to defeat the measure is led by the steel industry, but it includes cement and semiconductor manufacturers, labor unions, textile producers and many others. Passage of the bill, they all fear, would crack the wall of protection the government has built around them and expose them to more competition.

The government is against it as well. In an argument that justifies its sobriquet, "MITI without the brains," the Department of Commerce's Import Administration claims the "short-supply" legislation would have "harmful consequences . . . for U.S. industries." This argument apparently assumes that competition is harmful. It also disregards the fact that while the dozens of anti-dumping orders shielding the steel industry may protect the handful of U.S. steel producers, they hurt tens of thousands of steel users, from General Motors and Caterpillar to Canberra Industries, of Meriden, Conn.

Steel users facing shortages — research shows there is a chronic 15 million to 20 million ton steel shortage in the United States — are forced either to import steel at a much higher price, import components made abroad or move component production facilities to other countries. Labor, with its unblemished record of being wrong on trade, suffers as a result. Nonetheless, unions are opposed to the short-supply bill.

For decades following World War II, the United States was the world's leader in dismantling tariffs and quotas. But in the 1970s the process of liberalization reversed and the level of protection, mainly through non-tariff barriers, began to rise. A decade later, twice as many imports were subject to some form of restraint. Anti-dumping laws and other administered protection, such as voluntary export restraints, became the modern tools of U.S. protection. Even the European Union, which has made extraordinary use of its dumping laws to keep Central and East European imports out, has provisions for short supply.

It would be easy to make a case for doing away with anti-dumping laws altogether. The International Trade Commission, which helps administer the laws, believes they cost consumers $1.6 billion a year in higher prices. Recent research at Rutgers University shows that the "main benefactor of anti-dumping duties may not be the U.S. complainant, but rather the other countries competing in the U.S. market." After spending huge sums to win dumping cases, the complaining companies "might receive little or no gain," Rutgers economists concluded.

But the short-supply bill, sponsored by Republican Reps. Bill Archer of Texas and Phillip Crane of Illinois, would leave the basic anti-dumping law intact. It would merely suspend dumping levies on products not made in the United States at all or in insufficient quantities.

The Commerce Department claims today's law already allows short-supply exceptions under the "scope exclusion" provisions, and cites Canberra Industries as a shining example of the law's merits. Canberra itself is emphatically behind the short-supply bill, saying it took almost two years and reams of paper to get relief from Commerce. Unlike GM, which can move production anywhere around the globe without skipping a beat, Canberra can't.

The less obvious benefit of the short-supply bill is that it would bring producers and users closer together. Not since Soviet-style central planning has there been such a gulf between suppliers and customers as there is between U.S. steel producers and users. The two sides are so distant, they know or care little about one another's needs.

The short-supply measure makes good business sense. It would help companies adversely affected by anti-dumping orders without harming those domestic producers intended to benefit from such orders.

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REPORT

HD9510 Gen.

Christian A. Conrad*

Steel: A New Round of Protectionism in American Trade

Traditionally the American steel industry is the most protected industrial sector in the USA and internationally it is the largest user of anti-dumping and anti-subsidy proceedings.[1] At the end of 1994 a ruling from the GATT Panel[2] settled the most recent trade dispute in the steel market. A number of the anti-dumping and anti-subsidy proceedings applied for by US integrated steel producers in 1992 remain in effect. The following paper outlines the latest trade dispute in the steel trade, beginning with an overview of the various rounds of protectionism to date, and seeks to analyse the background to and causes of the dispute.

The American steel industry has enjoyed almost constant protectionism for 25 years. Until 1982 steel imports were controlled by voluntary restraint agreements (1969-1974) and a system of import controls known as the trigger price system[3] (1978-1982). In 1982 integrated steel producers[4] filed 132 anti-dumping and anti-subsidy complaints. This was the largest number of claims that had ever been brought at one time. However, the American government was able to persuade the steel producers to withdraw their actions by negotiating voluntary restraint agreements with the major importing countries. The import quotas limited imports of low-carbon steel from 28 countries to 18.4% of US steel consumption. The voluntary agreements were extended to other countries and in 1985 prolonged to 30th September 1989. That meant that the American steel market was fully protected; all significant steel imports into the USA were governed by voluntary restraint agreements. In 1989 the voluntary restraint agreements were renewed for the last time by President Bush. To prepare the way for the abolition of import restrictions, the quotas were to be increased gradually to 20.3% in 1992. At the same time it was intended to use this transitional period to draw up a Multilateral Steel Agreement (MSA)[5] for 1992.[6]

Before the voluntary restraint agreements expired the US integrated steel producers were facing a serious demand crisis, due to the US recession and a number of other problems. Capacity utilisation fell below 70%[7] and the American steel producers recorded losses of US$ 2.2 billion.[8] In the period preceding the agreements' expiry the producers campaigned for an extension. They started an advertising campaign against the growing competition from abroad. They argued that once the agreements expired the American market would be swamped with foreign steel and that this would cause considerable damage to the domestic industry.[9] On the other side of the debate, some major steel users expected lower costs once the voluntary restraint agreements expired and they therefore attempted to influence the President and the American public to prevent the agreements from being extended.[10] The position of the American steel producers was also undermined by the American minimills that explicity distanced themselves from the demands for import restrictions, pointing out their high level of competitiveness.[11]

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* University of Tübingen, Germany. The author has used information acquired during interviews with the International Trade Administration and the International Trade Commission while a "visiting researcher" at Georgetown University (Washington D.C.) in 1994 and while undertaking research at the European Commission.

[1] Cf. Richard Boltuck and Robert E. Litan: Down in the Dumps, Washington 1991, pp. 2.

[2] In this instance, in its role as the GATT (General Agreement on Tariffs and Trade) conciliation committee.

[3] In this system of controls Japanese production costs were used to set the minimum price. The Japanese were the lowest-cost producers at this time. The American authorities automatically initiated anti-dumping proceedings against imports below this minimum price.

[4] Integrated steelworks are production units in which pig-iron production, subsequent steel production and steel processing are all combined. Cf. Peter Oberender and Georg Rüter: Stahlindustrie, in: Marktökonomie, Munich 1989, p. 39.

[5] The agreement was intended to ensure fair terms of trade in the form of a multilateral agreement.

p. 150-56

Once President Bush had declined to extend the voluntary restraint agreements that had been in place since 1982 and the MSA negotiations had failed, all contractual obligations ceased to apply on 31st March 1992.[12] A few days later the American steel producers submitted the first eight applications to the International Trade Administration (ITA – the USA's equivalent of a ministry of trade) for the initiation of anti-dumping and anti-subsidy proceedings. A short time later a further 84 complaints (48 anti-dumping and 36 anti-subsidy complaints) were added.[13] The applications to ITA for subsidy-compensation duties of up to 164% were directed against 21 foreign governments, including EU member states,[14] who were accused of subsidising exports. Italy, Spain and New Zealand were considered to be the most guilty of providing subsidies, whereas South Korean and Mexican producers featured strongly in the 48 anti-dumping actions.[15] The steel imports affected by the actions totalled 6.5 million tonnes and had a value of DM 3 billion, of which DM 815 million came from the EU.[16]

The reactions of the countries affected by the actions varied, ranging from public indignation in the case of the EU[17] and Japan to the announcement of retaliatory measures in the cases of Mexico and Canada.[18] The Canadian steel producers retaliated by bringing anti-dumping actions against American steel imports.[19]

Following the imposition of provisional anti-subsidy duties and anti-dumping duties in November 1992 and January 1993, the International Trade Commission (ITC) determined the injury caused to the American steel industry by the imports in question in March 1993. That June, the ITA imposed the final anti-dumping duties at substantially increased levels. In some cases they were even double the levels of the provisional duties.[20] However, in the case of anti-subsidy duties the final levels were reduced substantially, except for those imposed against Italy.[21] The anti-dumping and anti-subsidy offensive by the US integrated steel producers ultimately ran up against the politically independent ITC. In September 1993, the commission gave its final decision and rejected 42 of the 74 remaining actions.[22] Thus the attempt by American producers to establish a total wall of protection using anti-dumping and anti-subsidy duties failed.

Effects of the Punitive Duties

The US integrated steel producers regarded the use of punitive duties to reduce competition from imports as the only way of increasing prices on the American steel market.[23] According to estimates made at the time, the introduction of the punitive tariffs applied for was expected to result in a price increase of at least 10%.[24] As a result of the duties imposed, imports of steel into the USA fell by 45% between January and February 1993 and imports of European steel fell by as much as 48%.[25] As a result steel imports were diverted to the EU and elsewhere and this additional supply exacerbated the already difficult market conditions being experienced by

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[6] Cf. Rainer Kulms: Das Antidumpingrecht im amerikanischen and europäischen Recht, Baden-Baden 1988, pp. 92 ff.; Frank Benyon and Jacques Bourgeois: The European Community – United States Steel Agreement, in: Common Market Law Review 21, 1984, pp. 305-354, here pp. 319 ff.; A. Austmann: Basispreise und Trigger-Preise im Antidumpingrecht, Heidelberg 1989, pp.158 ff.; Hans Mueller and Hans van der Ven: Perils in the Brussels-Washington Steel Pact of 1982, in: The World Economy, Vol. 5, No. 3, 1982, pp. 259-278; Thomas Grunert: Der transatlantische Stahlstreit in den achtziger Jahren: Integrationsfortschritt über Aussenhandelskonflikte?, in: Integration, Vol. 8, 1/85, pp. 318 ff.; Frankfurter Allgemeine Zeitung, 2nd December 1992, No. 280, p. 38; Stahlmarkt, 5/92, p. 15; and Metal Bulletin Monthly, May 1994, p. 14.

[7] Cf. Stahlmarkt 7/1991, p. 13.

[8] Cf. Frankfurter Allgemeine Zeitung, 12th December 1992, No. 289, p. 14.

[9] Cf. Stahlmarkt, 11/91, p. 15.

[10] In 1988 the first coalition of steel users was formed. This coalition opposed the extension of import quotas. The Coalition of Steel Using Manufacturers (CASUM) consisted of about 300 steel users who accounted for about a third of American steel consumption. The steel users complained about the increase in steel prices resulting from import quotas. However, for Caterpillar, the coalition's leader, the production bottlenecks that arose because of the reduction in product quotas in the 1984 voluntary restraint agreements were the main reason for forming the coalition. Cf. Stahlmarkt, 11/91, pp. 19.

[11] Cf. Stahlmarkt, 5/92, p. 16.

[12] Cf. Frankfurter Allgemeine Zeitung, 18th April 1992.

[13] Ibid.

[14] Germany, Italy, France, UK, Belgium, the Netherlands, Italy and Spain; cf. Stahl und Eisen, 14th September 1992.

[15] Cf. Frankfurter Allgemeine Zeitung, 2nd July 1992.

[16] Cf. Frankfurter Allgemeine Zeitung, 24th June 1993, No. 143, p. 15.

[17] In November 1992 France demanded that the EC Commission take retaliatory measures, but it declined to do so because of the "small scale of the dispute". Cf. Süddeutsche Zeitung, 30th September 1992, Ruhrnachrichten, 7th October 1992.

[18] Cf. Frankfurter Allgemeine Zeitung, 2nd July 1992.

[19] Cf. Stahlmarkt 9/92, p. 19.

[20] For example, provisional duties on imports of French steel were 11-23% and the final duties 44-79%.

[21] The duty on steel imports from Italy was increased from 59% to 73%. Cf. Metal Bulletin, 24th June 1993, p. 19.

[22] Cf. US International Trade Commission: Steel Semiannual Monitoring Report, September 1994, Publication 2807, Annex E 2.

[23] Cf. Stahlmarkt, 8/92, p. 19.

[24] Cf. Stahlmarkt, 12/92, p. 21.

[25] Cf. Metal Bulletin, 22nd April 1993, p. 22.

European steel producers.[26] In February 1993 the US import ratio for steel fell to its lowest point since 1975.[27] The anti-dumping and anti-subsidy duties, combined with the economic recovery in the USA, allowed the American steel industry to achieve the price increase it had sought. At the beginning of 1994 the American market even experienced a steel shortage. According to EU Commission estimates, the provisional duties led to a reduction in European steel exports of 25%.[28]

A coalition of 1,200 American steel users together with the electrosteel producer[29] NUCOR was formed to oppose anti-dumping and anti-subsidy actions. Known as the "Coalition of American Businesses for Stable Steel Supplies (CABSSS)", its membership accounted for 50% of the US consumption of flat steel.[30] The coalition was founded by former members of CASUM.[31] Their organisation costs were low because of the contacts already built up by the CASUM coalition.[32] The steel users complained about the increase in price and the supply shortage caused by the anti-dumping measures. They argued that American steel could replace imported steel neither qualitatively nor quantitatively. In one of the companies wastage increased threefold and another company had to cease manufacture of one of its products because the steel required was not available in sufficient quantities on the American market.[33]

[26] Cf. Frankfurter Allgemeine Zeitung, 18th February 1993, No. 41, p. 11.

[27] Cf. Frankfurter Allgemeine Zeitung, 7th June 1993, No. 129, p. 13.

[28] Cf. Frankfurter Allgemeine Zeitung, 24th June 1993, No. 143, p. 15.

[29] "Electrosteel producer" and "minimills" refer to the same class of firms.

[30] Cf. Metal Bulletin, 19th July 1993, p. 19.

[31] Cf. footnote 10.

[32] In the steel sector users have a very unfavourable market position relative to that of the steel producers: there is a small number of large producers and a large number of small users.

[33] Cf. Metal Bulletin, 28th March 1994, p. 19.

Hans-Eckart Scharrer (ed.)

Economic and Monetary Policy Cooperation: The EC and Japan

Any meaningful discussion about "managing macroeconomic interdependence" must take into account the national policy objectives, institutional arrangements, and socioeconomic challenges. This collection of papers presents seven contributions of European and Japanese economists relevant to that issue.
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1994, 176 p., paperback, 48,– DM, 374,50 öS, 48,– sFr, ISBN 3-7890-3419-3
(Veröffentlichungen des HWWA-Institut für Wirtschaftsforschung – Hamburg, Bd. 8)

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The Multilateral Steel Agreement

The talks on a Multilateral Steel Agreement (MSA) took place between 32 steel-producing countries within the framework of the general GATT negotiations. The American steel producers expected the MSA to deal with the question of international overcapacity, government subsidies, closed markets and "unfair trade practices".[34] The Agreement was also intended to abolish all import duties on steel. December 1993 was the deadline set by the parties to the negotiations for completion of the MSA. But this date also passed without agreement being reached and the MSA had to be separated from the Uruguay Round negotiations.[35] As part of the MSA negotiations the EU proposed that the MSA should prohibit support subsidies for uncompetitive suppliers if the USA withdrew the anti-dumping complaints against European companies. Subsidies granted for the purpose of restructuring were to be permitted. However, this was rejected by the US integrated steel producers who did not want to withdraw their anti-dumping actions. The Americans also feared that support subsidies for uncompetitive firms could be disguised as restructuring subsidies.[36] A short time later the EU withdrew this proposal on the initiative of the European steel producers and repeated its demand that an MSA be conditional upon the withdrawal of anti-dumping actions. The USA declined by stating that an MSA could not deprive the American steel producers of their right to pursue anti-dumping actions.[37]

Certain of the EU's objectives in the MSA negotiations, such as the legalisation of regional aid, research and development subsidies and an increase in the lower limits for dumping and injury (de minimis criteria) were already written into the new text of the Uruguay Round of GATT, with the result that interest in a separate MSA waned. The only remaining point to be negotiated that continues to be of interest to the EU is an anti-harassment clause. This provision is intended to prevent American steel producers from excluding European importers from the US market for a given period of time by concentrating a large number of anti-dumping actions at one time and by imposing provisional anti-dumping duties, even if the actions are subsequently proved to be unjustified (see below). However, the US integrated steel producers have far too much political influence for this bargaining point to stand any chance of success.[38]

American Accusations Regarding Subsidies

In May 1993 the European Commission applied to the GATT Secretariat to establish a panel to investigate the legitimacy of anti-subsidy duties on ferriferous and bismuth steel. The criticism voiced by the EU to the panel in respect of the American anti-subsidy duties was as follows:

☐ Some of the duties related to subsidies that had been granted up to 15 years ago.

☐ The voluntary restraint agreements concluded with the USA in 1978 had led to a sharp reduction in steel imports, so the EU refuted the injury accusations made by the USA. Furthermore, the European steel producers had not used up their quotas.

☐ The US claims were not based on the actual amount of the subsidy, but on the discounted present value.

☐ ECSC loans were also classed as subsidies, even though they were financed by the European steel industry itself via the ECSC levy.

☐ Subsidies were attributed in full to firms in the countries concerned, ignoring the fact that part of the money was received by foreign subsidiaries.

☐ Firms that received funding not directly from the government but from subsidised enterprises were also classed as having themselves been subsidised.

☐ A credit renouncement agreed by a private German bank in respect of an insolvent enterprise was classified as a subsidy by the USA.[39]

☐ Subsidies paid by the British Government prior to the sale of the British Steel Corporation (BSC) were also taken into account. The EU contended that the purchase price paid to the government by the new owners cancelled out the effects of subsidies.

Certain insufficiencies in the GATT regulations were one reason for the interpretational differences in the previous GATT subsidies code.[40] The GATT did allow

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[34] Cf. Stahlmarkt, 6/92, p. 10.

[35] Cf. United States - General Accounting Office: The General Agreement on Tariffs and Trade - Uruguay Round Final Act Should Produce Overall US Economic Gains, Vol. 2, Washington D.C. 1994, p. 173.

[36] Cf. Metal Bulletin, 4th October 1993, p. 19

[37] Cf. Metal Bulletin, 30th June 1994, p. 17.

[38] Cf. Metal Bulletin Monthly, May 1994, pp. 13-14; Metal Bulletin, 30th June 1994, p. 17.

[39] Cf. EUROPE, 21st September 1992, and 28th May 1993, No. 5989, p. 9.

[40] Prior to amendment by the Uruguay Round.

countervailing duties to be levied (Art. VI, 3) in respect of subsidies causing injury, but the antisubsidy code neither defined the permitted domestic subsidies nor clearly demarcated them from the prohibited export subsidies. Although it was recognised that such domestic subsidies could also injure foreign industry, the only specific provision covering this case was that the subsidising party should call a halt to the injuries. Moreover, the corresponding sections were amenable to differing legal interpretations.[41]

Finally, in October 1994, the GATT Panel agreed substantially with the EU and judged the USA's application of the antisubsidy code to be an infringement of GATT. The Panel decided that the subsidies received in the case of the BSC were already reflected in the Corporation's purchase price, with the result that the goods exported subsequently could not be classified as subsidised. The Panel ruled that the interest calculation used by the ITA to determine the benefit received by Usinor-Sacilor from government credits was unjustified, because the ITA had not given sufficient grounds for its decision. The treatment of a credit renouncement from a private bank as a subsidy was also rejected by the Panel, as was the treatment of an increase in a government's shareholding in a company as a subsidy in its entirety. The ITA's interpretation was confirmed by the Panel in only two cases, namely its taking into account of subsidies granted during a preceding period of up to 15 years, and its general classification of increases in government shareholdings as subsidies.[42]

American allegations of subsidies must also be viewed in the context that the US integrated steel producers are themselves subsidised. For example, in 1994 Bethlehem Steel was awarded $35 million from the US State of Pennsylvania to avert threatened job cuts.[43] However, the EU also played its own part in pushing events towards anti-subsidy proceedings, as its member states vied with one another to provide their industries with subsidies in the 1980s. The negative effects of indirectly subsidised[44] exports on foreign profits and jobs cannot be tolerated, because the pressures placed on suppliers from other countries are not generated by domestic firms' own competitive efforts, thus causing distortions to competition which are damaging to the market system.

American Accusations Regarding Dumping

The claim made by the US integrated steel producers that the dumping[45] of steel imports was pushing American steel prices below the cost of production and so damaging the American steel industry have to be qualified in that American steel producers were themselves supplying their home market at prices below the cost of production, i.e. were also engaging in dumping, and thus helped to bring about the collapse in prices they complained of.[46] One reason for this was a bitter price war amongst the US integrated steel producers as demand fell off during the recession, and another was the similarly bitter price war between the integrated steel producers and the minimills.[47] For example, by the first quarter of 1992 the import share of the American steel market fell to 17.2%, whereas market share of the US minimills rose to 35% (cf. Figure 1).[48] As a result, Nucor, the electrosteel producer, was able to increase its profits from 1991 to 1992, notwithstanding the falling demand for steel in the US market, whereas the large integrated steel producers were forced to sell steel at prices below their full costs, and hence to make losses.[49] Imports were not therefore the main cause of losses amongst the US integrated producers. Nor is there any direct correlation between the trend in imports and the profits of the integrated steel producers. In 1987 the integrated steel producers recorded profits of $1 billion, while imports accounted for 21% of the American market, whereas in 1991 they incurred losses of $2 billion, even though imports had fallen to 18% of the market (cf. Figure 1).[50]

As a supplier to the capital equipment industry, the steel industry is heavily dependent on the business

[41] Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT; and Art. 12, Para. 2; Frank Bonyon and Jacques Bourgeois, op. cit., pp. 319 ff.

[42] Cf. Inside U.S. Trade, 21st October 1994, pp. 8-9.

[43] Cf. Metal Bulletin, 28th March 1994, p. 19.

[44] In principle this applies only to export subsidies, but the borderlines are hazy. For instance, the mere prospect of subsidies or recovery of losses from the state can cause a firm to undercut the prices of its competitors on export markets to find a new outlet for its products, as it can assume that it will not have to meet any resulting losses itself.

[45] Dumping refers generally to the sale of goods on a foreign market at a lower price than on the domestic market. The GATT also regards sales below domestic production costs as dumping. According to Art. VI of the GATT dumping violates the rules of international fair trading and is "to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry".

[46] Cf. Stahlmarkt, 11/91, p. 16.

[47] Cf. Stahlmarkt, 6/92, p. 12.

[48] Cf. Stahlmarkt, 7/92, p. 15.

[49] Cf. Stahlmarkt, 6/92, p. 12.

[50] Cf. Metal Bulletin, 1st February 1993, p. 3.

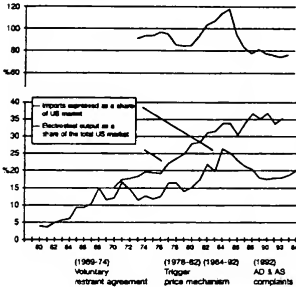
cycles of the economy, with the result that economic trends are transferred overproportionally, and productive capacity is underutilised on a cyclical basis. In order to be able to cover its very high fixed costs when utilisation is low, the steel industry would have to increase its prices during periods of undercapacity, but this is almost impossible to achieve against a background of weak demand. As a result companies are forced to sell at prices lower than the costs of production, that is, to engage in "dumping", during this period. To allow for these swings in the cost calculation during the dumping investigation, production costs ought to be based on an average utilisation of 85% or measured for the duration of a full business cycle. However, the Commerce Department (ITA) works on the basis of a one-year period, which ultimately allowed American petitioners to influence whether the ITA would determine that dumping had taken place or not by timing their action accordingly.[51] Dumping can also be caused by fluctuations in exchange rates, a further objection raised by the European steel producers. As a result when the ITA ruled that dumping had taken place EUROFER[52] pointed, by way of explanation, to the decline in the value of the US dollar during the period of the investigation.[53] If the value of the dollar depreciates even the maintenance of export prices in dollar terms leads to dumping determination, because the "normal value",[54] if it is calculated, will have increased in dollar terms as a result of the appreciation of the exporters' domestic currencies. Exporters are therefore forced to increase their dollar prices and thus lose market share.

Figure 1

Trade-Weighted Value of the US Dollar Relative to the Currencies of 18 Industrialised Countries

and

Trends In US Market Shares of Competitors of the Integrated Steel Producers



Sources: Deutsche Bundesbank: Devisenkursstatistik, August 1994; OECD: World Steel Trade, Developments 1960-1983, Paris 1985, Donald F. Barnett and Robert W. Crandall: Up from the Ashes, Washington D.C. 1986, p. 7; Metal Bulletin and American Iron and Steel Institute: Steel Works. (The 1994 import ratio is estimated.)

The European Accusations of Harassment

The interest group representing the European integrated steel producers, EUROFER, pointed to the bundling of anti-dumping actions and accused the American producers of misusing anti-dumping law to "harass" them.[55] The bundling of complaints is advantageous in that the probability of the ITC's determining injury is increased by the cumulative effect of imports ascertained in its investigations. In addition, the political significance of the anti-dumping actions is increased by this cumulative effect. It can also be assumed that the authorities, overloaded by such a flood of actions, will be unable to carry out the preliminary dumping investigation very meticulously within the fixed time-period of 115 days and will therefore be inclined to impose a provisional anti-dumping duty in order to keep its options open.

However, even if it is finally rejected the benefit of an anti-dumping petition for domestic producers substantially exceeds the average legal cost of $400,000 per complaint, because foreign producers are temporarily pushed out of the market by the provisional duties, which also leads to an increase in the price level.[56] Based upon the US integrated steel producers' annual output of approximately 40 million tonnes in 1993, even an average price increase of $1

[51] Cf. Rainer Kulms, op. cit., p. 135.

[52] Group representing the interests of European integrated steel producers.

[53] Cf. Metal Bulletin, 1st February 1993, p. 13.

[54] The price used to compare the export price during the dumping investigation. This is usually the selling price in the exporting country. The difference between the normal value and the adjusted export price results in the dumping margin and thus the maximum anti-dumping duty. In exceptional cases the production costs of the foreign producer can also be used to calculate the normal value.

[55] Cf. Metal Bulletin, 1st February 1993, p. 13.

[56] Cf. The Economist, 16th May 1992; and Metal Bulletin, 1st February 1993, p. 3.

per tonne would mean an increase in profit of $40 million. Experts estimate that prices rose by $20 per tonne as a result of the anti-dumping actions and that the American steel producers' legal costs amounted to $40 million, which would mean a net increase in profit of $760 million.[57]

Negative Determination of Injury

In analysing injury, GATT no longer stipulates that imports must be a significant cause or even the main cause of injury. This position was abandoned as long ago as the Tokyo Round.[58] To achieve a positive result it is therefore sufficient to prove that the imports are one cause among others of significant injury to the domestic industry. For example, the principal cause of injury may be domestic competition, structural change, recession or even mismanagement and yet this does not affect the determination of injury. American steel producers can therefore choose the most favourable time to bring their action based upon profit trends and employment figures. Moreover, the purpose of the investigation is often not regarded by the national authorities as one of establishing whether the proven dumping of imports damaged the domestic industry at the time the imports were made, but rather whether the imposition of anti-dumping duties would improve the difficult situation faced by the domestic industry.[59]

For the most part the various votes within the ITC were relatively close. The individual opinions of the six members of the Commission determine whether the injury proved is substantial. This opinion depends not least on the personal economic and political beliefs of the individual members of the Commission. Two factors are supposed to have played a part in the predominantly negative determination of injury by the ITC. Firstly, that in spite of the difficulties experienced by the US integrated steel producers at the beginning of the 1990s there were few redundancies and secondly, that by the time of the final determination of injury the position of the integrated steel producers had improved considerably as a result of the increase in international demand for steel.

Conclusion

The flood of anti-dumping and anti-subsidy actions was the US integrated steel producers' attempt to protect the American market from foreign imports of flat steel in order to be able to achieve the general price increase urgently required because of the increasing competition between them and the mini-mills. The integrated producers were not successful in keeping imports of flat steel out of the market completely, but did manage to exclude some foreign suppliers on the basis of the provisional duties and the remaining definite duties. By pushing back foreign imports the integrated producers were able to achieve the desired increase in prices, a trend strengthened by the recovery in demand for steel. This was the minimum outcome the integrated producers could expect to achieve when they commenced their complaints. Seen against this background, the anti-dumping and anti-subsidy actions were far more advantageous than an extension of the voluntary restraint agreements, whose quotas were so high that they had not been used up by the European steel producers in any case. The integrated producers therefore gave up their original demand for an extension of the voluntary agreements.

As illustrated, the protective effects of American anti-dumping and anti-subsidy law goes beyond providing defence against breaches of fair international competition. One reason for this lies in decades of protectionist lobbying by the US integrated steel industry.[60] Once the US Federal Government had granted the American steel industry protection at the end of the 1960s because of its political importance, the integrated producers recognised the value of good political representation. The US Government therefore pointed the way to a "rent-seeking society". So it is little surprise that even the resources available to the political representation of the integrated steel producers in Washington far exceeds that of the more competitive mini steel producers, although in the meantime the mini steel producers account for about 40% of the US steel market. But, like the first articulation of the interests of the American steel consumers, this market shift can also be regarded as a positive development, for with the fall in their share of the US market and the structural retrenchment of the integrated producers, their political importance also diminishes. For their part, the American mini steel producers are more interested in opening up world markets than in protecting the US market for they currently rank among the world's most efficient producers of steel.

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[57] Anti-dumping and anti-subsidy proceedings would therefore seem to be lucrative, particularly for companies in large markets, because the "return" increases in line with the size of the market, whereas legal costs remain roughly constant.

[58] Cf. Rainer Kulms, op. cit., pp. 78 and 204-205.

[59] Ibid., p. 207.

[60] Cf. Michael K. Levine: Inside International Trade Policy Formulation, New York 1985, pp. 13 ff.

The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements

Investigation No. 332-344

Publication 2900

June 1995

Washington, DC 20436

U.S. International Trade Commission

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EXECUTIVE SUMMARY[1]

The U.S. Trade Representative requested that the U.S. International Trade Commission (Commission) estimate the economic effects of unfair trade practices as transmitted through unfair imports and of the remedies imposed under U.S. antidumping (AD) and countervailing duty (CVD) laws. The analysis consists of estimating economic effects at an economy-wide level and at the industry level. The industry-specific case studies include (a) comprehensive empirical analyses of conditions in the affected industries; (b) quantitative estimates of the effects for such key industry performance indicators as prices, production, employment, wages, income, and trade; and (c) comparative static analysis of petitioning, upstream and downstream industries/consumers and net welfare effects.

To accomplish this extensive task the Commission has undertaken a multi-part study. The Commission's computable general equilibrium (CGE) model is used to measure economy-wide effects. In addition, a trend analysis of AD/CVD cases filed since 1980 provides insights into the effects enforcement actions have had on different kinds of product markets. One general effect, for example, is trade diversion toward nonsubject imports when orders are imposed. Finally, eight case studies combine thorough industry expertise with rigorous economic and statistical analyses to examine market conditions, industry performance and welfare effects of AD/CVD enforcement. The broad range of data sources employed include industry questionnaires, interviews, public and private data, Commission reports on AD/CVD investigations, and a relatively new U.S. Customs Service database of U.S. imports subject to AD/CVD orders.

Economy-Wide Analysis

The Commission's CGE model estimates the economy-wide effects of a simultaneous removal of outstanding AD/CVD orders in 1991. These orders affected approximately 1.8 percent of total U.S. merchandise imports or $9 billion out of $491 billion in 1991. The Commission CGE model simulates the U.S. economy in 1991, including interactions among U.S. producers and consumers in markets for goods, services, labor, and capital, as well as upstream and downstream linkages. The model is static and cannot take into account the cumulative or dynamic effects of existing orders, which may have been in place for many years.

The removal of outstanding AD/CVD orders in 1991 leads to different estimated economic effects across the U.S. economy. A direct consequence of the simulated order removal is lower prices and resulting gains experienced by consumers and industries downstream to the sectors subject to AD/CVD orders. The estimates obtained from the CGE model indicate that with the removal of outstanding AD/CVD orders the eight sectors highlighted in the CGE analysis experience import price declines of 7 percent or more, with ball and roller bearing import prices falling by nearly 20 percent in 1991. At the same time, the U.S. industrial sectors subject to orders would suffer adverse economic consequences. For example, ball and roller bearings and

[1] For views of individual Commissioners see "Commissioner Comments" after chapter 14.

electrical industrial apparatus (small business telephone systems), are estimated to experience a 3 to 4 percent decline in output and employment.

The Commission model estimates that the removal of outstanding AD/CVD orders in 1991 results in a welfare gain to the U.S. economy of $1.59 billion, or 0.03 percent of 1991 U.S. gross domestic product ($5,724.8 billion) as calculated by using a standard equivalent variation measure. This welfare measure reflects both gains and losses experienced by all sectors in the U.S. economy from removal of the outstanding AD/CVD orders. Thus, the estimated welfare effect of $1.59 billion represents the amount by which the economy-wide gains outweigh the losses.

The estimation includes 163 AD and 76 CVD orders for a total of 239 AD/CVD investigations. Not included are 170 orders that were revoked, 9 suspended and 37 terminated investigations, and 41 orders in which subject imports stopped completely after their imposition. The impact of the excluded AD/CVD cases, and others that were filed and withdrawn, such as the steel cases in the 1980s (withdrawn pursuant to voluntary restraint arrangements), may be sizable but is not measured. The model thus tends to underestimate the economy-wide effects of AD/CVD cases as it does not capture the effects of the excluded cases mentioned above. At the same time, the model tends to overestimate the economy-wide effects of AD/CVD orders because it assumes that the price the U.S consumers ultimately pay for subject imports is equal to the pre-duty U.S. price plus the full amount of the original margin.

Petitioning industries and industries upstream from petitioners are estimated to experience losses as the result of removing outstanding AD/CVD orders. For the most adversely affected sectors highlighted in the model, losses of output are estimated to be $658 million and losses of employment are estimated to be 4,075 full-time equivalent workers. A specific estimate of the component of the net welfare effects of order removal that can be attributed to adversely affected industries is precluded because of intractable empirical issues with regard to petitioner-specific industries and the limits of currently available models with regard to comparisons of the distribution of income and consumption among different groups.

As a rough proxy for the direct decomposition of the net welfare effects, the value-added measure generated by the Commission model of $1.85 billion can be used as the basis to approximate the relative effects of the removal of AD/CVD orders on gainers and losers. The economy-wide losses in income to workers and firm owners in the petitioning and upstream industries as a result of removing outstanding AD/CVD orders fall within the range of $320 million to $1.09 billion for 1991. The corresponding implied gains to the rest of the economy range from $2.17 billion to $2.94 billion.

Historic Caseload

Examining the trends for the overall caseload for which an injury determination was required from 1980 to 1993, the data indicate that 33 percent of all AD/CVD investigations had affirmative determinations, 45 percent had negative, and the remaining 22 percent were terminated or suspended. Of the 1040 AD/CVD cases filed in this period, 44 percent involved steel products. Evidence of trade diversion is observed as trade shifts from imports originating in subject countries to imports from nonsubject sources. In particular, imports subject to AD orders fell by 32 percent while nonsubject imports rose by 24 percent during the 1990-92 period.

Case-Study Effects

To address the request of the U.S. Trade Representative, eight case studies were conducted, representing the caseload of agricultural, high-technology and commodity industries, final and intermediate products, and new and mature industries. These case studies included: frozen concentrated orange juice (FCOJ), lamb meat, erasable programmable read only memories (EPROMs), color television picture tubes (CPTs), solid urea, brass sheet and strip, standard welded carbon steel pipes and tubes, and certain bearings. A detailed trend analysis of each industry examines the dynamic forces at work in the marketplace. Time series and comparative static analyses estimate the effects of AD/CVD enforcement over time and for a given year, respectively.

Analysis Over Time

To estimate the combined impact of the petition filing and remedy over time, it is necessary to account for the influence of market demand and supply variables so that the estimated effects of the petition filing and remedy can be isolated from the market forces affecting a given industry. These market variables include input costs, exchange rates, downstream demand growth, and changes in technology. The econometric analyses partition the time series data into pre-petition, investigation, and post-final determination periods to estimate the effects of the petitions and remedial duties given the key demand and supply variables. The impact of filing petitions could not be estimated separately from the impact of the remedy in all the cases because detailed data were not available to distinguish these two closely occurring events. The impact of dumping could not be estimated because the date when the dumping started could not be determined with any precision.

The time-series analyses find that AD/CVD petition filing and remedy generally had an impact on prices and quantities of domestic output and subject imports, though other factors were also influential in determining the behavior of these variables. For example, urea prices and domestic shipments rose by 19 and 48 percent, respectively, following the imposition of the order. Subject urea imports stopped completely, while nonsubject imports from Canada increased by about 38 percent. In the case of tapered roller bearings cone assemblies, subject imports fell by an estimated 30 percent while nonsubject imports doubled as a result of the investigation process. The time-series estimates for tapered roller bearings and ball bearing products however, were inconclusive. The effects of the remedies were likely outweighed by the aggressive direct investment in the United States by bearing producers from subject countries during the pre-petition period. This investment, beginning before the petition, helped limit post-determination imports, and also resulted in declining prices.

In the case of CPTs, the trend analysis indicates that subject imports dropped by 68 percent the year of the petition filing. Subject countries dropped from 100 percent of imports in 1986 to 30 percent in 1993. Despite this drop, rapid foreign investment in the United States and aggressive competition within the CPT industry considerably reduced the effect of the AD filing and order. Both the time-series analysis and interviews with the U.S. CPT producers indicate that the investigation process did not have a significant impact on the industry.

The time series results indicate that imports of frozen concentrated orange juice from Brazil were 75 percent lower in the years after the remedy and that consumption of domestic FCOJ increased. This substantial decline in Brazilian imports despite the low dumping margin is most likely due to the changes in Brazilian exporter behavior. According to the U.S industry and FCOJ purchasers, the AD order spurred Brazil to seek non-U.S. markets as well as to establish a pricing formula tied to the U.S. spot market to avoid further U.S. antidumping actions.

In the case of lamb, the CVD process led to trade diversion where imports of lamb from nonsubject Australia largely replaced imports from subject New Zealand. Domestic prices nevertheless rose by 10 percent. The relatively small impact of the CVD process on the U.S. domestic lamb meat market was also due to the very small market share held by imports.

Prices did not always rise in response to remedies as other market factors overpowered the trade remedy. For example, aggressive competition among domestic producers of brass sheet and strip kept prices down while the foreign competition from subject imports spurred improved U.S. product quality. Domestic shipments of brass sheet and strip were an estimated 34 percent by the end of 1991 than they would have been in the absence of trade remedies; subject imports were 73 percent lower.

In the case of the pipes and tubes industry, domestic prices increased by 10 percent after the AD order went into effect, while domestic shipments also increased. Lacking the necessary data to estimate the effects of the title VII process on EPROMS, an estimate using a hedonic price index (i.e. quality adjusted price) found that the long-term decline in prices slowed after the investigation process. Also, while EPROMS remained an almost constant portion of total integrated circuits (IC) unit shipments, EPROM revenues increased as a share of total IC revenue during 1987-89, indicating that the EPROM investigation may have affected the industry.

The case studies also suggest that AD/CVD relief affects upstream firms and downstream consumers in different ways and amounts. When the subject product is only a small component of downstream firms' demand or consumers' input, demand is relatively less sensitive to price and not diminished by higher prices, such as the case of ball bearings or brass sheet and strip. When downstream industries are competitive, such as farmers purchasing urea, increased prices may not be fully passed through to consumers.

Comparative-Static Analysis

In contrast to time series and trend analysis, simulation models built on standard partial equilibrium analysis provide comparative static, or "snapshot" estimates that isolate the effect of AD/CVD relief on the prices and quantities of domestic product, fairly traded imports, and unfairly traded imports from the impact of other factors, such as business cycles. The model also estimates the total net welfare effects on the upstream and downstream industries. These effects reflect the gains (losses) realized by consumers (producers) due to unfair trade practices and the reverse effects associated with the remedies.

Table A (placed at the end of this executive summary) presents the effect on price, output, revenue, and employment for the domestic like product relative to the "fair values," estimated to have been in place without the unfair trade practice (column 1) and the effects on these variables with the remedy in place (column 2). Column 3 indicates the extent to which the remedy offsets the unfair trade practice for each one of these key industry variables for each case study. Similarly, the effects on the price and output for subject imports as estimated by the model are also presented in Table A. Revenue and employment effects tend to be larger for those industries with a relatively high import market share and a high dumping margin.

The remedies offset the unfair trade practice for lamb meat, EPROMs, and urea, and almost offset the effect of the unfair trade practice for pipes and tubes (column 3 in table A). However, the remedies did not completely offset the effect of the unfair trade practice in the case of frozen concentrated orange juice, color picture tubes, brass sheet and strip, and bearings. This incomplete offset is a terms of trade effect that arises when import supply is not assumed to be

completely responsive to changes in prices. A U.S. duty reduces demand for subject imports, which in turn increases supply and reduces prices in non-U.S. markets. The fair market price estimated by the Department of Commerce in administrative reviews will therefore be lower and dumping will be reduced or remedied without raising U.S. subject import prices by the full amount of the dumping margin.

The effects of both the unfair trade practice and the remedy are greater on output than on prices in each case but color picture tubes (figure A, at the end of this executive summary). In the former cases, domestic producers were not facing capacity constraints and were therefore able to increase supply without increasing price substantially. In the case of color picture tubes, however, U.S. producers had been operating near capacity since 1984. Hence for the color picture tubes, the effect of the unfair trade practice and remedy is greater on prices than output.

Net welfare effects measure the difference between consumer and producer welfare changes. As shown in column 1 of table A and in figure B, the largest consumer and net welfare effects of the unfair trade practices in the case studies were found in the ball bearing and tapered roller bearing investigations. For ball bearings, the consumer and net welfare effects were $212 million and $106 million, respectively, while for tapered roller bearings, they were $66 million and $31 million, respectively. Both had very large U.S. markets ($2.0 billion in 1985 sales of ball bearings and $904 million in 1987 sales of tapered roller bearings) and large dumping margins. Comparing columns 1 and 2 in table A for certain bearings estimates, model results also suggest that 64 ($68.1 million/$105.6 million) and 39 ($13.6 million/$34.8 million) percent, respectively, of the welfare loss to U.S. bearings producers were remedied in the two case studies.

FCOJ and brass sheet and strip also had fairly large net welfare effects due to the unfair trade practices. For FCOJ, despite a 1.96 percent weighted average dumping margin, a net welfare loss occurs because of the very large U.S. market and high subject import market share of 49 percent. Additionally, 52 percent ($2.7 million/$5.2 million) of the U.S. producer welfare loss was estimated to be remedied by the AD order. The relatively large welfare effects due to unfair trade practices for the brass sheet and strip industry were due to a relatively high subject import market share of 24 percent and a 21 percent weighted average margin of dumping. AD orders remedied 86 percent ($4.4 million/$5.1 million) of the U.S. producer welfare loss for the brass and strip industry.

Solid urea, color picture tubes, and EPROMS all experienced moderate net welfare losses ($8.4 million, $8.1 million, and $5.7 million, respectively, in column 1 of table A) due to unfair trade practices. All three faced subject import penetration above 10 percent; solid urea and EPROMs obtained large dumping margins. Despite a large U.S. color picture tube market ($1.1 billion in 1986), relatively low weighted average margins kept the net welfare effects moderate. According to model estimates, there would have been no subject imports of urea and EPROMS but for the dumping and all the producer welfare losses were remedied in both industries. In the case of the CPT industry, 54 percent of the welfare losses to U.S. producers was estimated to be remedied.

Pipe and tubes and lamb had the lowest net welfare effects ($3.8 million and $2.0 million) associated with unfair trade practices. Both had weighted average margins over 20 percent, but small subject import market shares (4 and 5 percent, respectively). For the pipes and tubes industry, 89 percent ($.8 million/$.9 million) of the welfare loss due to dumping was remedied. In the case of lamb, the loss from subsidies was fully remedied by the countervailing duty.

Table A
Comparative static effects of unfair trade practices and remedies for selected U.S. industries[1]

Product group and case types	Effects	Unfair trade practice	Remedy	Unfair trade practice and remedy
		Change from fair value[3]		
Frozen concentrated orange juice (AD/CVD[2] cases)		*(Base year: 1984/85)*		
	MARKET EFFECTS *(percent)*:			
	Domestic			
	Price	-0.5	0.2	-0.3
	Output	-.6	.4	-.2
	Revenue	-1.2	.7	-.5
	Employment	-.5	.3	-.2
	Subject imports			
	Price	-1.5	.9	-.6
	Volume	2.1	-1.2	.9
	Revenue	.6	-.4	.2
	WELFARE EFFECTS *(million dollars)*:			
	Consumers	19.0	-10.7	8.3
	Producers	-5.2	2.7	-2.5
	Net welfare effect	13.8	-8.0	5.8
Lamb meat (CVD cases)		*(Base year: 1985)*		
	MARKET EFFECTS *(percent)*:			
	Domestic			
	Price	-0.2	0.2	0
	Output	-.4	.4	0
	Revenue	-.6	.6	0
	Employment	-.4	.4	0
	Subject imports			
	Price	-9.0	9.0	0
	Volume	25.5	-25.5	0
	Revenue	14.1	14.1	0
	WELFARE EFFECTS *(million dollars)*:			
	Consumers	3.0	-3.0	0
	Producers	-1.0	1.0	0
	Net welfare effect	2.0	-2.0	0
EPROMS (AD case[2])		*(Base year: 1985)*		
	MARKET EFFECTS *(percent)*:			
	Domestic			
	Price	-3.8	3.8	0
	Output	-11.0	11.0	0
	Revenue	-14.4	14.4	0
	Employment	-8.0	8.0	0
	Subject imports:			
	Price	(4)	(4)	0
	Volume	(4)	(4)	0
	Revenue	(4)	(4)	0
	WELFARE EFFECTS *(million dollars)*:			
	Consumers	16.7	-16.7	0
	Producers	-11.0	11.0	0
	Net welfare effect	5.7	-5.7	0

See footnotes at end of table

Table A—*Continued*
Comparative static effects of unfair trade practices and remedies for selected U.S. industries[1]

Product group and case types	Effects	Unfair trade practice	Remedy	Unfair trade practice and remedy
		Change from fair value[2]		
Color picture tubes (AD cases)			*(Base year: 1986)*	
	MARKET EFFECTS *(percent)*:			
	Domestic:			
	Price	-2.8	1.4	-1.4
	Output	-1.2	1.2	0
	Revenue	-4.0	2.6	-1.4
	Employment	-1.0	1.0	0
	Subject imports:			
	Price	-6.0	3.8	-2.2
	Volume	26.9	-19.9	7.0
	Revenue	19.2	-14.6	4.6
	WELFARE EFFECTS *(million dollars)*:			
	Consumers	37.1	-20.8	16.3
	Producers	-29.1	15.6	-13.5
	Net welfare effect	8.1	-5.3	2.8
Solid urea (AD cases)			*(Base year: 1985)*	
	MARKET EFFECTS *(percent)*:			
	Domestic:			
	Price	-2.5	2.5	0
	Output	-7.3	7.3	0
	Revenue	-9.6	9.6	0
	Employment	-5.1	5.1	0
	Subject imports:			
	Price	(4)	(4)	0
	Volume	(4)	(4)	0
	Revenue	(4)	(4)	0
	WELFARE EFFECTS *(million dollars)*:			
	Consumers	20.0	-20.0	0
	Producers	-11.7	11.7	0
	Net welfare effect	8.3	-8.3	0
Brass sheet and strip (AD/CVD cases)			*(Base year: 1985)*	
	MARKET EFFECTS *(percent)*:			
	Domestic:			
	Price	-1.3	1.1	-0.2
	Output	-9.6	8.4	-1.2
	Revenue	-10.8	9.5	-1.3
	Employment	-9.4	8.2	-1.2
	Subject imports:			
	Price	-16.3	14.2	-2.1
	Volume	47.5	-42.8	4.7
	Revenue	23.8	-21.3	2.5
	WELFARE EFFECTS *(million dollars)*:			
	Consumers	26.2	-22.9	3.3
	Producers	-5.1	4.4	-.7
	Net welfare effect	21.1	-18.5	2.6

See footnotes at end of table.

Table A—*Continued*
Comparative static effects of unfair trade practices and remedies for selected U.S. industries[1]

Product group and case types	Effects	Unfair trade practice	Remedy	Unfair trade practice and remedy
		Change from fair value[3]		
Standard welded carbon steel pipes and tubes (AD/CVD[2] cases)		*(Base year: 1986)*		
	MARKET EFFECTS *(percent):*			
	Domestic:			
	Price	-0.2	0.2	0
	Output	-1.6	1.5	-.1
	Revenue	-1.9	1.7	-.2
	Employment	-1.6	1.5	-.1
	Subject imports:			
	Price	-13.6	12.5	-1.1
	Volume	70.5	-64.3	6.2
	Revenue	48.7	-44.4	4.3
	WELFARE EFFECTS *(million dollars):*			
	Consumers	4.7	-4.3	.4
	Producers	-.9	.8	-.1
	Net welfare effect	3.8	-3.5	.3
Certain bearings		*(Base year: 1985)*		
A) Tapered roller bearings (AD cases)	**MARKET EFFECTS** *(percent):*			
	Domestic:			
	Price	-4.8	1.8	-3.0
	Output	-8.4	3.6	-4.8
	Revenue	-12.8	5.2	-7.6
	Employment	-6.7	3.0	-3.7
	Subject imports:			
	Price	-23.6	9.5	-14.1
	Volume	104.5	-56.9	47.6
	Revenue	56.1	-30.0	26.1
	WELFARE EFFECTS *(million dollars):*			
	Consumers	65.7	-28.6	37.1
	Producers	-34.8	13.6	-21.2
	Net welfare effect	30.9	-15.0	15.9
B) Ball bearings (AD/CVD cases)		*(Base year: 1987)*		
	MARKET EFFECTS *(percent):*			
	Domestic:			
	Price	-6.8	4.3	-2.5
	Output	-12.7	8.0	-4.7
	Revenue	-19.1	11.3	-7.8
	Employment	-11.7	7.4	-4.3
	Subject imports:			
	Price	-27.3	11.6	-15.7
	Volume	221.9	-174.8	47.1
	Revenue	134.9	-110.2	24.7
	WELFARE EFFECTS *(million dollars):*			
	Consumers	211.9	-137.6	74.3
	Producers	-105.6	68.1	-37.5
	Net welfare effect	106.3	-69.5	36.8

[1] The estimated effects reported are the results of the Commission's CPE model using the midpoint values of parameter ranges.

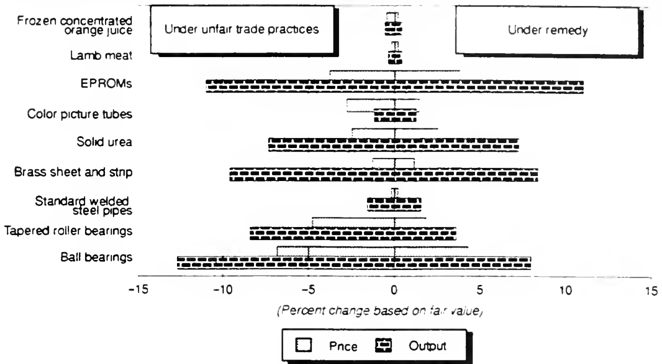
[2] Suspended, one pipe CVD case suspended.

[3] The "fair values" are the values estimated by the model to have been in place without the effect of the unfair trade practice.

[4] The margins determined by Commerce are so large that the model calculates that there would be no imports from the subject country but for the unfair trade practice.

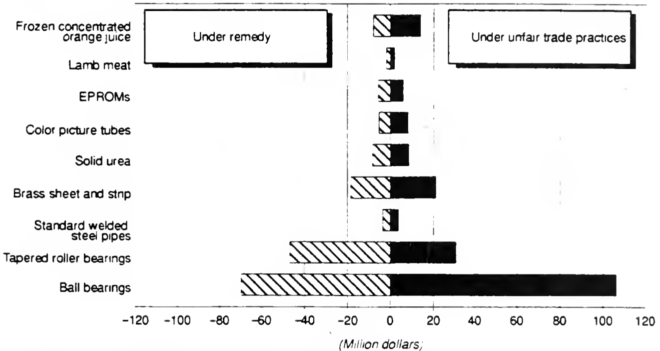
Source: Estimated by the staff of the U.S. International Trade Commission.

Figure A
Comparative static effects of unfair trade practices and remedies on U.S. price and output for a given year



Source Estimated by the staff of the U S International Trade Commission.

Figure B
Net welfare comparative static effects of unfair trade practices and remedies for a given year



Source Estimated by the staff of the U S International Trade Commission

CONGRESS OF THE UNITED STATES
CONGRESSIONAL BUDGET OFFICE

A
CBO
STUDY

SEPTEMBER 1994

How the GATT Affects U.S. Antidumping and Countervailing-Duty Policy

Summary

The antidumping and countervailing-duty laws provide protection to domestic firms from import competition. Because U.S. law and procedures have changed substantially over the last century, U.S. antidumping law is now a tangled and confusing subject. It was once a reasonably close approximation of a prohibition on predatory pricing of imports, and served as a complement to antitrust law, which prohibited predatory pricing by domestic firms. Over the years, however, antidumping law and antitrust law have evolved in different directions, so that now the United States treats similar pricing practices differently depending on whether the product being sold is domestically produced or imported.

Predatory pricing, as the term is currently used, refers to the practice of intentionally selling a product at a loss in order to drive competitors out of business, thereby establishing increased market power that allows the seller to raise prices above competitive market levels and increase profits. Predatory pricing is one of a number of unfair competitive practices that the Sherman Act has been interpreted to prohibit. An early Supreme Court decision, however, ruled that acts committed in other countries were beyond the jurisdiction of the Sherman Act. Among other things, that interpretation effectively ruled out most prosecutions of predatory pricing of imports under the Sherman Act.

The Antidumping Act of 1916 specifically applied to the practice of pricing imports substantially below their normal market value with the intent of destroying, injuring, or preventing the establishment of an industry in the United States. Over time, however, antidumping law and policy have evolved along a path of ever-increasing protection for U.S. firms from imports and decreasing concern for consumers and the economy as a whole. In contrast, antitrust law relating to predatory pricing, at least in recent decades, has taken a path of increasing concern for consumers and the economy as a whole and decreasing concern for firms suffering intense competition.

Antidumping law no longer acts primarily against predatory pricing. It acts against international price discrimination (sales at a lower price in the United States than in the home country of the exporter) and sales below cost, regardless of whether the sales are predatory or not. Yet the relevant provisions of the antitrust laws prohibit only predatory pricing; they do not prohibit below-cost selling or price discrimination, as prohibited by the antidumping laws, except in cases where it is predatory. That difference is important.

Predatory pricing impairs economic welfare because it leads to monopolies, which cause economic inefficiency and raise concerns about social equity. It seldom occurs, however, because it is rarely a profitable strategy. Moreover, it is usually not possible to establish a monopoly. By contrast, nonpredatory price discrimination and sales below cost generally provide net benefits to the country receiving the lower price, and both are relatively common. Moreover, seldom do cases of price discrimination or selling below cost have anything to do with predatory pricing.

Countervailing-duty laws provide for added duties on imports that have been subsidized by the government of the exporting country. They date from before the turn of the century. Unlike the antidumping laws,

these laws have not changed in character over time, though they have become more inclusive. The first such U.S. law covered only imports of sugar. A later law covered all dutiable imports, and a later revision expanded coverage to include both dutiable and non-dutiable imports.

Over the years since World War II, U.S. tariffs have steadily declined in accord with agreements reached in successive rounds of negotiations to liberalize the General Agreement on Tariffs and Trade (GATT). This decline has resulted in increasing competition for domestic firms from imports. For such firms, and their workers U.S. trade law provides two forms of assistance: Trade Adjustment Assistance and protection under the Section 201 escape clause. Trade Adjustment Assistance consists of training, employment services, job-search and relocation allowances, and other forms of aid to displaced workers in industries adversely affected by increased import competition. The Section 201 escape clause provides temporary protection from imports to give domestic industries breathing room to adjust to increased competition. It contains several restrictions designed to ensure that the protection it provides is used only for such temporary adjustment purposes--not for permanent protection--and only when the adjustment costs are large and the costs of the protection to the economy and the national interest are not large.

In the case of industries unable to become competitive with imports (such as unskilled-labor-intensive industries), temporary breathing room for adjustment may be better than no protection at all, but it is not what the industries really want. Anything short of long-term protection would force painful contractions on them that trade adjustment assistance will not completely ameliorate. Further, those industries want protection from imports that cause *any* injury, not just those that cause substantial injury, and they would rather such protection be automatic, regardless of any harm it might cause to the rest of the economy or to the national interest generally. Not surprisingly, they have found the escape clause to be inadequate

As the antidumping and countervailing-duty (AD/CVD) laws became more inclusive and protection under them easier to obtain, industries more and more frequently were able to obtain better protection, and to obtain it more easily, under those laws than under the escape clause. Gradually, many groups came to view the laws as an alternative to the escape clause for competitive industries and for those industries unab... meet the stringent criteria that the escape clause sets for the protection it provides.

As more people accepted this view, the laws and the procedures for administering them--especially the antidumping law and procedures--began to serve this more general protective purpose more effectively. If the purpose of AD/CVD laws is to prevent, punish, and offset predatory pricing, subsidies, and other unfair practices relating to U.S. imports, many of the legal provisions and procedures that have evolved--especially those used for calculating dumping margins--are biased against foreign exporters (and against U.S. consumers of foreign goods). But if one believes that the AD/CVD laws should offer more general protection for domestic industries from troublesome import competition, those same provisions and procedures appear more reasonable, even if a bit ad hoc. Moreover, from that perspective, they have been quite effective.

How the Laws Currently Function

The antidumping law, and to some extent the countervailing-duty law, are now a fairly general source of protection from foreign competition. In practice, the main hurdle to an industry seeking protection under the AD/CVD laws is to demonstrate that it has been injured by the imports, not that the imports are dumped or subsidized. The Department of Commerce (DOC) found no dumping in only 7 percent of the cases that came before it from 1980 through 1992, while the International Trade Commission (ITC) found no injury in 34 percent of those cases that subsequently went to final injury determination. From 1988 through 1992, the numbers were even more lopsided: 3 percent for DOC and 41 percent for the ITC. Countervailing-duty cases were slightly less skewed: DOC found no subsidies in 14 percent of cases from 1980 through 1992, and the ITC found no injury in 57 percent of those that went on to final injury determination. For 1988 through 1992, the numbers were 32 percent for DOC and 38 percent for the ITC.

Those statistics suggest that the main hurdle in AD/CVD cases is establishing injury. However, the degree of injury that must be demonstrated in AD/CVD cases is less than in Section 201 cases. For that and other reasons, the Section 201 escape clause is now seldom used. An industry generally finds it much easier to obtain protection under the AD/CVD laws. Unfortunately, using those laws as a general source of protection from imports has several disadvantages.

First, the AD/CVD laws do not have the restrictions that the Section 201 escape clause has to ensure that protection is granted only temporarily for the purpose of aiding adjustment and only in cases where the benefit to the protected industry outweighs the harm to the rest of the country in economic, foreign policy, and security matters. To get an antidumping order revoked, a foreign firm usually must get a determination from the Commerce Department that it has ceased dumping. But that determination is difficult to get because of biases in the Commerce Department's procedures. Hence, protection under the antidumping law tends to be permanent for all practical purposes. Furthermore, permanent protection of industries is almost always detrimental to the economy and is contrary to the basic thrust of U.S. trade policy since World War II, which has supported the philosophy that all countries should eliminate trade barriers.

Second, other countries have begun to follow the U.S. lead. They are now using antidumping laws to protect their industries, and in fact many of them are targeting U.S. exports in retaliation for U.S. use of antidumping laws against them. As a result, although support for U.S. antidumping law and procedures among import-competing firms remains strong, sentiment against them is rising in the growing community of U.S. exporting and importing firms.

Third, even in those cases in which the protection is considered desirable, the AD/CVD laws sometimes provide inadequate protection. They apply only to imports of the product in question from particular countries or firms and not to all imports of the product from any source. Therefore, they can be, and sometimes are, circumvented either by the firm on whose products the duties are imposed or by the impersonal workings of the international market. Consequently, the United States has had to devote considerable attention in recent years to modifying the AD/CVD laws to make them apply to upstream dumping, downstream dumping, dumping routed through third countries, and various other routes by which AD/CVD orders have been circumvented. ("Upstream dumping" refers to the dumping of the intermediate goods or raw materials used as inputs in the production of the product in question. "Downstream dumping" refers to the dumping of products made from the product in question).

Finally, with increasing globalization of markets, it is becoming less clear which firms should be identified with which country. (That problem applies to other forms of protection as well as to the AD/CVD laws.) Increasingly, firms located in foreign countries and wishing to export to the United States are actually U.S. owned or partially U.S. owned. Conversely, domestically located firms that could be protected by trade laws are now often foreign owned or partially foreign owned. Such a melange of nationalities can make it unclear which countries are benefited or harmed most by protection granted by the AD/CVD laws.

A Look at the New GATT Antidumping and Subsidies Codes

Under the final "Agreement on Implementation of Article VI of GATT 1994" (Antidumping Code) and "Agreement on Subsidies and Countervailing Measures" (Subsidies Code) negotiated in the Uruguay Round, the United States and other countries will have to reform some of the more protectionist aspects of their AD/CVD laws. The reforms are modest, but for the United States they are nonetheless significant: they mark a change in direction from the 100-year trend in U.S. AD/CVD policy of ever-increasing protection of particular domestic industries and decreasing emphasis on the welfare of consumers and the economy generally.

Unlike the case for the old codes, which only some GATT signatories signed, all signatories to the GATT will be signatories to the new codes. Among the most important provisions in the new codes are new procedures for settling disputes, which cannot be blocked by a country that receives an adverse ruling. Also important is a sunset provision for automatically terminating

AD/CVD orders after five years unless a likelihood of continued dumping or subsidies and resulting harm is shown. The new codes provide for increased transparency and judicial review. They establish *de minimis* levels of dumping and subsidies that are higher than current U.S. levels, though still quite low, and they establish rigid levels of negligibility for imports, which the United States does not currently have. They also require greater evidence of industry support for initiating AD/CVD investigations than the United States currently requires.

The new codes contain provisions relating to many aspects of AD/CVD policy. A number of provisions attempt to ease the burden on investigated firms in complying with requests for information and ensure that firms know that the so-called "best information available," including information supplied by the domestic industries, can be used against them if they do not comply. Other provisions make it clear that administrative authorities may refuse to accept suspension agreements on grounds of general policy, which U.S. authorities often do.

For the first time, the codes explicitly recognize and legalize the practice of cumulating imports in determining injury, which the United States and other countries have already been doing without explicit legalization from the old codes. The new codes do not, however, allow the current U.S. practice of cross-cumulation of imports from firms subject to either antidumping or countervailing-duty investigations. They urge, but do not require, countries to consider the interests and views of parties in their own countries that might be injured by AD/CVD orders on imports.

The new Antidumping Code requires in most cases weighted-average-to-weighted-average comparisons of import prices with prices in the exporter's home market, which would eliminate a bias in current U.S. methodology. The new code also requires eliminating the current statutory minima that the United States maintains for profit and overhead in constructed-value calculations. It places new conditions on the ability of administrative authorities to eliminate sales below cost in the exporter's home market. Those conditions may reduce such eliminations by U.S. authorities, though it is not entirely clear they will do so since the effects of those conditions and related provisions will be mixed.

Furthermore, the new code requires considering '' dumping margin in determining injury. Also, for first time, the new code explicitly recognizes and legalizes, though subject to certain conditions, the practice of sampling, which the United States and other countries have practiced without explicit authorization under the old code. The conditions may require some changes in U.S. policy.

The new Subsidies Code for the first time defines the terms "subsidy" and "specificity." It incorporates a "traffic-light" approach to subsidies, with "red-light" subsidies, which are prohibited in almost all circumstances; "yellow-light" subsidies, which are prohibited if their effects on trade would cause injury to other countries' industries; and "green-light" subsidies, which are not prohibited and against which other countries cannot retaliate in almost all circumstances. It also establishes new rules for determining serious prejudice and phases out many of the exemptions that developing countries currently have under the old code's restrictions on subsidies.

The Status of Legislation

As this study goes to press, the House and Senate committees with jurisdiction over the GATT are meeting in conference to reconcile different versions of the bill needed to implement the trade agreement. Once the bill has been reconciled, the Administration will submit legislation for Congressional vote. Consideration of that legislation will follow so-called "fast-track" procedures. Under fast-track procedures, the Congress must vote on the bill within a prescribed time limit and the bill cannot be amended.

At present, the House and Senate versions of the bill, with respect to changing antidumping and countervailing-duty laws, differ on numerous points. For example, differences exist in such areas as the method for determining appropriate export prices, the treatment of countries in transition from centrally planned to market-based economies, and the rules to prevent the circumvention of duties. Resolving these and other differences will strongly affect the fortunes of many individual firms, workers, and consumers.

Neither version, however, significantly changes the overall stance of U.S. law. In general, the different versions of the bills either codify or revise the procedures the Department of Commerce and the International Trade Commission already use, or they put into law those agreements reached in the Uruguay Round negotiations. The underlying philosophy and operating procedures of the AD/CVD laws remain unchanged

DONALD A MANZULLO
CHAIRMAN

EVA CLAYTON, NORTH CAROLINA
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives
104th Congress
Committee on Small Business
Subcommittee on Procurement, Exports, and Business Opportunities
B-363 Rayburn House Office Building
Washington, DC 20515

May 20, 1996

Paul L. Joffe
Deputy Assistant Secretary
Import Administration
Department of Commerce
14th & Constitution Avenue, N W.
Washington, D C. 20230

Dear Mr Joffe·

I want to first take this opportunity to thank you for appearing on May 2, 1996 before the Subcommittee on Procurement, Exports, and Business Opportunities to present the views of the Administration on the impact of HR 2822, the Temporary Duty Suspension Act on small manufacturers I appreciate your willingness to come before the Subcommittee on such a short notice, in response to the minority's request.

As a follow-up to the hearing, I ask the following questions that will be submitted for the record

1) In your testimony, you stated that there was no need for HR 2822 because the Commerce Department already had at its disposal a variety of mechanisms to remedy cases in which goods that are not produced by U.S manufacturers and for which there is no U.S. supplier likely to enter the market Yet, from the businesses who testified before the Subcommittee, these remedies do not appear to solve the "short supply" problem These mechanisms seem to apply to "no supply" situations or the remedy would take too long or would be too impractical to see a result (e g., an annual petition by the foreign producer, not the domestic user; appealing to the good nature of the domestic producer, and a five-year "sunset" review) in time for impacted companies to prevent a serious business disrupture Are there any plans by the Commerce Department to truly address "short supply" problems in a timely, practical manner?

2) In response to my March 1993 inquiry on behalf of General Power Equipment of Harvard, Illinois, a manufacturer of home power equipment, then-Secretary Ron Brown answered their

request to speed up an antidumping investigation by stating, "the law does not allow the Department to consider the impact of antidumping duties on domestic producers which consume the investigated merchandise." The company has since gone out of business, permanently losing 300 jobs in a small, rural Illinois town. Knowing that antidumping laws are very complex, precise, and inflexible, can regulations alone solve the "short supply" problem in a "just-in-time" manufacturing environment? In other words, does the law need to be changed to quickly resolve "short supply" claims?

3) HR 2822 provides the Department of Commerce with the discretion to address "short supply" situations, but there is no mandate that they do so. Why, then, does the Department of Commerce so strongly oppose the flexibility contained in HR 2822? Do you have any suggestions to make the legislation better? If so, what are they? If not, why not?

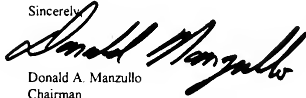
4) It is my understanding that when the steel voluntary restraint agreement (VRA) was in force during the 1980's, there was a "short supply" provision in force to remedy the impact on domestic users of unavailable steel because of the quota system. It is my further understanding that the Department of Commerce voiced opposition to this provision, claiming that it would pose an undue hardship on the staff of Import Administration. If the Commerce Department was successful and fair in implementing the "short supply" provision of the steel VRA during the 1980's, why does the Commerce Department resist a very similar proposal now, knowing that there is no practical business difference in the real world between steel quotas and "short supply?"

5) It is my understanding that HR 2822 is modeled after a similar law adopted last year in the European Union (EU). Can you please inform the Subcommittee how many times this EU "short supply" provision has been invoked for European manufacturers? Do you feel that the US experience with the "short supply" legislation will be similar or different from the EU's experience? Why?

6) Were you able to help resolve any of the pending "short supply" problems facing the four small businessmen who testified before the Subcommittee earlier this month? Please give the Subcommittee a status report on any of their requests.

I would appreciate a response by Friday, June 21 to the concerns raised in this letter. I thank you for your kind attention to my request. Any questions about this inquiry can be directed to the Subcommittee Staff Director, Phil Eskeland, at (202) 226-2630.

Sincerely,



Donald A. Manzullo
Chairman

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, DC 20230

ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION

June 21, 1996

The Honorable Donald A. Manzullo
Chairman, Subcommittee on Procurement,
Exports, and Business Opportunities
Committee on Small Business
United States House of Representatives
Washington, DC 20515

Dear Congressman Manzullo:

We are pleased to respond with the enclosed answers to the questions in your letter dated May 20, 1996, regarding temporary duty suspension.

Sincerely,

Robert S. LaRussa
Acting Assistant Secretary
for Import Administration

Enclosure

QUESTIONS ON TEMPORARY DUTY SUSPENSION:

1) *In your testimony, you stated that there was no need for HR 2822 because the Commerce Department already had at its disposal a variety of mechanisms to remedy cases in which goods that are not produced by U.S. manufacturers and for which there is no U.S. supplier likely to enter the market. Yet, from the businesses who testified before the Subcommittee, these remedies do not appear to solve the "short supply" problem. These mechanisms seem to apply to "no supply" situations or the remedy would take too long or would be too impractical to see a result (e.g., an annual petition by the foreign producers, not the domestic user; appealing to the good nature of the domestic producer; and a five-year "sunset" review) in time for impacted companies to prevent a serious business disrupture. Are there any plans by the Commerce Department to truly address "short supply" problems in a timely, practical manner?*

A. Current law does allow for relief consistent with the purpose of the law, but we are considering further suggestions in our regulation process. The topic is sufficiently important to us as to have been identified as one of only four topics designated for a separate panel discussion during our recent hearing on the proposed regulations. We received extensive comments from both sides of the short supply debate and are currently considering all comments submitted.

2) *In response to my March 1993 inquiry on behalf of General Power Equipment of Harvard, Illinois, a manufacturer of home power equipment, then-Secretary Ron Brown answered their request to speed up an antidumping investigation by stating, "the law does not allow the Department to consider the impact of antidumping duties on domestic producers which consume the investigated merchandise." The company has since gone out of business, permanently losing 300 jobs in a small, rural Illinois town. Knowing that antidumping laws are very complex, precise, and inflexible, can regulations alone solve the "short supply" problem in a "just-in-time" manufacturing environment? In other words, does the law need to be changed to quickly resolve "short supply" claims?*

A. It is important to appreciate that the AD/CVD laws do not preclude importation of foreign supply. While importers of unfairly traded products must pay duties to offset the dumping or subsidization, they may continue to purchase the products from the same supplier or from other foreign suppliers in the market. The AD/CVD laws deter sales at unfair prices; they do not bar imports or limit the quantities imported.

Although our proposed regulations impose a 270 day deadline for the completion of changed circumstances reviews, reviews to address the lack of domestic availability can and have been conducted in less time. For example, on November 3, 1995, we received a request to conduct a changed circumstances review and to revoke the order on carbon steel plate from Canada with respect to cobalt-60 free carbon steel plate. By February 28, 1996, we had completed our review and issued a final determination revoking the order in relevant part. This demonstrates that the Department can and does respond quickly in uncomplicated cases without the need for statutory changes.

3) *HR 2822 provides the Department of Commerce with the discretion to address "short supply" situations, but there is no mandate that they do so. Why, then, does the Department of Commerce so strongly oppose the flexibility contained in HR 2822? Do you have any suggestions to make the legislation better? If so, what are they? If not, why not?*

A. Our opposition is not limited to the "flexibility" contained in HR 2822. We do not believe there are any circumstances under which the legislative proposal for a temporary duty suspension system can be established without undermining the dumping law. For all the same reasons we have opposed the various short supply proposals, we find a temporary suspension objectionable. We continue to believe that existing authority is sufficient to address a broad range of supply concerns and we will continue to administer this authority having clearly in mind the need to avoid undermining the effectiveness of the law.

In connection with our proposed antidumping and procedural regulations, we have received proposals for changes that the submitters believe increase the effectiveness of the existing procedures to address the short supply concerns of industrial users. We intend to take these comments into account.

4) *It is my understanding that when the steel voluntary restraint agreement (VRA) was in force during the 1980's, there was a "short supply" provision in force to remedy the impact on domestic users of unavailable steel because of the quota system. It is my further understanding that the Department of Commerce voiced opposition to this provision, claiming that it would pose an undue hardship on the staff of Import Administration. If the Commerce Department was successful and fair in implementing the "short supply" provision of the steel VRA during the 1980's, why does the Commerce Department resist a very similar proposal now, knowing that there is no practical business difference in the real world between steel quotas and "short supply?"*

A. Several dozen people were involved in responding to the approximately 250 steel short supply requests received. This level of commitment of resources was required even though steel is an industry Commerce has studied in depth for 15 years. The resource commitment needed to administer a short supply program for the scores of industries covered by orders would be staggering.

We disagree that there is no practical business difference between the steel quotas under the VRA program and the so-called "short supply" situations faced by industrial users of products subject to AD/CVD orders. Under the steel VRAs, the total quantity of steel that could be imported from any of the VRA countries was limited. There are no quantitative restrictions on the volume of imports of products subject to AD/CVD orders; only duties to offset any injurious dumping or subsidization.

5) *It is my understanding that HR 2822 is modeled after a similar law adopted last year in the European Union (EU). Can you please inform the Subcommittee how many times this EU "short supply" provision has been invoked for European manufacturers? Do you feel that the US experience with the "short supply" legislation will be similar or different from the EU's experience? Why?*

A. The EU has used its provision only in the semiconductor cases against Japan and Korea. The EU's "short supply" provision turns on the political decision by the Member States as to the "Community interest," an essentially non-justiciable determination. By contrast, U.S. AD/CVD provisions are rule-driven, required to be made on the basis of an administrative record, and, as our experience in the steel short supply program confirms, proceed from a strong tradition of litigation before the agencies of every important issue.

6) *Were you able to help resolve any of the pending "short supply" problems facing the four small businessmen who testified before the Subcommittee earlier this month? Please give the Subcommittee a status report on any of their requests.*

A. Mr. Green of Gary Drilling met with us to further discuss the specifics of his situation. After the meeting and some further research by one of our steel industry specialists, we advised Mr. Green that: (1) the domestic mill he referred to had advised us that it had recently re-quoted with a shorter and firm delivery schedule; (2) an additional domestic manufacturer existed and we provided him with a contact name; and (3) orders were outstanding on only two of the seven potential foreign supplier countries.

Although we have not heard from the other three small businessmen who testified before the Subcommittee, we are pleased to reiterate our willingness to meet with them to discuss their concerns. Mr. Lewis Leibowitz (who participated in the hearing on behalf of PMA and Berg Steel) has, however, submitted comments on short supply and our proposed regulations on behalf of the Temporary Duty Suspension Group (which, either directly or through association membership, includes the four companies). We intend to give these comments all due consideration.

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