

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Administration Of The Steel Trigger Price Mechanism

The steel trigger price mechanism was established to speed up antidumping investigations.

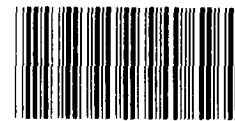
If imports were priced below preestablished trigger prices, the Treasury Department, which originally administered the program with the Customs Service, and later the Department of Commerce, could initiate antidumping investigations without prior industry complaint.

In operating the program:

--Customs may have overlooked a large volume of potential dumping, based on criteria it and the Treasury used. However, tonnage criteria to identify potential dumping were established only for some product categories and were not directly related to potential injury to the domestic steel industry.

--Treasury may not have exercised sufficient care in handling Customs recommendations and investigations.

The program was suspended in March 1980 when U.S. Steel filed major antidumping petitions. GAO recommends ways Commerce can improve the program if it is resumed.



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

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

In March 1980, when the steel trigger price mechanism was suspended, we were preparing a report on its administration, including recommendations for improving its administration. In the event that the trigger price mechanism is reinstated, we believe our findings and recommendations would contribute to more effective administration.

Copies of this report are being sent to the Director, Office of Management and Budget; Secretaries of Commerce and the Treasury; U.S. Trade Representative; Commissioner, U.S. Customs Service; and cognizant congressional committees.


Comptroller General
of the United States



D I G E S T

This report reviews the administration of the steel trigger price mechanism--a program initiated to speed up antidumping investigations affecting the steel industry. The program was suspended in March 1980 after GAO's review was completed.

During the time GAO was reviewing the program, it was administered by the Department of the Treasury and the U.S. Customs Service. In January 1980, responsibility for the program was transferred to the Department of Commerce. GAO's recommendations show how the program can be improved if it is resumed.

Under the program, which started in 1978 to assist the domestic industry in dealing with dumping, prices of steel mill imports were compared to preestablished "trigger" prices for such products; imports below trigger prices could have precipitated antidumping investigations by the Treasury Department without prior industry complaint.

GAO believes that Customs may have overlooked a large volume of potential dumping, based on criteria it and Treasury used. The tonnage criteria, however, were ad hoc--only for some product categories and not directly related to potential injury to the domestic steel industry. (See pp. 8, 21, 22, 29, and 30.)

During GAO's sample period, unconfirmed below-trigger price imports amounted to 2.4 million tons, 40 percent of total covered imports. GAO estimated that 355,700 tons were likely to be significantly below trigger price. This was almost 6 times greater than the 61,800 tons that Customs recommended for antidumping investigations or which could be associated with antidumping investigations. Total imports (in the same product categories included in the GAO estimate) from those foreign firms which accounted for the 355,700 tons were 1.6 million

tons, 27 percent of all imports covered by trigger prices during the sample period. (See pp. 24 to 30.)

GAO found a number of weaknesses in Customs administration. These included initial price comparison errors, delays in recording data, insufficient inquiries of importers, inquiries unanswered for a long time, and insufficient review of available information. Only four audits of steel-importing companies had been made, and the three completed by September 1979 did not adequately conform to audit objectives. (See pp. 8 to 32.)

During GAO's review, Treasury decided whether to initiate antidumping investigations on Customs recommendations and directed antidumping investigations. Treasury may not have exercised sufficient care in handling Customs recommendations and investigations. It:

- Overruled the first recommendation made by Customs and went along with the remedy proposed by the firm to allow the reexport of an amount of steel equivalent to the below trigger tonnage, despite its own concerns about the propriety of such an action.
- Apparently agreed with another Customs recommendation but did not initiate an investigation.
- Failed to respond to another Customs recommendation involving several firms and dealing with the single largest product category of steel mill imports.
- Terminated an investigation, begun on October 20, 1978, of one of three firms on the basis of information which it had available before initiating the investigation. While Treasury terminated this case, it rejected somewhat similar mitigating circumstances cited by the other two firms being investigated.
- Determined that shipments from the other two firms were sold at less than fair value. (See pp. 32 to 52.)

Treasury stated it believed that (1) enforcement of the trigger price mechanism required discretion, (2) the primary purpose of the program was to encourage voluntary adherence to trigger prices and formal initiation of a case would not always promote that objective most effectively, and (3) no cases beyond those actually initiated were needed. GAO agrees that discretion should be used but that adequate criteria as to what constitutes potential injury are needed. Moreover, GAO does not believe that Treasury has supported its view that no further cases were needed. (See p. 34.)

In commenting on GAO's report, Treasury cited several changes made during the course of developing the program. GAO believes much more is needed to be done to improve administration of the program, and chapter 4 contains GAO's recommendations that should be pursued by Commerce if the trigger price mechanism is reinstated. (See p. 7 and ch. 4.) Commerce agreed that the program needs to be more effectively administered and said it would study and be guided by GAO's recommendations. (See pp. 7 and 55.)

GAO did not evaluate the effectiveness of the program in deterring less-than-fair-value (or below-trigger-price) steel mill imports. This may not be measurable. This report, therefore, does not address Treasury's assertion of the program's apparent success in this regard. (See pp. 6 and 7.)



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ABBREVIATIONS

GAO	General Accounting Office
ITC	International Trade Commission
SSSI	Special Summary Steel Invoice
TAB	Trade Analysis Branch
TPM	Trigger price mechanism



CHAPTER 1

INTRODUCTION

Although the demand for steel rose from its recession level of 1975, the year 1977 has been described as one of crisis for the U.S. steel industry.

- Consumption of steel at 108.5 million tons was 10 percent below 1973 and 1974 levels.
- Much of the increase in the demand for steel was met by imports, which increased from 13 percent of consumption in 1974 to 18 percent in 1977.
- Steel capacity utilization, down from 1976, was 78.4 percent compared with 97.3 percent and 93.7 percent in 1973 and 1974, respectively.
- Wage employment was at a postwar low of 337,000 and about 60,000 workers were laid off during the year.
- Several plants closed, production was cut back, and one producer declared bankruptcy.
- Earnings were at a record low.

The steel industry emphasized that imports were a major cause of its problems. According to the industry, the surge in imports was largely due to unfair competitive practices, primarily dumping (selling at prices below those charged in home markets or below production costs). Depressed conditions in foreign steel industries were said to have prompted foreign steelmakers to dump steel. Capacity utilization in 1977 was 70 percent for Japan and about 65 percent for the European Community, considerably lower than for the United States. By December 1977, 19 dumping complaints had been submitted to the Treasury and further complaints were being prepared.

ESTABLISHMENT OF THE STEEL TRIGGER PRICE MECHANISM

In response to this situation, the President appointed an interagency task force on steel under the chairmanship of Under Secretary of the Treasury, Anthony Solomon. In December 1977, the task force proposed a number of measures to deal with industry problems which were approved by the President.

The chief recommendation was the establishment of the trigger price mechanism (TPM). This involved a system of trigger prices for steel mill products to be used by the Customs Service to monitor the flow of steel products into the United States and to enable Treasury to self-initiate accelerated "fast-track" antidumping investigations of imports priced below trigger prices without prior industry complaint.

Before TPM, an antidumping investigation usually was made only after an antidumping complaint was filed setting forth a prima facie case of dumping. The complaint included transaction prices of shipments to the United States and the foreign home market prices and/or production costs, data which might not have been readily accessible because foreign firms might treat it as proprietary and confidential.

The usual antidumping procedures were also criticized for being too slow, taking 13 or more months, according to the Solomon report. The intention of fast-tracking investigations under TPM was to reduce this time generally to 60 to 90 days.

Treasury first announced trigger prices for steel mill imports in early 1978. By May 1979, some 70 products, encompassing the bulk of steel mill products commonly shipped to the United States, were covered by TPM. Coverage expanded from about 65 percent of steel mill imports in the first half of 1978 to about 85 percent in the second quarter of 1979. 1/

The trigger price for each covered steel mill product was the total of a "base price" plus any "extras" plus transportation charges from Japan.

--The base price reflected the estimated cost of producing all steel mill products in Japan, which was taken to be the most efficient foreign steel-producing country; cost data was submitted to the Treasury on a confidential basis by Japan's Ministry of International Trade and Industry, which obtained it from Japanese mills.

--Extras were charged for specifications which differed from those of the base products, such as width, thickness, and surface preparation;

1/ Based on steel mill products accompanied by Special Summary Steel Invoices processed by Customs.

they were calculated by Treasury from data obtained from Japan's Ministry of International Trade and Industry and other sources.

--Transportation charges included inland freight, loading, ocean freight, insurance, interest, and wharfage; charges differed for shipments to the west coast, gulf coast, east coast, and Great Lakes.

Trigger prices were revised quarterly, within a "5-percent flexibility band," to allow for changes in production costs and the dollar-yen exchange rate. Development of average prices from inception of TPM through the 4th quarter of 1979 is shown below.

	Average cost estimate (note a)	Average trigger price (note a)	Percent change in trigger price	Flexibility band used (percent)
From inception to				
2d quarter 1978	\$297.80	\$297.80	-	-
3d quarter 1978	314.16	314.16	5.5	-
4th quarter 1978	329.42	329.42	4.9	-
1st quarter 1979	362.51	352.48	7.0	-3.0
2d quarter 1979	348.31	352.48	-	1.2
3d quarter 1979	341.08	347.54	-1.4	1.8
4th quarter 1979	343.70	347.54	-1.1	1.1

a/ Per net ton of finished product.

Trigger price was compared to the import transaction price if the importer and exporter were not corporately related. Until May 1979, if the importer and exporter were corporately related, trigger price was compared to the resale price to the first unrelated party, after deducting importers' expenses; since May 1979, trigger price was supposed to be compared to the import transaction price if the resale price was not supplied at time of entry.

Shipments made below trigger prices were to be promptly identified and the information reviewed to determine whether the quantities involved and the margins below trigger prices warranted initiation of an antidumping investigation. According to Treasury, the decision to initiate an investigation would depend on such factors as the size of the shipment and its source, relation to other shipments under the same contract or from the same supplier or country, and the amount the import price was below the trigger price.

TPM is to be used only for establishing the need for an antidumping investigation. When Treasury proceeded with an investigation, it was to do so without reference to trigger prices. Dumping margins were to be established according to criteria of foreign market value or, as appropriate, constructed value, without regard to trigger prices. If Treasury determined that TPM imports had been sold at less than fair value and the International Trade Commission (ITC) determined that the steel industry was injured or was likely to be, Treasury would assess and collect dumping duties as it did in other dumping cases.

Partial implementation of TPM began on February 21, 1978, with the requirement that all steel mill product shipments above \$2,500 be accompanied by a Special Summary Steel Invoice. (See ch. 2.) However, substantive operation of TPM did not begin until April 30, 1978, when the first grace period for products covered by trigger prices had expired. Until April 29, steel mill products could be imported below trigger prices without risking Treasury antidumping investigations.

The TPM program had no set duration; the Solomon report points out that, as world excess steel-producing capacity was eliminated, pricing practices would return to a more normal pattern, reducing the need for TPM. When the U.S. Steel Corporation filed major antidumping petitions in March 1980, the program was suspended.

COST OF TPM

No separate budgetary appropriations were made for TPM. From information supplied by Customs on the volume of steel entries processed, employment, and employment costs, we estimated the annual cost of administering TPM at \$1.7 million.

SCOPE OF REVIEW

Our review focused on how effectively the TPM program had been administered to pursue dumping possibilities. This relates to the program's basic objective, which was to enable Treasury (now Commerce) to self-initiate fast-track antidumping investigations of steel mill imports priced below trigger prices. We did not attempt to evaluate the structure of TPM (e.g., the determination of trigger prices) nor did we evaluate alternatives. Unless otherwise indicated, our review covers the period from inception through early May 1979.

Our work was done in Baltimore, Houston, New York, Los Angeles, Bethlehem, Pittsburgh, Frankfurt, Brussels, and in Washington, D.C. We examined Customs and Treasury records and talked with officials of Customs, the Treasury and State Departments, and the U.S. Trade Representative. We also met with representatives of the steel industry and with steel importers. Our methodology for analyzing below-trigger tonnage is discussed in chapter 2.

The Departments of Commerce and the Treasury furnished comments on a draft of this report, which we have incorporated as appropriate throughout the report.

In commenting on our report, Treasury said that TPM should be evaluated in the light of its overriding purpose, which Treasury gave as:

"Implementation of the trigger price mechanism should result in a substantial elimination of the injury the steel industry claims it is presently suffering due to sales of imported steel below its fair value."

Treasury said that, if evaluated in that light, TPM appears to have succeeded since imports fell, import prices rose, import market shares declined, and capacity utilization increased for the domestic industry.

It is important to understand that we did not evaluate the program's effectiveness in deterring less-than-fair-value steel mill imports (or less-than-trigger price imports). This may not be measurable. The volume of such imports in 1978-79 may have been a function of additional variables, including dollar depreciation, a high level of domestic demand for steel, and Japan's restriction of steel exports to the United States. Whether TPM had a significant deterrent effect was not within the scope of our review. Moreover, comprehensive data on steel mill imports at less than fair value is unavailable. Our review therefore did not address Treasury's assertion of TPM's apparent success.

Treasury also expressed concern that we reviewed the administration of TPM during its early stages. We felt that a review at that time would be helpful in identifying any improvements that were needed. Our review so identified such needed improvements.

Treasury also felt that our report did not cite some improvements that were made during the course of developing TPM. To the extent that we felt improvements were made, we have recognized them in the report. But, we felt that much more needed to be done to improve administration of the program and chapter 4 contains our recommendations that should be pursued by Commerce if the trigger price mechanism is reinstated.

Commerce agreed with us that TPM needs to be more effectively administered and said that it would study and be guided by our recommendations.

CHAPTER 2

CUSTOMS ENFORCEMENT OF TPM

Customs, under the general guidance of Treasury (Commerce, since January 1980), administered the day-to-day operations of TPM and recommended and conducted TPM anti-dumping investigations.

We believe that Customs may have overlooked a large volume of potential dumping, based on criteria used by Treasury and Customs. The tonnage criteria, however, were ad hoc--only for some product categories and not directly related to potential injury to the domestic steel industry. During our sample period, unconfirmed below-trigger-price imports amounted to 2.4 million tons, 40 percent of total TPM-covered imports. We estimated that 355,700 tons were likely to be significantly below trigger price. This was almost 6 times greater than the 61,800 tons Customs recommended for antidumping investigations or which could be associated with antidumping investigations. Total imports (in the same product categories included in the GAO estimate) from those foreign firms which accounted for the 355,700 tons were 1.6 million tons, 27 percent of TPM-covered imports during our sample period.

We found a number of weaknesses in Customs administration. These included initial price comparison errors, delays in recording data, insufficient inquiries of exporters, inquiries unanswered for a long time, and insufficient review of available information. Only four audits of steel-importing companies had been made, and the three completed by September 1979 did not adequately conform to audit objectives.

THE SPECIAL SUMMARY STEEL INVOICE AND THE IMPORT SPECIALIST

The monitoring of TPM products was based on the Special Summary Steel Invoice (SSSI), which was required for all steel mill imports of \$10,000 or more (\$2,500 until May 1979) except for shipments from Canada and Mexico where the minimum was \$5,000, regardless of whether the products were covered by trigger prices.

Customs import specialists located at ports and other entry points checked to see that steel mill shipments were accompanied by properly completed SSSIs. There was no special control program for physically checking steel mill shipments or for analyzing their contents by laboratory procedures.

Information requested on the SSSI included (1) identification of seller, producer, importer, and buyer, (2) point of origin, (3) description of goods, (4) quantity, (5) unit prices in the country of origin and on the import invoice, (6) resale price (since May 7, 1979) to the first unrelated party, if available at the time of entry, when the importer is corporately related to the exporter, (7) transportation costs, and (8) selling and processing costs for sales to the first unrelated party, when the importer and exporter are corporately related.

The import specialist prepared a TPM worksheet from the SSSI. For a TPM-covered product, the worksheet compared the trigger price to the import transaction price or to the resale price (after deducting importer's expenses), if available, for related-party transactions.

The SSSIs and TPM worksheets for shipments found to be below trigger prices were supposed to be forwarded to Customs Trade Analysis Branch (TAB) in Washington within 1 to 3 days of the date of entry (date by which importer had completed submission of all required documents, including the SSSI, to the import specialist); for shipments at or above trigger prices, the SSSIs and TPM worksheets were to be batched and sent to Washington once a week.

However, for below-trigger-price shipments recorded by Customs in Washington for October 1 to December 3, 1978, we found an average 30-day lag between the date of entry and the date the SSSI was logged in Washington. We were told at Customs Baltimore district office that in the last week of June 1979, the import specialist team was just beginning to work on steel entries for May and the backlog before June had been much greater.

Import specialists also have had fairly high error rates in making trigger price comparisons. We reviewed a sample of 89 below-trigger-price shipments recorded in the October 1, 1978 to March 1, 1979, period and found that TAB had determined that import specialists had incorrectly calculated trigger price comparisons in 28 percent of the cases. (We did not determine the cause of the errors.) Partially in response to this situation, Customs held two training seminars for import specialists in April 1979.

TELEXING AND ANALYSES OF TPM SHIPMENTS

Analyses of TPM-covered shipments was the responsibility of Customs Trade Analysis Branch (now Commerce's Agreements Compliance Division) in Washington.

No special attention was given to ordinary above-trigger shipments. Other types of shipments, after elimination of any errors made by import specialists, were selected for telex inquiries to importers to check whether they were below trigger prices. Telexing also served to let steel importers know that Customs was concerned about below-trigger imports. Checking for errors before selecting candidates for telexing was begun in the Spring of 1979, after TAB noticed that many importers were being needlessly telexed for potential below-trigger shipments because of a high rate of error by import specialists on the TPM worksheets.

From the onset of TPM, Customs and Treasury were concerned that evasion might be occurring through below-trigger resales of related-party shipments for which import transactions prices for related importers were at or above trigger prices. However, no special attention was given to such above-trigger transactions until March 1979, when TAB attempted to telex five above-trigger, related-party shipments a week. The telex asked the importers to send information within 10 days on terms of resale to related parties, with copies of invoices; duty paid; and selling, freight, warehousing, processing, and other expenses.

The number and tonnage of above-trigger, related-party transactions actually telexed were small. From March through July 1979, TAB sent 52 telexes, involving 66,200 tons, representing less than 1 percent of the number and 3 percent of the tonnage of such shipments recorded during this period.

Below-trigger shipments from sources which had not been precleared ^{1/} and which equaled and/or exceeded certain criteria of margin and value were also selected for telex inquiries. The margin criterion was a certain minimum difference between trigger price and transaction price; the value criterion was a certain minimum shipment value. Since December 1978, separate criteria, with higher minimum amounts, have been used for shipments from Japan. We have no reason to question these criteria.

The telex inquiry asked for such information as (1) why prices were below trigger prices, (2) the relationship between

^{1/}Preclearance is described on pp. 17 to 19. No steel shipments from Canada were telexed as all steel from Canada was treated as if it had been precleared by Customs.

importer and exporter, (3) date of purchase, (4) whether further shipments were anticipated, (5) whether further purchases were anticipated and at what prices and volume, (6) whether price renegotiation was considered, and (7) data on home market sales. For a related-party shipment, the importer was also asked to furnish a copy of resale invoice. The importer was asked to reply within 10 days.

We were told that TAB selectively telexed cumulative below-trigger shipments which added up to a significant tonnage and which, taken together, were significantly below trigger prices but which were not telexed on an individual shipment basis because they failed to meet the individual shipment telexing criteria. There were no criteria for determining what constituted significant cumulative below-trigger tonnage, and we found virtually no telexing of cumulative shipments recorded in the October 1, 1978 to March 1, 1979, period 1/; for this period, significant untelexed cumulative below-trigger tonnage amounted to 346,600 tons. (See p. 27.)

We checked telexes to determine whether TAB was following its margin and value criteria in selecting shipments to be telexed. For below-trigger tonnage recorded during the January 1 to March 1, 1979, period, TAB should have telexed 108 shipments (113,000 tons); it telexed 98 shipments (105,400 tons), 91 percent of those which should have been telexed.

We also determined the average time required for telexing and related procedures for below-trigger tonnage recorded during the October 1, 1978 to March 1, 1979, period. The cutoff date for these determinations was May 9, 1979.

TAB sent 435 telexes to importers concerning below-trigger tonnage recorded during this period. The average elapsed time from the date of the recording of a shipment in Washington, D.C., to the date a telex was sent was 36 days.

Customs requested that telex replies be made within 10 days. For 346 cases, the average time of reply was 18 days.

1/There were two instances of telexing cumulative shipments involving 214 tons.

However, no replies had been received in 88 cases 1/, 20 percent of the number of shipments telexed, with an average outstanding time of 109 days as of May 9, 1979.

TAB said that it began to send followup letters to those importers who had not responded through September 30, 1978. However, there was no program for automatically sending followup letters whenever no response had been received within a certain time. In commenting on our report, Treasury also said that letters were being sent automatically to follow up all unanswered telexes. When we checked with Commerce in March 1980, we again found that this was not the case. According to Commerce, followup letters had been sent to importers who had not responded through September or October 1979, but such letters were not sent automatically whenever no response had been received within a certain time.

After the reply was received, a TAB analyst reviewed it and, if necessary, requested additional information. Analysts reviewed 253 of the 346 replies received. In 129 of these 253 cases, however, the analysts did not date their reviews; they took an average of 14 days to review the 124 dated cases. The 93 replies which had not been reviewed, 27 percent of the total number of replies received, had an average outstanding time of 93 days as of May 9, 1979.

When there was a need for additional information, for example, resale data for related-party shipments, Customs usually sent a letter, although sometimes this was handled by phone call. There were 64 requests for additional information; however, for only 15 requests could we find both the date that the need for additional information was determined by Customs and the date that the request for additional information was made. For the 15 dated requests, the average time from determining the need to requesting the information was 17 days.

There were 43 replies to requests for additional information. It took an average of 28 days to get these replies for the 38 dated cases. No replies were received for 21 cases, 33 percent of the requests, with an average outstanding time of 83 days as of May 9, 1979.

1/There was no need for a reply in one case because TAB concluded that the shipment was at or above trigger price.

TAB analysts reviewed 35 replies. The average time from the date of reply to the date of review for the 12 dated cases was 10 days; 4 replies had not been reviewed, with an average outstanding time of 29 days as of May 9, 1979.

After all the information was received and reviewed, a determination was made whether the telexed shipment was at, above, or insignificantly below trigger price on the one hand (i.e., less than a set percentage below trigger price) or significantly below trigger price on the other hand. In the 89 cases we reviewed, we agreed with each TAB determination.

If a determination was made that the shipment was significantly below trigger, the importer was usually notified that, because below-trigger shipments could lead to an antidumping investigation, he might want to renegotiate the price of this and/or subsequent shipments to, at, or above trigger price levels. We were informed that importers rarely took up this suggestion. Customs recommendations to initiate antidumping investigations were not based on single shipments.

PRECLEARANCES

Foreign manufacturers who sell their steel mill products below trigger prices may avoid the risk of antidumping investigations and having their shipments telexed if their products are "precleared" by Customs.

In response to a request for preclearance, TAB (now Commerce's Agreements Compliance Division) will determine whether a foreign steel company is selling its products to the United States at fair value; i.e., at or above home market prices or costs of production. According to TAB, even before preclearance is granted, a company avoids the risk of an antidumping investigation as long as it has indicated that it will complete a preclearance questionnaire. Should the company fail to complete the questionnaire, this immunity is rescinded.

As of June 1979, four Canadian companies had obtained preclearances for specific steel mill products and six other companies from other countries were awaiting preclearance investigations. Below-trigger shipments of precleared products from the four Canadian companies totaled 161,600 tons, 62 percent of total Canadian below-trigger shipments recorded in the second quarter of 1979.

But, according to TAB, all Canadian steel from any Canadian source was regarded as having been precleared.

Below-trigger shipments of products without preclearance accounted for 38 percent of total Canadian below-trigger shipments recorded in the second quarter of 1979.

In commenting on our report, Treasury said that it would have been an inefficient use of resources to require formal preclearance of the remaining Canadian tonnage because:

1. The investigations of the four companies showed them to be clearly able to sell below trigger price yet above fair value.
2. All companies benefitted equally from the proximity of the northern U.S. market. The attendant low transportation costs to the U.S. market was a determinative factor in finding Canadian costs lower than TPM.
3. Evidence indicated that Canadian industry was making high profits overall and Customs investigators, during preclearance investigations, found that Canadian companies generally were making more money on their U.S. sales than on their sales in Canada.
4. No U.S. steel company or analyst raised the prospect that Canadian companies were dumping the principal, high-tonnage, steel products.
5. Other information suggested no dumping of products not cleared.
6. Canadian steel prices were usually expressed in dollars irrespective of whether the currency was United States or Canadian. Given that practice and the weakness of the Canadian dollar against the U.S. dollar, dumping was highly unlikely.

We note that the alternative to preclearing the remaining Canadian tonnage would have been to treat it as an ordinary TPM tonnage; i.e., to process it in the same way as non-Canadian tonnage.

In the notifications of preclearance grants, Treasury indicated that Customs would continue to monitor the firms' prices and costs and might require updated information periodically. However, we found that Customs had made no checks to determine whether the prices of below-trigger shipments of precleared companies were significantly below fair value, as

determined during Customs preclearance investigations. Treasury commented that weekly computer printouts permitted it and Customs to observe and spot any variation from the pattern documented in the preclearance investigation and gave reasonable assurance that Canadian entry prices were within the precleared fair value range. On February 26, 1980, Commerce (formerly Customs) officials told us again they were not making any checks.

In addition, updated information had been requested only from one firm. Although the preclearance grant of one other Canadian firm was more than one year old before the end of 1979, Customs said there would be no other updating in 1979.

ANTIDUMPING REVIEWS, CRITERIA, AND RECOMMENDATIONS

TAB's procedures for arriving at recommendations for initiating antidumping investigations were generally not written down.

Periodically, although not systematically, the TAB program manager or branch chief checked the various TPM statistical runs and the telex files for indications of significant below-trigger tonnage. If he believed that the information indicated possible antidumping violations, he might have assigned a TAB analyst to make a more extensive review. No record was prepared of examinations by the branch chief or program manager.

In commenting on our draft report, Treasury cited three types of reports that it used to monitor imports and initiate antidumping cases. Two of these were not made available to us, and we found no evidence that they were used analytically in deciding on case initiation. The third was used as the basic source for our own analysis of below-trigger tonnage.

We found that, as of early May 1979, TAB analysts had made about 10 of these reviews. (It is not possible to be more precise because the review files are incomplete.) Only three reviews appear to have involved extensive consideration of individual steel mill product categories--steel plate, cold-finished bars, and cold-rolled sheet. Major product categories which have not been extensively reviewed include wire rods, structural shapes, hot-rolled sheets, and coated sheets.

In commenting on our draft report, Treasury said that more than 10 reviews had been made. Our count was based on a list furnished by the Customs program manager during our

review. This list combined several reviews which were counted separately by Treasury. In any event, major steel mill products were not extensively reviewed.

As of early May 1979, TAB had recommended to Customs Technical Branch that antidumping investigations be initiated against 53 firms, covering 272,000 tons of steel.

TAB's memorandum of recommendations contained information on trigger price comparisons, including a summary of telex replies, fair value comparisons if available (these were generally unavailable because of lack of data), and data relating to injury.

To be included in a recommendation for initiating an antidumping investigation, a firm's below-trigger shipments for a product category must have been below trigger price by an average of at least a fixed percentage margin. Treasury established this criterion in connection with the recommendations which resulted in the antidumping investigations of the three plate cases. (See ch. 3.)

TAB officials informed us that the volume of below-trigger shipments must also be significant before TAB will include a firm in a recommendation. However, we found that there were no clearly established tonnage criteria for making recommendations. TAB informed us that the below-trigger tonnage of a firm for any product category under consideration must be at least a fixed minimum tonnage; yet in the recommendations which led to the antidumping investigation of South Korean nail exports, a number of firms were included whose shipments were less than this minimum.

Treasury established a higher tonnage criterion for selecting companies for the plate investigations and TAB and the Technical Branch decided on an even higher tonnage criterion for making recommendations on cold-rolled sheet (see ch. 3). However, neither Treasury nor Customs established tonnage criterion for other product categories.

Treasury stated that it was impossible to set absolute parameters for when a case should begin--though it did so in the plate cases. We believe, however, that it is possible to establish flexible tonnage criteria and that such criteria would be helpful in deciding on recommendations to initiate investigations.

Although TAB presented information in its recommendations which related to potential injury to the domestic steel industry, TAB, the Technical Branch, and Treasury established no

explicit injury criteria in the sense of critical minimum levels of relevant injury factors, aside from the ad hoc tonnage criteria. In commenting on our report, Treasury said that an exporting country's share of the market for a given product usually approached 2 percent before Treasury initiated an antidumping case. We have no evidence that Treasury ever used a 2-percent standard for initiating cases.

ROLE OF THE TECHNICAL BRANCH

TAB's recommendations were reviewed by the Technical Branch (now Commerce's Office of Investigations). After the Branch's review, most of TAB's recommendations to initiate antidumping investigations against 53 companies were referred to the Treasury Department for action and others were under consideration. In addition, the Technical Branch made several recommendations, including those dealing with three Italian firms and the China Steel Corporation discussed in chapter 3.

The Technical Branch's principal role in the TPM program was to assure that the cases were handled in conformity with standard antidumping laws and regulations. Usually, after the cases were evaluated by the Branch, meetings were held with Treasury's General Counsel's Office of Tariff Affairs to determine whether the cases should be further pursued. The Technical Branch also prepared memorandums for the Commissioner of Customs recommending that the Treasury's General Counsel initiate formal antidumping investigations.

If an investigation was undertaken, the Technical Branch asked Customs attaches in foreign countries to present standard antidumping questionnaires to the exporters involved and to verify their responses. After it reviewed the responses and the report of investigation, the Branch prepared memorandums for the Commissioner of Customs to notify Treasury whether sales had been made at less than fair value.

ANALYSIS OF BELOW-TRIGGER TONNAGE AND ESTIMATED POTENTIAL DUMPING

Table 1 shows the performance of below-trigger imports from the establishment of TPM through the second quarter of 1979, based on data contained in SSSIs and related materials. Below-trigger imports as a proportion of total TPM-covered imports have declined, except during the initial period when major grace periods were still in force. The percentage margin by which these imports were below trigger prices declined in 1978 and rose somewhat in 1979.

Table 1

Below-Trigger Tonnage and Trigger Price Margins

	Below-trigger tonnage as percent of covered TPM <u>tonnage</u>	Average percent margin of below-trigger <u>shipments</u>
2-21-78 to end of		
2d quarter 1978	19.04	18.40
3d quarter 1978	42.88	12.04
4th quarter 1978	41.39	7.22
1st quarter 1979	32.73	8.00
2d quarter 1979	32.04	9.23

Source: U.S. Customs

While table 1 may be used to gain an impression of the historical pattern of change in relative below-trigger shipments and trigger-price margins, it should not be used for ascertaining the levels of these two variables. The SSSI data underlying table 1 is unconfirmed, and further processing of this data (e.g., taking into account telex replies) is likely to reduce the volume of below-trigger shipments and trigger-price margins. The reasons cited by Customs why the SSSI data may substantially overstate below-trigger shipments and trigger-price margins include (1) corrections by Customs in Washington to import specialists' calculations may change shipments to trigger price levels or above, (2) information obtained through telex and other inquiries may change shipments to trigger price levels or above, (3) precleared steel is considered equivalent to shipments at or above trigger price even though it may be below trigger, and (4) the tonnage and/or the margin may be insignificant.

We analyzed below-trigger shipments reported by Customs in Washington during the period October 1, 1978, to March 1, 1979, as shown in table 2. Although the data is on a composite basis, our analysis was done product category by product category and company by company. Unconfirmed below-trigger shipments (i.e., based on Special Summary Steel Invoices and related data) totaled 2.4 million tons, 40 percent of total TPM-covered imports. This unconfirmed volume was reduced to 957,400 tons as explained in table 2.

Table 2

Below-Trigger TonnageOctober 1, 1978 to March 1, 1979

	<u>Tons</u>
Unconfirmed below-trigger tonnage	2,383,000
Tonnage explained:	
Below minimum trigger-price criterion used by Customs in making antidumping recommendations	716,100
Below lowest minimum tonnage criterion used by Customs in making antidumping recommendations	76,900
Preclearance (all Canadian steel shipments)	408,300
Found to be at, above, or insignificantly below trigger price by Customs review of replies to telex and other inquiries	193,300
Found to be at, above, and/or insignificantly below trigger price by Customs adjustments of import specialist calculations	31,000

Residual tonnage 957,400

Components of residual:

Recommended by Customs (TAB) for anti-dumping investigations a/ or could be related to antidumping investigations. b/ 61,800

Found by Customs to be significantly below trigger price from analysis of telex and related replies but had not been recommended for antidumping investigations nor could be related to anti-dumping investigations. 71,700

Unanalyzed by Customs although replies were available. 93,800

Awaiting responses from importers 172,400

Not telexed by Customs 557,700

Source: U.S. Customs statistical reports and other records.

a/ Includes all below-trigger tonnage in our sample period of firms/products categories covered by recommendations, for which Customs recommended at least some below-trigger tonnage in some part of the sample period.

b/ Includes all below-trigger tonnage in our sample period of firms/products categories under antidumping investigations.



As of May 9, 1979, the date of our last review of Customs processing of tonnage data in our sample period, only 133,500 tons (61,800 tons + 71,700 tons), 14 percent of the residual, could be regarded as below trigger. The below-trigger tonnage in the other components, the bulk of the residual, was unknown because Customs had not telexed the tonnage, had not received replies from importers, or had not analyzed the replies from importers.

The untelexed component accounted for the major part (58 percent) of the residual. For the most part, this tonnage reflected unconfirmed below-trigger price shipments which, when cumulated for a particular exporter and product category, were potentially significant in terms of volume and margin (percentage deviation from trigger prices). As previously indicated, TAB had telexed virtually no cumulative shipments in our sample period. The portion of this component of untelexed tonnage which could be regarded as potentially significant, based upon the margin and tonnage criteria used by Customs and Treasury for making antidumping recommendations, amounted to 346,600 tons, 62 percent of the untelexed component. (It should be noted that the related tonnage for the same exporters and the same product categories found to be at, above, or insignificantly below trigger by Customs on the basis of replies to telexes and other inquiries was too small in general to "excuse" the large volume of potentially significant untelexed tonnage. The former amounted to 22,200 tons, 6 percent of the latter.)

Because the amount of below-trigger tonnage in the bulk of the residual is unknown, we estimated the amount which would likely have remained significantly below trigger on the basis of Customs analysis of replies to telex and other inquiries relating to the tonnage in our sample period.

--To develop such an estimate, we calculated ratios of tonnage at, above, or insignificantly below trigger to both significantly below trigger and at, above, or insignificantly below trigger tonnage as determined by Customs for (1) Japanese-related party shipments, (2) other Japanese shipments, (3) related-party shipments for other countries, and (4) other shipments for other countries.

--We subtracted from the total residual the "known" components: (1) the volume of below-trigger tonnage which Customs had found to be significantly below trigger prices on the basis of analysis of responses to telex and other inquiries (71,700 tons) and (2) the volume which was recommended for

antidumping investigations or could be associated with antidumping investigations (61,800 tons).

--To the remaining tonnage, we applied our calculated ratios exporter by exporter and product category by product category. This gave us an estimate of that part of the residual likely to be above or insignificantly below trigger.

--To the balance we added back the volume of below-trigger tonnage as determined by Customs from analysis of replies to telex and other inquiries (71,700 tons), eliminated insignificant tonnage for each exporter and product category based upon minimum tonnage criteria used by Customs/Treasury in antidumping recommendations, and added back the tonnage which was recommended for antidumping investigations or could be associated with antidumping investigations (61,800 tons).

Our analysis resulted in estimated overall, significant below-trigger tonnage of 355,700 tons. It is possible that this estimate may be an understatement of the volume of steel mill shipments at less than fair value (i.e., below actual costs of production or domestic prices in exporters' countries) during our sample period. In two of the three antidumping investigations, virtually all shipments investigated by Treasury were found to be at less than fair value. 1/ Total imports (in the same product categories included in our estimate) from those firms which accounted for the 355,700 tons were 1.6 million tons, 27 percent of TPM-covered imports during our sample period.

As noted earlier, the impact of TPM in deterring below trigger (or less than fair value) imports may not be measurable.

However, a measure of adequacy of the administration of TPM in pursuing dumping possibilities, the objective of our review, is the relationship between the total volume of significant below-trigger tonnage (355,700 tons) and that part

1/ After completion of our review, Commerce in May 1980 in another case involving several firms determined that half of the firms (six) had sales at less than fair value and virtually all the shipments of five of these firms were at less than fair value.

which Customs recommended for antidumping investigations or which could be associated with antidumping investigations (61,800 tons). The former, which may be referred to as potential dumping, is almost 6 times the latter.

Our estimate of potential dumping is based upon Customs and Treasury criteria. It is not explicitly based on injury to the domestic steel industry, because Customs and Treasury had no explicit injury criteria. Customs indicated in several of its antidumping recommendations that violations of trigger prices were themselves indications of injury.

In commenting on our report, Treasury stated that viewed in the context of domestic steel consumption, the significantly below-trigger tonnage of 355,700 tons would have relatively little market significance and the likelihood of injury would be de minimus. Treasury's comments obscure (1) the fact that our estimate is the sum of below-trigger tonnage for individual product categories and companies, based on criteria used by Treasury and Customs and (2) the fact that Treasury did not have explicit injury (or market impact) criteria. It also ignores the fact that the tonnage involved in the recommendations for investigation made during our sample period was only 61,800 tons. If there are any problems with the components of our estimate, it is because Treasury/Customs had only ad hoc tonnage criteria--only for some product categories and not directly related to potential injury to the domestic steel industry.

AUDITS

In December 1978, Treasury announced that comprehensive audits would be made of selected related-party, steel-importing companies. Its concern about related-party transactions was prompted by an increase in related-party tonnage from 40 percent of imported steel to 60 percent.

The announced audit objectives were to examine:

- Resales of imported steel to assure that they were occurring above trigger prices by a margin large enough to cover the importers' full costs, including any storage, capital, or additional processing costs.
- Credit terms allowed in actual resales.
- Claims by buyers for rebates from the importer because steel was of "secondary" quality.

--Costs incurred by importers, including storage, selling, processing, and inland freight, to determine whether they were included in resale prices.

Four companies were audited by Customs regulatory audit division. Treasury, in its comments, stated that all four companies chosen for audit were related parties in that all were known to have corporate entities overseas as well as in the United States. However, we found that one of the firms had virtually no related-party transactions during the period selected for audit and that the audited transactions showed that another firm acted solely as an agent for the exporter and did not purchase or take title to the imported steel.

Audit reports on three of the companies had been completed as of early September 1979. The reports indicate that none of the three companies used methods to circumvent TPM, such as passing through their costs to steel purchasers or by giving rebates. However, none of the three companies engaged in storing or processing steel, although examination of such activities is stressed in the announced audit objectives.

In commenting on our report, Treasury said that it turned out that only one of the four companies actually processed or inventoried the steel it imported. Treasury also said that the completed audits indicated a high degree of compliance with the TPM requirements. We note, however, that the companies audited through September 1979 did not engage in those kinds of transactions (processing and inventorying) which were stressed in the audit objectives, and Commerce informed us that the audit report (completed after our review) for the one company which did process or inventory steel had transactions which violated TPM.

If TPM is reinstated, we believe that Commerce should increase the number of audits and ensure that audits conform better to audit objectives.

CHAPTER 3

TREASURY'S HANDLING OF ANTIDUMPING

RECOMMENDATIONS AND INVESTIGATIONS

During the period of our review, Treasury decided on whether Customs recommendations to initiate antidumping investigations should be pursued and directed them ^{1/} Treasury may not have exercised sufficient care in handling Customs recommendations and investigations. It:

- Overruled the first recommendation made by Customs and went along with the remedy proposed by the firm to allow the reexport of an amount of steel equivalent to the below-trigger tonnage, despite its own concerns about the propriety of such an action.
- Apparently agreed with another of Customs recommendations but did not initiate an investigation.
- Failed to respond to another Customs recommendation involving several firms and dealing with the single largest product category of steel mill imports.
- Terminated the investigation, begun on October 20, 1978, of one of three firms on the basis of information it had available before initiating the investigation. While Treasury terminated this case, it rejected somewhat similar mitigating circumstances cited by the other two firms being investigated.

^{1/} The procedures followed by Treasury and the International Trade Commission for TPM antidumping investigations were essentially the same as for other dumping cases and were discussed in GAO's report, U.S. Administration of the Antidumping Act of 1921 (ID-79-15, Mar 15, 1979). The principal difference is that for TPM cases, the timeframe is shortened and information on only a few months of sales or shipments is obtained rather than the usual 6 months. When Treasury announced TPM, it anticipated that the investigations could often be completed within 60 to 90 days, substantially less than the usual 9 to 12 months.

--Determined that shipments from the other two firms were sold at less than fair value.

Treasury stated it believed that (1) enforcement of TPM required discretion, (2) the primary purpose of TPM was to encourage voluntary adherence to TPM and formal initiation of a case would not always promote that objective most efficiently, and (3) no cases beyond those actually initiated were needed. We agree that discretion should be used but that adequate criteria as to what constitutes potential injury are needed. We did not find these in our review. Treasury cited some macroeconomic reasons in support of its view that no additional cases were needed; these reasons may not be pertinent to determining dumping. Treasury also said, in support of its view, that ITC had an unfavorable record of findings concerning injury. We do not believe ITC's record on TPM cases shows a tendency toward no-injury determinations. Of three TPM cases, ITC found injury in one, a reasonable indication of injury in another, and no injury in the third.

The cases referred to Treasury by Customs mostly focused on hot-rolled plate and cold-rolled sheet. As of the cutoff date of our information-gathering in May 1979, Treasury had initiated four antidumping investigations; two were completed, one was terminated before the manufacturer responded to the standard antidumping questionnaire, and the fourth was still in process.

The following sections describe Treasury's handling of Customs recommendations and antidumping investigations. They are based on Treasury and Customs records and discussions with officials of these agencies. We deal with all of Customs recommendations and antidumping investigations through early May 1979.

CASES ON WHICH FORMAL INVESTIGATIONS WERE NOT INITIATED

Italian case

The first TPM antidumping investigation recommended by Customs, on June 15, 1978, concerned three Italian firms selling steel plate and various types of sheet steel. From May 30 to June 15, 1978, 67,694 tons of such steel were imported below trigger prices after the grace period.

The counsel for the Italian exporters said that the steel in question was produced by one firm--Italsider--and sold to its U.S. subsidiary, primarily in the Great Lakes region. He

offered Treasury five options for dealing with the below-trigger shipments, including the reexport of steel products described as "an equivalent quantity of identical or similarly sensitive" material as that which was imported below trigger prices. In a memorandum dated June 27, 1978, to Treasury's General Counsel, the Treasury Deputy Assistant Secretary for Tariff Affairs expressed doubts about such action, stating that:

"* * * I wonder about our legal ability to 'remove' the TPM exemption for preexisting 'stock' so that previously imported steel is put under TPM to make up for later-imported products identified as having entered below trigger prices. While I am sympathetic to the idea of fashioning a narrower remedy to deal with what may be a narrow problem, the suggestion here proposed seems not to be authorized under the Act. On the other hand, it may be that there is no one who would have standing to challenge any action that we took along these lines. If any support for them can be found under the Act and our regulations (or new ones adopted for that purpose), it may be appropriate to consider whether accepting such voluntary offers at the pre-initiation stage is a useful way of dealing with such problems."

We found no response to the memorandum.

The Italian Ambassador, expressing the concern of his government that the Treasury might initiate antidumping action because Italsider sold steel below trigger prices after the grace period, said in a letter dated July 28, 1978, that:

"As outlined in the detailed proposal, a thorough study of the case has revealed ample evidence that the quantity of steel at issue is, in effect, just 36,500 tons, an amount even smaller than the one previously estimated by Italsider. Also, the questioned shipments were all made pursuant to contracts pre-existing the system, and they would have been scheduled prior to the April 30th grace period were it not for technical difficulties mainly connected with the late opening of Great Lakes maritime traffic.

"Despite its conviction of having acted properly and substantially in compliance with the TPM, but well aware of the Treasury's need to pursue effectively the matter, Italsider has now volunteered to remove

35,000 tons of stock predating the system; to renegotiate an additional 9,500 tons; and to cancel all longer term shipments."

In response to a request by Treasury officials for additional information, the Commissioner of Customs, in a memorandum also dated July 28, repeated his June 15 recommendation to begin an antidumping investigation.

In a letter dated August 21, 1978, the counsel for Italsider informed Treasury that action was taken to reexport about 32,000 tons of steel from the warehouses of Italsider's subsidiary, Siderius. In an October 13 letter to Customs, the counsel said a vessel sailed from Houston, Texas, with 17,000 tons of steel on September 24, having previously loaded and departed from New Orleans. He said a second vessel sailed from Camden, New Jersey, on October 13 and a third vessel was scheduled to load the remaining 5,000 tons in Camden at a later date. The counsel enclosed documents relative to the reexport of steel from Houston and New Orleans.

Our examination of files made available for our review by Treasury revealed no written responses to Italsider's counsel or to the Italian Ambassador. The files indicate that the press of events may have forced Treasury to accept the decision by Siderius/Italsider to reexport the steel. Although the files contained no memorandum responding to the Commissioner of Customs recommendation, Treasury officials may have decided not to begin an antidumping investigation because they believed that reexporting the steel did not negatively affect the U.S. market. A memorandum of a September 13, 1978, staff meeting of Treasury and Customs officials stated that "Treasury decided to resolve the Italian case by allowing exportation of Italian steel from the United States in an amount equal to the tonnage imported under trigger prices." We found no indication in Treasury files that any rule had been established to allow a company to avoid an antidumping investigation if it reexports steel after a finding that steel was sold below trigger prices.

In commenting on a draft of our report, Treasury asserted it was not overtaken by events, but it indicated to the firm that if the firm reexported the steel at its own initiative Treasury could and would consider that fact in deciding whether to initiate an antidumping proceeding.

The reexports were not physically examined by Customs to determine whether an equivalent quantity of steel similar to the below-trigger shipments had been reexported. With respect

to the 17,000 tons said to have been exported from Houston, Customs, in a memorandum to Treasury concerning documents provided by the counsel for Siderius, stated that:

"Although none of this documentation has been certified or authenticated by a Customs Officer, there is precedent for accepting such uncertified documentation as satisfactory evidence of exportation (e.g., CR 22.7 (c) (1)). Accordingly in light of the agreement previously made with this importer allowing for this exportation, this office believes this submission to be satisfactory evidence of exportation of the steel in question."

During a visit to Houston in June 1979, we inquired about the circumstances surrounding the reexportation of the steel from that port and whether the shipment in fact was reexported to another country. We were referred to a Customs Regional Office investigator, who informed us that Siderius was being investigated pursuant to grand jury action and that he could not discuss the details of the investigation. During our followup inquiries at Customs headquarters in Washington, we were told that none of the steel, including the 15,000 tons said to have left Camden, New Jersey, was examined by Customs.

In commenting on a draft of our report, Treasury noted that although the tonnage entered after the TPM grace period, it was shipped under a contract that preexisted TPM--presenting a practical question of whether spillover tonnage could be penalized short of a full-fledged antidumping proceeding. We should note that Treasury initiated antidumping investigations of steel imports from Poland and Taiwan under the same circumstances. Treasury stated that the reexport of steel from the United States was a serious remedy and the reexport was publicized to enhance future compliance with TPM. Finally, Treasury stated its belief that when a "law firm of high standing" affirms the reexport and provides confirming documentation, Treasury can appropriately rely on those assurances.

South African case

The second case recommended by the Commissioner of Customs for an antidumping investigation pertains to steel imported from South Africa.

In a July 20, 1978, memorandum to Treasury's General Counsel, the Commissioner stated that through June 30, 1978, 36,123 tons of steel, mostly sheet, were sold substantially

below trigger prices after the grace period by the South Africa Iron and Steel Industrial Corp. Ltd. (ISCOR). The Commissioner said an attorney for the company supplied extensive documentation about a September 14, 1977, blowout of ISCOR's main blast furnace; the attorney contended that if it were not for the accident, which reduced ISCOR's production capacity by 60 percent, the steel would have entered the United States prior to the April 29, 1978, grace period expiration date set under TPM. The Commissioner concluded his memorandum by asking the General Counsel whether to initiate an antidumping investigation.

In a memorandum of August 8, 1978, to the General Counsel, Treasury's Deputy Assistant Secretary for Tariff Affairs attached the Commissioner's memorandum and made the following comments.

"As you know, the Antidumping Act provides no 'adjustment' to the price of merchandise because of such conditions as plant explosions delaying the deliveries of certain sales. Under the Act, merchandise must be valued as there prescribed. In a 'purchase price' situation (such as exists here, where sales by the foreign exporter are to an unrelated U.S. importer), the date of contract governs. Therefore, for fair value purposes, the dates on which the several contracts were concluded in 1977 would control. The Antidumping Act would not 'penalize' a producer who ships late at a price established at an earlier date, when the delay is due to 'force majeure'. On the other hand, the delayed shipment cannot excuse or prevent inclusion of the merchandise in the calculation of dumping margins if the period of investigation embraces such delayed shipments.

"In my judgment, the foreign exporter has, in this case, made no bona fide effort to attempt to renegotiate its contracts based upon the claim of force majeure. Instead, it has asked us to give it a benefit in the market due to its problem that could injure the domestic industry. Under these circumstances, the receipt of over 36,000 tons through the end of June, and the information that possibly 80,000 tons--below trigger prices by substantial margins--are expected, would seem to make this a prime candidate for initiation of a proceeding. However, I would limit the proceeding to some items and not make it an across-the-board investigation

in view of the force majeure claim, the current recovery of the domestic industry and our desire primarily to establish a precedent and example."

During a weekly staff meeting on August 11, 1978, the Deputy Assistant Secretary asked that Customs immediately prepare a recommendation to initiate a dumping case on steel from South Africa.

On September 1, 1978, the Commissioner of Customs formally recommended to Treasury's General Counsel that an antidumping investigation be made to determine whether imports were being sold at less than fair value. He stated that as of August 10, 1978, 45,346 tons of cold-rolled and hot-rolled steel sheet and galvanized sheet had entered the United States at below-trigger prices after the grace period. Treasury records do not show any reply to his recommendation, nor was an antidumping investigation initiated.

In commenting on a draft of our report, Treasury said that when the tonnage is broken out into product lines, each product represents an insignificant percentage (less than 2 percent) of domestic consumption and that generally, unless the import is about 2 percent of consumption, it is doubtful that ITC would find injury. Treasury also cited indications that the sale prices were not likely to be below the company's cost of production. The genesis of the 2 percent appears to be an ITC decision published in June 1979, 10 months after Treasury's Deputy Assistant Secretary for Tariff Affairs and the Commissioner of Customs decided that an investigation was warranted. Concerning less-than-fair-value sales, Customs estimated potential dumping margins for the company's shipments of hot-rolled sheet, cold-rolled sheet, and galvanized sheet of \$67, \$75, and \$88, respectively. Also, cost of production is used only when there is no, or virtually no, home market sales data or if the number of such sales made at prices below cost is very large.

Cold-rolled sheet cases

In five memorandums dated between September 22 and September 27, 1978, TAB recommended to Customs Technical Branch that antidumping investigations be initiated on steel imports from Spain, Poland, West Germany, France, and Belgium. The recommendations covered two categories of steel--hot-rolled plate and cold-rolled sheet, the latter of which is the single largest category of steel mill imports. During a meeting of Treasury and Customs personnel, the Deputy Assistant Secretary for Tariff Affairs was concerned that the cases be good ones and Customs representatives believed that the cases were not

as strong as the Italian and South African cases previously submitted to Treasury (although, as previously noted, Treasury did not initiate antidumping actions against the latter firms).

The Technical Branch prepared a "recommendation package" covering plate and sheet from several countries, including the five previously mentioned, and forwarded it to Treasury. While the package was being reviewed, the Deputy Assistant Secretary notified Customs that he wished to initiate cases on a company-by-company approach rather than a countrywide basis and on hot-rolled plate first and cold-rolled sheet as soon thereafter as possible. During early October 1978, a Technical Branch casehandler worked with Treasury personnel to identify the major TPM plate and sheet violators. The work resulted in a memorandum from the Commissioner recommending initiation of antidumping investigations of companies shipping hot-rolled plate below trigger prices.

In a memorandum dated December 15, 1978, the Commissioner of Customs reminded Treasury of the potential antidumping cases involving manufacturers of cold-rolled sheet and asked for advice on how to proceed.

We met with Treasury officials in May 1979 to inquire about Treasury's efforts on the cold-rolled sheet cases and to ascertain whether they responded to the December 15, 1978, memorandum. The officials remembered the Commissioner's memorandum but could not recall its disposition. In response to our request, a search made by them of their files disclosed neither a response to the Commissioner's memorandum nor analyses of the cold-rolled sheet cases.

In commenting on a draft of our report, Treasury said that the cold-rolled sheet situation did not result in a formal investigation because the trigger price for cold-rolled sheet during the relevant period was higher than the domestic price, domestic mills were heavily booked with orders for cold-rolled sheet and considerable production backlogs were developing, and the three principle companies involved came into greater and more precise compliance with trigger prices. As noted above, Treasury had no analyses of the cold-rolled sheet cases at the time of our review. Moreover, Treasury's support for its assertions in its comments concerning prices and backlogs was based on a June 1979 report comparing 4th quarter 1978 through 3d quarter 1979 data whereas the cold-sheet recommendations covered the 2d and 3d quarters of 1978.

Other cases

In April 1979, Customs forwarded information to Treasury on two potential cases, one involving cold-drawn bars from Japan and the other wire rods from Finland, and requested Treasury guidance on what to do with them. Our review of Treasury files showed that as of early May 1979 Treasury was considering the requests.

CASES RESULTING IN FORMAL INVESTIGATIONS

In his memorandum dated October 17, 1978, to Treasury's General Counsel, the Commissioner of Customs recommended anti-dumping investigations of 10 companies exporting hot-rolled steel plate from 6 countries. However, after making a detailed analysis of below-trigger shipments, Treasury decided to initiate investigations of Empresa Nacional Siderurgica, S.A. of Spain, China Steel Corporation of Taiwan, and "Stahlexport" Przedsiębiorstwo of Poland because their below-trigger shipments exceeded a certain tonnage and trigger price percentage margin. On October 20, 1978, Treasury announced its first formal "fast-track" antidumping investigations of the three companies.

Empresa case

Customs, in a September 27, 1978, memorandum, identified 5,944 tons of hot-rolled plate manufactured by Empresa that entered below trigger price (\$110 to \$123 per ton) on April 30, 1978, one day after the grace period ended. Customs also identified another below-trigger shipment of 2,383 tons; this shipment was exported on July 1, 1978, one day after the change from 2d quarter to 3d quarter 1978 trigger prices. (The shipment was below trigger on the basis of 3d quarter trigger prices.)

In addition, the memorandum prepared by TAB on the case contained information on substantial shipments by Empresa of cold-rolled sheet significantly below trigger price. The shipments of cold-rolled sheet steel totaled 7,692 tons and were sold from \$75 to \$127 a ton below trigger price. However, Treasury decided to pursue only shipments of hot-rolled plate at that time.

On October 27 and November 3, 1978, Empresa representatives met in Washington with Treasury and Customs officials to request the case be reexamined, stating that, to the best of their knowledge, they had complied with TPM in all respects. On November 13, Treasury's General Counsel met with the Spanish

Ambassador. We asked Treasury for memorandums on this meeting and on a meeting held on November 15 with company officials so that we could fully evaluate the impact of the meetings on the events in this case, but the files Treasury provided did not contain memorandums of the meetings. They did, however, contain briefing notes prepared for use of the General Counsel during his meeting with the Spanish Ambassador. One comment was that it was difficult for Treasury to ignore the fact that Empresa took full advantage of the grace period by importing a tremendous volume of steel. Another comment indicated that, even if below-trigger imports were not intentional, Treasury was obliged to take enforcement action and that lack of intent is no defense in an antidumping complaint.

A November 15, 1978, cable to Treasury officials from Empresa's senior representative in the United States stated that if Treasury discontinued the antidumping investigation, the company would furnish information regarding the home market price for hot-rolled plate. Treasury wanted this information for use in determining the fair value of exports from Stahlexport, the Polish firm also under TPM investigation. The information was useful because for a country such as Poland, which has a state-controlled economy, the Antidumping Act does not permit the use of prices for either the home market or third countries. Instead, fair value is determined from the home market prices or prices to third countries of that product manufactured in a market economy country at a comparable stage of economic development. Spain and Poland are considered to be at a comparable stage of economic development.

Empresa representatives, at a meeting on November 15, were told that Treasury decided to terminate the antidumping investigation and the Spanish representatives agreed to provide certain home market price information (for use in the Polish case). In commenting on a draft of our report, Treasury said that any implication that the home market price information was offered to induce withdrawal of the case was inaccurate.

In a press release dated November 16, 1978, Treasury announced termination of the antidumping investigation of Empresa, stating that:

"Upon receiving full documentation from the company, the Customs Service was able to conclude that the below-TP tonnage was limited to two shipments which had narrowly missed an announced grace period and a quarterly shipping date. Since the full documentation confirmed that all other plate

sales of the company were at or above the applicable trigger prices, the Treasury Department decided to terminate the investigation involving this company.

"In the future, information relevant to monitoring under the trigger price mechanism which could have been provided upon entry or upon initial inquiry by Customs will not be considered once an antidumping investigation is formally initiated."

However, Treasury failed to mention that, before it announced the antidumping investigation, it had information available that the larger below-trigger shipment missed the grace period by only one day, the smaller below-trigger shipment missed a quarterly shipping date by only one day, (i.e., it was exported one day after the change from 2d quarter to 3d quarter 1978 trigger prices), and only these two shipments had been identified as being below trigger.

At the time of Treasury's termination decision, the chief of TAB said that in view of Empresa's "honest attempt to comply with the Trigger Price Mechanism" for hot-rolled plate, he recommended that no further action be taken on the cold-rolled sheet shipped below trigger prices by Empresa during the same period, although Customs had previously recommended pursuit of the case.

In commenting on our draft report, Treasury said that it started the case in part because there was significant below-trigger tonnage (2.94 percent of U.S. plate consumption). Our evidence shows that the investigation was begun because of two below-trigger shipments which cumulatively exceeded the tonnage criterion established for the plate investigation and the percentage margin criterion. There is no evidence that Treasury used 2.94 percent to ascertain the significance of the two shipments.

China Steel Corporation case

China Steel Corporation of Taiwan sold 25,296 tons of hot-rolled plate steel at about 24 percent below trigger price. At a meeting between Treasury and China Steel representatives on November 21, 1978, the China Steel representatives said that:

--Their mill began full operation only recently, in December 1977.

--Their below-trigger-price shipments were made under contracts preexisting TPM and they risked litigation if they tried to raise the price of steel on those contracts.

--Lawyers and customs brokers told them they would probably face no trouble with preexisting contracts.

Treasury responded that:

--It intentionally gave a long grace period to allow the trade to make necessary adjustments and enter steel under preexisting contracts.

--Many other companies made major efforts to enter shipments before May 1 or to renegotiate contracts, with attendant risk of litigation.

--Treasury had clearly announced its rules; it must follow them in an orderly way or people would not believe TPM was a serious program.

Treasury concluded that China Steel simply made a business judgment that the U.S. Government would not initiate antidumping procedures against a small company on a preexisting contract even if it continued entering steel below trigger prices far after the grace period.

Since China Steel refused to provide home market price data during the investigation, Treasury estimated fair market value from data supplied on SSSIs. On February 12, 1979, Treasury announced its final determination that exports of plate produced by the China Steel Corporation were being sold at less than fair value.

The case was referred to the International Trade Commission, which subsequently ruled that imports from China Steel caused injury to the U.S. steel industry in a major region of the United States (the west coast).

Stahlexport case

Stahlexport of Poland sold 18,366 tons of hot-rolled plate at about 32 percent below trigger prices. According to a Treasury memorandum, at a meeting on December 19, 1978, Stahlexport representatives explained to Treasury that the contracts which gave rise to the TPM violations were signed in 1977 and were originally set so that all deliveries would

have been made before the end of the first quarter of 1978. However, as the company began to realize that deliveries would carry past the end of March, it raised the question of renegotiation with its U.S. customers, who said that no renegotiation was necessary because it was anticipated at the time that the delay would not extend too far beyond the end of the grace period and they hoped that they could get an extension of the grace period from Treasury.

Treasury indicated that, although Stahlexport circumstances were unfortunate, the only way to administer TPM fairly for all parties was to grant no extensions beyond the end of the grace period. According to the same memorandum, the counsel for Stahlexport indicated the company's willingness to provide assurances that it would not violate the trigger price for carbon steel plate on any future imports but Treasury's Deputy Assistant Secretary for Tariff Affairs replied that:

"* * * at this point such assurances are not relevant since in the context of an antidumping investigation only assurances of no future sales at less than 'fair value' would provide the possibility of the discontinuance of the investigation. In administering the trigger price mechanism, the Treasury cannot afford to give the impression that foreign manufacturers can violate the TPM until they are caught and then avoid a dumping investigation by giving assurances tied to trigger prices."

In an April 18, 1979, press release, Treasury announced its final determination that exports of carbon steel plate produced by Stahlexport were sold at less than fair value in the United States. To make the determination, Treasury used market prices of carbon steel plate manufactured in Spain.

The case was referred to the International Trade Commission, which subsequently found that the imports did not injure U.S. producers.

Korean nails case

The fourth case on which Treasury initiated an antidumping investigation involved wire nails from Korea. In March 1979, the Commissioner of Customs recommended investigating 25 firms. On April 18, Treasury announced that it was initiating an investigation of many of the firms, but that, because of substantial doubt that injury existed, the case was being

referred to the International Trade Commission for preliminary injury determination. On May 17, the Commission concluded that there was a reasonable indication of injury and that Treasury should proceed with its investigation. After completion of our review, Commerce in May 1980 determined that six companies (half the number investigated) made less-than-fair-value sales.

CHAPTER 4

RECOMMENDATIONS IF TPM IS REINSTATED

We believe there are a number of actions that should be undertaken by Commerce to improve administration of TPM, if it is reinstated. These are aimed at helping to assure that potential dumping will not be overlooked and that antidumping investigations will be properly pursued.

To improve the analysis of basic TPM generated data, we recommend that, if TPM is reinstated, the Secretary of Commerce:

- Continue efforts to reduce import specialists' high rate of errors in making trigger price calculations.
- Establish cumulative telexing criteria and telex significant cumulative below-trigger-price shipments.
- Establish procedures for automatically sending follow-on inquiries to importers who have not replied to telexes and other requests for information after a fixed period of time.

To improve the procedures for arriving at recommendations to initiate antidumping investigations, we recommend that, if TPM is reinstated, the Secretary of Commerce:

- Together with the International Trade Commission, develop tonnage criteria based on potential injury considerations which could be used for determining dumping possibilities.
- Make systematic antidumping reviews of TPM information, using criteria established by Commerce.
- Prepare written procedures for conducting antidumping reviews.

We believe that the procedures for preclearing steel mill products of foreign manufacturers need to be improved. We therefore recommend that, if TPM is reinstated, the Secretary of Commerce:

- Limit preclearance treatment to specific steel mill products and companies which have in fact been precleared.

--Periodically check the prices of precleared items to ensure that they are within fair-value range, as established by preclearance investigations.

Finally to assure that antidumping investigations are properly pursued, we recommend that, if TPM is reinstated, the Secretary of Commerce:

--Respond fully to all recommendations to initiate antidumping investigations.

--Exercise care in dealing with recommendations to initiate antidumping investigations and the investigations themselves.

--Maintain complete files on the disposition of TPM cases.

Commerce agreed that TPM needs to be more effectively administered and said it would study and be guided by our recommendations.

10/10/10

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