

UNITED STATES TARIFF COMMISSION

TITANIUM SPONGE FROM THE U. S. S. R.

Determination of Injury
in Investigation No. AA1921-51
Under the Antidumping Act, 1921,
As Amended



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UNITED STATES TARIFF COMMISSION

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UNITED STATES TARIFF COMMISSION
Washington

July 23, 1968

[AA1921-51]

TITANIUM SPONGE FROM THE USSR

Determination of Injury

On April 23, 1968, the Tariff Commission received advice from the Treasury Department that titanium sponge from the U.S.S.R. is being, or is likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Accordingly, on April 24, 1968, the Commission instituted Investigation No. AA1921-51 under section 201(a) of that Act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Notice of the institution of the investigation and of a public hearing to be held in connection therewith was published in the Federal Register of April 27, 1968 (33 F.R. 6495). The hearing was held on June 4 and 5, 1968.

In arriving at a determination in this case, due consideration was given by the Commission to all written submissions from interested parties, all testimony adduced at the hearing, and all information obtained by the Commission's staff.

On the basis of the investigation, the Commission has determined that an industry in the United States is being injured by reason of the importation of titanium sponge from the U.S.S.R., sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. ^{1/}

Statement of Reasons for Affirmative Determination
of Vice Chairman Sutton and Commissioner Clubb

Titanium is a metal having a high strength-to-weight ratio, particularly at temperatures ranging above 1000° F. Its production was begun and stimulated as a result of military requirements during the Korean war. Over 80 percent of all titanium metal is used in jet engines and airframes for aircraft. The remainder is used principally in missiles, space equipment, and chemical processing equipment where its corrosion-resistant characteristics are essential. World production has caught up with demand for the moment and projections of sales of the metal in the next

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

six years all indicate that the use of titanium will more than double.

At present all commercial production of titanium metal in the United States is dependent upon the use of titanium ore (usually the mineral rutile) from South Africa and Australia. The ore is chemically reduced to a highly porous, brittle mass known as titanium sponge. To create a usable metal the sponge must be compressed and is usually double-melted in an electric furnace. A small amount of clean scrap, and alloying elements as desired, are mixed with the compressed sponge before the melting process. The resulting ingot may be used in the process of making castings but for the most part at present is worked by various mill processes into wrought forms such as billet, plate, sheet, strip, rod, bar, wire, pipe, and tubes. Subsequent processing of the various products is required to complete them for their ultimate uses.

U.S. production and consumption of ingots and mill products have risen steadily since January 1, 1958 and were over five times as large in 1967 as in 1958, having reached an annual production of 52 million pounds of ingot and 27 million pounds of mill products (made from ingots). In the same period U.S. production of sponge more than tripled, starting with a production of 9 million

pounds in 1958. ^{1/} The domestic needs for additional supplies of sponge had to be supplied by imports which ranged from 843,000 pounds in 1959 to 13.8 million pounds in 1967. Imports of sponge are still necessary to meet our total domestic demands for titanium metal. Imports from the U.S.S.R. began in 1965. In the period 1965-66, such imports equalled 2 percent of all imports of sponge. In 1967 they equalled 19 percent of all such imports and attempts were made to sell 10 million pounds on an annual basis which would equal 68 percent of all imports of sponge in 1967 or nearly one-fourth of the amount of sponge consumed in the United States in 1967.

The commercial production of titanium metal in its various forms, ranging from the crude titanium sponge to finished mill products, whether in captive facilities or by independent producers, is now in its early formative stages of development and is a highly speculative undertaking having a fast growth potential. In the industrial complex of integrated and independent producers of titanium and its products, the sponge-producing level of production is not only the most speculative but also the one which experiences the principal impact of imports of sponge. Such sponge-producing facilities generally constitute an industry in the United

^{1/} The U.S.-produced sponge ranged from 990,000 pounds in 1951 to 34.5 million pounds in 1957. The production was made principally by government subsidized plants for stockpiling and military use. The government paid as high as \$2.52 per pound for the sponge and the subsidized plants were shut down for economic reasons after the stockpile needs were met. Production in 1967 is confidential.

States within the meaning of the Antidumping Act. Several domestic firms have undertaken or are undertaking, the production of titanium products from titanium sponge or ingot ^{1/} but few desire to risk investment in plant facilities to make the sponge. Out of seven companies known to have produced sizable quantities of sponge, four which entered the field with Government assistance and incentives have closed down their operations, one has entered the sponge production field on a small scale, but not to the extent necessary to meet its own captive needs, preferring to use substantial quantities of imports, including U.S.S.R. sponge, to supplement its supply, and two have entered the field of production on a large scale with the end view of being able to sell the metal in its various forms, including sponge. Although these latter two companies have experienced rapid growth in production in recent years, their profit experience has been erratic with periods of losses as well as profits. For practical purposes, the sponge-producing facilities of these two producers may be characterized as the sponge industry in the United States.

Foreign titanium sponge is available from the U.S.S.R., the United Kingdom, and Japan. The erratic demand for titanium components

^{1/} There are six firms which process substantial amounts of sponge and at least twelve firms which make mill products from purchased ingot or billet.

for aerospace vehicles in the last decade has been the dominant factor affecting the ability of the domestic titanium sponge industry to meet the consumption needs of the United States. In order to maintain a balance between supply and demand, it has been necessary for the domestic sponge producers to import sponge to meet their needs for the basic metal in the production of mill products. Indeed, for the most part, they were unable to supply sponge to non-integrated producers of titanium mill products except on a limited basis. However, the two major domestic sponge producers were alert to the sponge supply problem, they planned incremental increases in their production capacities to the extent that it seemed economically sound, and now have sponge capacity in excess of their captive needs for sponge. It is clear from the record that the industry wants to sell sponge, is able to sell sponge, and plans to produce and sell sponge to all mill operators under conditions which are price competitive with imports of titanium sponge purchased at fair value.

The importer of the U.S.S.R. sponge claims that his sponge is superior in quality to domestic sponge for the reasons that it is purer, it may be processed by less expensive equipment, and has a lesser tendency to foul the processing equipment. The domestic buyers of the U.S.S.R. sponge affirm these claims. Thus, it would appear that the importer of U.S.S.R. sponge should be able to demand premium prices. However, the importer does not price his sponge according to its claimed virtues. The two major domestic

producers of sponge are offering their usual grade sponge at \$1.32 per pound. Nominal amounts of scientific grades are being sold for much higher prices. However, the usual grade may be sold or offered at prices somewhat lower than \$1.32 depending upon the quantity and the duration of the contract which factors would justify cost-saving reductions in price. Imports of U.K. and Japanese sponge have been sold under a similar competitive pricing system. However, the U.S.S.R. sponge, although allegedly of a better quality than the domestic sponge by reason of the different methods employed in its production, is sold or offered for sale at prices ranging up to 37 cents less than the prices obtained by all other sellers of sponge. The price differential for the greatest volume of sales is well above the mid-point of the 37-cent differential. Confidentiality laws preclude a detailed disclosure of the price competition but it is clear that the margin of dumping ^{1/} found by the Secretary of the Treasury is substantial and contributes the major part of the price differentials existing between U.S.S.R. sponge and all other sponge sold in the United States.

Domestic production of sponge has increased every calendar year since 1959, as has domestic consumption of sponge. However,

^{1/} The "margin of dumping" is the difference between the importer's actual purchase price and fair value. The amount is confidential.

at present the domestic sponge industry has idle capacity and is deferring further expansion of its capacity at a time when there is almost unanimity of opinion in the trade that future demands for titanium will more than double in the next six years. Negotiations for sales of titanium sponge to domestic processors are at a standstill pending the outcome of the Commission's determination in this case as the price differentials are critical. One industry representative says that if U.S.S.R. sponge continues to sell as low as 95 cents per pound the industry will find it necessary to buy such sponge rather than to pursue a further increase in its production capacity. Approximately 200 employees used directly in the production of sponge are idle. In addition to dumping, it is recognized that there are a number of factors causing the unemployment and cut-down in production in recent months. However, by reason of the dumped imports the domestic sponge industry is being adversely affected or injured to a substantial degree.

In summary, the presence of the less-than-fair-value (LTFV) U.S.S.R. sponge in the domestic market is having a significant depressing effect on sponge prices, and is to a substantial degree causing the idling of, and the loss of employment in, sponge-producing facilities, and the abandonment of plans to increase sponge capacity. We conclude, therefore, that the titanium sponge-producing industry in the United States is being injured within the meaning of the Antidumping Act.

The facts available to the Commission show that the impact of the LTFV imports also is experienced derivatively, but in lesser degree, by certain of the mill-product industries. In some instances, for example, it appears that the lower prices of domestic mill products made with the use of LTFV imports have caused the prices of like domestic products made without the use of such LTFV imports to be depressed or the sales of such latter products to be lost. However, in view of our determination that the sponge-producing industry in the United States is being injured by reason of the LTFV imports, it is not necessary for us to proceed with further analysis respecting the degree of the impact of such imports on domestic industries producing mill products.

Separate Statement of Commissioner Clubb

I concur with Vice Chairman Sutton that an industry in the United States has been injured by the LTFV sales involved, and that it is threatened with even greater injury in the future. Important to the determination is what constitutes the "industry" for purposes of this investigation. Thus, it may be worthwhile to set out my views on that question at greater length.

Complainants, stating their case in terms of the Act, ^{1/} allege that the LTFV sales of titanium sponge from the U.S.S.R. (1) have caused injury to a domestic industry, (2) are likely to cause further injury, and (3) are in effect preventing the industry from being established. Respondent contends that, if the "industry" involved is the titanium sponge industry, then no injury has been shown because the major domestic producers of titanium sponge are integrated companies which do not regularly sell sponge, but rather process almost all of their sponge output into mill products.

1/ The Antidumping Act reads in pertinent part as follows:

Whenever the Secretary of the Treasury . . . determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the United States Tariff Commission, and the said Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.
* * *. 19 U. S. C. § 160(a) (1965).

Similarly, Respondent argues that if the "industry" involved is made up of the sponge producers, plus those who process sponge into ingots, and those who process ingots into mill products, then the value added by their aggregate operations is so large relative to the differential in sponge cost caused by dumping, that the latter is incapable of causing injury.

The scope of the term "industry" is flexible and depends heavily upon why the inquiry is being made. The industry itself has neither physical nor corporate existence; it is merely a convenient grouping of companies, usually done for statistical purposes with a particular end in mind. Thus, for some purposes a food distributing company may be described by its labor union as being in the "canning industry", by one of its suppliers as being in the "olive packing industry", and by its trade association as being in the "food distributing industry." All might well be correct because the labor union is defining "industry" in terms of the group of employers which uses the skills of its members; the supplier describes it in terms of the group of customers which buy his product; and the trade association in terms of the group of commercial interests which have a common enough goal to cause them to unite for some kind of action. The supplier's description of industry may be much too narrow for the labor union's purpose, however, and the labor union's description similarly too narrow for the trade association. In the present instance, the question of

what constitutes the industry is determined by the reason the investigation is being made, i.e., the purpose of Congress in enacting the Antidumping Act.

Dumping in the United States is specifically restricted by two laws: one criminal, the other civil. These two laws were enacted at different times but appear to have the same general purpose. The criminal law, enacted in 1916, provides criminal penalties for those who commonly and systematically import goods into the United States at a price substantially less than the home market value with intent to injure, destroy, or prevent the establishment of an industry in this country, or to monopolize trade or commerce in the imported articles. ^{2/} This provision appears to have been enacted with a view to preventing European industries from disrupting United States markets by price wars after World War I ended. ^{3/} The Act was not designed as a protectionist measure; Congress felt it was merely placing foreign producers on the same footing as domestic producers. ^{4/}

^{2/} 15 U. S. C. § 72 (1963).

^{3/} 53 Cong. Rec., pt. 15, at 1911 (1916) (speech by Rep. Saunders).

^{4/} The House Ways and Means Committee reported this bill out with the following comment:

"In order that persons, partnerships, corporations, and associations in foreign countries, whose goods are sold in this country, may be placed in the same position as our manufacturers with reference to unfair competition, your committee recommends:

(Continued on next page.)

In 1919 the Tariff Commission issued a report which noted that the 1916 criminal Act was ineffective because it could not be enforced. ^{5/} Unable to accomplish its objective by focusing on the specific predatory dumping which it wished to prevent,

4/ Cont'd.

"(1) The adoption of a provision making it unlawful for a person, partnership, corporation, or association to import and systematically sell any article at a price substantially less than the actual market value or wholesale price of such article at the time of exportation, with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States; . . ." H. R. Rep. No. 922, 64th Cong., 1st Sess. 9-10 (1916). (Emphasis supplied.)

^{5/} The difficulties of the 1916 Act were explained by the Tariff Commission as follows:

"The anti-dumping law enacted by Congress on September 8, 1916, invites special comment. Some brief but substantial criticism of its effectiveness will be found among complaints presented to the commission and summarized in this report. As a criminal statute that act must be strictly construed. It is wanting in certainty in providing, as a condition precedent of the conviction of offenders, that the sale of articles in the United States must be at a price 'substantially less' than the actual market value or wholesale price abroad. It apparently fails, where the Canadian law succeeds, in not contemplating in reasonable cases the prohibition of sporadic dumping, since its penalties apply only to persons who 'commonly and systematically import' foreign articles, and in providing that such importation must be made with intent to injure, destroy, or prevent the establishment of an industry in this country, or to monopolize trade or commerce in the imported articles. Evidently, for the most part, the language of the act makes difficult, if not impossible, the conviction of offenders and, for that reason, the enforcement of its purpose." Tariff Commission, Information Concerning Dumping and Unfair Competition in the United States and Canada's Anti-Dumping Law, at 33 (1919).

Congress began to explore the possibility of prohibiting all competitive dumping. Thus, the House Ways and Means Committee reported out a bill which provided for the assessment of dumping duties on all dumped imports which were "comparable in material, quality, or use with a kind or class made or produced . . . in the United States." ^{6/} The Committee explained that this provision was necessary to prevent domestic industries from being destroyed in a price war, after which the foreign producer, then unopposed, would increase his prices and recoup losses. ^{7/} In order to accomplish this purpose it was felt necessary to prevent the process from getting started by preventing all dumping of goods comparable to those produced in the United States. The Senate Finance Committee, noting that the House bill would require that every importation be examined to determine whether it was comparable to a domestically produced product, decided that such an act would be impossible to administer. Accordingly, it recommended

^{6/} H. R. 2435, 67th Cong., 1st Sess. (1921), § 207.

^{7/} The House Committee explained the purpose of the Act as follows:

"Other countries in the presence of the experience now being undergone by this country have enacted similar legislation. It protects our industries and labor against a now common species of commercial warfare of dumping goods on our markets at less than cost or home value if necessary until our industries are destroyed, whereupon the dumping ceases and prices are raised at above former levels to recoup dumping losses. By this process while temporarily cheaper prices are had our industries are destroyed after which we more than repay in the exaction of higher prices." H. R. Rep. No. 1, 67th Cong., 1st Sess. 23-24 (1921).

that dumping duties be assessed only where a domestic industry was being injured. Thus, those who were injured could complain, and the Customs Service could examine only those cases. It was in this form that the bill was finally enacted. ^{8/}

It thus seems clear that in the Antidumping Act Congress was trying to prevent the possible destruction of domestic industries by foreign companies using dumping as a weapon. Accordingly, the term "industry" as used in that Act must be defined in terms of this purpose, i.e., it is that group of economic interests which might be destroyed by unabated dumping of the product involved. In this case it is the companies which must compete with the dumped imports. More specifically, it is the sponge producing portions of these companies which might be destroyed by unabated dumping.

Respondent asks that we define the "industry" as being either the sponge selling industry (in which case neither of the complainants have been injured, it is contended, because neither sells sponge to anyone but themselves), or as the "titanium industry" (in which case, it is contended, all sponge, ingot and mill products producers must be included and the amount of damage done is so small relative to the size of the industry that the injury is de minimis, and in any event is vastly outweighed by the benefit to the importing members of the industry). But to accept this approach would be to impose on the Antidumping Act concepts of "industry" which may have meaning for other purposes, but which

^{8/} See the discussion of the legislative history of this Act in Tariff Commission Publication 214, Cast Iron Soil Pipe from Poland at 12-16 (Sept. 1967).

would be no more appropriate here than it would be to use a concept of "industry" developed for labor purposes to test the effect of competition on a trade association or a supplier.

Such a course would disregard the congressional purpose in enacting the Antidumping Act. Unlike most quota and tariff legislation it is not protectionist in nature; it imposes no burden on the foreign producer merely because he is foreign. On the contrary, it is a regulatory statute which, like the Sherman Act, the Federal Trade Commission Act, and the Robinson-Patman Act, is designed to prevent certain trade practices which Congress has found to be unfair. Indeed, in this proceeding both complainants had exhibited confidence in their ability to compete successfully against fairly priced imports of titanium sponge. What they fear is a price war in which they must compete with the ability of the Soviet Union to absorb losses. It was this that the Antidumping Act was designed to prevent. Accordingly, the "industry" involved is that group of commercial interests which are adversely affected by the unfair trade practice. If the injury to them is more than de minimis ^{9/} then the requirements of the statute have been satisfied, as they have been here. It does not matter that other related commercial interests are not affected, or that some are actually benefitted. Congress obviously realized that in dumping cases, as in other

^{9/} For a discussion of the degree of injury required see: Tariff Commission Publication 214, Cast Iron Soil Pipe from Poland (Sept. 1967).

unfair trade cases, the buyer of the unfairly priced goods benefits in the short run, but it does not require that this factor be weighed against the injury to the domestic competitor.

Statement of Chairman Metzger

The function of the Tariff Commission in this investigation is to determine "whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of" titanium sponge from the U.S.S.R. sold at less than fair value (LTFV)^{1/}, within the meaning of the Anti-Dumping Act, 1921, as amended. In my opinion, the evidence requires that the determination be in the negative.

This investigation does not raise any issues concerning the consistency or inconsistency of any of the provisions of the Anti-Dumping Act, 1921, with the International Antidumping Code, which has been in effect as to the United States since July 1, 1968. The U.S.S.R. not being a party to the Code, the United States is under no obligation to

^{1/} The basis upon which the Secretary of the Treasury found that the U.S.S.R. sponge was sold at less than fair value, was the price at which an English sponge producer sold sponge to an English consumer -- that is, upon a "constructed value" basis.

While U.S.S.R. sponge is sold in other countries foreign to it, such as the U.K., there is no indication that her sponge sales in those countries were at higher prices than she received for her U.S. sales. Nor is there any evidence that her U.S. sales have been "predatory" -- undertaken to injure or exploit American producers.

Under the law, the Treasury finding is binding upon, and in no sense is reviewable by, the Tariff Commission.

it thereunder. This statement is based upon the application of the Act to the facts of the case, and would be the same were the Code non-existent.^{2/}

The varying types of operations of the domestic producers of titanium products and the interrelationship between such producers make it difficult to define with precision the scope of the industry to be examined in this case. Nonetheless, however defined, the evidence does not indicate that "an industry" in the United States is being or is likely to be injured "by reason of" the LTFV imports. Rather, the evidence demonstrates that the shifting requirements for titanium products on the part of the U.S. Government and industrial consumers, largely the aerospace industries, have been and will continue to be the overwhelmingly dominant reason both for the great expansion in recent years of titanium production and shipments, and the 1967-1968 downturn. Imports of sponge, including LTFV imports, have been largely an effect of these economic developments. Since the statute requires a

^{2/} Since the Code does exist, and since it is desirable in the absence of a Congressional purpose to the contrary, that the Act be applied without discrimination as between Code country imports and non-Code country imports, the Code provisions which might have been relevant had a Code country been involved have been examined. No differences in the relevant provisions of the Code and the Act, which might have led to different results had they been read together, were perceived.

finding that LTFV imports cause injury before an affirmative determination of injury can be made, I am unable to find that the statutory test has been met.

For the same reason, there is no basis for finding that an industry has been prevented from being established by reason for LTFV imports. Indeed, there are a number of well-established firms in the United States engaged in the manufacture of titanium products, including sponge; sponge producers are increasing their productive capacity and have plans for substantial additional expansion; and there are several firms making plans for entering the titanium products industry. Long-term prospects for the industry appear to be excellent, from all that the Commission has learned during the course of this investigation.

There are currently three producers of titanium sponge in the United States, all of whom retain most or all of the sponge they produce for further manufacture into ingot and mill products.^{3/} Three other firms have commercial facilities to melt sponge into ingot and to fabricate

^{3/} These sponge producers are Titanium Metals Corporation of America (TMCA), jointly owned by National Lead Company and Allegheny-Ludlum Steel Corp.; Reactive Metals, Inc. (RMI), jointly owned by National Distillers and Chemicals Corp. and United Steel Corp.; and Oregon Metallurgical Co. (Oremet), partially owned (about 29 percent) by Armco Steel Corp. and Ladish Co. (about 23 percent). The first two are proponents of action to assess anti-dumping duties against U.S.S.R. sponge, while the third opposes such action.

ingot into mill products; these three firms, as well as one of the aforementioned domestic producers of sponge, rely largely on imported sponge for their requirements. In addition, at least a dozen concerns manufacture titanium mill products from ingot and billet purchased from domestic producers.

U.S. production of titanium sponge more than tripled from 1958 to 1967; output of titanium ingot increased from 11 million pounds to 52 million pounds during the same period; and reported shipments of titanium mill products rose from 5 million pounds in 1958 to 28 million pounds in 1966 and then declined slightly to 27 million pounds in 1967. Preliminary data for the first five months of 1968 indicate a continued decline in the production and shipments of most titanium products. It is undisputed that this decline, which began in late 1967 and continued into 1968, is accounted for almost entirely by a slowdown in Government orders for aircraft, space vehicles, and missiles, and delay of the SST (Supersonic transport) program.

U.S. imports of titanium sponge for commercial use (excluding imports for the U.S. Government) increased from less than 1 million pounds in 1958 to nearly 14 million pounds in 1967. Imports in January-April 1968 were 19 percent below the imports in the corresponding period of 1967, reflecting the general decline in the demand for titanium products

that began in late 1967. Most of the imports throughout the period were from Japan and the United Kingdom. Entries from the U.S.S.R. -- the LTFV imports -- began in 1965 and ceased on March 22, 1968, when withholding of appraisement was ordered; U.S.S.R. imports in March were very small. Imports from the U.S.S.R. accounted for 3.6 percent of the total imports in 1965, for 1.3 percent of the total in 1966, for 19.0 percent in 1967, and for 23.1 percent in January-April 1968. They amounted, however, to only 6.5 percent of domestic industrial consumption of sponge at their highest point, 1967. These increased U.S.S.R. imports largely replaced other imports from Japan and the United Kingdom.

Imported sponge has not competed directly with domestic sponge in the market place. Imported sponge, whether or not sold at LTFV, has been beneficial if not indispensable to some domestic producers, i.e., those that manufacture ingot and mill products but do not have their own sponge facilities. Until the decline in demand of the aerospace industries in 1967, sponge imports had no adverse effect whatever upon the producers of mill products with sponge manufacturing facilities. These sponge imports were helpful to them, since those producers found that they required, and purchased, substantial quantities of imported sponge in addition to that which they produced for their own use. Indeed, during the period when the great bulk of the LTFV imports were being sold in the United States, at least until late 1967, domestic producers of titanium sponge were not offering significant quantities of sponge for sale because

they needed all of their output for their own manufacture of ingot and mill products. During that period, the imports of sponge, including the LTFV imports, were not only not in direct competition with domestically produced sponge -- they were in fact essential to the domestic producers of ingot and mill products without sponge production facilities.

Since late 1967, but only after the aerospace industry demand declined, two of the domestic producers of sponge who produced mill products therefrom, having excess sponge capacity for the time being, have offered some sponge for sale at prices substantially higher than the prices at which the imported products, including Japanese and U.K. sponge, not found to have been sold at LTFV prices, have been selling. Since prices of Japanese sponge in the U.S. market have been slightly lower than those of British sponge, and prices of the U.S.S.R. sponge have been somewhat lower than those of the Japanese material, even during this extremely limited period when domestic sponge has been available for sale, it appears that the U.S.S.R. LTFV imports have been directly competitive with imports from Japan and the United Kingdom and only indirectly and partially competitive with domestic sponge. The two principal domestic producers of sponge, even under these circumstances, have not been and are not now selling significant quantities at competitive prices, and have not been prepared to commit themselves to supply sponge to domestic mill products producers on a long-term basis. This may be

understandable, since any such sales would be made to firms that compete with them in the sale of mill products, and, depending upon what happens in the future on the aerospace industry demand side, they may find that they will need all their sponge production for their own fabrication of mill products. The third producer of sponge does not offer the product for sale; this firm has plans for expansion of sponge capacity to meet a larger share of its own requirements for the manufacture of ingot and other titanium products.

Under all of the circumstances, I find that LTFV imports have not caused injury to an industry in the United States within the meaning of the Anti-Dumping Act. To the extent that there may have been any degree of adversity to two largest domestic producers of titanium sponge in the very recent past, it has been caused overwhelmingly by the recently declining demands of the U.S. Government and aerospace industries, not by LTFV imports.

X X X

As above indicated, there has been a rapid expansion of production and sales of titanium products in the United States in recent years, and a set-back beginning in 1967 and continuing through May 1968. The evidence before the Commission indicates that the titanium-products industry and all of its segments are currently undergoing a period of readjustment

after a decade of expansion, caused almost entirely by the slowdown in demand by aerospace industries and the SST program, but that production and sales will resume their upward trend in the 1970s. Substantial increases in demand are expected as a result of the manufacture of new aircraft, now in the planning stage, that will require large quantities of titanium products, and as a result of greater use of titanium products in the chemical industry, rapid transit and hydrospace industries.

Any finding that an industry is "likely" to be injured by reason of LTFV imports, when there is no finding that LTFV imports have caused present injury, should be based upon "changes in circumstances that are clearly foreseen, substantive, and imminent; the finding may not be based on allegation, conjecture, or possibility" (Steel Reinforcing Bars from Canada, T.C. Publ. 22, March 23, 1964, pp. 14-15, Statement of Chairman Dorfman and Commissioner Talbot).

The evidence before the Commission indicates that the near-term future is more likely to be the same as the very recent past than otherwise -- "the way 1968 is going, it is going to be below 1967" (Tr. 69, Mr. Ciborski for TMCA) -- and for the same reason -- the slowdown in U.S. Government and aerospace industry demand. That LTFV imports will no more cause injury in the near-term future than they have caused present injury, appears to be more "likely" than that they will cause injury. A dramatic turnabout in demand by the aerospace industry is a possibility, as is a dead-level flattening out, but these phenomena, with their individual

and very differing consequences, are not "clearly foreseen"; they are conjectural; they are possibilities.

The Commission has insufficient evidence upon which to prognosticate their likelihood. Should they occur -- should there be a change in circumstances showing that LTFV imports are continuing and that they, and not shifting U.S. Government and aerospace industry demand, are causing injury, there is nothing to prevent a new submission to the Commission and a prompt consequential determination. On the present evidence, however, no finding that an industry in the United States is "likely" to be injured by reason of LTFV imports is warranted.

Statement of Commissioner Thunberg

I agree with Chairman Metzger that the evidence available does not support a finding of injury to a domestic industry "by reason of" less-than-fair-value imports. The change in the profit experience of domestic producers of titanium sponge-- insofar as there proves to have been a change during 1968--is attributable almost entirely to the decline in demand which began in mid-1967.

The market for titanium sponge is composed of consumers, who are the manufacturers of titanium products, and suppliers, who are domestic producers and importers of sponge. From 1964 through the first half of 1967, the market for titanium sponge was buoyant and expanding with production increasing at an average annual rate of more than 20 percent, consumption increasing from 22 to 44 million pounds a year, imports from 4 to nearly 14 million pounds. At the end of this period consumption was growing at the average rate of about 10 percent annually.

In mid-1967 the complexion of the market changed abruptly because of a sharp decline in the demand for titanium products. The demand for titanium sponge is a derived demand, reflecting

the demand for titanium products which are used almost exclusively in the aerospace industry. A decline in the rate of military purchases occurring at the same time as a delay in the SST program caused consumption of sponge to drop by 12 million pounds, a decline of more than 25 percent. During the first half of 1968 monthly consumption of sponge appeared to have leveled off at about 2.6 million pounds.

In response to the foregoing cutback in demand, domestic output was contracted by 25 percent from the first half of 1967 to the first half of 1968. This cutback in sponge production was accompanied by declining imports of non-Soviet sponge from an annual level during the first half of 1967 of 13 million pounds to one of 8.4 million pounds during the first half of 1968, or a decline of 36 percent. The annual level of imports of Soviet sponge increased, in contrast, by 2 million pounds with the result that total imports declined from an annual rate of 13.7 to one of 10.9 million pounds. Meanwhile, because of the suddenness with which demand had declined, inventories of sponge in the hands of producers and importers accumulated rapidly. Inventories which had been less than 3 million pounds at the end of June 1967 were more than double that at the close of 1967 and even higher at the end of April 1968.

The continued accumulation during 1968 reflected increased inventories in the hands of importers, including the importer of Soviet sponge, which more than counterbalanced the contraction of inventories in the hands of producers and consumers from 5.7 million pounds at the end of 1967 to 4.9 million pounds at the start of May 1968.

Thus the second half of 1967 was a period of transition in the market for titanium sponge during which market forces were adjusting to the new lower level of demand. From the first half of 1967 to the first half of 1968, demand fell by 12 million pounds at an annual rate, domestic production by substantially less, non-Soviet imports by less than 5 million pounds. Imports of Soviet sponge increased by 2 million pounds. This increase in supply from Soviet sources between the first half of 1967 and the first half of 1968 exaggerated the problems of adjustment but did not cause them. The pressure on profits being experienced by domestic sponge producers is "by reason of" the decline in domestic demand.

I disagree with Chairman Metzger's outlook for the near-term, although I, too, agree that available evidence relevant to the likelihood of injury to the domestic industry by reason of less-than-fair-

value imports is not sufficiently unequivocal to warrant such a finding. In my view the evidence supporting a finding of likelihood of injury could be summarized as follows:

The objective of national economic policy for the near-term is one of restraint. Increases in the level of aggregate demand--including Government expenditures--are to be constrained to those which the capacity of the economy can accommodate without inflationary price rises. The peak levels of production and consumption of titanium sponge achieved during the first half of 1967 occurred in the context of combined public and private demand which exceeded the flow of goods and services from current output. The markedly lower rate of growth of Government purchases of goods and services--including purchases of titanium products--that characterized the second half of 1967 seems likely to be sustained over the near-term future. This implies that the present level of demand for titanium sponge is likely to continue for the next several months. Consumption of titanium sponge during the first 5 months of 1968 appears to have leveled off at about 2.6 million pounds a month.

Given this rate of consumption, an increase of less-than-fair-value imports to the level that prevailed during the second half of 1967--an annual rate of nearly 5 million pounds--would be likely to put serious pressure on the domestic industry. Such a rate of Soviet imports may be imminent for two reasons: First because it is the rate

that actually was achieved in a recent period, and second because there are in this country in the hands of importers substantial inventories of Soviet sponge which could be delivered immediately. Such an increase of supply would intensify the competitive pressures already existing in the titanium market and would result either in a general lowering of prices or a further accumulation of inventories or both.

Since it seems likely that demand for titanium products at prevailing price levels is relatively price-inelastic, revenues would decline with lower prices and if production should fall considerably below capacity output, unit costs would be likely to increase. While the long-term outlook for the demand for titanium is much more favorable than that prevailing at present, the new level of demand which appears to have been established since the first half of 1967 is one which could imply injury in the near-term if imports of less-than-fair-value sponge should return to their previously established peak rate.

I have stated earlier ^{1/} that a finding of likelihood of injury must be based on a foreseen change in market conditions which is specific, imminent, and predictable. For the foreseen change to be imminent its occurrence must be expected in the near future--the next few months. The hypothetical developments, described above, in the market for titanium sponge over the coming months

^{1/} Steel Jacks from Canada, T.C. Publication 196, p. 6.

are highly conjectural. They depend on a variety of factors, military and economic here and abroad--including the present and future level of demand, the nature of the responsiveness of demand to price, the pricing policies of the Japanese and U.K. producers as well as the domestic--which are not sufficiently predictable to make them "likely."

In fact, it seems unlikely that imports from the U.S.S.R. would approach their previously established peak at the current, new lower level of demand, because of certain processing disadvantages to users of Soviet sponge (which is composed of larger size pieces than sponge from other sources), because of its non-acceptance for the manufacture of rotating parts of jet engines, and because of general reluctance of users to rely on sponge from the U.S.S.R. when it is available from other sources even at higher prices. Further, although a new lower level of demand appears to have been established during the first half of 1968, the volatility of even aggregate defense expenditures since 1965 is pronounced. Demand for titanium could shift abruptly within the next 6 months, as it did in 1967, because of shifting defense requirements or falling or rising non-defense Federal and commercial demand. Or it may be, as Chairman Metzger opines, that demand is still declining and has

not yet leveled off, despite the evidence of consumption data for the past 5 months.

Should the hypothetical concatenation of events become actual, however, I would agree with the Chairman that the Tariff Commission could act with dispatch on an appeal for relief.

