

UNITED STATES TARIFF COMMISSION

PRIMARY LEAD METAL FROM AUSTRALIA AND CANADA

Determination of Injury or Likelihood thereof
Investigation Nos. AA-1921-134 and 135
Under the Antidumping Act, 1921,
as Amended



TC Publication 639
Washington, D. C.
January 1974

UNITED STATES TARIFF COMMISSION

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January 10, 1974

[AA1921-134 and-135]

PRIMARY LEAD METAL FROM AUSTRALIA AND CANADA

Determinations of Injury

The Treasury Department advised the Tariff Commission on October 10, 1973, that primary lead metal from Canada and on October 11, 1973 that primary lead metal from Australia, is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted investigations Nos. AA1921-134 and -135 to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Notice of the institution of the investigations was published in the Federal Register of October 25, 1973 (38 F.R. 29541). With its announcement of the investigations, the Tariff Commission scheduled public hearings in connection therewith to be held November 27, 1973. The hearings were later rescheduled to begin December 4, 1973. Notice of the rescheduling of the hearings was published in the Federal Register of November 2, 1973 (38 F.R. 30308).

In arriving at its determinations, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of its investigations, the Commission 1/ has determined, by a vote of 2 to 2, 2/ that an industry in the United States is being, or is likely to be, injured by reason of the importation of primary lead metal from Australia and Canada that is being sold at less than fair value (LTFV) within the meaning of the Anti-dumping Act of 1921, as amended.

1/ Vice Chairman Parker and Commissioner Young did not participate in the decision.

2/ Chairman Bedell and Commissioner Moore determined in the affirmative (Chairman Bedell determined that an industry is likely to be injured and Commissioner Moore determined that an industry is being or is likely to be injured); Commissioners Leonard and Ablondi determined in the negative. Commissioners Leonard and Ablondi made separate determinations in each investigation and each determination is in the negative. Pursuant to section 201(a) of the Antidumping Act of 1921, as amended, the Commission is deemed to have made an affirmative determination when the Commissioners voting are equally divided as to whether its determination should be in the affirmative or in the negative.

Statement of Reasons for Affirmative Determination
of Chairman Bedell

I have made an affirmative determination that an industry in the United States is likely to be injured by reason of the LTFV imports of primary lead from Australia and Canada. I consider the relevant U.S. industry to consist of the facilities in the United States devoted to the production of primary lead, i.e., the mines and mills that produce lead bearing ores or concentrates, and the smelters and refineries that produce primary refined lead metal.

The Antidumping Act requires the Tariff Commission to make an affirmative determination when it finds that "an industry in the United States is being or is likely to be injured, or is prevented from being established," by reason of the LTFV imports. The prevention of establishment of a domestic industry is not in issue.

It is my judgment that the evidence in this case does not support a determination that a domestic industry is presently being injured. Indeed, the U.S. industry is generally healthy, and the effect of LTFV sales of Australian and Canadian primary lead metal, whether considered separately for each country, or together, is probably no more than de minimis at this time. However, the economic factors involved clearly point to likelihood of injury in the immediate future. In this connection, it is my view that the LTFV imports from Australia and Canada should be viewed in terms of their cumulative impact owing to the similarity of the conditions with respect to these imports in the United States market. In addition, the margins of

dumping are substantial and contribute significantly to the effectuation of sales.

Several developments have restricted, or will restrict, the level of domestic requirements for primary lead metal. Because of environmental regulations, the amount of lead in antiknock additives per unit of gasoline has been reduced and a further reduction of 70 percent will be carried out in the period 1975-79. Toxic effects attributed to lead have either reduced or eliminated the use of lead in several applications. Battery redesign and rising consumer preference for cars of smaller size have reduced the average quantity of lead consumed per battery. The energy squeeze doubtless will continue to have a depressing effect because of the reduced production of motor fuels using lead.

At the same time, other factors indicate a potential for increased entries of primary lead from both Australia and Canada. There are presently large proven and potential reserves of low-cost lead ores in both Australia and Canada, sufficient to support increased levels of production. Anticipated increased production of zinc in those two countries will also bring forth added quantities of lead, as a co-product, thus increasing the pressure to find markets. Both countries will continue to have limited home markets for lead--recently exports took more than 70 percent of their primary lead metal production--and they must therefore continue their heavy reliance on export markets.

Moreover, I expect more and more of the primary lead metal production of Australia and Canada to be diverted to the U.S. market from the United Kingdom market, as United Kingdom entries of such lead become subject to the European Economic Community external duty.

From the foregoing, I anticipate increased penetration of the U.S. market by LTFV imports from Australia and Canada. Stemming from such increased penetration, the U.S. industry will continue to be subjected to suppression or depression of prices, loss of sales, increased levels of inventories, and a reduction in capacity utilization. Taking an even longer view, I see further damages in the form of a retardation of the exploration and development of ore reserves, which are vital to a continued healthy development of the U.S. primary lead industry.

I therefore conclude that an industry in the United States is likely to be injured by reason of the importation of primary lead from Australia and Canada which Treasury has determined is being sold at less than fair value.

Statement of Reasons for Affirmative Determination
of Commissioner Moore

In my opinion, an industry in the United States is being or is likely to be injured by reason of the importation of primary lead from Australia and Canada that is being, or is likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended. In making this determination, I have considered the industry to consist of the domestic facilities of U.S. producers devoted to the mining and milling of lead-bearing ores and concentrates and to the smelting and refining of primary lead. Currently, lead ore is mined in the United States by many independent mining concerns and three integrated producers of primary lead, and primary lead is smelted and refined by four firms, including the three integrated producers.

Combined impact of LTFV imports

As a result of its investigation, the Treasury Department determined that imports of primary lead from both Australia and Canada are being, or are likely to be, sold at LTFV. Since LTFV imports from two countries are involved, an issue has arisen whether the Commission in weighing the extent of injury caused by the LTFV imports should consider the impact of LTFV imports from each country separately or consider the impact of the combined LTFV imports from both countries.

This issue is not before the Commission for the first time. On several past occasions, the Treasury Department has forwarded to the Commission either simultaneous or successive determinations of LTFV sales of the same articles from several countries. In those cases where the issue has arisen, I have held that it was the combined effect of all LTFV imports on the U.S. industry which must be considered. In the first such case in

which I participated as a Tariff Commissioner, I concurred in the following view 1/--

. . . an industry can be as much injured by small amounts of LTFV imports from many different sources as it can be by the same total amount from one source. Accordingly, for purposes of making the injury determination [under the Antidumping Act, 1921], the source of the imports is not important. It is their combined effect on the domestic industry which controls.

Consistent with my views in similar cases, the facts involved here support the view that the combined effect of contemporaneous LTFV imports from multiple foreign sources should be examined. Primary lead is a fungible product; its customers draw no distinction as to the origin of the product they use. Primary lead from Australia and primary lead from Canada are not different with respect to their effect in the domestic marketplace. Thus, the combined effect of all LTFV sales of primary lead should be considered.

LTFV sales

The LTFV sales of primary lead in the U.S. market by suppliers from both Australia and Canada have been pervasive, and the degree of price discrimination involved in the sales has been marked. During the period of the Treasury Department's investigation, which covered parts of 1972-73 for both Australia and Canada, all of the sales of primary lead in the United States by both Australia and Canada were made at less than fair value. The average dumping margin was substantial for each of the suppliers in both countries.

1/ Potassium Chloride (Muriate of Potash) from Canada, France, and West Germany, . . . Investigations Nos. AA1921-58, -59, and -60. . . , TC Publication 303, November 1969, pp. 24-26. See also Pig Iron from Canada, Finland, and West Germany, . . . Investigations Nos. AA1921-72, -73, and -74 . . . , TC Publication 398, June 1971, p. 3; and Clear Sheet Glass from Taiwan, . . . Investigation No. AA1921-76 . . . , TC Publication 407, July 1971. p. 4. 7

Injury by LTFV sales

In order to determine whether there is injury to an industry in the United States by reason of LTFV sales, the Commission must evaluate the extent to which such imports have penetrated the U.S. market, have taken sales from domestic producers, and have adversely affected domestic prices. An assessment of these factors in this case shows that the LTFV sales of Australian and Canadian primary lead are injuring a domestic industry within the meaning of the Antidumping Act.

As indicated above, the Treasury investigated sales of Australian and Canadian primary lead to the United States during part of 1972 and the early months of 1973, and concluded that all such sales at that time were at less than fair value.

In 1972 LTFV imports of primary lead from the two countries represented nearly 12 percent of U.S. consumption of that product--a market penetration more than large enough to have a detrimental impact on price and market conditions in the United States. Imports of primary lead from both countries remained substantial in 1973, even though two of the three supplying companies (including the sole supplier of Australian lead) suspended shipments late in the year, while the third supplying company (the principal Canadian supplier) substantially increased its price to U.S. consumers.

The bulk of the sales of primary lead in the United States are made on the basis of long-term contracts. Under these contracts, however, the price of individual shipments fluctuates.

The prices of primary lead on the U.S. market have not been marked by wide differences among suppliers, domestic or foreign. Rather, the range of delivered prices at which major buyers have purchased primary lead at any given time has usually been narrow, reflecting the limited number of buyers and sellers, the fungible nature of the product, and the importance of long-term contracts to both buyers and sellers. Nevertheless, imports of Australian and Canadian primary lead sold at LTFV have clearly suppressed prices in the U.S. market. The delivered prices of Australian and Canadian lead to major customers in many instances have been lower than the prices of domestically produced lead. Sales of Australian and Canadian lead at such prices would not have been possible without LTFV margins. Such LTFV margins were consistently much greater than the difference between the selling prices of the LTFV imports and the domestic product. Moreover, the material market penetration achieved by the LTFV goods has exerted downward pressure generally on market prices. This high degree of penetration of LTFV imports, especially under conditions of oversupply, has resulted in price deterioration. These circumstances are evident in the U.S. market for primary lead in 1972, when sales of primary lead at LTFV were large, inventories of lead held by domestic producers rose evidencing lost sales by U.S. producers, and market prices inevitably weakened.

Conclusion

On the basis of the foregoing, I have made an affirmative determination, namely, that an industry in the United States is being or

is likely to be injured by reason of the importation of primary lead at LTFV from Australia and Canada.

Statement of Reasons for Negative Determinations
of Commissioner Leonard

On October 10 and 11, the Commission received from the Department of the Treasury advice of Treasury's determinations that primary lead metal from Australia and from Canada, respectively, is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. The Commission, on October 18, instituted two investigations 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. This is my statement of reasons in support of my separate determinations in the investigation with respect to primary lead metal from Australia and in the investigation with respect to primary lead metal from Canada that an industry in the United States is not being nor is likely to be injured, nor is prevented from being established, by reason of the importation of such merchandise into the United States.

Before the Commission can make an affirmative determination under the Antidumping Act, 1921, as amended, it must find each of two conditions satisfied. First, there must be injury, or likelihood of injury, to an industry in the United States, or an industry in the United States must be prevented from being established. Second, such injury (or likelihood of injury or prevention of establishment of an industry) must be "by reason of" the importation into the United States of the

class or kind of foreign merchandise the Secretary of the Treasury determined is being, or is likely to be, sold at less than fair value (LTFV). ^{1/}

Cumulative impact of imports

Before proceeding further, let me say that on the issue of "cumulating the impact of imports" from Australia and Canada, I agree generally with the views expressed in this report by Commissioner Ablondi. While it is difficult ^{2/} to envision a case in which I would cumulate the impact of imports from more than one country if Treasury were to make separate country determinations of sales at less than fair value, nevertheless the facts in the instant investigations, as Commissioner Ablondi notes, dictate against cumulation here. Therefore, I am constrained to consider the impact of the LTFV imports from Australia on a domestic industry separate and distinct from the impact of the LTFV imports from Canada on a domestic industry.

My determinations in the instant investigations are each in the negative because whether or not the first condition set out above,

^{1/} Prevention of the establishment of an industry is not an issue in this investigation and is not treated further.

^{2/} It is difficult because consideration should be given to the terms of reference set forth in the Treasury determination which will usually include a country designation in the description of "a class or kind of foreign merchandise" and to providing fair and equal treatment to importers whether the determinations of their sales at less than fair value come to the Commission contemporaneously or widely separated in point of time.

that of injury, is present, the second condition, that of causation, is not present--any injury there is or there is likely to be is not by reason of the importation of LTFV merchandise. ^{1/}

Domestic industries considered

There are two domestic industries most directly affected by the LTFV imports. They are: One, those facilities for the mining and milling of lead-bearing ores and concentrates; and, two, those facilities for the smelting and refining of primary lead metal.

The domestic mining and milling industry includes a very large number of independent mining companies, of which the vast majority have relatively small-scale operations, and a comparatively small number of large-scale operations that are parts of integrated companies.

The domestic smelting and refining industry currently consists of four companies: The complainant, The Bunker Hill Company, an integrated producer that also engages in custom-refining (i.e., refining purchased ores) and in toll refining (i.e., refining a customer's material for a fee); two other integrated producers, one of which is substantially engaged in toll refining; and one producer that operates as a custom smelter-refinery (with minor exceptions).

^{1/} Treasury's investigation of LTFV sales was based on the period of Mar. 30, 1972, to Feb. 19, 1973, with respect to the Australian merchandise and the period of Oct. 1, 1972, to Mar. 31, 1973, with respect to the Canadian merchandise.

With respect to whether there is injury in the instant cases, it will be well to describe the positive and the negative developments in the domestic industries. If any injury can be established, then what caused the injury must be determined.

Positive developments in the domestic industries

Expansion of mine output.--The annual output of U.S. mines increased steadily over the period 1968-72 from 360,000 short tons of recoverable lead content in 1968 to 619,000 short tons in 1972, an increase of 250,000 short tons, or 72 percent. Annual output of mines in the State of Missouri increased steadily at an even faster rate than that of the nation as a whole, expanding from 213,000 short tons recoverable lead content in 1968 to 489,000 short tons in 1972, an increase of 276,000 short tons or 130 percent. Missouri's gain in the share of total mine output, realized at the expense of each of the other producing States, is directly related to the development of large reserves of low-cost, high-grade ore in the "New Lead Belt."

Increase of primary refined lead production by smelter-refineries.--Annual production of primary lead by the smelting and refining industry increased almost without interruption in the period 1968-72 from a level of 491,000 short tons in 1968 to 714,000 short tons in 1972, or at an annual average rate of 10 percent. The level of output was 6 percent greater in 1972 than in 1971 and, for

the first 9 months of 1973, was 4 percent higher on an annual basis than in the corresponding period of 1972.

Rise in utilization of smelting and refining capacity.--The increase in production during 1968-72 outlined above compared with a 3-percent increase in installed refining capacity during that period and reflects an increasing rate of utilization of capacity, from 64 percent in 1968 to 83 percent in 1971 and to 91 percent in 1972. During the first 9 months of 1973, the rate of capacity utilization stood at an even higher level than that for the like period in 1972.

Negative developments in the domestic industries

Depression of prices.--American Smelting and Refining Co., primarily a custom smelter and refiner, initiated one-half cent reductions in its quoted price for lead in August 1972 and October 1972 which effectively lowered the Metals Week monthly average price from 15.50 cents per pound in July 1972 to 15.00 cents per pound in September 1972 and 14.50 cents per pound in November and December 1972. Subsequently, the monthly average price advanced steadily to the ceiling price set by the Cost of Living Council of 16.50 cents per pound in May 1973, where it remained until price controls were eliminated in early December 1973 and quoted prices rose above the previous ceiling level.

Increase in inventories of refined lead.--Inventories of primary lead metal held by the primary smelting and refining industry declined

during the first half of 1972, then rose during the second half, reaching a level some 15,000 short tons higher at yearend 1972 compared with yearend 1971. During the first 9 months of 1973, inventories again declined.

Closure of producing facilities.--The closure of several lead-producing establishments occurred during 1970-72. During 1971-72, four of the six lead mines in Utah allegedly were closed. In 1971, the custom lead concentrator at Midvale, Utah, and the custom lead smelter at Tooele, Utah, were closed. A custom lead refinery at Selby, Calif., was closed in 1970, and another lead refinery at East Chicago, Ind., was closed at the end of 1971. It was later converted to a secondary metal refinery.

LTFV sales not an identifiable cause ^{1/} of negative developments

The price reductions that were effected in 1972 have been attributed by the complainant to the LTFV imports from Australia, which occurred during the last 10 months of 1972, and to the LTFV imports from Canada, which occurred during the last 3 months of 1972. LTFV imports continued for the first 2 months of 1973 from Australia and, for the first 3 months, from Canada. Primary lead metal is a homogenous

^{1/} The test of "identifiable cause" was introduced and met in Elemental Sulfur from Mexico . . . Investigation No. AA1921-92 . . ., T.C. Publication 484, 1972, p. 9. The test was not met in a later determination, Stainless Steel Wire Rods from France . . . Investigation No. AA1921-119 . . ., T.C. Publication 596, 1973, p. 7, but was again satisfied in Expanded Metal of Base Metal from Japan . . . Investigation No. AA1921-130 . . ., T.C. Publication 629, 1973, p. 4.

product and is sold mainly on the basis of price. For LTFV imports to depress or suppress U.S. prices, such imports should sell at prices below prices of other suppliers. Since Australia was never the lowest-price supplier during the period of the Treasury investigation and Canada only infrequently was, sales from either of these countries at LTFV are not an identifiable cause of price depression or suppression. Unlike the LTFV imports, certain other factors can be related to the price reductions of the domestic industry. These factors, which also affected the rise in inventories, are discussed below.

The rise in inventories in the latter half of 1972 has also been adduced by the complainant as evidence of injury from sales lost to imports sold at LTFV from Australia or from Canada. However, the General Services Administration released 50,000 short tons of lead to U.S. producers and consumers, mostly in the latter half of 1972; this quantity was 40,000 short tons greater than releases in 1971. Similarly, secondary refined soft lead production increased 20,000 short tons in 1972 compared with 1971, and such production competed directly with primary lead output in nearly all its uses. Imports of primary lead metal from countries other than Australia and Canada, none of which has been determined to have been sold at LTFV, increased

27,000 short tons in 1972. ^{1/}

With so many other significant factors at play in the U.S. market during the period under investigation, identification can no more be made of the LTFV imports from Australia or from Canada as a cause of the inventory increase of the domestic industry than of the price reductions.

The closures of lead mining, milling, smelting, and refining establishments that occurred during 1970-72, too, have been attributed by the complainant to the sales at LTFV prices of the imports from Australia and from Canada. Each one of the closures, however, occurred before the first LTFV importations from Australia (with some possible exceptions regarding mine closures in 1972) and before the LTFV importations from Canada. It appears that all the closures were caused by a lack of ore reserves in the case of mines and, in the case of the other facilities, by a lack of nearby sources of ore supply, obsolescence of producing equipment, and inability to meet established environmental protection regulations.

In summary, with respect to neither the depression of prices, nor the rise in inventories, nor the closures of lead-producing facilities can LTFV imports be identified as a cause.

^{1/} In contrast, imports from Australia increased not at all in 1972, while the penetration ratio of such imports in the refined lead market, primary and secondary, declined from 3.7 percent in 1971 to 3.5 percent in 1972. Imports from Canada increased by only 21,000 short tons for the entire year 1972, while the corresponding market penetration ratio increased moderately from 5.2 percent in 1971 to 6.9 percent in 1972. Market penetration may be used as an indicator of injury in these two cases only where there also has been a displacement of domestic sales "by reason of" sales of the imported product at LTFV prices. But here there is no evidence of displacement of domestic sales by imports at LTFV.

Likelihood of injury

Treasury determined that future importations of primary lead metal from Australia and from Canada are likely to be sold at LTFV prices. Any identifiable link of such sales to any possible injury that might in the future befall the U.S. industries considered here is not in evidence. This position derives from consideration of several important factors that will be at play in the U.S. market in the coming years, as presented below.

On the demand side, some of the more important uses of primary lead are being subjected to unusual stresses as a result of environmental considerations and the energy shortage, among other factors. All of these factors will continue to be operative in the near future, and perhaps for a long time to come. Any restrictions on, or losses of, uses of primary lead from these factors will adversely affect the U.S. primary lead industry.

On the supply side, any further expansion of the domestic lead industry is expected to be based on the large reserves of low-cost ores in other parts of the country. If and when it occurs, such expansion itself might become a significant factor in the U.S. market for primary lead, far beyond any significance attributable to future LTFV imports from Australia or from Canada.

Releases of stockpile lead by the General Services Administration have been a major factor in the U.S. market heretofore and are certain to continue in that role. It will be difficult for the domestic

primary lead industry to meet domestic requirements, particularly if requirements expand--no plans to expand refining capacity have been announced--so that stockpile releases will have to take up some of the slack between domestic requirements and production.

With respect to prices, the recent elimination of the price ceiling on sales of domestic lead in the United States was immediately followed by a material rise in the domestic producers' price quotations for that commodity and by a narrowing of such producers' discounts and allowances, reflecting substantial pressure on the available supply. Also, continued pressure on the world supply of lead has resulted in a reversal of the traditional relationship between U.S. prices and world prices. It will be some time before the impact on the U.S. industry of these price changes can be assessed with any degree of confidence.

To summarize, a number of the demand and supply factors are expected to influence the U.S. market for lead during the next several years, so much so as to obscure any part that LTFV imports from Australia or from Canada may play. In addition, changing U.S. and world prices will make difficult any attempt to pinpoint causal relationships between such LTFV importations and developments in the U.S. market for some time to come.

Possible injury to Bunker Hill alone

Even if injury to an industry under the Antidumping Act is to be premised upon injury to individual members of that industry,

negative determinations are called for in the instant investigations because any such injury is not by reason of the imports of LTFV merchandise. Here, Bunker Hill is the major complainant of injury by reason of LTFV imports from Australia and Canada.

The pertinent difference between Bunker Hill and the rest of the domestic lead industry appears to be Bunker Hill's higher level of production costs due in large measure to a lower grade of ore and use of obsolescent equipment. Bunker Hill has been operating at full capacity and has been selling all of its production, but its lead operation revenues and profits can be adversely affected by a price that does not cover its higher costs plus return a profit. As no causal link has been found to exist or is likely to be found to exist between LTFV imports from Australia and Canada and domestic price levels, injury or likelihood of injury to Bunker Hill through suppressed or depressed prices cannot be attributed to such imports.

Conclusion

The failure to identify the LTFV imports from Australia and from Canada as a cause of any injury that the domestic industries or a part of those industries may have incurred or may in the future incur requires negative determinations in each of the instant investigations.

Statement of Commissioner Ablondi

The primary issue in this proceeding is whether the impact of any injury caused by LTFV imports from Australia and from Canada should be considered on a cumulative basis. While the affirmative determinations of injury and likelihood of injury in the two investigations were based upon cumulating the impact of the imports from the two countries, I have determined, on the basis of the facts in this proceeding, that the impact of any injury caused by LTFV imports from Australia should be considered independently from the impact of any injury caused by LTFV imports from Canada.

The question of whether the Tariff Commission should weigh the impact on a domestic industry of LTFV imports of the same product from each of several countries individually or collectively under the Anti-dumping Act has been considered frequently. 1/

Discretion is given the Commission by the statute to examine the particular facts of each case in order to make a determination of whether cumulative injury should be considered. As former Chairman Metzger observed:

Neither the statute, nor any court, nor the Commission has furnished a clear or general answer to the question whether LTFV imports from different countries, entering in the same period of time, must be cumulated or treated separately for the purpose of determining whether injury to an industry in the United States is "by reason of" such imports. Circumstances can be envisioned where on the one hand

1/ See, for example, Portland Gray Cement from Portugal * * *, Investigation No. AA1921-22, TC Publication 37, 1961; Pig Iron From East Germany, Czechoslovakia, Romania, and the U.S.S.R. * * * Investigation Nos. AA1921-52, 53, 54, and 55 * * *, TC Publication 265, 1968; and Printed Vinyl Film from Brazil and Argentina * * * Investigations Nos. AA1921-117 and -118 * * *, TC Publication 595, 1973.

it would be appropriate to cumulate, and on the other hand, where it would be appropriate to treat separately, such imports. 1/

In City Lumber Co. v. United States, 2/ the only court case to consider the issue of cumulative injury, the Court of Customs and Patent Appeals held that the Commission's cumulation of injury was not ultra vires, and did not result in the Commission's exceeding its statutory authority. However, this decision cannot be read so broadly as to require the Commission to cumulate the impact of LTFV imports in all cases. As the Court stated:

. . . under the Antidumping Act, Congress delegated to the Commission a broad discretionary power to determine whether an industry is being, or is likely to be, injured by the sale of imports at less than fair value. The courts have a very limited power of review over the Commission's determinations. It is not the judicial function to review or to weigh the evidence before the Commission or to question the correctness of findings drawn therefrom. 3/

In the instant investigations, the weight of evidence presented and discovered precludes any finding of any action between the importers from Australia and those from Canada and/or between the exporters from the two countries to warrant cumulating the Australian and Canadian imports. Quite to the contrary, the imports competed with each other and with third country imports without predatory intent for sales in the United States. While the Canadian imports could be delivered in the U.S. market on a "spot" sale basis, because of the much greater distance involved, Australian primary lead sales require approximately a 4-month waiting period

1/ Pig Iron From East Germany, Czechoslovakia, Romania, and the U.S.S.R. * * * Investigation Nos. AA1921-52, 53, 54, and 55 * * *, TC Publication 265, 1968, p. 27, footnote 2.

2/ City Lumber Co. v. United States, 457 F.2d 991 (1972).

3/ Id. at 994.

for delivery. Market penetration ratios for the two countries varied substantially--the ratio of imports from Australia has been approximately half of that for imports from Canada. Moreover, the penetration ratio of imports from Canada has increased while that from Australia has declined. The potential for growth of the primary lead industry in Canada is materially larger than that of the same industry in Australia. A shotgun approach to finding injury herein is not warranted.

Accordingly, I have determined, on the basis of all the facts, that an industry in the United States is not being and is not likely to be injured by reason of the importation of primary lead metal from Canada or Australia that is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

