

PROFILE

TECHNICAL FLAWS IN THE APPLICATION OF THE U.S. ANTIDUMPING LAW: THE EXPERIENCE OF U.S.-KOREAN TRADE

ROBERT W. MCGEE AND YEOMIN YOON*

1. INTRODUCTION

The U.S. antidumping law suffers from a series of defects in its implementation, resulting in the unwarranted finding of illegal predatory pricing by foreign companies. In light of the existing technical flaws outlined in this Article, it is clear that the U.S. antidumping law is merely a form of protectionism, designed to serve the interests of domestic industry at the expense of consumers.

This Article briefly profiles the U.S. antidumping law in light of the U.S.-Korean trade experience. Section 2 provides background information on the U.S. antidumping law. Section 3 discusses the current U.S.-Korean trade policy. Section 4 analyzes some of the shortcomings of the U.S. law, using the U.S. relationship with Korea as a model for understanding these problems. Section 5 discusses the threat that the existing antidumping law poses as a means of harassing foreign producers. Section 6 addresses the effects of antidumping that are often overlooked by policy makers. In light of both the protectionist nature of the statute as well as the defects in the implementation of the statute, this Article concludes that a reexamination of the U.S. antidumping law is necessary, and that an outright repeal should be considered.

* Robert W. McGee is an Associate Professor of Accounting and Yeomin Yoon is an Associate Professor of Finance at the W. Paul Stillman School of Business, Seton Hall University. The authors wish to thank Vivian Lugo, John Tortora and Eric Laffont for their research assistance.

2. U.S. ANTIDUMPING LAW

Traditionally, dumping is defined as selling an internationally traded good at a lower price in one national market than in another.¹ By dumping, an international firm can increase its profits by discriminating among customers, charging different customers different prices for virtually identical products.² For example, if some consumers are willing to pay \$10 for widgets and others are willing to pay \$15, a firm will maximize its profits if it can successfully charge a higher price to the consumer who is willing to pay more. In general, domestic producers are harmed by dumping policies because when the price of dumped goods falls below the price of domestically produced goods, domestic consumers buy the foreign goods. Consumers, however, are the beneficiaries of these lower priced goods. There is a widespread view among international trade experts that the purpose of the antidumping duties imposed by the United States is to protect domestic industries from competition.³ According to the conventional theory upon which the antidumping law is based, foreign companies should be assessed for dumping if their purpose is to *limit competition* by driving other producers out of the domestic market. A number of commentators have concluded, however, that predatory pricing either does not exist, or exists only rarely. If predatory pricing does exist, it only inures to the benefit of consumers.⁴

¹ See BLACK'S LAW DICTIONARY 502 (6th ed. 1990).

² See JOHN H. JACKSON & WILLIAM J. DAVEY, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 654 (2d ed. 1986).

³ See Tracy Murray, *The Administration of the Antidumping Duty Law by the Department of Commerce*, in DOWN IN THE DUMPS: ADMINISTRATION OF THE UNFAIR TRADE LAWS 23, 44 (Richard Boltuck & Robert E. Litan eds., 1991).

⁴ See generally Philip Areeda & Donald F. Turner, *Predatory Pricing and Related Practices Under Section 2 of the Sherman Act*, 88 HARV. L. REV. 697-733 (1975); ROBERT J. CARBAUGH, INTERNATIONAL ECONOMICS 162 (1992); Franklin M. Fisher, *On Predation and Victimless Crime*, 32 ANTITRUST BULL. 85-92 (1987); Ronald H. Koller, *The Myth of Predatory Pricing: An Empirical Study*, 4 ANTITRUST L. & ECON. REV. 105-23 (1971); John S. McGee, *Predatory Price Cutting: The Standard Oil (N.J.) Case*, 1 J.L. ECON. 137-69 (1958); Robert W. McGee, *When is Pricing Predatory?* 2 J. PRICING MGMT 40-43 (1991); Russell Pittman, *On Predation and Victimless Crime: A Comment*, 34 ANTITRUST BULL. 231-34 (1989).

2.1. *The U.S. Statute*

Since the Revenue Act of 1916,⁵ the United States has enacted numerous trade laws and regulations aimed at protecting various domestic industries from “unfair” competition. The present antidumping law in the United States is based on the Trade Agreements Act of 1979.⁶ In essence, if imported goods are sold at “less than fair value” and “an industry in the United States is (i) materially injured, or (ii) is threatened with material injury,” then the United States assesses a dumping duty equivalent to the amount by which the “foreign market value” exceeds the U.S. price.⁷

The Trade Agreements Act has been modified over the past several years. The most significant change was the 1984 amendment which requires an assessment of the injuries to domestic companies from alleged dumping by examining the prices of competing imports.⁸ In addition, Congress has recently shifted the administration of the antidumping law from the Treasury Department to the Commerce Department, indicating Congressional intent to aggressively impose dumping duties.⁹

2.2. *Administration of the Antidumping Law*

Antidumping actions may be initiated by a manufacturer that produces a product similar to the good allegedly being dumped. Once a petition is filed, the Commerce Department begins an inquiry, which usually involves sending questionnaires and requests for documents to the companies that are allegedly dumping.¹⁰ The Commerce Department

⁵ See Revenue Act of 1916, ch. 463, §§ 800-01, 39 Stat. 798 (codified at 15 U.S.C. § 72 (1982)). The statute is sometimes referred to as the Antidumping Duty Act of 1916. See Michael S. Knoll, *United States Antidumping Law: The Case for Reconsideration*, 22 TEX. INT'L L.J. 265, 268 (1987). Richard Dale points out that the Sherman Antitrust Act (1890) and § 73 of the Wilson Tariff Act of 1894 could have been applied to dumping situations. See RICHARD DALE, *ANTI-DUMPING LAW IN A LIBERAL TRADE ORDER* 12 (1980).

⁶ Trade Agreements Act of 1979, 19 U.S.C. §§ 1671-77 (1993).

⁷ *Id.* § 1673.

⁸ See Knoll, *supra* note 5, at 269-70 & n.31 (1987).

⁹ JAMES BOVARD, *THE FAIR TRADE FRAUD* 114 (1991).

¹⁰ See JACKSON & DAVEY, *supra* note 2, at 675.

has the sole authority to prescribe the format of the reply, the time within which a reply must be made and is the sole judge of the adequacy of the reply.¹¹ The Commerce Department also is the ultimate decision-maker in the underlying matter for which the information is sought.

The administration of this system has been criticized for making unreasonable demands on foreign producers for data.¹² For example, the Commerce Department imposed a 115% dumping duty on uranium imports from six republics of the former Soviet Union¹³ for a period of time that predates the separate political existence of these republics.¹⁴ In effect, the Commerce Department held the six republics responsible for the pricing behavior of the former Soviet Union. As part of its investigation, the Commerce Department sent the six governments a sixty-six page questionnaire in English, demanding detailed information regarding their uranium operations.¹⁵ The Commerce Department concluded that the six republics were involved in dumping activities despite the republics' inability to defend themselves by complying with the document requests.¹⁶ The Ministry of Atomic Power and Industry of the Soviet Union could have provided the information, but it had been abolished a few months earlier. In addition, much of the information was highly confidential.¹⁷

This example illustrates how the information demanded by the Commerce Department can be highly burdensome for producers. The Commerce Department can demand a tremendous amount of information, subsequently leaving

¹¹ *Id.*

¹² See, e.g., James Bovard, *U.S. Protectionists Claim a Russian Victim*, WALL ST. J., June 8, 1992, at A-10.

¹³ See *id.* For more on the antidumping investigation that was filed in November, 1991 against Soviet uranium importers by U.S. mining interests, see U.S. GEN. ACCT. OFF., GAO/RCED-92-194, URANIUM ENRICHMENT: UNSOLVED TRADE ISSUES LEAVE UNCERTAIN FUTURE FOR U.S. URANIUM INDUSTRY (1992); Uranium from the U.S.S.R., USITC Pub. 2471, Inv. No. 731-TA-539 (Dec. 1991) [hereinafter USITC Pub. 2471] (preliminary determination).

¹⁴ See Bovard, *supra* note 12.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

foreign producers in a double-bind. In essence, it appears that any refusal to comply is regarded as a confession of dumping, resulting in the imposition of the highest possible dumping margins. Foreign producers may choose not to comply, however, because the Commerce Department has often permitted confidential information to slip into the hands of U.S. competitors.¹⁸

Another difficulty with the administration of the U.S. antidumping law is that it is jointly administered. This overlapping jurisdiction of both the Commerce Department and the United States International Trade Commission ("ITC") has resulted in confusion regarding each agency's function.¹⁹ The Commerce Department initiates antidumping investigations, determines whether there has been dumping or subsidization, and publishes the resulting orders. Simultaneously, the ITC determines whether a domestic industry has been materially injured or threatened with injury, or whether the growth of a domestic industry is being materially retarded. The statute and existing case law grant the Commerce Department the sole authority to determine standing.²⁰ It is the ITC, however, which is charged with the authority for

defining the relevant domestic industry and assessing whether that industry has been materially injured. This appears to be an anomaly, because the [ITC], the agency with the most detailed information about a particular industry, is precluded from evaluating a party's standing to petition on behalf of that industry. As a result, it could be argued that the Tariff Act cannot have granted the Commerce Department the sole authority to determine standing questions and that

¹⁸ James Bovard, *No Justice in Anti-Dumping*, N.Y. TIMES, Jan. 28, 1990, at F13.

¹⁹ See, e.g., *Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240, 241 (Fed. Cir. 1989), cert. denied, 492 U.S. 919 (1989).

²⁰ At least two commentators take the position that the Commerce Department has the sole statutory power to make standing determinations. See Edwin J. Madaj & Charles H. Nalls, *Bifurcation Without Direction: The United States International Trade Commission and the Question of Petitioner Standing in Antidumping and Countervailing Duty Cases*, 22 LAW & POLY INT'L BUS. 673 (1991).

the [ITC] must also have such authority.²¹

From the time a petition is filed, the law requires the Commerce Department to make a preliminary determination as to standing within 160 days and make a final determination within another 75 days.²² The Commerce Department, however, may extend a preliminary antidumping investigation for 50 more days and the final determination for 60 days, under certain circumstances.²³ The final determination by the ITC as to material injury must be made within 390 days after the petition is filed.²⁴ Both the ITC and the Commerce Department must agree that a U.S. industry has been materially injured before a dumping violation can be found. If either the ITC or the Commerce Department finds otherwise, no dumping margin is established.

3. THE U.S.-KOREAN TRADE RELATIONSHIP

In recent years, the trade relationship between the United States and Korea has become prominent. Korea is now the eighth largest trading partner of the United States, and the United States is the largest trading partner of Korea.²⁵ Trade between these two countries has increased rapidly in the past quarter-century because of the industrialization of Korea. As a result of export-oriented industrialization, the per capita GNP grew to nearly \$7,466 in 1993,²⁶ a dramatic contrast to the meager \$80 per capita GNP in 1961. Korea has been called "tomorrow's power house"²⁷ and "Asia's next giant."²⁸

²¹ *Id.* at 674.

²² See 1930 Tariff Act, §§ 733, 735, 19 U.S.C.A. § 1673b (West 1980 & Supp. 1993).

²³ See JACKSON & DAVEY, *supra* note 2, at 676.

²⁴ See U.S. INTERNATIONAL TRADE COMMISSION, SUMMARY OF STATUTORY PROVISIONS RELATED TO IMPORT RELIEF 8-16 (Washington, D.C.: U.S. International Trade Commission, n.d.).

²⁵ KOREA ECON. REP., Sept. 1993, at 22 col. 1.

²⁶ KOREAN CENT. DAILY, Mar. 26, 1994, at 1.

²⁷ Louis Kraar, *Korea: Tomorrow's Powerhouse*, FORTUNE, Aug. 15, 1988, at 75, 75.

²⁸ See ALICE H. AMSDEN, ASIA'S NEXT GIANT: SOUTH KOREA AND LATE INDUSTRIALIZATION (1989).

3.1. U.S. Trade Barriers to Korean Exports

While the United States has been one of the most open economies in the world,²⁹ it continues to impede trade with high tariffs, import quotas, and administered protection. Although the average U.S. tariff is small and now stands at about 5%, tariffs remain large for a number of industries. These industries typically involve goods that are labor-intensive and production-intensive. The average U.S. tariff on textiles is 11%, while the average rate on apparel is 20% and may be as high as 35%.³⁰ Tariff rates on footwear range from 10% to 40%, while tariffs on leather goods such as gloves, handbags and luggage range from 12% to 16%.³¹ Korea's comparative advantage *vis a vis* the United States depends at least partially on the production of these types of goods. Korea's exports of apparel, textiles, footwear, and leather products accounted for nearly 40% of its total exports to the United States in 1991. These high U.S. tariff rates significantly impede Korean exports to the United States.

In addition to high tariffs, the United States also employs quantitative restrictions to limit imports. Two of these quantitative restrictions are of particular importance to Korea. First, the Multifiber Arrangement ("MFA") is a system of bilateral quantitative restraints used to limit textile and apparel imports from developing countries. The United States has negotiated several bilateral agreements with Korea, restricting textile and apparel exports from Korea to an annual growth rate of 1%.³² This restriction has contributed to the decline of Korea's share of textile and apparel exports to the

²⁹ According to the estimate by the Korean Central Daily, one of the leading newspapers in Seoul (with daily circulation of eight million copies), the "degree of trade liberalization" as of the end of 1992 was 78% for the United States, 58% for Korea, 54% for Japan, 80% for Germany, 88% for Singapore, and 89% for Hong Kong, respectively. Joongang Ilbo, *What are the Characteristics of Developed Countries?*, KOREAN CENT. DAILY, Sept. 22, 1993, at 5.

³⁰ The Economic Effects of Significant U.S. Import Restraints, Phase I: Manufacturing, USITC Pub. 2222, Inv. No. 332-262, at 4-2 and 4-3 (Oct. 1989) [hereinafter USITC Pub. 2222] (report to the Senate Committee on Finance) (table showing the percentage tariff rates for textiles and apparel).

³¹ *Id.* at 2-7.

³² Operation of the Trade Agreements Program, 41st Rep., USITC Pub. 2317 (Sept. 1990) at 321.

United States.³³

The second important quantitative restraint involves the steel industry, which accounts for a significant portion of Korea's total exports to the United States.³⁴ Steel trade between the United States and Korea has been reduced to 5.3%, and in the absence of a Multilateral Steel Agreement ("MSA"), more restrictive measures are likely to impede the steel trade between the United States and Korea.

Over the past decade, a number of Korean industries have been investigated for allegedly dumping their products in the United States by selling goods at prices that are too low.³⁵

3.2. Korean Trade Barriers To U.S. Exports

Prior to the Tariff Reduction Plan announced in 1988, Korea's average tariff rate was about 21%, only a slight decrease from the 25% rate in 1979.³⁶ By 1991, the Korean trade reforms adopted in 1988 had reduced the average tariff rate in Korea to 11.4%.³⁷ Further reforms should drive the average tariff rate down to 7.9% by the end of 1994.³⁸ These

³³ Between 1989 and 1991, Korea's share of all U.S. imports subject to the MFA declined from 11% to 8.5%. See *The Year in Trade: Operation of the Trade Agreements Program*, 43rd Rep., USITC Pub. 2554 (Aug. 1992) [hereinafter USITC Pub. 2554].

³⁴ James M. DeVault, *The Republic of Korea and the United States: Trade and Trade Policy Issues 9* (July 29-30, 1993) (unpublished manuscript on file with the authors) (paper presented at the Conference on the U.S.-Korea Economic Partnership, July 29-30, 1993 in Philadelphia, PA).

Five percent of the total Korean exports to the United States is \$1 billion. For Korea's relatively small economy, this is a significant amount.

³⁵ Products that Korea allegedly dumped on the United States market include automotive batteries, ball bearings, brass sheet and strip, cast-iron pipe fittings, cold-rolled carbon steel, color picture tubes, computer chips, flat-rolled carbon steel, industrial belts, motorcycle batteries, nitrocellulose, offshore platform jackets and piles, photo albums, polyethylene terephthalate film, sheet and strip, stainless steel butt weld pipe fittings, steel pipes and tubes, sweaters, telephone systems and subassemblies, tubular goods, and welded stainless steel pipes. Full citations to each of these actions are given in Section 3.3., and a brief summary of each of these actions is provided in the Appendix to this Article.

³⁶ See IL SAKONG, *KOREA IN THE WORLD ECONOMY* 125 (1993).

³⁷ See U.S. TRADE REPRESENTATIVE, *NATIONAL TRADE ESTIMATES REPORT ON FOREIGN TRADE BARRIERS: KOREA 1* (1992) [hereinafter U.S. TRADE REPRESENTATIVE].

³⁸ See *id.*

rates are much higher than the 5% average tariff rate imposed by member countries of the Organization for Economic Cooperation and Development ("OECD").³⁹

While many of Korea's trade reforms have been voluntary, the United States has been successful in pressuring Korea to liberalize its trade policy in several areas through section 301 of the Trade Act of 1974, which allows the United States to retaliate against trading partners that unreasonably or unjustifiably restrict U.S. exports.⁴⁰ Section 301 was used successfully to affect the trading of Korean products such as beef, cigarettes, and wine.⁴¹

Despite the reforms made by the Korean government and the subsequent reduction in formal trade barriers, the United States has protested recently that informal trade barriers have allowed Korea to wage an "anti-import campaign."⁴² The Korean government insists that restrictions on "luxury" import goods are designed to reduce excessive consumption and to encourage saving.⁴³

3.3. *Antidumping Duty Investigations*

In recent years, the United States has initiated numerous antidumping actions against Korean companies and industries. Antidumping actions have been initiated against those Korean industries producing automotive batteries,⁴⁴ ball bearings,⁴⁵

³⁹ The OECD is an international organization founded in 1961 to stimulate economic progress and world trade. It is currently composed of 24 developed countries such as the United States, Japan, Canada and Western European countries.

⁴⁰ Trade Act of 1974 § 301, 19 U.S.C. § 2441 (1974).

⁴¹ See I. M. DESTLER, *AMERICAN TRADE POLITICS* 404-31 (2d ed. 1992).

⁴² See Yeomin Yoon, *Korean Protectionism: An Opinion*, *MID-ATLANTIC J. BUS.*, Apr. 1991, at 69.

⁴³ USITC Pub. 2554, *supra* note 33, at 121-22.

⁴⁴ See 12-Volt Lead-Acid Type Automotive Storage Batteries from the Republic of Korea, USITC Pub. 1710, Inv. No. 731-TA-261 (June 1985) [hereinafter USITC Pub. 1710] (preliminary determination).

⁴⁵ See Ball Bearings, Mounted or Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey and Yugoslavia, USITC Pub. 2374, Inv. Nos. 701-TA-307 and 731-TA-498-511 (Apr. 1991) [hereinafter USITC Pub. 2374] (preliminary determinations finding that no material harm has resulted to the United States by the imports from the listed nations).

brass sheet and strip,⁴⁶ cast-iron pipe fittings,⁴⁷ cold-rolled carbon steel,⁴⁸ color picture tubes,⁴⁹ computer chips,⁵⁰ flat-rolled carbon steel,⁵¹ industrial belts,⁵² motorcycle batteries,⁵³ nitrocellulose,⁵⁴ offshore platform jackets and

⁴⁶ See Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea, USITC Pub. 1930, Inv. Nos. 701-TA-269 and 731-TA-311, 312, and 315 (Dec. 1986) [hereinafter USITC Pub. 1930] (final determination).

⁴⁷ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, USITC Pub. 1845, Inv. Nos. 731-TA-278 through 280 (May 1986) [hereinafter USITC Pub. 1845] (final determination).

⁴⁸ See Certain Cold-Rolled Carbon Steel Products from the Republic of Korea, USITC Pub. 1634, Inv. No. 701-TA-218 (Jan. 1985) [hereinafter USITC Pub. 1634] (final determination).

⁴⁹ See Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, USITC Pub. 2046, Inv. Nos. 731-TA-367 to 370 (Dec. 1987) [hereinafter USITC Pub. 2046] (final determination).

⁵⁰ See DRAMs of One Megabit and Above from the Republic of Korea, USITC Pub. 2519, Inv. No. 731-TA-556 (June 1992) [hereinafter USITC Pub. 2519] (preliminary determination); DRAMs of One Megabit and Above from the Republic of Korea, USITC Pub. 2629, Inv. No. 731-TA-556 (May 1993) [hereinafter USITC Pub. 2629] (final determination).

⁵¹ See Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, USITC Pub. 2549, Inv. Nos. 701-TA-319 to 354 and 731-TA-573 to 620 (Aug. 1992) [hereinafter USITC Pub. 2549] (preliminary determination); Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom vol. I, USITC Pub. 2664, Inv. Nos. 701-TA-319 to 332, 334, 336-342, 344, 347-353 and 731-TA-573 to 579, 581-592, 594-597, 599-609, 612-619 (Aug. 1993) [hereinafter USITC Pub. 2664-I] (final determination); Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom vol. II, USITC Pub. 2664, Inv. Nos. 701-TA-319 to 332, 334, 336-342, 344, 347-353 and 731-TA-573 to 579, 581-592, 594-597, 599-609, 612-619 (Aug. 1993) [hereinafter USITC Pub. 2664-II] (final determination).

⁵² See Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany, USITC Pub. 2194, Inv. Nos. 701-TA-293 and 731-TA-412 to 419 (May 1989) [hereinafter USITC Pub. 2194] (final determination).

⁵³ See 12-Volt Motorcycle Batteries from the Republic of Korea, USITC Pub. 2203, Inv. No. 731-TA-434 (July 1989) [hereinafter USITC Pub. 2203] (preliminary determination); see also 12-Volt Motorcycle Batteries from Korea, 54 Fed. Reg. 24,927 (Dep't Comm. 1989) (initiating antidumping investigation).

piles,⁵⁵ photo albums,⁵⁶ polyethylene terephthalate film, sheet and strip,⁵⁷ stainless steel butt-weld pipe fittings,⁵⁸ steel pipes and tubes,⁵⁹ sweaters,⁶⁰ telephone systems and subassemblies,⁶¹ tubular goods,⁶² and welded stainless steel

⁵⁴ See Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, United Kingdom, West Germany, and Yugoslavia, USITC Pub. 2231, Inv. Nos. 731-TA-439 to 445 (Nov. 1989) [hereinafter USITC Pub. 2231] (preliminary determination); Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, USITC Pub. 2295, Inv. Nos. 731-TA-439 to 444 (June 1990) [hereinafter USITC Pub. 2295] (final determination).

⁵⁵ See Offshore Platform Jackets and Piles from the Republic of Korea and Japan, USITC Pub. 1708, Inv. Nos. 701-TA-248 and 731-TA-259 to 260 (June 1985) [hereinafter USITC Pub. 1708] (preliminary determination).

⁵⁶ See Photo Albums and Photo Album Filler Pages from Hong Kong and the Republic of Korea, USITC Pub. 1660, Inv. Nos. 731-TA-240 to 241 (Mar. 1985) [hereinafter USITC Pub. 1660] (preliminary determination).

⁵⁷ See Polyethylene Terephthalate Film, Sheet, and Strip from Japan, the Republic of Korea and Taiwan, USITC Pub. 2292, Inv. Nos. 731-TA-458 to 460 (June 1990) [hereinafter USITC Pub. 2292] (preliminary determination); Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, USITC Pub. 2383, Inv. Nos. 731-TA-458 to 459 (May 1991) [hereinafter USITC Pub. 2383] (final determination); see also Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, 55 Fed. Reg. 52,105 (Int'l Trade Comm. 1990) (institution of final antidumping investigations).

⁵⁸ See Certain Stainless Steel Butt-Weld Pipe Fittings from Korea and Taiwan, USITC Pub. 2534, Inv. Nos. 731-TA-563 to 564 (July 1992) [hereinafter USITC Pub. 2534] (preliminary determination).

⁵⁹ See Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, USITC Pub. 2454, Inv. Nos. 701-TA-311 and 731-TA-532 to 537 (Nov. 1991) [hereinafter USITC Pub. 2454] (preliminary determination); Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, USITC Pub. 2564, Inv. Nos. 731-TA-532 to 537 (Oct. 1992) [hereinafter USITC Pub. 2564] (final determination).

⁶⁰ See Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan, USITC Pub. 2312, Inv. Nos. 731-TA-448 to 450 (Sept. 1990) [hereinafter USITC Pub. 2312] (final determination); Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan: Views on Remand, USITC Pub. 2577, Inv. Nos. 731-TA-448 to 450 (Nov. 1992) [hereinafter USITC Pub. 2577] (final determination).

⁶¹ See Certain Telephone Systems and Subassemblies thereof from Korea, USITC Pub. 2254, Inv. No. 731-TA-427 (Jan. 1990) [hereinafter USITC Pub. 2254] (final determination).

⁶² See Oil Country Tubular Goods from Brazil, Korea, and Spain, USITC

pipes.⁶³ A summary of each of these actions is contained in the Appendix.

4. THE SHORTCOMINGS OF U.S. ANTIDUMPING LAW: AN ILLUSTRATIVE LOOK AT KOREA

The implementation of the U.S. antidumping law is flawed. First, the method of computing dumping duties is unduly biased against foreign manufacturers. Second, the U.S. antidumping law does not adequately take into account the fluctuations of international exchange rates in determining whether dumping has occurred. Third, the process by which the U.S. antidumping law treats goods for which there is no domestic market in the exporter's country is often inconsistent.

4.1. Computational Problems: The Use of Average Prices

In essence, under U.S. law, the price of the goods in the United States is compared to the price of the goods sold in the exporter's home market ("foreign market price").⁶⁴ If the foreign market price exceeds the U.S. price, a dumping duty equivalent to the difference between the two prices will be applied.⁶⁵ The problem lies in the manner by which U.S. law determines the U.S. price and the foreign market price. The Commerce Department uses average prices to set foreign market price. A representative sample of individual U.S. sales are then compared to this average foreign market price. If the U.S. price is less than the foreign market price in any individual case, dumping is determined to have occurred.⁶⁶

Pub. 1633, Inv. Nos. 701-TA-215 to 217 (Jan. 1985) [hereinafter USITC Pub. 1633] (final determination).

⁶³ See *Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan*, USITC Pub. 2474, Inv. Nos. 731-TA-540 to 541 (Jan. 1992) [hereinafter USITC Pub. 2474] (preliminary determination); *Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan*, USITC Pub. 2585, Inv. Nos. 731-TA-540 to 541 (Dec. 1992) [hereinafter USITC Pub. 2585] (final determination).

⁶⁴ See JACKSON & DAVEY, *supra* note 2, at 679.

⁶⁵ See *id.* at 678-79.

⁶⁶ See *Tubular Steel Framed Chairs from Taiwan*, 50 Fed. Reg. 21,917 (Int'l Trade Admin. 1985) (final determination); *Cellular Mobile Telephones and Subassemblies from Japan*, 50 Fed. Reg. 45,447 (Int'l Trade Admin. 1985) (final determination) (describing the calculation and comparison of U.S. price and foreign market value).

For example, in the Korean computer chip (DRAM) case, the Commerce Department made one hundred comparisons between the prices of Korean products and the prices of U.S. products.⁶⁷ The Commerce Department found that in forty-seven cases, the Korean company undersold the U.S. company by a range of 0.1% to 28%. In forty-eight cases, the Korean product had a higher price than the U.S. product by a range of 0.3% to 69.2%. In the remaining five cases, the prices of the Korean product were identical to those of the U.S. products.⁶⁸

In nearly one-half of the cases, the price charged by the Korean firm was actually more than that charged by the domestic firm. This suggests that as to half of its products there was no dumping.⁶⁹ The Commerce Department, however, can impose a dumping margin if a foreign company sells any units in the U.S. market at a price lower than the *average foreign price* for the period being investigated.⁷⁰ Therefore, if the foreign exporter charges a range of prices over some relevant period of time, it may be that some of the prices will be below the average foreign price and some will be above the average foreign price. This means that some of the sales could potentially be categorized as dumping. Such an approach is illogical and inherently unfair.⁷¹ Indeed, the General Accounting Office has criticized the practice of using the average price for these reasons as well as because this

⁶⁷ See *infra* Appendix.

⁶⁸ See USITC Pub. 2519, *supra* note 50, at A-50.

⁶⁹ The dissenting opinion in the final determination raised another point: Although the underselling/overselling comparisons are almost evenly split, we do not place much weight on evidence of underselling. As discussed above, the confluence of demand for memory and the point in the product life cycle largely explain the price of DRAMs at any particular point in time. As a result of market forces, price comparisons are only meaningful if they are contemporaneous, i.e., at the same point in the DRAM product life cycle. In this investigation, the price comparisons between domestic DRAMs and subject imports are not contemporaneous. Accordingly, the price comparisons do not constitute substantial evidence that any underselling is significant.

USITC Pub. 2629, *supra* note 50, at 49.

⁷⁰ See BOVARD, *supra* note 9, at 120-21.

⁷¹ Other commentators agree with this conclusion. See, e.g., Wesley K. Caine, *A Case for Repealing the Antidumping Provisions of the Tariff Act of*

practice increases existing dumping margins or creates new ones.⁷² The Court of International Trade has also criticized this method of price comparison, stating that it "leads to loss of reasonable fairness in the results."⁷³ This averaging method produces a built-in bias against foreign producers. It compares the average foreign price with the price at which each sale is made in the United States. When sales are made at a price above this "fair value," it treats such sales as if they were made at fair value. Therefore, these sales are assigned a less than fair value ("LTFV") amount of zero rather than a negative value. Thus, when the Commerce Department combines sales made at prices lower than fair value with those made at prices higher than fair value, it invariably skews the statistical result in favor of a higher dumping margin.⁷⁴ In some cases, this method calculates a dumping margin where none exists.⁷⁵

An alternative method for computing the dumping margin is necessary. Using a negative number rather than zero when

⁷² See U.S. GEN. ACCT. OFF., U.S. ADMINISTRATION OF THE ANTIDUMPING ACT OF 1921, Mar. 15, 1979, at 21, cited in BOVARD, *supra* note 9, at 122, 163 n.59.

⁷³ See NAR, *S.p.A. v. United States*, 707 F. Supp. 553, 559 (Ct. Int'l Trade 1989).

⁷⁴ See Knoll, *supra* note 5, at 278.

⁷⁵ For example, assume that the average foreign price for a certain product is \$5.00 and the actual prices charged in the U.S. market for five specific domestic sales are \$6.00, \$5.50, \$5.00, \$4.50, and \$4.00. The less than fair value ("LTFV") amounts would be computed as follows:

Case No.	Average Foreign Price	Actual Sale Price in U.S.	LTFV Amount
1	\$5.00	\$6.00	\$0.00
2	\$5.00	\$5.50	\$0.00
3	\$5.00	\$5.00	\$0.00
4	\$5.00	\$4.50	\$0.50
5	\$5.00	\$4.00	\$1.00

In the first three cases, no dumping margins are found because the price charged in the United States is higher or equal to the average price charged in foreign markets. There is a dumping margin in the fourth and fifth cases, however, because the U.S. price is less than the average foreign price. Yet if one takes the average of the prices charged in the United States, it is exactly the same as the average foreign price—\$5.00. But the LTFV amounts add up to a positive number, \$1.50, because whenever the U.S. price is higher than the average foreign price, the LTFV amount is assigned a zero value, whereas whenever the U.S. price is lower than the average foreign price, the LTFV amount is assigned a positive value.

analyzing prices above fair value provides, overall, a more accurate calculation of the dumping margin.

To illustrate, assume that a Korean firm sold ten units of a product in Korea for \$20 per unit on January 20. Assume that it sold an equal number of units in the U.S. market on the same day for the same price. On June 15, the same Korean company sold ten more units in Korea for \$10 per unit, and ten units in the United States for the same price. The weighted average foreign market price ("fair value") is calculated to be \$15 per unit.⁷⁶ According to the method currently used by the Commerce Department, a LTFV of \$0 and a LTFV of \$5 should be assigned to the January and the June sales, respectively. This results in a dumping margin of 16.67%.⁷⁷

This entire calculation is flawed on a number of counts. It is questionable to compare the actual price charged for particular U.S. sales to the average foreign price. Individual foreign prices should be compared with individual U.S. prices, or average foreign prices should be compared with average U.S. prices. The correct way to compute the dumping margin would be to assign a LTFV of *minus* \$5, not \$0, to the January sale, thus resulting in a zero dumping margin.⁷⁸

4.2. Shifts In Exchange Rates

In order to compare the foreign price with the domestic price, the foreign price must be converted into dollars. As a

⁷⁶ This number is derived as follows: $[\$20 (10 \text{ units}) + \$10 (10 \text{ units})] / 20 \text{ units} = \15 weighted average foreign market price.

⁷⁷ The dumping margin is calculated with the following information:

<u>Case</u>	<u>Korean Price</u>	<u>U.S. Price</u>	<u>Average Foreign Price</u>	<u>LTFV Amount</u>
1/20	\$20	\$20	\$15	\$0
6/15	\$10	\$10	\$15	\$5

The dumping margin is computed as follows:

$$[\$0 (10/20) + \$5 (10/20)] / \$15 = \$2.50 / 15 = 16.67\%.$$

⁷⁸ The dumping margin is calculated with the following information:

<u>Case</u>	<u>Korean Price</u>	<u>U.S. Price</u>	<u>Average Foreign Price</u>	<u>LTFV Amount</u>
1/20	\$20	\$20	\$15	-\$5
6/15	\$10	\$10	\$15	\$5

The dumping margin is computed as follows:

$$[-\$5(10/20) + \$5(10/20)] / \$15 = \$0 / \$15 = \$0.00\%.$$

result, shifts in exchange rates can cause a company, through no fault of its own, to be liable for dumping. Ever since the breakdown of the Bretton Woods system, exchange rates have been floating rather than fixed.⁷⁹ Currently, the way the Commerce Department uses exchange rates creates cases of dumping where none previously existed.⁸⁰ For example, if the British Pound is equal to \$1.50 at the time the contract is entered into and the price of the product in question is £1 in England and \$1.50 in the United States, then there is no dumping because the price is the same in both countries. But if the exchange rate shifts so that £1 equals \$1.75, then there is dumping because the product sells in England for an amount equivalent to \$1.75, whereas the price in the United States is \$1.50. Consequently, even if there was no intent to dump, a foreign exporter can still be found to have dumped if the exchange rates shifted in the wrong direction. Exporters that are based in countries that have hyperinflation can be severely penalized by the Commerce Department's

⁷⁹ When exchange rates were fixed, it was simpler to predict future exchange rates because they would be the same as current exchange rates. But having fixed, rather than flexible, exchange rates causes other problems. For example, to prevent a run on (or toward) a particular country's currency, central banks have to intervene by buying or selling the target currency. One advantage of flexible exchange rates over fixed exchange rates is that flexible rates provide a check on inflation. A country that inflates its currency at a faster than average rate will have the value (and the desirability) of its currency adversely affected in the international marketplace because supply and demand will automatically shift to reflect the currency's true relative value. Having fixed exchange rates, coupled with central bank intervention, prevents this natural shift from taking place, thus causing disruption and distortion throughout all the major economies. For arguments in favor of flexible exchange rates, see MILTON FRIEDMAN, *ESSAYS IN POSITIVE ECONOMICS* 157-203 (1953); MILTON FRIEDMAN & ROBERT V. ROOSA, *THE BALANCE OF PAYMENTS: FREE VS. FIXED EXCHANGE RATES* (1967), reprinted in MILTON FRIEDMAN, *DOLLARS AND DEFICITS* 218-34 (1968).

The Bretton Woods agreement—signed by 45 nations in Bretton Woods, New Hampshire in July, 1944—established the International Monetary Fund and resulted in a number of actions that exacerbated post-WWII inflations. For a brief summary of the Bretton Woods Agreement, see MURRAY ROTHBARD, *THE MYSTERY OF BANKING* 252-54 (1983). For a more detailed description and analysis of its consequences, see HENRY HAZLITT, *FROM BRETTON WOODS TO WORLD INFLATION: A STUDY OF CAUSES AND CONSEQUENCES* (1984).

⁸⁰ See generally N. David Palmeter, *Exchange Rates and Antidumping Determinations*, 22 J. WORLD TRADE 73 (1988).

methodology⁸¹ because of frequent devaluation of their home currency.

4.3. Comparing Prices In Dissimilar Markets

When the allegedly dumped good is not sold in the exporter's home market it can be difficult to determine the foreign market price. In such cases, the Commerce Department compares the prices the foreign exporter charges in the United States to those it charges in a third country.⁸² For example, several Korean sweater companies were penalized because they sold their sweaters in the U.S. market for slightly less than the price charged in other foreign markets.⁸³ The Commerce Department's investigation determined that the price of the sweaters one Korean company sold in the United States was 1.20% lower than the price of the sweaters in Mexico.⁸⁴ The price another company charged in the United States was 1.11% lower than the price charged in Canada.⁸⁵ A third company sold its sweaters for 0.73% less in the United States than in the United Kingdom.⁸⁶ The Commerce Department found that all of these companies had violated U.S. antidumping law.⁸⁷

Several factors were ignored in the Commerce Department's analysis. For example, each shipment of sweaters was a custom order, and there were significant differences in the actual sweaters the Korean companies exported to the three different countries. The Commerce Department, however, treated the sweaters as identical.

In light of this criticism, it is appropriate to consider what standard the Commerce Department should have used in

⁸¹ Some commentators have suggested that the Commerce Department should use a different methodology in cases involving a hyper-inflationary currency. See Gilbert B. Kaplan et al., *Cost Analysis Under the Antidumping Law*, 21 GEO. WASH. J. INT'L L. & ECON. 357, 409-10 (1988).

⁸² See JACKSON & DAVEY, *supra* note 2, at 679.

⁸³ See USITC Pub. 2312, *supra* note 60, at B-33.

⁸⁴ See *id.*

⁸⁵ See *id.*

⁸⁶ See *id.*

⁸⁷ See BOVARD, *supra* note 9, at 121; see also USITC Pub. 2577, *supra* note 60, cited in I. M. DESTLER, *AMERICAN TRADE POLITICS* 396 (2d ed. 1992).

arriving at the price of Korean sweaters. Certainly it should have allowed for differences in quality and type, and in addition, it should have considered each shipment as a custom order.

5. USE OF THE ANTIDUMPING LAW TO HARASS FOREIGN COMPETITION

More antidumping penalties on low-priced imported goods have been imposed in the United States than in any other country.⁸⁸ Under the U.S. rules, nearly all the foreign sellers that were investigated for dumping between 1980 and 1989 were found liable.⁸⁹ Even if a company ultimately is determined not to have dumped, the time and money involved in settling the case can bankrupt a small or medium-size company, and the expense would force even a large company to think twice about exporting to the United States. As a result, the U.S. antidumping law significantly chills foreign competitors from exporting their goods to the United States at all. For example, the Matshushita company withdrew from one antidumping case that involved the investigation of small business telephone systems—consequently abandoning more than \$50 million in export sales—because the Commerce Department requested on a Friday afternoon that the Company translate 3,000 pages of Japanese financial documents into English by the following Monday morning.⁹⁰

Another example suggests that at least one antidumping investigation “effectively wrecked the exports of hundreds of Taiwanese sweater companies because a few small Taiwanese companies could not quickly respond to [the Commerce Department’s] massive information requests.”⁹¹ The Commerce Department required that the companies respond to a 100-page English questionnaire and provide more than

⁸⁸ U.S. GEN. ACCT. OFF., USE OF THE GATT ANTIDUMPING CODE 3-4 (1990), cited in BOVARD, *supra* note 9, at 107.

⁸⁹ Only six of the Commerce Department investigations made between 1980 and 1986 resulted in those investigated being found not liable for dumping. See Bovard, *supra* note 18, at F13. For a summary of antidumping investigations undertaken between 1979 and 1990 and their outcomes, see DESTLER, *supra* note 87, at 326-403.

⁹⁰ See BOVARD, *supra* note 9, at 136.

⁹¹ See BOVARD, *supra* note 9, at 139.

200,000 pieces of information.⁹² The management "team" of one of these companies consisted of a business run solely by a husband and his wife.⁹³ The Commerce Department held that lack of management was an inadequate justification for failing to respond.⁹⁴ Another company did not respond because a fire destroyed all of its records. This too was determined to be an insufficient reason for not responding to the Department's inquiry.⁹⁵ Because of the lack of response from these companies, and other small Taiwanese manufacturers, a 21.94% dumping duty was assessed on all Taiwanese sweater manufacturers, which when combined with a 34% tariff, makes it very difficult, if not impossible, for a Taiwanese company to sell sweaters in the United States.⁹⁶ Within a year after this investigation commenced, more than two-thirds of the Taiwanese companies that manufacture acrylic sweaters had gone out of business.⁹⁷

Domestic companies are aware of this situation, and often use the antidumping law to harass or intimidate foreign competitors.⁹⁸ This harassment is likely to occur whenever the cost of filing a petition is lower than the potential benefits to the petitioning company from an investigation. The government pays all of the costs of an antidumping prosecution. Therefore, the domestic firm that initiates the proceeding does not incur any cost, but stands to gain much if a foreign competitor is either forced to raise its prices, or is turned away from the U.S. market completely. Thus, by initiating a proceeding, a domestic producer can reduce competition from abroad and avoid lowering prices to meet a foreign producer's prices.

6. THE HARMS OF ANTIDUMPING PROTECTIONISM

The U.S. antidumping law is unduly protectionist. As numerous studies have indicated, the antidumping law

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 155.

⁹⁸ See ROYARD, *supra* note 9, at 78-83.
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produces more losers than winners.⁹⁹ Although domestic industry is certainly being protected by protectionist policies, a study of 203 ITC investigations in five industries found that protectionism was not effective in stimulating output in the protected domestic industry because the reactions of consumers tended to offset the actions of producers.¹⁰⁰ In essence, if the protected industry raises the price of its product, consumers will often shun the high-priced product and buy a lower-priced substitute product instead. A study by the Congressional Budget Office also reached this same conclusion.¹⁰¹

There are a number of general results associated with protectionist antidumping policy. First, when the government narrowly defines an industry so that it can show injury from imports, users and foreign suppliers often shift to substitute items, which essentially circumvents the antidumping law.¹⁰² Second, when the United States adopts a temporary protectionist measure in order to protect an "infant" industry¹⁰³ or to provide breathing room¹⁰⁴ for an ailing

⁹⁹ We will discuss some of these studies *infra*.

¹⁰⁰ See Robert E. Baldwin & Richard K. Green, *The Effects of Protection on Domestic Output*, in TRADE POLICY ISSUES AND EMPIRICAL ANALYSIS 205, 223-24 (Robert E. Baldwin ed., 1988).

¹⁰¹ The Congressional Budget Office study concluded that "protection has not substantially improved the ability of domestic firms to compete with foreign producers." Congressional Budget Office, *Has Trade Protection Revitalized Domestic Industries?* Washington, DC: U.S. Government Printing Office, at 96, quoted in *Protectionism's Adverse Economic Impact*, U.S. Int'l Trade Comm. Inv. No. 332-325 (Oct 1992) (written testimony of Daniel Oliver, former chairman of the Federal Trade Commission).

¹⁰² See Baldwin & Green, *supra* note 100, at 223-24.

¹⁰³ The "infant" sugar industry has been protected by the U.S. government since 1816. This protection has resulted in the domestic sugar industry charging up to four times the world price for sugar. Restrictions on sugar imports in 1987, for example, cost American consumers between \$2.1 and \$3 billion. The high cost of sugar led to increases in the price of corn sweeteners, which cost consumers an additional \$1 billion a year. Sugar became so expensive that Coke and Pepsi switched to high fructose corn syrup, which caused U.S. sugar consumption to fall by more than 500,000 tons a year. Thus, the long-run effects of protection may actually harm the protected industry more than it helps. See generally BOVARD, *supra* note 9, at 71-72; Bruce L. Gardner, *The United States*, in AGRICULTURAL PROTECTIONISM IN THE INDUSTRIALIZED WORLD 47 (Fred H. Sanderson ed., 1990); Janet Novack, *Three Yards and a Cloud of (Sugar) Dust*, FORBES, Sept. 4, 1989, at 39.

¹⁰⁴ The breathing room argument has been used to provide "temporary" <https://scholarship.law.upenn.edu/jil/vol15/iss2/3>

industry, problems arise because such temporary measures tend to become permanent. Consequently, industries that are relieved of the pressure of competition do not take advantage of the opportunity to compete and often use their resources to lobby the legislature to continue the protection rather than invest in cost reduction.¹⁰⁵ In short, using the antidumping law to protect domestic industry from Korean exporters may result in domestic industries becoming uncompetitive.

Consumers must also bear the cost of the current U.S. trade policy with Korea. Antidumping duties have led to a reduction in consumer choice. If goods are prevented from entering the United States because antidumping duties make the product's price too high to be competitive, or because quotas or the antidumping law prevents the goods from even crossing the border, consumers may have to settle for their second or third choice. This is economically inefficient. The loss in utility is the difference between the utility consumers would gain by purchasing their first choice product and the utility they receive by settling for their second or third choice.

7. CONCLUSION

This Article has examined the shortcomings of U.S. antidumping policy using the Korean trade experience as a case study. Given the protectionist nature of U.S. antidumping policy generally, which is compounded by technical flaws in the existing U.S. statute—problems in computing dumping margins, inadequate consideration of fluctuating exchange rates, and inconsistent treatment of goods not sold in the exporter's home market—the only proper recourse is a serious and comprehensive reexamination, or

protection for a number of declining industries, such as automobiles, steel and textiles. In the steel industry, for example, various government policies have cushioned it from foreign competition at least since 1969 through quota agreements and restrictions. Yet unit costs have risen and production has fallen. Labor productivity actually declined after the passage of temporary protectionist measures and cost-cutting has not been implemented. Investment in the steel industry actually declined after the government imposed import restrictions. See WAYNE GABLE, MYTHS ABOUT INTERNATIONAL TRADE 14 (n.d.).

¹⁰⁵ Aaron Tornell, *On the Ineffectiveness of Made-to-Measure Protectionist Programs*, in INTERNATIONAL TRADE AND TRADE POLICY 76 (Elhanan Helpman & Assaf Razin, eds. 1991).

even outright repeal, of the U.S. antidumping statute.

APPENDIX¹⁰⁶

Summarized below are twenty antidumping and countervailing duty investigations that have been conducted against Korean companies and industries in the last decade.

1. AUTOMOTIVE BATTERIES¹⁰⁷

An investigation began on May 8, 1985 by General Battery International Corporation of Puerto Rico¹⁰⁸ to determine whether certain 12-volt lead-acid type automotive storage batteries from Korea were being sold, or were likely to be sold, in the United States market at less than fair value.¹⁰⁹ The ITC unanimously determined that "there [was] no reasonable indication that an industry in the United States [was] materially injured; or threatened with material injury; or that the establishment of an industry in the United States was materially retarded by reason of imports from the Republic of Korea."¹¹⁰

¹⁰⁶ Citations to each footnote are given in full in the Appendix for the reader's convenience, although they are also cited in footnotes 44-63 in the body of the Article. Subsequent citations to sources in the Appendix will refer to the citation given in the Appendix, not to citations given in the body of the Article.

¹⁰⁷ 12-Volt Lead-Acid Type Automotive Storage Batteries from the Republic of Korea, USITC Pub. 1710, Inv. No. 731-TA-261 (June 1985) [hereinafter USITC Pub. 1710] (preliminary determination).

¹⁰⁸ 12-Volt Lead-Acid Type Automotive Storage Batteries from Korea, 50 Fed. Reg. 20,302 (Dep't Comm. 1985) (institution of preliminary antidumping investigation).

¹⁰⁹ 12-Volt Lead-Acid Type Automotive Storage Batteries from Korea, 50 Fed. Reg. 23,486 (Dep't Comm. 1985) (initiation of antidumping duty investigation).

¹¹⁰ USITC Pub. 1710, *supra* note 107, at 1.

2. BALL BEARINGS¹¹¹

This investigation was instigated as a result of a petition filed by the Torrington Company of Torrington, Connecticut on February 13, 1991 to determine whether Korean ball bearing¹¹² imports were being sold in the United States for less than fair value.¹¹³ The Torrington Company alleged that the Korean dumping margins ranged between 7.41% and 149.78%.¹¹⁴ The ITC determined that there was no reasonable indication of dumping.¹¹⁵

3. BRASS SHEET AND STRIP¹¹⁶

This investigation was initiated as the result of a petition filed March 10, 1986 by American Brass, Bridgeport Brass Company, Chase Brass and Copper Company, Hussey Metals Division, the Miller Company, Olin Corporation—Brass Group, and Revere Copper Products, Inc., all domestic manufacturers of brass sheet and strip, and by three unions: the International Union—Allied Industrial Workers of America

¹¹¹ Ball Bearings, Mounted or Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey and Yugoslavia, USITC Pub. 2374, Inv. Nos. 701-TA-307 and 731-TA-498-511 (Apr. 1991) [hereinafter USITC Pub. 2374] (preliminary determination) (finding that no material harm has resulted to the United States by the imports from the listed nations).

¹¹² The products covered by this investigation included all ground anti-friction bearings and parts thereof, finished or unfinished, which employ balls as the rolling element, whether or not housed or combined. *Id.* at 1, n.3.

¹¹³ Ball Bearings, Mounted or Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey, and Yugoslavia, 56 Fed. Reg. 7,398 (U.S. Int'l Trade Comm. 1991) (institution of preliminary countervailing duty and antidumping investigations); *see also* Ball Bearings, Mounted or Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey, and Yugoslavia, 56 Fed. Reg. 10,237 (Dep't Comm. 1991) (initiation of antidumping duty investigation).

¹¹⁴ 56 Fed. Reg., *supra* note 113, at 10,238.

¹¹⁵ USITC Pub. 2374, *supra* note 111, at 2.

¹¹⁶ Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea, USITC Pub. 1930, Inv. Nos. 701-TA-269 and 731-TA-311, 312, and 315 (Dec. 1986) [hereinafter USITC Pub. 1930] (final determination).

(AFL-CIO); Mechanics Educational Society of America (Local 56); and United Steelworkers of America (AFL/CIO-CLC). The petition was filed on behalf of the domestic industry in the United States that casts, rolls and finishes brass sheet and strip.¹¹⁷ The ITC found that brass sheet and strip from Korea were being, or were likely to be, sold in the United States at less than fair value, and found the weighted-average dumping margin to be 7.17%.¹¹⁸ In arriving at this determination, the ITC made fair value comparisons based on sales of the class or kind of merchandise shipped to the United States¹¹⁹ for the period October 1, 1985 to March 31, 1986, the period of investigation.¹²⁰

4. CAST-IRON PIPE FITTINGS¹²¹

This investigation began from petitions filed July 31, 1985 by the Cast-Iron Pipe Fittings Committee, which is composed of Stanley G. Flagg & Co., Inc., ITT-Grinnell Corp., Stockham Valves & Fittings Co., U-Brand Corp., and Ward Foundry Division of Clevepak Corp.¹²² The petitions charged that Korean companies were selling their malleable cast-iron pipe fittings in the United States at less than fair value. The preliminary investigation found a reasonable indication that an industry in the United States was materially injured due to the importation of the merchandise in question.¹²³ The ITC's final determination found dumping margins ranging from less than 1% to 93.42% percent, with a weighted-average

¹¹⁷ Brass Sheet and Strip from the Republic of Korea, 51 Fed. Reg. 40,833 (Dep't Comm. 1986) (final determination of sales at less than fair value).

¹¹⁸ *Id.*

¹¹⁹ Only one firm responded to requests for information.

¹²⁰ 51 Fed. Reg., *supra* note 117, at 40,833. The Commerce Department justified using the trade figures for only one company (Poongsan) because the imports from this company represented more than 97 percent of the total Korean imports. *Id.* at 40,834-35.

¹²¹ Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, USITC Pub. 1845, Inv. Nos. 731-TA-278 through 280 (May 1986) [hereinafter USITC Pub. 1845] (final determination).

¹²² Certain Cast-Iron Pipe Fittings from Brazil, Korea and Taiwan, 51 Fed. Reg. 4660, n.2 (U.S. Int'l Trade Comm. 1986) (institution of final antidumping investigations). U-Brand Corp. did not join the other committee members in filing petitions. *Id.* at n.2.

¹²³ *Id.* at 4660.

margin of 12.48%.¹²⁴

5. COLD-ROLLED CARBON STEEL¹²⁵

This countervailing duty investigation followed a petition filed on June 18, 1984 by the United States Steel Corporation on behalf of the carbon steel structural shapes and cold-rolled carbon steel flat-rolled products (shapes and sheet) industries.¹²⁶ The petition charged that certain benefits, which constituted subsidies within the meaning of the countervailing duty laws, were being provided to manufacturers, producers or exporters in Korea of (1) cold-rolled carbon steel flat-rolled products and (2) carbon steel structural shapes. The ITC found a 3.6% subsidy to exist for the first category of products. The subsidy for the second category of product was 0.37%, which was held to be de minimis, and therefore not subject to a penalty.¹²⁷ According to the ITC, the following Korean programs were conferring subsidies:

- Short-term export financing under the export financing regulations;¹²⁸
- Tax incentives for exporters;¹²⁹
- Special depreciation;¹³⁰
- Government equity infusions;¹³¹
- Reductions in port charges;¹³²
- Tariff reductions on plants and equipment¹³³

¹²⁴ Malleable Cast Iron Pipe Fittings, Other than Grooved, from Korea, 51 Fed. Reg. 10,900-901 (Dep't Comm. 1986) (final determination of sales at less than fair value).

¹²⁵ Certain Cold-Rolled Carbon Steel Products from the Republic of Korea, USITC Pub. 1634, Inv. No. 701-TA-218 (Jan. 1985) [hereinafter USITC Pub. 1634] (final determination).

¹²⁶ Cold-Rolled Carbon Steel Flat-Rolled Products from Korea and Carbon Steel Structural Shapes from Korea, 49 Fed. Reg. 47,284 (Dep't Comm. 1984) (final determination).

¹²⁷ *Id.*

¹²⁸ *Id.* at 47,286-87.

¹²⁹ *Id.* at 47,287.

¹³⁰ *Id.* at 47,287-88.

¹³¹ *Id.* at 47,288.

¹³² *Id.*

¹³³ *Id.*

Interestingly enough, the same government assistance in foreign nations labelled as subsidies under U.S. countervailing duty laws are not much different from the types of domestic assistance given by the past few administrations to help U.S. companies and industries compete in international markets.

6. COLOR PICTURE TUBES¹³⁴

This investigation was initiated on November 26, 1986 by the International Association of Machinists and Aerospace Workers; the International Brotherhood of Electrical Workers; the International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL-CIO-CLC; the United Steelworkers of America, AFL-CIO; and the Industrial Union Department, AFL-CIO.¹³⁵ These unions represent four of the five producers of color picture tubes¹³⁶ in the United States.¹³⁷ The ITC determined that imports from Korea were being sold in the United States market for 1.91% less than fair value.¹³⁸

7. COMPUTER CHIPS¹³⁹

This investigation was instigated by Micron Technology, Inc. of Boise, Idaho in April 1992.¹⁴⁰ The petition requested

¹³⁴ Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, USITC Pub. 2046, Inv. Nos. 731-TA-367 to 370 (Dec. 1987) [hereinafter USITC Pub. 2046] (final determination).

¹³⁵ Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, 52 Fed. Reg. 28,353, 28,354 (U.S. Int'l Trade Comm. 1987) [hereinafter Color Picture Tubes (final investigation)] (final investigation).

¹³⁶ Color picture tubes are defined as "cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing." Color Picture Tubes from Korea, 52 Fed. Reg. 44,186, 44,186 (Dep't Comm. 1987) [hereinafter Color Picture Tubes] (final determination).

¹³⁷ Color Picture Tubes (final investigation), *supra* note 135, at 28,354.

¹³⁸ Color Picture Tubes, *supra* note 136 at 44,190.

¹³⁹ DRAMs of One Megabit and Above from the Republic of Korea, USITC Pub. 2519, Inv. No. 731-TA-556 (June 1992) [hereinafter USITC Pub. 2519] (preliminary determination); DRAMs of One Megabit and Above from the Republic of Korea, USITC Pub. 2629, Inv. No. 731-TA-556 (May 1993) [hereinafter USITC Pub. 2629] (final determination).

¹⁴⁰ Dynamic Random Access Memories of One Megabit and Above from the Republic of Korea, 57 Fed. Reg. 18,163 (U.S. Int'l Trade Comm. 1992) [hereinafter Dynamic Random Access Memories of One Megabit and Above from the Republic of Korea] (preliminary determination).

the investigation of Goldstar Electron Co., Hyundai Electronic Industries and Samsung Electronics Co. for selling dynamic random access memory semiconductors of one megabit and above (DRAMs)¹⁴¹ for less than the cost of production.¹⁴² The range of dumping margins assessed, based on a comparison of U.S. prices to constructed value alleged by Micron, was for Hyundai: 94.29% - 170.89% (one meg) and 278.83% - 282.51% (four meg); for Goldstar: 132.11% - 165.29% (one meg) and 273.25% (four meg); for Samsung: 0.62% - 3.83% (one meg) and 93.18% - 97.39% (four meg).¹⁴³ In arriving at these dumping margins, 100 price comparisons were made between U.S. prices and Korean prices. In forty-seven cases, the Korean price was lower than the U.S. price ranging between 0.1% and 28%. In forty-eight cases, the Korean price was higher than the domestic product price ranging from between 0.3% and 69.2%. In five cases, the prices of the two products were identical.¹⁴⁴ In its final investigation, the ITC found no evidence of dumping.¹⁴⁵

¹⁴¹ The items covered by this petition included processed wafers, uncut die, cut die, and assembled 1 Meg and above DRAMs produced in Korea and imported directly or indirectly into the United States; processed wafers produced in Korea and further processed into finished or semi-finished 1 Meg and above DRAMs in a third country before exportation to the United States; finished or semi-finished DRAMs assembled in Korea from wafers produced in another country; memory modules, such as Single In-Line Processing Modules (SIPs) and Single In-Line Memory Modules (SIMMs), containing more than one 1-Meg or above DRAMs mounted on their own small printed circuit board, as well as memory cards, which are memory modules about the size of a credit card which are designed to be easily inserted into portable computers, printers, and similar applications; so-called video random access memory (VRAM) which is DRAM designed to improve the video performance of computers; and any future packaging and assembling of DRAMs. *Id.* at 18,163.

¹⁴² Dynamic Random Access Memory Semiconductors of one Megabit and Above from the Republic of Korea, 57 Fed. Reg., 21,231 (Dep't Comm. 1992) (initiation of investigation).

¹⁴³ *Id.*

¹⁴⁴ USITC Pub. 2519, *supra* note 139, at A-50.

¹⁴⁵ USITC Pub. 2629 *supra* note 139, at 65.

8. FLAT-ROLLED CARBON STEEL¹⁴⁶

This investigation was initiated by Armco Steel Co., L.P.; Bethlehem Steel Corp.; Geneva Steel; Gulf States Steel, Inc. of Alabama; Inland Steel Industries, Inc.; Laclede Steel Co., Inc.; Lukens Steel Co.; National Steel Corp.; Sharon Steel Corp.; USX Corp./U.S. Steel Group; and WCI Steel, Inc.¹⁴⁷ against several steel companies in Korea¹⁴⁸ and steel companies in more than a dozen other countries for alleged countervailing duty and antidumping violations.¹⁴⁹ In Korea's case, items under the antidumping investigation involved certain hot-rolled carbon steel flat products; certain cold-rolled carbon steel flat products; certain corrosion-resistant carbon steel flat products; and certain cut-to-length carbon steel plate.¹⁵⁰ The countervailing duty investigation involved certain equity infusions into POSCO (one of the Korean companies accused of being subsidized) in 1981, and from 1986 to 1988. In

¹⁴⁶ Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, the Republic of Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, USITC Pub. 2549, Inv. Nos. 701-TA-319 to 354 (Aug. 1992) [hereinafter USITC Pub. 2549] (preliminary determination); Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, the Republic of Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom vol. I, USITC Pub. 2664, Inv. Nos. 701-TA-319 to 332, 334, 336-342, 344, 347-353, 731-TA-573 to 579, 581-592, 594-597, 599-609, 612-619 (Aug. 1993) [hereinafter USITC Pub. 2664-I] (final determination); Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, the Republic of Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom vol. II, USITC Pub. 2664, Inv. Nos. 701-TA-319 to 332, 334, 336-342, 344, 347-353, 731-TA-573 to 579, 581-592, 594-597, 599-609, 612-619 (Aug. 1993) [hereinafter USITC Pub. 2664-II] (final determination).

¹⁴⁷ Not all of these companies were petitioners in each case.

¹⁴⁸ The companies being sued are named in USITC Pub. 2549, *supra* note 146, at I-99.

¹⁴⁹ Certain Flat-Rolled Carbon Steel Products, 57 Fed. Reg. 30,231 (U.S. Int'l Trade Comm. 1992) (preliminary investigation).

¹⁵⁰ Certain Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, the Republic of Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 57 Fed. Reg. 32,971 (Dep't Comm. 1992) (preliminary investigation).

addition, the investigation resulted in government land transfers to POSCO for the Pohang facility (one of POSCO's plant facilities).¹⁵¹ In the case of the Korean companies, alleged dumping margins at the preliminary investigation ranged from 5.53% to 152.84%.¹⁵² The subsidy rate was alleged to be 11.74%.¹⁵³

This barrage of investigations virtually closed portions of the U.S. steel market to certain kinds of foreign steel for a significant period of time.¹⁵⁴ This put a number of U.S. steel producers in the awkward position of having to increase the amount of semi-finished steel they imported in order to fill their own orders for finished steel.¹⁵⁵ The ITC's final ruling stated that steel imports did not injure the U.S. industry in over half of the seventy-four cases that were investigated.¹⁵⁶ As a result of this ruling, steel prices are expected to drop.¹⁵⁷

9. INDUSTRIAL BELTS¹⁵⁸

This investigation resulted from the petition filed on June 30, 1988 by the Gates Rubber Company of Denver, Colorado.¹⁵⁹ The petitioner alleged that Korean industrial

¹⁵¹ *Id.*

¹⁵² Richard K. Bank, *Trade Horizons*, KOREA BUS. WORLD, Aug. 1992, at 12.

¹⁵³ *Id.*

¹⁵⁴ Experts say that foreign steel is effectively barred from the U.S. market when dumping duties exceed 15%. James Bovard, *Steel Rulings Dump on America*, WALL ST. J., June 23, 1993, at A14.

¹⁵⁵ Dana Milbank, *U.S. Steel Industry's New Strength May Soon Weaken*, WALL ST. J., June 3, 1993, at B4. Milbank points out that these suits may actually damage the steel industry in the United States because the breathing room provided by the suits allowed inefficient capacity to remain, while encouraging the growth of mini mills and making the domestic steel industry more isolated and parochial. *Id.*

¹⁵⁶ Asra Q. Nomani & Dana Milbank, *Trade Panel Backs Foreign Steel Concerns*, WALL ST. J., July 28, 1993, at A3; see also USITC Pub. 2664-I, *supra* note 146.

¹⁵⁷ Erle Norton & Dana Milbank, *ITC Stance Puts Pressure on Steel Prices and Eases Concerns About Inflation*, WALL ST. J., July 29, 1993, at A2.

¹⁵⁸ Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany, USITC Pub. 2194, Inv. Nos. 701-TA-293 and 731-TA-412 to 419 (May 1989) [hereinafter USITC Pub. 2194] (final determination).

¹⁵⁹ Industrial Belts from Israel et al., 54 Fed. Reg. 6970-6971 (U.S. Int'l
<https://scholarship.law.upenn.edu/jil/vol15/iss2/3>

belts¹⁶⁰ were being sold in the United States for less than fair value. The ITC determined that the Korean industrial belts were indeed being sold, or were likely to be sold, in the United States for less than fair value,¹⁶¹ and estimated the average of the highest margin to be 64.3%.¹⁶² The ITC, however, determined that the countervailing duty laws were not violated; and the estimated net subsidy of 0.41% was held to be *de minimis*.¹⁶³

10. MOTORCYCLE BATTERIES¹⁶⁴

This investigation commenced on May 17, 1989 in response to a petition filed by Yuasa-Exide Battery Corp. of Reading, Pennsylvania to determine whether an industry in the United States was materially injured, or was threatened with material injury, or the establishment of an industry in the United States was materially retarded by 12-volt motorcycle batteries imported from Korea.¹⁶⁵ The target of the investigation was Korea Storage Battery Co., Ltd.¹⁶⁶ The ITC unanimously found that the charges were groundless.¹⁶⁷

Trade Comm. 1989) (final investigation).

¹⁶⁰ The industrial belts in this investigation consisted of belting and belts for machinery, in part or wholly of rubber or plastics. Excluded from this investigation were imports of conveyor belts and automotive belts. Industrial Belts from Israel and South Korea, 53 Fed. Reg. 52,517 (U.S. Int'l Trade Comm. 1988) (final investigation).

¹⁶¹ Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Republic of Korea, 54 Fed. Reg. 15,487, 15,487 (Dep't Comm. 1989) (final determination).

¹⁶² *Id.* at 15,489.

¹⁶³ Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Republic of Korea, 54 Fed. Reg. 15,513 (Dep't Comm. 1989) (final negative countervailing duty determination).

¹⁶⁴ 12-Volt Motorcycle Batteries from the Republic of Korea, USITC Pub. 2203, Inv. No. 731-TA-434 (July 1989) [hereinafter USITC Pub. 2203] (preliminary determination); *see also* 12-Volt Motorcycle Batteries from Korea, 54 Fed. Reg. 24,927 (Dep't Comm. 1989) (initiating investigation).

¹⁶⁵ 12-Volt Motorcycle Batteries from the Republic of Korea, 54 Fed. Reg. 23,296, 23,296-297 (U.S. Int'l Trade Comm. 1989) (preliminary investigation).

¹⁶⁶ 12-Volt Motorcycle Batteries from Korea, 54 Fed. Reg., *supra* note 164, at 24,928.

¹⁶⁷ USITC Pub. 2203, *supra* note 164, at 3.

11. NITROCELLULOSE¹⁶⁸

This investigation began as the result of a petition filed on September 19, 1989 by Hercules, Inc. of Wilmington, Delaware.¹⁶⁹ The petitioner alleged that imports of industrial nitrocellulose from Korea were being, or were likely to be, sold in the United States at less than fair value.¹⁷⁰ The ITC determined that there was a reasonable indication that an industry in the United States was materially injured as a result of these imports.¹⁷¹ It determined the weighted-average dumping margins to be 66.0%.¹⁷²

12. OFFSHORE PLATFORM JACKETS AND PILES¹⁷³

This investigation was initiated by Kaiser Aluminum Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers in April, 1985.¹⁷⁴ A countervailing duty investigation was brought against Korean manufacturers, producers and exporters of offshore platform jackets and piles for receiving benefits that constitute subsidies.¹⁷⁵ The ITC

¹⁶⁸ Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, West Germany, and Yugoslavia, USITC Pub. 2231, Inv. Nos. 731-TA-439 to 445 (Nov. 1989) [hereinafter USITC Pub. 2231] (preliminary determination); Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, USITC Pub. 2295, Inv. Nos. 731-TA-439 to 444 (June 1990) [hereinafter USITC Pub. 2295] (final determination).

¹⁶⁹ Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, West Germany, and Yugoslavia, 54 Fed. Reg. 39,055 (U.S. Int'l Trade Comm. 1989) (institution of investigation).

¹⁷⁰ Industrial Nitrocellulose from the Republic of Korea, 54 Fed. Reg. 42,537, 42,537 (Dep't Comm. 1989) (initiation of antidumping duty investigation).

¹⁷¹ USITC Pub. 2231, *supra* note 168, at 1.

¹⁷² Industrial Nitrocellulose from the Republic of Korea, 55 Fed. Reg. 21,054, 21,056 (Dep't Comm. 1990) (final determination).

¹⁷³ Offshore Platform Jackets and Piles from the Republic of Korea and Japan, USITC Pub. 1708, Inv. No. 701-TA-248 (June 1985) [hereinafter USITC Pub. 1708] (preliminary determination).

¹⁷⁴ Offshore Platform Jackets and Piles from the Republic of Korea, 50 Fed. Reg. 20,253, 20,253 (Dep't Comm. 1985) (initiation of countervailing duty investigation).

¹⁷⁵ *Id.* at 20,253-54.
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determined that industries in the United States were materially injured by Korean imports.¹⁷⁶

13. PHOTO ALBUMS¹⁷⁷

This investigation was instigated in January, 1985 by Esselte Pendaflex, Inc., The Holson Co., Kleer-Vu Plastics Corp. and SPM Manufacturing on behalf of the U.S. photo albums and photo album filler pages industry.¹⁷⁸ The investigation was brought against Korean manufacturers for allegedly selling their products in the United States for less than fair value. Preliminary dumping margins ranged from 26% to 83%.

14. POLYETHYLENE TEREPHTHALATE FILM, SHEET AND STRIP¹⁷⁹

This investigation was initiated in response to a petition filed on April 27, 1990 by E.I. du Pont de Nemours & Co., Wilmington, Delaware; Hoechst Celanese Corp., Charlotte, North Carolina; and ICI Americas, Inc., Wilmington, Delaware. These companies alleged that Korean imports of PET film, sheet and strip were being sold in the United States at less than fair value.¹⁸⁰ The ITC determined that an

¹⁷⁶ See *Offshore Platform Jackets and Piles from the Republic of Korea and Japan*, USITC Pub. 1848, Inv. No. 701-TA-248 (May 1986) (final determination).

¹⁷⁷ *Photo Albums and Photo Album Filler Pages from Hong Kong and the Republic of Korea*, USITC Pub. 1660, Inv. Nos. 731-TA-240 and 241 (Mar. 1985) [hereinafter USITC Pub. 1660] (preliminary determination).

¹⁷⁸ *Photo Albums and Photo Album Filler Pages from Hong Kong and the Republic of Korea*, 50 Fed. Reg. 5,327, 5,327-28 (U.S. Int'l Trade Comm. 1985) (institution of preliminary antidumping investigation).

¹⁷⁹ See *Polyethylene Terephthalate Film, Sheet, and Strip from Japan, the Republic of Korea and Taiwan*, USITC Pub. 2292, Inv. Nos. 731-TA-458 to 460 (June 1990) [hereinafter USITC Pub. 2292] (preliminary determination); *Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea*, USITC Pub. 2383, Inv. Nos. 731-TA-458 to 459 (May 1991) [hereinafter USITC Pub. 2383] (final determination); see also *Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea*, 55 Fed. Reg. 52,105 (U.S. Int'l Trade Comm. 1990) (giving notice of the final antidumping investigations to determine harm to U.S. markets).

¹⁸⁰ *Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea*, 55 Fed. Reg. 52,105 (U.S. Int'l Trade Comm. 1990) (giving notice of the final antidumping investigations to determine harm to U.S. markets); see also *supra* note 179, at 52,105.

industry in the United States was materially injured as a result of the Korean imports¹⁸¹ and computed the weighted-average dumping margins to be between 3.88% and 5.38%.¹⁸²

15. STAINLESS STEEL BUTT-WELD PIPE FITTINGS¹⁸³

This investigation began as the result of a petition filed on May 20, 1992 by the Flowline Division of Markovitz Enterprises, Inc. of New Castle, Pennsylvania.¹⁸⁴ The petitioner alleged that certain stainless steel butt-weld pipe fittings from Korea and Taiwan were being, or were likely to be, sold in the United States for less than fair value.¹⁸⁵ The ITC determined unanimously that there was a reasonable indication that an industry in the United States was materially injured by reason of imports from Korea.¹⁸⁶

16. STEEL PIPES AND TUBES¹⁸⁷

This investigation was instituted on September 24, 1991 by counsel for Allied Tube & Conduit Corp., Harvey, Illinois; American Tube Co., Phoenix, Arizona; Bull Moose Tube Co.,

¹⁸¹ USITC Pub. 2383, *supra* note 179, at 1.

¹⁸² Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea, 56 Fed. Reg. 16,305, 16,317 (Dept' Comm. 1991) (final determination of sales at less than fair value).

¹⁸³ Certain Stainless Steel Butt-Weld Pipe Fittings from Korea and Taiwan, USITC Pub. 2534, Inv. Nos. 731-TA-563 and 564 (July 1992) [hereinafter USITC Pub. 2534] (preliminary determination).

¹⁸⁴ Certain Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea and Taiwan, 57 Fed. Reg. 22,486, 22,487 (U.S. Int'l Trade Comm. 1992) (institution and scheduling of preliminary antidumping investigations).

¹⁸⁵ Certain Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea and Taiwan, 57 Fed. Reg. 26,645, 26,645 (U.S. Int'l Trade Comm. 1992) (initiation of antidumping duty investigations). The products subject to these investigations were stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. *Id.*

¹⁸⁶ USITC Pub. 2534, *supra* note 183, at 3.

¹⁸⁷ Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, USITC Pub. 2454, Inv. Nos. 701-TA-311 and 731-TA-532 to 537 (Nov. 1991) [hereinafter USITC Pub. 2454] (preliminary determination); Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, USITC Pub. 2564, Inv. Nos. 731-TA-532 to 537 (Oct. 1992) [hereinafter USITC Pub. 2564] (final determination).

Gerald, Missouri; Century Tube Corp., Pine Bluff, Arkansas; Sawhill Tubular Division of Cyclops Corp., Sharon, Pennsylvania; Laclede Steel Co., St. Louis, Missouri; Maruichi American Corp., Santa Fe Springs, California; Sharon Tube Co., Sharon, Pennsylvania; Western Tube & Conduit Corp., Long Beach, California; and Wheatland Tube Co., Collingswood, New Jersey.¹⁸⁸ The petition alleged that circular welded non-alloy steel pipe¹⁸⁹ from Korea and other countries was being, or was likely to be, sold in the United States for less than fair value.¹⁹⁰ The petitioners estimated the United States price based on two methods: (1) export price quotes obtained from two Korean producers of standard pipe, and (2) the customs value of standard pipe imported into the United States from Korea during the second quarter of 1991. The petitioners estimated fair value based on actual transaction prices for welded standard pipe in Korea as reported in the Korean publication COMPREHENSIVE COMMODITY PRICE INFORMATION (June, 1991), which listed the average FOB (freight on board) transaction price for standard pipe during May, 1991. Based on these comparisons, they alleged antidumping margins ranging from 1.81% to 25.04%.¹⁹¹ The ITC found that there was a reasonable indication of material injury resulting from Korean imports that were sold at less than fair value,¹⁹² and assessed dumping margins ranging from 4.91% to 11.63%.¹⁹³ In 25 of

¹⁸⁸ Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, 56 Fed. Reg. 49,903, 49,904 (U.S. Int'l Trade Comm. 1991) (institution and scheduling of preliminary countervailing duty and antidumping investigations).

¹⁸⁹ The circular welded non-alloy steel pipe covered in this investigation included certain circular, welded, non-alloy steel pipes and tubes or circular cross section, regardless of wall thickness not more than 406.4 mm (16 inches) in outside diameter. *Id.* at 49,904 n.2.

¹⁹⁰ Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, 56 Fed. Reg. 52,528, 52,528 (Dep't Comm. 1991) (initiation of antidumping investigations).

¹⁹¹ *Id.*

¹⁹² USITC Pub. 2454, *supra* note 187, at 27.

¹⁹³ Circular Welded, Non-Alloy Steel Pipe from the Republic of Korea, 57 Fed. Reg. 42,942, 42,953 (Dep't Comm. 1992) (final determination of sales at less than fair value).

55 possible quarterly price comparisons, the Korean companies sold pipe at prices that were between 0.3% and 19.5% less than those of domestic products. In the other 30 cases, the Korean companies sold their pipe at higher than domestic prices, at margins ranging from 0.6% to 15.3%.¹⁹⁴

It should be noted that this was not the first investigation involving circular, welded, non-alloy steel pipes and tubes. The ITC previously conducted ten antidumping investigations and six countervailing duty investigations involving these products. Many of these investigations were terminated before final antidumping and/or countervailing-duty orders were issued. Some orders were revoked after the subject country entered into a voluntary restraint arrangement with the United States.¹⁹⁵

17. SWEATERS¹⁹⁶

This investigation was initiated by a petition filed on September 22, 1989 by counsel on behalf of the National Knitwear and Sportswear Association, New York, New York.¹⁹⁷ The petitioner alleged that Korean sweaters made of man-made fiber were, or were likely to be, sold in the United States for less than fair value.¹⁹⁸ The ITC determined the weighted-average dumping margins to be between 0.73% and 3.17%.¹⁹⁹ The ITC's holding that an industry in the United States was materially injured was appealed to the Court of International Trade, which remanded the matter for further

¹⁹⁴ USITC Pub. 2454, *supra* note 187, at A-52.

¹⁹⁵ *Id.* at A-4.

¹⁹⁶ Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan, USITC Pub. 2312, Inv. Nos. 731-TA-448 to 450 (Sept. 1990) [hereinafter USITC Pub. 2312] (final determination); Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan: Views on Remand, USITC Pub. 2577, Inv. Nos. 731-TA-448 to 450 (Nov. 1992) [hereinafter USITC Pub. 2577] (final determination).

¹⁹⁷ Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan, 55 Fed. Reg. 19,369, 19,370 (U.S. Int'l Trade Comm. 1990) (institution of final antidumping investigations).

¹⁹⁸ Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan, 55 Fed. Reg. 32,659, 32,659 (Dept Comm. 1990) (final determination of sales at less than fair value).

¹⁹⁹ *See id.* at 32,672.

determinations.²⁰⁰ Upon remand, the ITC determined that no industry in the United States was materially injured, or threatened with material injury, by reason of the imported Korean sweaters.²⁰¹

18. TELEPHONE SYSTEMS AND SUBASSEMBLIES²⁰²

This investigation responded to a petition filed on December 28, 1988 by American Telephone & Telegraph Co. of Parsippany, New Jersey and Comdial Corp. of Charlottesville, Virginia. It alleged that certain telephone systems and subassemblies²⁰³ were being sold in the United States for less than fair value.²⁰⁴ The ITC's preliminary determination found that there was a reasonable indication that an industry in the United States was materially injured by reason of imports.²⁰⁵ The ITC's final determination found dumping margins ranging from 13.4% to 14.75%.²⁰⁶

²⁰⁰ Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan, 57 Fed. Reg. 47,352, 47,352 (U.S. Int'l Trade Comm. 1992) (notice and scheduling of remand proceedings).

²⁰¹ USITC Pub. 2577, *supra* note 196, at 1.

²⁰² Certain Telephone Systems and Subassemblies thereof from Korea, USITC Pub. 2254, Inv. No. 731-TA-427 (Jan. 1990) [hereinafter USITC Pub. 2254] (final determination).

²⁰³ For purposes of this investigation, "small business telephone systems and subassemblies thereof" consisted of telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking ports capacities of between 2 and 256 ports, and discrete subassemblies thereof designed for use in such systems. A subassembly is designed for use in small business systems if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies consist of control and switching equipment, circuit cards and modules and telephone sets and consoles. *See* Certain Telephone Systems and Subassemblies thereof from Japan, the Republic of Korea, and Taiwan, 54 Fed. Reg. 33,783, 33,783 n.1 (U.S. Int'l Trade Comm. 1989) (institution of final antidumping investigations).

²⁰⁴ *See id.* at 33,784.

²⁰⁵ *See id.*

²⁰⁶ USITC Pub. 2254, *supra* note 202, at B-3 to 4.

19. TUBULAR GOODS²⁰⁷

This investigation was instigated by Lone Star Steel Company of Dallas, Texas, CF&I Steel Corporation of Pueblo, Colorado; LTV Steel Company of Cleveland, Ohio; and the United States Steel Corporation of Pittsburgh, Pennsylvania, in June, 1984.²⁰⁸ The investigation was brought against five Korean producers²⁰⁹ of oil country tubular goods²¹⁰ and five Korean trading companies²¹¹ that exported the goods to the United States as well as to companies located in Brazil and Spain. The petitioners alleged that these companies received export subsidies from the governments of Korea, Brazil²¹² and Spain.²¹³ The investigation found the Brazilian and Spanish companies to be guilty, but did not find the Korean companies guilty of any violations.²¹⁴

²⁰⁷ Oil Country Tubular Goods from Brazil, Korea, and Spain, USITC Pub. 1633, Inv. Nos. 701-TA-215 to 217 (Jan. 1985) [hereinafter USITC Pub. 1633] (final determination).

²⁰⁸ Oil Tubular Goods from the Republic of Korea, 49 Fed. Reg. 46,776, 46,776 (U.S. Int'l Trade Comm. 1984) (final affirmative countervailing duty determination).

²⁰⁹ The five Korean companies were Hyundai Pipe Company, Korea Steel Pipe Company, Pusan Steel Pipe Company, Dongjin Steel Company and Union Steel Manufacturing Company. *Id.* at 46,777.

²¹⁰ Oil country tubular goods include hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute or proprietary specifications. *Id.* at 46,776.

²¹¹ The five Korean trading companies were the Hyundai Corporation, Kukje-ICC Corporation, Sunkyong Limited, Samsung Co. Ltd. and Daewoo Corporation. *Id.* at 46,777.

²¹² For a discussion on the countervailing duty case against the Brazilian companies, see Oil Country Tubular Goods from Brazil, 49 Fed. Reg. 46,570 (Dep't Comm. 1984) (final affirmative countervailing duty determination).

²¹³ For a discussion of the countervailing duty case against the Spanish companies, see Oil Country Tubular Goods from Spain, 49 Fed. Reg. 47,060 (Dep't Comm. 1984) (final affirmative countervailing duty determination).

²¹⁴ USITC Pub. 1633, *supra* note 207, at 1. The Brazilian and Spanish companies were found guilty of materially injuring an industry in the United States by reason of their imports, pursuant to § 705(b) of the Tariff Act of 1930, 19 U.S.C. § 1671d(b).

20. WELDED STAINLESS STEEL PIPES²¹⁵

This investigation was initiated by a petition filed November 18, 1991 by Avesta Sandvik Tube, Inc., Bristol Metals, Damascus Tubular Products, Trent Tube Division of Crucible Materials Corp., and the United Steelworkers of America.²¹⁶ The petition alleged that welded ASTM A-312 austenitic stainless steel pipe was being, or was likely to be, sold in the United States at less than fair value.²¹⁷ The ITC found the Korean companies guilty²¹⁸ of dumping at margins of up to 30% in its preliminary investigation.²¹⁹ The final investigation also found the Korean companies guilty of dumping²²⁰ and assigned weighted-average dumping margins of between 2.55% and 7.75%.²²¹

²¹⁵ Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan, USITC Pub. 2474, Inv. Nos. 731-TA-540 to 541 (Jan. 1992) [hereinafter USITC Pub. 2474] (preliminary determination); Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan, USITC Pub. 2585, Inv. Nos. 731-TA-540 to 541 (Dec. 1992) [hereinafter USITC Pub. 2585] (final determination).

²¹⁶ Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan, 56 Fed. Reg. 59,961, 59,961 (U.S. Int'l Trade Comm. 1991) (institution and scheduling of preliminary antidumping investigations).

²¹⁷ Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan, 56 Fed. Reg. 65,043, 65,043 (Dep't Comm. 1991) (initiation of antidumping investigations).

²¹⁸ USITC Pub. 2474, *supra* note 215, at 1.

²¹⁹ *Id.* at 17 n.73.

²²⁰ Certain Welded Stainless Steel Pipe from the Republic of Korea, 57 Fed. Reg. 53,693, 53,693 (Dep't Comm. 1992) (final determination of sales at less than fair value).

²²¹ *Id.* at 53,705.