Bureau of Competition
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

COMMISSION APPROVED

BY HAND

March 28, 1986

RECEIVED

Mr. Gilbert B. Kaplan
Deputy Assistant Secretary for
Import Administration
Room B-099
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Dynamic random access memory semiconductors of 256 kilobits and above

Dear Mr. Kaplan:

The Federal Trade Commission ("Commission") wishes to participate in the public hearing on April 18 in the antidumping investigation of dynamic random access memory semiconductors of 256 kilobits and above from Japan. Dr. Sarah Goodfriend and I will be participating on behalf of the Commission and will discuss whether sales in Japan are at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. The Commission enforces various statutes aimed at promoting competition in United States commerce to the benefit of United States consumers and has expertise in assessing the competitive significance of a decline in prices.

Sincerely,

Benjamin Cohen

Benjamin Cohen
Attorney
Division of International
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TRADE POLICY AND THE CONSUMER: THE CONSUMER ADVOCACY ROLE OF THE FTC IN TRADE LAW PROCEEDINGS*

Carol T. Crawford
Director
Bureau of Consumer Protection
Federal Trade Commission

November 28, 1984

before the

Organization For Economic Cooperation and Development
Committee on Consumer Policy
"Symposium on Consumer Policy and International Trade"

*The opinions expressed are solely those of the Director of the Bureau of Consumer Protection of the Federal Trade Commission and do not represent the views of the Commission itself or any individual Commissioner, however, the Commission has voted to authorize the presentation of this paper.

Introduction

This paper deals with "Trade Policy and the Consumer" and more specifically the role of the Federal Trade Commission (the "Commission" or the "FTC") in recent years in attempting to identify and define the real "social costs" to the consumer and the free-world economy of protectionist trade law measures. This is not a new area of concern for the OECD; as early as 1960, this organization recognized the economic dangers inherent in barriers to free trade. At that time, the OECD countries stated in the OECD's 1960 Convention that they agreed "to pursue their efforts to reduce or abolish obstacles to the exchange of goods and services and current payments and maintain and extend the liberalisation of capital movements." Twenty-four years later, this concern remains, for as recently as last year, in a communique following the 1983 Ministerial Council Meetings, the OECD Ministers stated, in pertinent part, that

> "They ... agreed that the economic recovery, as it proceeds, provides favourable conditions which Member countries should use, individually and collectively, to reverse protectionist trends and to relax and dismantle progressively trade restrictions and trade distorting domestic measures, particularly those introduced over the recent period of poor growth performance."[1]

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1 C(83)77; paragraph 14, as cited in Report on Issues Arising at the Frontier of Competition and Trade Policies, RBP(84) 9 Part II at 72.

Inherent in both these pronouncements, made more than two decades apart, is the concern of this collective multinational body over the negative impact of such trade policies upon the Free World's economies, and indeed, the ultimate consumer. Given this historical and continuing concern, it is quite fitting that the Committee on Consumer Policy sponsor this Symposium on Consumer Policy and International Trade. Indeed, the issues addressed at this Symposium have perhaps never been more timely.

The current Administration has been, and remains, committed to promoting free and open world trade. During the last four years, working within the constraints of the existing trade laws of the United States as well as the practical realities of the frequently over-heated political climate surrounding trade issues, the current Administration has sought to implement its commitment to free trade on the principle that such open and unfettered trade is essential to a healthy, vigorously competitive free-world economy which enhances the welfare of all consumers. Recently the FTC, under the Chairmanship of James C. Miller III, has played an increasingly active role in the governmental process related to the enforcement of the United States' trade laws. This paper describes the FTC's efforts in this area: the attempt to underscore and dramatize to the appropriate trade agencies the demonstrable "social costs" of protectionism by presenting both legal and economic analyses of the issues presented by particular cases and estimates of the proposed import relief's effect on both consumers and the domestic economy.

There is bipartisan support among the FTC's Commissioners for these efforts even though the current five Commissioners have been appointed by two different Administrations and belong to both major political parties. Indeed, there has not been a single dissenting vote on any of the Commission's trade briefs which are discussed below.

I. The principal enforcement agencies and the principal trade laws

It may be useful to begin by providing a brief summary of the U.S. trade laws and the principal enforcement agencies charged with their administration.

The President and several agencies administer U.S. foreign trade laws. The principal agencies are the United States Trade Representative ("USTR"), the Department of Commerce ("DOC"), and the International Trade Commission ("ITC").[2] In addition, the Trade Policy Committee ("TPC") -- which includes the USTR, who is its Chairman, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the

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2 The ITC is an "independent" agency like the FTC. The other agencies are part of the Executive Branch. The Customs Service, also part of the Executive branch, classifies and values imports, determines the proper rate of duty applicable to imports, and assesses and collects the duty.

Secretary of Commerce, and the Secretary of Labor[3] -- plays an important role in the trade policy area. Some U.S. trade laws -- countervailing duty and antidumping -- require decisions by both the DOC and the ITC. The DOC determines the amount of the foreign subsidy or dumping, and the ITC determines whether the domestic industry is injured. Some U.S. trade laws -- such as unfair practices and escape clause -- explicitly give the President the final decision; in these situations he is advised by the TPC.

While U.S. trade laws cover numerous fields, this paper concentrates on those four areas in which the FTC has recently played a role: countervailing duties, antidumping, unfair practices, and the escape clause.

Countervailing duties are imposed when the DOC determines that a "subsidy" is being provided to goods imported into the U.S. and when the ITC determines that a U.S. industry is materially injured, or threatened by injury, by reason of imports of the subsidized merchandise.[4] Antidumping duties are imposed when the DOC determines that imports are being sold at "less than fair value" and when the ITC determines that a U.S. industry is

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3 15 C.F.R. §2002.0.

4 19 U.S.C. §§1671 et seq. If a foreign country has not signed the International Agreement on Subsidies and Countervailing Measures, or an equivalent agreement, then countervailing duties are imposed even if there is no injury. 19 U.S.C. §1303(a)(1). If a country is a signatory of the General Agreement on Tariffs and Trade ("GATT") and if the imported item is duty-free, then countervailing duties can be imposed only if the ITC makes an affirmative injury determination. 19 U.S.C. § 1303(a)(2).

materially injured, or threatened by injury, by reason of imports of the dumped goods.[5] There is judicial review by the Court of International Trade of both countervailing duty and antidumping decisions.

The ITC also investigates whether unfair methods of competition or unfair acts in the importation of articles into the U.S. are destroying or substantially injuring an efficiently operating industry in the U.S., preventing the establishment of such an industry, or restraining or monopolizing trade in the U.S.[6] If such a violation is found, the ITC may order the exclusion of such articles from the U.S. The President, however, may disapprove such an order by the ITC. The Court of International Trade reviews decisions by the ITC under this provision as well.

Under the "escape clause", the ITC determines if rising imports are a substantial cause of injury to a domestic industry.[7] If so, the ITC may recommend adjustment assistance for the workers and firms in that industry, higher tariffs, or import quotas. The President receives a recommendation from the Trade Policy Committee following its review of the ITC's decision, and the President then decides what relief, if any, to order. If the President takes action different from what the ITC

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5 19 U.S.C. §§1673 et seq. "Less than fair value" is a technical term; roughly speaking, it means selling in the U.S. at a price that either is below the price in the domestic market or is below the cost of production.

6 19 U.S.C. §1337.

7 19 U.S.C. §§2251 et seq.

recommends, then Congress may override the President by passing a concurrent resolution directing the President to proclaim the relief recommended by the ITC.[8] The Court of International Trade reviews the action taken by the ITC and the President.[9]

II. The Congressional perception of the link between the trade laws and the antitrust laws

A brief review of the legislative history related to the enactment of the U.S. trade laws demonstrates that the United States Congress believed that the goals of the countervailing duty, antidumping, and unfair practices provisions of our trade laws are intimately connected with the goals of our antitrust laws. The first countervailing duty statute was passed in 1890, the same year as the Sherman Antitrust Act. In 1916 Congress passed the first antidumping statute,[10] two years after passing the Clayton Antitrust Act and the Federal Trade Commission Act. The stated purpose of this first antidumping law was to place foreign firms selling in the U.S. in the same position "with

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8 19 U.S.C. §2253(c)(1). This part of the law may no longer be valid in light of the Supreme Court's recent decision involving a similar provision in our immigration law. Immigration and Naturalization Service v. Chadha, 103 S. Ct. 2764 (1983).

9 Maple Leaf Fish Co. v. U.S., 566 F. Supp. 899 (Ct. Int'l Trade 1983) and 6 ITRD 1019 (Ct. Int'l Trade 1984).

10 15 U.S.C. § 72.

reference to unfair competition" as domestic firms.[11] In 1921 Congress passed another antidumping law -- the predecessor of the current antidumping law administered by the ITC and DOC-- to prevent foreign firms from engaging in what it called "predatory pricing" in the U.S.[12] In 1922 Congress made minor changes to the countervailing duty law and also enacted legislation prohibiting imports associated with "unfair methods of competition."[13] Senator Smoot, one of the sponsors of the 1922 tariff legislation, said that these provisions were an extension of the existing antidumping laws and the existing countervailing duty law, intended to protect U.S. firms against "unfair competition."[14]

Congress enacted two specific statutory provisions dealing with links between the FTC and the ITC. In its investigations of unfair practices in import trade, the ITC is directed to consult with, and seek advice and information from, the FTC and other agencies.[15] More generally, the FTC and other agencies are directed to "cooperate fully with the [ITC] for the purposes of aiding and assisting in its work."[16]

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11 H.R. Rep. No. 922, 64th Cong., 1st Sess. 9-10 (1916).

12 H.R. Rep. No. 1, 67th Cong., 1st Sess. 23-24 (1921).

13 19 U.S.C. § 1337.

14 62 Cong. Rec. 5874 (1922). See S. Rep. No. 595, 67th Cong., 2d Sess. 2-3 (1922).

15 19 U.S.C. §1337(b)(2).

16 19 U.S.C. §1334.

Additionally, the "escape clause" statute states that the President, in determining whether to provide import relief, shall take into account, inter alia, "the effect of import relief on consumers...and on competition in the domestic markets for such articles."[17] The unfair practices provision states that, in deciding whether to exclude an article, the ITC shall consider the effects of such exclusion "upon...competitive conditions in the United States economy...and United States consumers."[18]

Given this historical statutory linkage of trade policy to competition policy, the FTC in recent years has undertaken analyses designed to determine in specific cases the economic impact of trade relief on competition and the consumer.[19] The Commission's analyses are then shared with the agencies with

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17 19 U.S.C. §2252(c)(4) (emphasis added).

18 19 U.S.C. §1337(d) (emphasis added).

19 The organization of the Commission is divided into three Bureaus which carry out its two principal Congressional mandates: maintaining competition in the marketplace and policing unfair and deceptive trade practices. The separate, but complementary duties, responsibilities, and expertise of its three Bureaus facilitate this goal. The FTC's participation in foreign trade proceedings is a product of the joint efforts of the Bureaus of Consumer Protection, Competition and Economics. The principal mission of the Bureau of Consumer Protection is to eliminate unfair or deceptive acts or practices in or affecting commerce, with an emphasis on those practices that may unreasonably restrict or inhibit the free exercise of consumer choice. The Bureau enforces the consumer protection laws administered by the FTC. The principal mission of the Bureau of Competition is to enhance the welfare of consumers by maintaining competitive operation of our economic system of private enterprise through enforcement of our antitrust laws. Lastly, the Bureau of Economic's principal mission is to provide economic support to the FTC's consumer protection and antitrust activities.

which the individual proceedings are pending. The typical trade proceeding involves the domestic firms and the unions representing their workers, on the one hand, and U.S. importers and foreign exporters, on the other hand. Individual consumers rarely appear,[20] and organizations representing consumers have not appeared in any of the proceedings in which the FTC has been involved. The Commission's so-called "intervention" program therefore has allowed the FTC to assume the role of consumer advocate before the agencies holding the proceeding.

III. The FTC's recent intervention in trade cases[21]

A. Countervailing duties and dumping: Carbon Steel

In January 1982 seven major United States steel firms filed antidumping and countervailing duty petitions covering nine major steel products imported from Belgium, Brazil, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, Romania, South Africa, Spain, and the United Kingdom. The FTC filed briefs, presented oral testimony, and cross-examined other parties' witnesses at both the DOC and the ITC.

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20 Individual consumers did participate in the carbon steel escape clause case.

21 The FTC's first major involvement in a trade proceeding was in the "escape clause" case in 1980 dealing with imported automobiles. In that case our Bureau of Economics presented to the ITC a model which analyzed the likely impact of the proposed tariffs and quotas on sales, prices, profits, employment, competition, and costs to the consumer.

The FTC's principal brief to the DOC on countervailing duties stated that a major purpose of the Trade Agreements Act of 1979 (which enacted the current countervailing duty law) is to promote world trade based on efficiency or long-run comparative advantage. The brief then applied this general principle to three of the principal alleged subsidies involving imported carbon steel.

It was alleged by petitioners that European steel firms received subsidies because of payments by the respective European governments to their domestic coal firms. The Commission said that the legislative history and judicial precedent interpreting the countervailing duty law indicate that payments to local coal companies are not subsidies to the steel companies to the extent these payments merely reduce the difference between the price of local coal--which the steel companies are forced by their governments to buy even though foreign coal is cheaper -- and the price of imported coal; the Commission also said that there is no subsidy to the steel firms if they buy the coal at the same price as other users of coal.

A second major alleged subsidy involved the acquisition of equity and the provision of grants, loans, and loan guarantees by governments to steel firms as part of the "financial restructuring" of these steel firms. The FTC observed that in bankruptcy proceedings in the U.S. private creditors frequently take equity or give new loans to private debtors, and the Commission noted that in many cases the foreign government was a creditor of the foreign steel firm prior to the "restructuring." The Commission concluded that the foreign government's acquisition of equity or provision of additional grants, loans, or loan guarantees was not a subsidy if it was consistent with rational policies of private lenders in similar circumstances.

Another major alleged subsidy dealt with government payments for research and development. The FTC said that such payments are not a subsidy if they are financed out of a special tax on steel earmarked for research and development or if they are for basic research.

Finally, the Commission proferred estimates prepared by our Bureau of Economics of the costs to the economy and the consumer of imposing a countervailing duty. For example, if a uniform countervailing duty of 15 percent were imposed, then this would impose an annual cost to United States' consumers of $480 million and an annual inefficiency loss to the United States' economy of between $238 million and $257 million.

The FTC's brief to the DOC on the dumping aspects of the carbon steel cases again began by stating that in both the antidumping law and the antitrust laws Congress sought to create a legal environment in which the most efficient firms would survive. Thus, while prohibiting "unfair" competition from foreign imports, the antidumping law should not be interpreted so as to deny United States' consumers the benefits of fair competition by efficient foreign firms. The FTC then turned to some of the particular problems raised by these petitions. The dumping law provides that the DOC shall compare the price in the

U.S. with an estimate of foreign production costs-- "constructed value" -- if the price in the foreign market does not cover the foreign firm's total costs over "a reasonable period of time." The Commission suggested that a "reasonable period of time" would be the entire business cycle and not just the recession period argued by petitioners. Noting that the DOC adjusts the price in the foreign market to reflect physical differences in the product, the FTC suggested that the DOC should also adjust the foreign price downward to allow for certain important non-physical differences between sales to customers in the foreign country and sales to customers in the U.S.; e.g. (1) foreign steel firms may give their local customers more reliable deliveries than they give their U.S. customers, (2) foreign steel firms may give their local customers prompter service, more timely deliveries, and better technical assistance than they give their U.S. customers.

Following the DOC's findings that most of the foreign steel firms were receiving subsidies and were dumping, the FTC submitted briefs to the ITC on the injury phase of the proceedings. The Commission asserted that there is no injury to domestic steel firms if competitive conditions in the U.S. would be unchanged even if there were no subsidized imports. The FTC suggested that this might be the case here because a majority of steel imports came from low-cost producing countries, such as Japan and Canada, not found to have been subsidizing their steel exports, and these countries had substantial unused steel capacity available. The Commission also stated that there was no injury if the foreign subsidies do not have the effect of increasing sales of foreign steel in the U.S. Since most of the subsidies found by the DOC related to the financial restructuring of foreign steel firms, the Commission suggested that some of this restructuring may simply have affected the steel firms' fixed costs and so had no impact on their sales in the U.S. The FTC also said that some, if not all, of the alleged margin by which foreign steel sold below domestic steel in the U.S. might be due to differences in non-physical aspects of the two products, such as reliability of delivery, promptness of delivery, and service. Finally, at the request of the FTC, the staff of the ITC, using confidential data they had collected, calculated Hirschman-Herfindahl indices for the various steel products, and the Commission observed that some of the product markets -- hot-rolled plate and structurals-- were so concentrated that elimination of the challenged imports might result in an increase in concentration sufficient to attract attention if such an increase were to result from a merger.[22]

While the cases against the EEC steel firms were settled in the fall in 1982 by an agreement between the EEC and the U.S. government setting quotas on EEC steel exports to the U.S., the U.S. steel companies challenged in the Court of International Trade the DOC's findings about the magnitudes of the subsidies for Brazil, South Africa, and Spain. The FTC was granted

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22 For further development of this concept, see Benjamin I. Cohen, "A Method for Analyzing the Effect on Competition of Restricting Imports," 5 Northwestern Journal of International Law & Busness 510 (Fall 1983).

permission by the Court to be an _amicus curiae_ in these cases, and the FTC then filed, in 1983, briefs that presented essentially the same analysis concerning financial restructuring that the FTC had made to the DOC. The FTC pointed out to the Court that the DOC had adopted our analytical framework about restructuring in the case of a Luxembourg steel firm, and so, we suggested, it would be appropriate to apply the same legal standard to the restructuring that had occurred in the cases of Brazil, South Africa, and Spain. Following a settlement between the U.S. steel companies and the DOC in early 1984, these cases were voluntarily dismissed by the Court prior to any ruling on the issues the FTC had raised.

B. Softwood Lumber Products from Canada

In April 1983 the FTC filed with the DOC a brief concerning alleged subsidies given by the Canadian national and provincial governments to exporters of softwood lumber products. The alleged subsidy concerned the fee charged by the governments for the right to cut trees on land owned by the governments ("the stumpage fee"). The FTC endorsed the DOC's preliminary finding that the stumpage fee was not a countervailable subsidy, noting that petitioners' request, if granted, might raise the cost of a single-family house by as much as 6.5 percent.

The FTC stated that the language and legislative history of the countervailing duty statute both indicate that not every government payment or benefit to a private party is a countervailable subsidy; only those payments that distort trade and resource allocation by affecting the price or quantity of the good produced should be subject to countervailing duties. The FTC then provided a detailed economic analysis which showed that the benefit, if any, realized by timber owners in Canada from the stumpage fee did not affect the quantity or price of Canadian lumber sold in the U.S. and so was not a countervailable duty subsidy to lumber. The FTC's analysis also indicated that the appropriate benchmark by which to determine whether there is a subsidy would not be, as alleged by petitioners, the stumpage price in the U.S. but would be the stumpage price that would exist in Canada under a different system. The DOC's final determination used a framework similar to that proposed by the FTC and held there was no subsidy.

C. Color Television Receivers from the Republic of Korea and Taiwan

Reflecting the ever increasing internationalization of trade, many foreign firms have established manufacturing facilities in the United States on a "grass roots basis" or through acquisitions and joint ventures. The status of such firms became an issue in a recent trade proceeding. Foreign companies had established several plants in the U.S. to produce color television receivers. In May 1983 the FTC filed a brief with the ITC on the issue of whether plants owned by Japanese, Korean, and Taiwanese firms should be considered by the ITC as part of the U.S. industry in determining whether under the applicable trade law the U.S. industry was being injured by allegedly dumped imports from the Republic of Korea and Taiwan. The petitioners argued that the U.S. industry consisted of only five U.S. owned companies and -- without explanation -- one Dutch owned company. The FTC presented a broader definition, which included eight Japanese plants, a Korean plant, and two Taiwanese plants.[23] The FTC stated that the legislative history, the ITC's own precedents, and the nature of competition in the U.S. market between foreign and domestic television receivers all indicated that the ITC should consider all producers located in the U.S. as part of the U.S. industry. The ITC eventually agreed with the FTC's analysis on this issue.[24]

D. Vertical Milling Machines from Taiwan

In January 1984 the FTC filed with the ITC a brief concerning alleged unfair practices by 43 Taiwanese manufacturers and importers of vertical milling machines, a type of machine tool. The petitioner argued, in part, that the general shape of its "Bridgeport" brand vertical milling machine was a common law trademark and that the Taiwanese firms' products should be excluded from the U.S. because they were infringing on that trademark and thus were engaging in an "unfair method of competition." The Commission stated that there was a strong national interest in encouraging competition in the production

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23 These plants were built following numerous successful efforts by U.S. producers of television receivers to limit imports from these countries. These efforts include a major antidumping proceeding in 1971, claims of unfair trade practices, and an escape clause proceeding in 1977. The President negotiated Orderly Marketing Agreements with Japan in 1977 and with Korea and Taiwan in 1979.

24 The FTC did not participate in the "injury" issue in this case.

and sale of unpatented products and that the public interest in preventing consumer confusion and deception can be adequately protected by ensuring that imported products are truthfully labeled as to their origins. The Commission suggested that in determining what constitutes an "unfair" trade practice the ITC should be guided by domestic law so that foreign producers were not held to a higher standard of conduct than their domestic competitors. Where the purchasers of milling machines were knowledgeable and exercised a high degree of care in buying the expensive machines, the Commission concluded that accurate labeling as to the machines' manufacturer was sufficient to prevent any consumer deception. The ITC dismissed this portion of the petition.

E. "Escape clause" petitions on carbon steel, copper, and canned tuna fish

In early 1984 "escape clause" petitions were filed with the ITC seeking relief from imports of footwear, carbon steel, copper, and canned tuna fish. The FTC participated fully in the ITC's proceedings on carbon steel, copper, and canned tuna fish.[25] Following affirmative findings of injury or threat of injury by the ITC on carbon steel and copper, the FTC also filed briefs with the USTR and the Trade Policy Committee on these two matters.

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25 On March 20, 1984 the FTC notified the ITC that it wished to participate in the ITC's hearing on remedy in the footwear case. The ITC ultimately determined that there was no injury in this case, and so there was no remedy hearing.

In each of these three escape clause proceedings the FTC presented identical analyses concerning the appropriate analytical framework for determining if there was injury and, if so, what remedy should be recommended to the President. The Commission also presented in each ITC proceeding an estimate of the cost to the U.S. consumer and the economy of the relief requested by the petitioners.[26]

In the injury phase of each ITC investigation the FTC asserted that the statutory language and legislative history both suggest that escape clause relief should not be based on long-term shifts in comparative advantage, declines in domestic demand, or increases in the costs of a domestic industry. The FTC then applied this analytical framework to each of the three investigations.

For carbon steel, the Commission stated that available information raised questions regarding petitioners' entitlement to escape clause relief, since many of the import related problems appear to have had their origins in long-term trends and increased imports appear to be only one of many factors contributing to the decline of the domestic steel industry.

In copper the FTC suggested that while a recurring decline in domestic demand may be the most important cause of injury to the domestic industry, the ITC should also consider depressed

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26 Recently the USTR specifically requested the ITC to furnish the Administration with estimates of the likely cost of import relief to consumer industries and the ultimate consumer in these types of proceedings. Letter from Hon. William E. Brock to Hon. Alfred Eckes, Chairman, ITC, April 6, 1984.

copper demand outside the U.S. and foreign currency devaluations as other possible causes of injury which might entitle the petitioners to relief.

In canned tuna fish the Commission indicated that available information suggests that the shift in domestic demand from tuna canned in oil to tuna canned in water is the most important cause of actual or threatened injury and that there was reason to doubt whether the domestic tuna industry could become competitive with foreign tuna industries within the limited time period--five years--for which escape relief would be available if injury were found.

In each of these proceedings the FTC also proffered to the ITC estimates of the costs to the consumer and the economy over five years if the requested relief were granted:[27]

	Cost to consumers and economy of requested relief		Cost of adjustment assistance to workers
	Consumers	Economy	
	---------------------- $ Million		----------------------
	(1)	(2)	(3)
carbon steel	3,368	615	114
copper	1,718	228	NA
canned tuna fish	783	46-74	15

In the remedy phase of each ITC investigation the Commission stated that adjustment assistance to workers, whose jobs would be lost because of rising imports, was preferable to restricting

27 These costs were discounted using a discount rate of seven percent.

imports. If imports were to be restricted, the Commission said that tariffs were preferable to quotas. If quotas were to be imposed, the Commission suggested that the quotas should be global rather than country by-country and that they should be allocated to U.S. citizens, perhaps through an auction, rather than to foreigners.

The Commission's briefs to USTR and the Trade Policy Committee on carbon steel and copper[28] presented essentially the same analysis that the Commission had presented to the ITC concerning the appropriate remedy, and the FTC also provided estimates of the costs to the consumers and the economy of the specific remedies recommended to the President by the majority of the ITC.

IV. Evaluating the impact of the FTC's participation

It is difficult, if not impossible, to evaluate the impact of the FTC's participation in the proceedings described above. In some of these proceedings there were numerous other parties[29], who sometimes presented the same or similar analysis that the Commission made. In some of these proceedings, the formal

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28 The ITC determined there was no injury in the tuna fish case, and so the investigation ended. On September 6, 1984, the President decided that he would not impose import restraints on foreign copper, and on September 18 the President decided he would not unilaterally limit imports of carbon steel.

29 For example, in the carbon steel escape clause case there were 79 other parties.

decision was consistent with our analysis.[30] Other decisions stated that the analysis relied upon had been developed in the Commission's brief;[31] others did not. Sometimes there has been no discussion whatsoever of the issues raised by the FTC.

There has been one aspect of the FTC's role, however, that has been rather unique. In all these proceedings the FTC has blended fundamental economic analysis with legal arguments derived from the statutory language, the legislative history, and the precedents. The FTC has been the only party that has presented estimates of the costs to the consumer and the economy of the relief requested by the petitioners in the proceedings, and the FTC has usually been the only party cross-examining the economists presented by the other parties.

The FTC has also been cited in both the general press[32] and the trade press,[33] and it is, of course, possible that these articles have influenced the final decisions in the settlement of the carbon steel countervailing duty and antidumping cases and

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30 For example, our arguments about financial restructuring in the carbon steel countervailing duty cases were cited in other parties' posthearing briefs, and in one case -- Luxembourg -- DOC used our approach.

31 See opinions of ITC Vice Chairman Liebeler in Unwrought Copper, ITC No. 1549 (July 1984) and Carbon and Certain Alloy Steel Products, ITC. No. 1553 (July 1984).

32 See, e.g. news stories in The Economist (June 16, 1984) at 64, Washington Post (June 22, 1984) at D-7, New York Times (May 8, 1984) at D-15. See also editorial in Wall Street Journal (June 13, 1984) reprinted as part of Senator Chafee's remarks in Congressional Record (June 18, 1984) at S 7527.

33 See, e.g., American Metal Market (May 8, 1984) at 1.

may have possibly influenced the President in the escape clause cases involving copper and carbon steel. Given this positive, but somewhat unmeasurable, impact upon the trade proceedings in the United States, the Commission believes that this voice for competitive markets should be heard, and the Commission remains committed to representing consumers in future trade proceedings.

LIST OF TRADE INTERVENTION BRIEFS

I. <u>Carbon Steel: Countervailing Duties and Antidumping</u>

<u>Department of Commerce</u>

Comment by the Federal Trade Commission's Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics on Countervailing Duty Investigations (May 28, 1982)

Posthearing Brief by the Federal Trade Commission's Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics on Countervailing Duty Investigations (July 21, 1982)

Posthearing Brief by the Federal Trade Commission's Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics on the Issue of Financial Restructuring in the Countervailing Duty Investigations (July 26, 1982)

Comment by the Federal Trade Commission on Antidumping Investigations (July 28, 1982)

<u>International Trade Commission</u>

Comment by the Federal Trade Commission on the Countervailing Duty Investigations (August 11, 1982)

Prehearing Brief of the Federal Trade Commission (August 27, 1982)

The Federal Trade Commission's Posthearing Brief and Responses to Commissioners' Questions and Requests (September 14, 1982)

<u>Court of International Trade</u>

Brief by the Federal Trade Commission as <u>Amicus Curaie</u> on Plaintiffs' Motions Concerning Creditworthiness and Equity Infusions of ISCOR, USIMINAS, and COSIPA (June 14, 1983)

Brief by the Federal Trade Commission as <u>Amicus Curaie</u> on Plaintiffs' Motions Concerning Carbon Steel Products from Spain (December 2, 1983)

II. <u>Softwood Lumber Products from Canada: Countervailing Duty</u>

<u>Department of Commerce</u>

Prehearing Brief by the Federal Trade Commission (April 7, 1983)

III. <u>Color Television Receivers from the Republic of Korea and Taiwan: Antidumping</u>

<u>International Trade Commission</u>

Brief by the Federal Trade Commission (May 31, 1983)

IV. <u>Certain Vertical Milling Machines and Parts, Attachments and Accessories Thereto: Unfair Practices</u>

<u>International Trade Commission</u>

Comment by the Federal Trade Commission Opposing an Exclusion Order (January 9, 1984)

V. <u>Carbon and Certain Alloy Steel Products: Escape Clause</u>

<u>International Trade Commission</u>

Prehearing Brief by the Federal Trade Commission (May 3, 1984)

Posthearing Brief by the Federal Trade Commission (May 18, 1984)

Prehearing Brief on Remedy, the Federal Trade Commission (June 15, 1984)

Posthearing Brief on Remedy, the Federal Trade Commission (June 29, 1984)

<u>Office of the United States Trade Representative, Trade Policy Committee, and Trade Policy Staff Committee</u>

Brief by the Federal Trade Commission on Section 201 Investigation Regarding Imports of Carbon and Alloy Steel (August 10, 1984)

VI. Unwrought Copper: Escape Clause

International Trade Commission

Prehearing Brief by the Federal Trade Commission (May 8, 1984)

Posthearing Brief by the Federal Trade Commission (May 23, 1984)

Trade Policy Staff Committee

Brief by the Federal Trade Commission Regarding Recommendations of the International Trade Commission on Unwrought Copper, Investigation No. TA-201-52 (August 2, 1984)

VII. Certain Canned Tuna Fish: Escape Clause

International Trade Commission

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Posthearing Brief by the Federal Trade Commission (June 18, 1984)