

CERTAIN LINE PIPES AND TUBES FROM CANADA

Views on Remand in
Investigation No.
731-TA-375 (Preliminary)



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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In 1987, the U.S. International Trade Commission made a determination in investigation No. 731-TA-375 (Preliminary) 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 allegedly dumped imports of certain line pipes and tubes from Canada (USITC Pub. No. 1965 (1987)). That determination was subsequently appealed to the U.S. Court of International Trade and remanded to the Commission for further consideration (Maverick Tube Corp. v. United States, Ct. No. 87-04-00636, Slip Op. 88-65, May 24, 1988). The attached views were submitted to the Court in response to the remand.

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC 20436

Inv. No. 731-TA-375 (Preliminary) (Remand),
Certain Line Pipes and Tubes from Canada

VIEWS OF COMMISSIONERS SEELEY LODWICK AND DAVID ROHR

On May 24, 1988, the Court of International Trade (CIT) rendered its decision in Maverick Tube Corp. v. United States, Slip Op. 88-65 (CIT May 24, 1988). The CIT remanded to the Commission the negative preliminary determination in Inv. No. 731-TA-375 (Preliminary), Certain Line Pipes and Tubes from Canada. The Court directed the Commission to reconsider its determination in conformance with the Court's opinion and to file its remand decision within thirty days.

In the investigation, the Commission determined by vote of five to one (Commissioner Eckes dissenting) there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of alleged less than fair value (LTFV) imports of line pipe from Canada. With regard to the joint views of Commissioners Lodwick and Rohr, the CIT sustained our negative determination except for our analysis of one sale that one domestic firm alleged that it had lost to the subject imports because of price (the so-called "Southern Colorado" sale).

In our original opinion, we found that the transaction at issue was not lost to the allegedly less than fair value (LTFV) imports by the domestic industry because of price, but rather that the Canadian producer (IPSCO) "had

received the award because it could meet the delivery requirements." ^{1/}
Certain Line Pipes and Tubes from Canada, Inv. No. 731-TA-375 (Preliminary),
USITC Pub 1965 at 22 (Mar. 1987) (Views of Commissioners Seeley Lodwick and
David Rohr). The CIT, however, found that "the record expressly states that
the evidence upon which the Commissioners relied is 'not certain.'" Maverick
Tube Corp. v. United States, Slip Op. at 15. Accordingly, the CIT remanded
this portion of our decision "to consider whether the likelihood that contrary
evidence will arise in a full investigation changes the Commissioners'
assessment of material injury or threat of material injury." Id. at 16. ^{2/}

Before turning to the factual basis for our decision, we believe that it
is necessary to consider the possible definitions of the term "lost sale" and
the significance of those definitions to our analysis. On the broadest level,
a lost sale might be defined as a sale of an imported product that displaces
the sale of a domestic product, regardless of the reason for the
displacement. The Commission has never adopted such a broad definition of the
term "lost sale" because, without knowing the reason why the sale was "lost,"
its relevance to the issue of causation cannot be established.

A lost sale may also be defined, on a second level, as a sale lost to the
domestic industry because of the lower price at which the imported good is

^{1/} As in our original views in this investigation, our discussion is
necessarily constrained by the fact that most of the data in this
investigation are confidential.

^{2/} Other than the handling of the Southern Colorado transaction, the CIT
found no error in our earlier opinion. We incorporate those views by
reference here.

sold to a customer in the United States. Such sales have some probative value because the price at which the good is sold to a customer in the United States is obviously related to the price of the import.

Finally, at yet a third level, a lost sale may be defined as a sale lost to the domestic industry because of unfairly priced imports. Such sales have the most probative value because they are defined in terms of the causal connection that the Commission is mandated to examine in its investigation. This last definition differs from the second definition because it excludes from the Commission's consideration certain factors that may have affected the sale but which are not relevant to causation. This level excludes, for example, domestic competitive factors such the Commission should not consider in assessing the role of imports in the market. See Egg Filler Flats from Canada, Inv. No. 731-TA-201 (Final, Remand) (June 1988) (Concurring Views of Commissioner David B. Rohr).

For purposes of this determination, we have first considered the two transactions deemed to be lost sales (including the one we found earlier and the Southern Colorado transaction), as defined in the second definition, and concluded that they are not sufficient to outweigh the other causal factors relevant to the case. Second, we have analyzed the Southern Colorado transaction, which is the subject of this remand, from the perspective of the third, and more relevant, definition and concluded that, analyzed in that manner, it would be accorded even less probative weight. Thus, a negative determination is required in either case.

With regard to the first basis for our decision, when the information gathered in this investigation is examined — including the two lost sale

transactions and the data on price and volume for each of them — those two lost sale transactions stand alone as indicators of a causal nexus between the condition of the domestic industry and the subject imports. In our initial determination, we discussed how our examination of import volumes and prices as well as other allegedly lost sales compelled a contrary conclusion. We conclude that the record, considered as a whole and containing the two lost sale transactions, contains a clear and convincing showing that there is neither material injury nor threat of material injury to the domestic industry by reason of the subject imports. Moreover, the record does not support any inference that there is a reasonable likelihood that any further contrary evidence will arise in any final investigation.

With regard to the second basis for our decision, we note that the Southern Colorado transaction involved a sale lost by a distributor of domestic product to a distributor of imported product. To ensure that the transaction was fairly analyzed, the Commission obtained data at a comparable level of trade for both domestic producers and foreign producers or importers. In doing so, we were faced with the need to balance two often competing considerations. On one hand, we try to compare actual prices at which goods are sold to customers in the United States. On the other hand, we try to isolate prices of the domestic producers and the foreign producers from the effects of domestic competitive considerations. Factors such as different profit margins, trading practices, or internal distribution practices and costs of independent domestic entities will distort a price comparison whose purpose is to examine the impact of the unfair imports only. We are trying, within the limitations of available data, to avoid examining domestic

competition and unintentionally attributing to the allegedly LTFV imports effects that arise from domestic competition. See Egg Filler Flats from Canada, Inv. No. 731-TA-201 (Final, Remand) (June 1988) (Concurring Views of Commissioner David B. Rohr); S. Rep. No. 249, 96th Cong., 1st Sess. 74-75 (1979). In general, to the extent that we must conduct our analysis at a level of trade in which domestic competitive factors are present, the less probative the individual alleged lost sale transaction becomes, even if confirmed as a lost sale by the Commission's investigative efforts.

In this investigation, the Southern Colorado sale would be precisely such an instance, since it involves competition between a distributor of imported line pipe and a distributor of domestic line pipe, both of which appear to be operating as independent businesses. Thus, the actual comparison between the two distributors' prices will reflect their own markup over the prices they paid for the pipe (and the record suggests that the distributor representing the importer used a relatively small markup) and other factors such as those described above.

Under this second analysis, the Southern Colorado transaction, in our view, thus cannot be accorded sufficient weight — considered in conjunction with the other confirmed lost sale — to overcome the contrary indications of the cumulative evidence.

We therefore determine there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the allegedly LTFV line pipe imports from Canada.

ADDITIONAL VIEWS OF COMMISSIONER LIEBELER ON REMAND

Certain Line Pipes and Tubes From Canada,
Inv. No. 731-TA-375 (Preliminary)
June 23, 1988

Maverick Tube Corp. filed its initial petition on February 11, 1987, alleging that an industry in the United States is materially injured or threatened with material injury by reason of less than fair value (LTFV) imports of line pipes and tubes from Canada. In Certain Line Pipes and Tubes From Canada, Inv. No 731-TA-375, USITC Pub. 1965 (Preliminary) (March 1987), the Commission determined, by a four to one vote, that there was no reasonable indication that a United States industry was being materially injured or threatened with material injury by reason of imports of welded carbon steel line pipes and tubes from Canada allegedly sold at LTFV.¹

Petitioner appealed this determination to the Court of International Trade. The Court identified certain deficiencies in the views of all four Commissioners in the majority and remanded the case to the Commission for further consideration consistent with its opinion. In its opinion remanding this investigation to the Commission, the Court found that the predatory pricing analysis underlying the 2.5 percent presumption is not based on substantial evidence and is not in accordance with the law.

In light of the court's interpretation of my 2.5 benchmark analysis, I provide further explanation in this opinion. Because the Court has criticized the use of this analysis, I have reconsidered the issue of causation and provide new views on this subject.

¹/Material retardation is not an issue in this case.

In its criticism of my causation analysis the Court inferred, from my reference to two previous opinions, that the analysis was based on predatory pricing analysis. This presumption to which the Court specifically referred, however, was not based on a predatory pricing analysis; I did not base my earlier decision in this case on the lack of evidence of predation or predatory intent. I have voted affirmatively in many preliminary investigations; in none of them was there evidence of predation. Moreover, requiring predatory intent would be inconsistent with the law.^{2/}

The presumption was simply a benchmark analysis used to illustrate the importance of market share in my determination. The statute focuses the Commission on market share and instructs the Commission to consider, among other factors, the volume of imports, their impact on prices, and their impact on domestic producers of like products. Specifically, Congress has instructed the Commission to consider "whether the volume of imports of the merchandise, or any increase in that volume, either in absolute or relative terms to production or consumption in the United States is significant."^{3/} Unless the elasticities of demand and supply are all very low, if unfairly traded imports have a very small market share, it is reasonable to infer that such imports can neither have a material effect on domestic production, nor cause domestic price suppression.

I did not use the 2.5 percent rebuttable presumption as a legal presumption, but rather as an economic one. It was an attempt to

^{2/}While predation would be a classic case in which LTFV imports cause or threaten material injury, it is not the only case.

^{3/}19 U.S.C. Section 1677(7)(c)(i).

articulate a de minimus benchmark, a standard below which a market participant could not have a material impact on, or cause material injury to the domestic industry.^{4/} I noted, however, that if supply and demand were highly inelastic, I would not presume that the impact was immaterial, not because of the likelihood of predation, but because with highly inelastic supply and demand, a very small market participant could have a greater effect on the domestic market than would be ordinarily expected.

Given the very low market share of the subject imports throughout the period of investigation, and the absence of any reason to believe that the supply or demand elasticities for line pipe and tube are exceptionally small, I believed it was reasonable to presume that unfairly traded imports from Canada have not materially injured or threatened the domestic industry with material injury.

Because the court has criticized the use of the 2.5 rebuttable presumption, I have reconsidered my causation analysis. In reviewing the causation issue, I concur with the causation discussion of Commissioners Lodwick and Rohr.

Although I no longer adhere to any particular benchmark when considering import penetration levels, I again conclude that the subject imports have not caused or threatened material injury to the domestic industry producing

^{4/}Congress has noted that an apparently small volume of imports may have a significant impact in one market; for another, the same import volume might not be significant. S. Rep. No. 249, 96th Cong., 1st Sess. 88 (1979). In adopting a de minimus threshold, I was aware that Congress had indicated that no absolute volume of imports should be considered dispositive of the issue of whether there has been material injury or threat by reason of dumped or subsidized imports. The 2.5% benchmark was not based on absolute volume, but rather on relative market share.

Also, circumstances may give a 2.5% market share greater significance than usual and the analysis I employed called for consideration of the existence of such circumstances.

welded carbon steel line pipes and tubes." Because of the extremely tiny market share of the subject imports, even if they were totally eliminated from the market, the impact on the domestic industry producing welded carbon steel line pipes and tubes would not have been material.

I note that I would also reach the same conclusion by applying the analytical framework I utilized in three recent investigations.^{5/} First, the Commission must examine volumes and prices in the U.S. market for the subject imports. Second, the Commission must evaluate the manner in which the sale of the subject imports affects domestic prices and domestic production of the like product. Third, the Commission must explore the manner in which LTFV sales have affected the domestic industry and assess the significance of such effects.^{6/}

In each of these inquiries, one compares the actual state of the domestic industry to the state of the domestic industry absent dumping. It is important to segregate the effects of the LTFV imports from all other

^{5/} Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Preliminary), USITC Pub. No. 2071 (March 1988), Additional Views of Chairman Liebler and Vice Chairman Brunsdale at 33; Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Preliminary), USITC Pub. No. 2081 (May 1988), Additional Views of Chairman Liebler, Vice Chairman Brunsdale and Commissioner Cass at 26; and Internal Combustion Forklift Trucks from Japan, Inv. No. 731-TA-377 (Final), USITC Pub. No. 2082 (May 1988), Additional Views of Chairman Liebler at 43-49.

^{6/} Whether the injury to the domestic industry caused by the LTFV imports rises to the level of material injury can be addressed as a fourth question. Insofar as that is done, however, the fourth inquiry becomes a process of applying the statutory test for materiality to the information developed in the prior three inquiries; that is, this last inquiry would reach a legal conclusion but would not extend the factual analysis of the other inquiries.

factors affecting the domestic industry.^{7/} Only then can one assess the effects of the LTFV imports on the domestic industry and decide whether the effects are large enough to constitute material injury. If, on the evidence before us, there is a reasonable indication that the domestic industry is materially worse off in the presence of LTFV sales than it would have been absent dumping, we must render an affirmative determination.

Our first inquiry seeks to evaluate the amount by which prices for imported Canadian pipes and tubes were lower because of dumping. For this purpose, it is appropriate to consider the margins of dumping alleged by Petitioner. Petitioner alleges dumping margins that range from 36.6 percent to 60.0 percent. These allegations are based on comparisons of adjusted price lists for sales in Canada by a Canadian producer and adjusted transaction prices of sales to U.S. purchasers.

Petitioner's allegations are the best estimates currently available of actual price differences between sales in the United States and sales in Canada.^{8/} These figures also indicate the maximum differences between the actual prices of the subject imports and the prices that would have been

^{7/}This should in no way be construed as weighing the different causes for that is prohibited by the statute. In fact, the opposite occurs: we are removing the other causes from consideration so they do not interfere with the mandate of the law.

^{8/} See H.R. Doc. 153, Part II, 96th Cong, 1st Sess. (1979). (In preliminary investigations, in an effort to give the petitioner the benefit of the doubt, I use the Petitioner's allegations concerning the dumping margin). The allegations in the Petition are based on a comparison of sales prices in the U.S. and Canada. The Department of Commerce's International Trade Administration (ITA) has not yet determined if the dumping margin is positive.

charged in the absence of dumping during the period of investigation.^{9/} If the exporting firms had not been able to charge different prices in the United States and Canada (as would have been the case if the imports had been fairly traded), the prices of the imports sold in the United States may have been substantially higher, taking the Petitioner's allegations as true for purposes of this preliminary investigation. Had that happened, and especially if import prices had increased by all or much of the alleged dumping margins, the volumes of the subject imports sold in the United States would have been substantially below the levels actually observed.^{10/} The magnitude of this change is discussed further below.

The second inquiry focuses on the impact of prices and volumes of the subject imports on the market for the domestic like products. The statute specifically directs the Commission to consider the effect of LTFV imports

^{9/}While we cannot be certain about the exact price that the Canadian imports would have been sold in the United States had they not been sold at LTFV, many of the facts collected during the course of an investigation permit us to make a reasonable approximation of this price. The dumping margin is useful in assessing the maximum increase in the U.S. price of the subject imports had they been sold in the United States and Canada at the same price. In many cases prices of the subject imports would have increased less than the amount of the dumping margin had the imports not been sold at LTFV. See 3.5" Microdisks and Media Therefore from Japan, Inv. No. 731-TA-389, USITC Pub. No. 2076, at 74-83 (April 1988) (Additional Views of Commissioner Cass); Report accompanying Office of Economics memo EC-L-149.

^{10/}The percentage of IPSCO's shipments to the U.S. as a percentage of its total domestic and U.S. shipments fell from [] percent in 1984 to [] percent in 1985 and rose to [] percent in 1986. Rep. at A-10. IPSCO is the Canadian firm responsible for [] percent of the imports under investigation. Rep. at A-8, fn. 1. The major portion of IPSCO's production shipped to its domestic market and the U.S. was shipped to its domestic market. Thus, if IPSCO were to have charged one price, it would have raised the U.S. price more than lower the Canadian price so as not hurt profits in its larger market. Restated, in the absence of dumping, much of the margin, but not all, would have been passed through to the U.S. price.

on the prices for domestic like products.^{11/} and further to evaluate evidence indicating that LTFV imports have depressed prices for the domestic like products.^{12/} The statute directs our attention to evidence that sales of the subject imports have replaced sales of the domestic like product.^{13/}

The degree to which these phenomena occur depends not only on the prices at which the imports are sold but also on the manner in which demand for the domestic product responds to the price of the imports. The responsiveness of demand for the like product to changes in the price of imports in turn is generally a function of the substitutability of the import and the domestic product, the products' relative shares of the domestic market, and the availability of substitutable fairly traded imports. The more fully substitutable are the subject imports and domestic products, the more significant will be the impact of LTFV imports' sales on the prices and volumes of sales of the domestic like products. The greater the market share of the subject imports, the greater their effect on prices and volumes of the domestic like products. The larger the share of the market held by other substitute products, and the more readily supply of these products responds to changes in their price, the lower the impact of changes in the prices of subject imports on the domestic industries.

^{11/} 19 U.S.C. §1677(7)(B).

^{12/} 19 U.S.C. §1677(7)(C).

^{13/} The statute instructs the Commission to look at domestic market share and the subject imports' market share, at domestic sales, domestic output, and domestic inventories, among other factors. 19 U.S.C. 1677(7). These factors are useful in assessing changes in the sales of domestic products and relating those changes to the sales of subject imports.

I find clear and convincing evidence in the record of the limited substitutability of imported Canadian and domestically produced pipes and tubes. There are differences in (1) the quality of the final product due to both production techniques and material inputs, (2) delivery time, and (3) the perceived reliability of alternative suppliers.^{14/} The fact that purchasers of pipes and tubes were willing and able to pay different prices for the same dimension pipes and tubes is evidence that they perceived differences in the products.^{15/}

Several purchasers expressed doubts as to the ability of one domestic producer to produce quality line pipe of the size desired for their purposes.^{16/} Their apprehensions were based on three facts: first, the producer was unfamiliar with new production facilities; second, the producer was unfamiliar with the use of quality control equipment at the new facility; and third, the producer was uncertain of the quality of the steel available to make the pipe.^{17/} Other purchasers referred to a different U.S. producer whose quality was considered lower than the

^{14/}Rep. at A-41-45.

^{15/}Even when products are perfectly fungible, differences in other characteristics and factors can limit their economic substitutability. A partial list of these factors include differences in physical characteristics, quality, reliability, durability, reputation of the seller, service, marketing, warehousing costs, warranty coverage, order turn-around time, financing and credit terms, rebates, transportation costs, and availability of product information.

^{16/}Although pipe and tube is classified by the American Petroleum Institute, its specifications are only "intended to supplement rather than replace individual engineering judgement." Consequently, similarly classified pipe might not be fungible.

^{17/}Rep. at A-43.

Canadian import because their pipe had a higher carbon content.^{18/}

Pipe and tube purchasers stated that delivery time was often a factor which caused them to differentiate among suppliers. Several purchasers believed the availability and delivery schedule offered for the subject imports was superior to that of domestic producers. Further, given the capacity requirements large orders would place on certain U.S. producers, they felt the Canadian imports were a more reliable source given narrow time constraints.^{19/}

The second point, LTFV import market share, is also important. In general, the greater the market share of the subject imports, the greater their effect on the prices and volumes of the domestic like product. This can be clarified by an example. Let us assume that the price of a hypothetical LTFV import would have increased by fifty percent, had it not been sold at LTFV. The effect of this price increase on the demand for the domestic like product will vary depending on the market share held by the subject imports. A LTFV import market share of ninety percent would, ceteris paribus, impact demand for the domestic product to a significantly greater extent than a LTFV import market share of one percent. Thus, the LTFV import with a ninety percent market share would have decreased the price and quantity of the domestic like product to a greater extent.^{20/}

In the instant case, the highest level of the U.S. market share held by Canadian imports over the period of the investigation was 1.1 percent in

^{18/}Rep. at A-45.

^{19/}Rep. at A-45.

^{20/}See Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388, USITC Pub. No. 2071 (Preliminary) (March 1988) (Additional Views of Chairman Liebler and Vice Chairman Brunsdale at 31-34.

1986.^{21/} Because of the very small market share of the alleged LTFV imports and the limited substitutability of the domestic like product and alleged LTFV imports, the demand for domestic pipe and tube responds much less than proportionately to changes in the price of the alleged LTFV import.^{22/ 23/}

The third factor affecting the relationship between the demand for the domestic like product and the LTFV import is the availability of fairly traded imports. The lack of available fairly traded imports can exacerbate the decline in demand for the U.S. like product. In the instant case, a complicated series of voluntary restraint agreements (VRAs) affect imports of the like product into the U.S. However, all countries participating in the agreement were not at their limits at the time of the alleged dumping.^{24/} Further, several nonparties to the VRAs imported pipe and tube into the U.S. during the period of the investigation.^{25/} Thus, during the period of the investigation supplies of fairly traded imports were

^{21/}In absolute terms, imports of Canadian pipe and tube increased from 5,730 tons in 1984 to 5,991 tons in 1985 and then again to 7,255 tons in 1986. Rep. at A-33.

^{22/} The relationship between the demand for the domestic like product and the price of the LTFV import is captured by the cross-price elasticity. This measure, by definition, is the percentage change in the quantity demanded of the domestic like product given a one percent change in the price of the LTFV import.

^{23/}This is the case even when, as here, the vast majority of the dumping margin would have likely been passed through in the form of higher U.S. prices for LTFV imports.

^{24/}The fact that German and Japanese companies were bidding for certain of the contracts claimed as "lost sales" suggest Germany and Japan could have supplied the contracts won by the Canadians. Rep. at A-44.

^{25/}Compare the list of VRA participants with the countries importing pipe and tube into the U.S. Rep. at A-8 and A-33.

available in sufficient quantity to replace part if not all of the Canadian imports.^{26/}

I find clear and convincing evidence in the record that LTFV imports have not caused material injury to the domestic industry. The limited substitutability of the domestic like product and the LTFV import, the market share of the LTFV import, and the availability of fairly traded imports, all indicate that the domestic industry is not experiencing material injury by reason of the LTFV imports. Had Canadian pipes and tubes not been sold at LTFV, the domestic industry would not have materially increased the prices and volumes of its pipe and tube sales.

In conclusion, for the reasons set forth above, I determine that there is no reasonable indication that the domestic pipe and tube industry is experiencing material injury by reason of the allegedly LTFV imports from Canada.

^{26/}This is not to say that all Canadian imports would have been replaced with fairly traded imports. Rather, it just states that fairly traded imports were available during the period.

VIEWS OF COMMISSIONER ANNE E. BRUNSDALE

Certain Line Pipes & Tubes from Canada
Inv. No. 731-TA-375 (P)

June 23, 1988

As I understand the court's opinion in Maverick Tube Corp. v. United States, the court objected to my use of a domestic supply elasticity figure that was not sufficiently supported by information in the record.^{1/} After careful consideration of the record, I conclude that I am able to reach a decision on causation without re-opening the record and without using the elasticity figure in question.^{2/}

Accordingly, with respect to the issue of causation of material injury, I join in the views of Commissioners Lodwick and Rohr, as more fully developed in their views on the current remand. The evidence in the existing record adequately demonstrates, without more extensive development of an explicit record on relevant elasticities, the lack of a reasonable indication of a causal nexus between dumped imports and material injury suffered by the domestic industry. I join in the views of my colleagues without

^{1/} See Maverick Tube Corp. v. United States, Court No. 87-04-00636, slip op. 88-65, at 8-10 (CIT May 24, 1988).

^{2/} My understanding of the opinion in this case is that the court has concerns about my causation analysis, not my discussion of like product or the condition of the domestic industry.

reservation,^{3/} although I add certain comments below to explain my approach to the consideration of causation in this and other investigations.

The Role of Elasticity Estimates in Causation Analysis

In several recent opinions I have discussed in detail why my analysis of causation often contains an explicit discussion of my judgments about one or more of the elasticities that describe the aggregate forces of demand, supply, and product substitutability at work in the marketplace under consideration. In the interest of brevity, I will only summarize my reasoning here. For a fuller discussion of these matters, I urge the parties and the court to read my recent opinions in Cold-Rolled Carbon Steel Plates and Sheets from Argentina^{4/} and Internal Combustion Forklift Trucks from Japan.^{5/}

^{3/} In my original opinion, I joined in Chairman Liebeler's conclusion to assess the condition of the domestic industry through product line analysis pursuant to 19 U.S.C. 1677(4)(D). Commissioners Lodwick and Rohr did not use product line analysis. Since their position on this issue was at least implicitly approved by the court for purposes of this investigation, I will not use product line analysis for purposes of this remand. I note that the only difference in my analysis in using product line analysis occurred in my analysis of the financial data in this case. The major difference is that operating income is higher in a product line analysis -- therefore, using standard analysis actually favors the plaintiff.

^{4/} Inv. No. 731-TA-175 (Final) (Second Remand), USITC Pub. 2089, at 31-59 (June 1988) [hereinafter cited as Argentine Steel].

^{5/} Inv. No. 731-TA-377, USITC Pub. 2082, at 67-83 (May 1988) [hereinafter cited as Forklift Trucks].

Nothing in the controlling statutes mandates that we use any particular methodology in assessing whether there is a reasonable indication that the domestic industry has suffered material injury "by reason of" dumped imports.^{6/} Like my colleagues, I have generally assessed the condition of the industry by looking at the reported trends in the factors that measure the industry's condition.^{7/} I do not, however, generally use trend analysis to resolve the issue of causation.^{8/}

Many factors besides dumped imports affect the prices received by domestic producers. The operating and financial performance of any industry depends on a great many factors within the broad areas of costs of production, the level and characteristics of domestic demand, the level and characteristics of domestic supply, and the volume and prices of both fairly traded and unfairly traded imports from many different countries. We can never determine with total precision the exact impact of any one of the many factors within these broad areas. Nevertheless, our responsibility in a dumping case is to focus on the impact of dumped imports

^{6/} See 19 U.S.C. 1671, 1671b, 1671d, 1673, 1673b, 1673d, 1677(7).

^{7/} See, e.g., Certain Bimetallic Cylinders from Japan, Inv. No. 731-TA-383 (Preliminary), USITC Pub. 2017, at 8-12 (September 1987); Certain Stainless Steel Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-376 (Preliminary), USITC Pub. 1978, at 10-15 (May 1987); Certain Granite from Italy and Spain, Inv. Nos. 701-TA-288 and 289 (Preliminary), USITC Pub. 2016, at 6-17 (September 1987).

^{8/} See, e.g., Forklift Trucks, supra note 5, at 83-95.

and then to assess whether that impact is "material." That does not mean that we should weigh the impact of dumped imports against the impact of other factors.^{9/} It simply means that we should satisfy ourselves that the relevant adverse impact of dumped imports is itself sufficiently large to be "material" within the bounds of Section 771(7)(A) of the Tariff Act of 1930.

In my view, trend analysis is a difficult tool to use for identifying the effects of dumped imports, for separating those effects from the effects of other factors operating in the marketplace, and then for making a judgment about whether the effects of dumped imports are material. Although I sometimes join in Commission opinions using trend analysis (particularly in preliminary investigations),^{10/} I think it is often risky to try to evaluate the extent to which movements in one factor have caused movements in other factors simply by observing the size of those movements and whether they occurred at about the same time.

I use standard tools of economics, including explicit estimates of relevant elasticities where available, to analyze the factors pertaining to the issue of causation in a case because these tools help me focus my analysis on the effects of the dumped imports. Domestic output, prices, and revenues are always determined by a host of factors besides

^{9/} See S. Rep. No. 249, 96th Cong., 1st Sess. 57-58 (1979).

^{10/} See supra note 7 (examples of opinions I have joined that used trend analysis in the causation section).

the imports under investigation. The concept of elasticity is particularly useful for evaluating whether the reported facts relating to the volume and prices of imports have a material causal relationship with the facts relating to domestic prices, production, and financial performance.

While they may be troubling or mysterious to some, elasticities are just simple tools of standard economics. "Elasticity" is nothing more than a fancy term used in economics to refer to the extent to which one particular factor responds to a second factor; and an "elasticity estimate" is nothing more than a quantitative judgment about the degree of that responsiveness. Whether or not we ever expressly use the terms in our analysis, judgments about three elasticities are nonetheless present in every Commission Title VII investigation. These three elasticities characterize the aggregate forces of demand, supply, and product substitutability at work in an industry:

(i) the elasticity of domestic demand;11/

11/ The total revenue received by domestic producers depends on both the price and the volume of the goods that they sell. It is axiomatic for most goods that, as prices rise, the quantity demanded in the market falls, other things being equal. In other words, because customers do not have unlimited resources, they will seek out substitutes as prices increase, all other things being equal. It is equally true that the opposite also generally occurs. As prices fall, the quantity demanded generally increases. That is, customers will find the cheaper product more attractive in light of the prices of available alternatives, all other things being equal. The "elasticity of domestic demand" simply states in quantitative terms the relationship between aggregate changes in the price of products offered in the domestic market and
(continued...)

(ii) the elasticity of domestic supply; and^{12/}

(iii) the elasticity of substitution or the cross-elasticity of demand between the domestic product and the price of the imported product.^{13/}

It is plain to me that the vigorous use of these three concepts is not only allowed by the statutes and legislative history, but underlies the judgments we are obliged to make when we assess whether dumped imports caused material injury to the domestic industry. We necessarily must rigorously consider the relationship of movements in prices and volumes of domestic and imported products in order to evaluate the magnitude of the effect that one has on the other. The

^{11/}(...continued)

aggregate changes in the amount of those products that will be purchased by U.S. customers.

^{12/} The elasticity of domestic supply measures in the aggregate how domestic producers collectively respond to rising or falling prices. As prices rise, producers are generally willing to produce more of the product and, as prices fall, they generally produce less of the product, other things being equal. The degree to which producers are able and willing to expand or contract production varies from industry to industry. The elasticity of domestic supply is simply a quantitative statement of the relationship between prices in the market and unit volumes that producers are willing to supply.

^{13/} Unless customer tastes change, if the imported and domestic products under investigation are not sufficiently close substitutes, a decline in the price of the imports will not persuade many customers to buy the imports in lieu of the domestic alternative. The higher the degree of substitutability, the greater the likelihood that a given decline in the price of the imports will directly translate into lost domestic sales. The aggregate degree of substitutability or "fungibility" between the domestic product and the imported product under investigation is measured by their "elasticity of substitution" or "cross-elasticity of demand." The terms refer to two related quantitative statements of the relationship between the price of the import product and demand for the domestic product.

strength of the relationships between these factors is not just "theoretical"; it is, rather, the factual reality that lies at the heart of every Title VII case. As I illustrate in detail in my opinions in Cold-Rolled Carbon Steel Plates and Sheets from Argentina 14/ and Internal Combustion Forklift Trucks from Japan, 15/ whether or not it is expressly articulated in our opinions, every Commissioner at least implicitly considers these three basic elasticities in every case.

It should be apparent from the above discussion and my earlier opinion in this matter that I prefer whenever possible to make my judgments about the essential elasticities at issue in a case in both specific (i.e., stated in terms of a number or a range) and explicit terms. By actually stating the relationship of volumes and prices in terms of estimated numerical elasticities, or ranges of elasticities, the parties and the Commission thereby make explicit judgments about key factors that otherwise are at best merely implicit in the analysis of causation. In this regard I agree with the Commission's Director of the Office of Economics, who observed in the Picture Tubes investigation: "Both the petitioner and the respondent acknowledge that anyone systematically examining market relationships implicitly uses elasticity estimates; I feel it

14/ See Argentine Steel, supra note 4, at 38-48.

15/ See Forklift Trucks, supra note 5, at 75-79.

is preferable to make one's estimates explicit."^{16/} By making explicit judgments about the assumed elasticities that underlie our conclusions we will produce far more transparent decisions for the parties, the public, and our reviewing courts.^{17/}

The Sources of Elasticity Estimates Used in Commission Investigations

As I read the Court's opinion on this remand, the Court is not concerned with my explicit use of elasticity data, but rather is concerned with the source and reliability of the supply elasticity estimate that I used. I understand the Court to be suggesting that evidence on the specific subject of elasticity estimates is more acceptable if it is discussed in expert testimony to the Commission, submitted to scrutiny

^{16/} Memorandum from the Director, Office of Economics, Memorandum EC-K-470, at 3 (December 11, 1987) (attached as an appendix to my opinion in Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Inv. Nos. 731-TA-367-370 (Final), USITC Pub. 2046, at 55-58 (December 1987).

^{17/} It is true that the facts differ in every case, and necessarily must be considered on a case-by-case basis. But it is nonetheless possible to make our decisions more predictable and transparent by placing heavy and explicit reliance on the tools provided by economics and statistics. It seems obvious to me that if the Commission administers the dumping and countervailing duty provisions in such a way that the results of cases are difficult to predict, it will lead to a belief on the part of both U.S. producers and importers that our decisions are arbitrary. In my view, sound economic and statistical analysis, and less reliance on isolated instances of anecdotal evidence, will lead to more predictable application of our trade laws, which in turn will lead to greater confidence in the integrity of our proceedings.

by the parties through participation in the administrative process, addressed to the specific products involved in the investigation, and founded in a contemporaneous assessment of the characteristics of the relevant industry.^{18/} My approach in final investigations where I have relied on explicit estimates of relevant elasticities subsequent to my original opinion in this matter is responsive to each of the Court's concerns.

In each final investigation the Commission's Office of Economics now prepares and delivers to the Commission and the parties prior to the hearing a detailed analysis and estimation (in numbers or ranges) of the relevant elasticities which characterize the aggregate forces at work in the industry under investigation.^{19/} This analysis is based on the staff's review of the information then available in the record, including producer, importer, and purchaser questionnaire responses, and on telephone interviews, field work, and secondary research.^{20/} The parties then have an opportunity at the hearing and in their post-hearing

^{18/} See Maverick Tube Corp. v. United States, Court No. 87-04-00636, slip op. 88-65, at 8-10 (CIT May 24, 1988). Implicit in this discussion is that all of the above information is in the record for that case.

^{19/} See, e.g., Memoranda from the Director, Office of Economics, Memoranda EC-L-166 and 168 (May 27, 1988).

^{20/} See, e.g., Memorandum EC-L-166.

submissions to reply to the staff's analysis and provide their own estimates for consideration by the Commission.^{21/}

At least thus far, developing reasonable, explicit elasticity estimates for preliminary investigations has proven to be all but impossible. The severe time constraint faced by the Commission in preliminary investigations has made it difficult to produce elasticity estimates in more than the broadest sense.^{22/} Before the votes in preliminary Title VII investigations, Commissioners do not generally receive explicit elasticity information from Commission staff, and the parties generally do not address explicit elasticity estimates in their filings.

In general, the Commission must reach a decision in preliminary cases on the basis of a record that is less complete than in final cases. This is not at all surprising, given the short timeframe for these investigations. Not only information about relevant elasticities, but also other important information about the products under investigation and their relevant markets, including data pertaining to product prices, production, capacity, and financial results, is often incomplete in preliminary investigations. Despite these shortcomings, the Commission is obliged to make a decision by the statutory deadline.

^{21/} See, e.g., Post-hearing Briefs from Petitioners and Respondents, May 10, 1988 (examples of parties' response to the elasticity memorandum from the Commission staff).

^{22/} See 19 U.S.C. 1671b(a).

In this case, I am persuaded that the evidence is clear and convincing -- there is no reasonable indication of material injury or threat of material injury to the domestic industry and no reasonable likelihood that contrary evidence will come to light in any final investigation that would cause me to find that there was material injury caused by imports in this case.^{23/} Although I believe that the specific estimate of supply elasticity I used in my original opinion was probably not far out-of-line,^{24/} my use of an explicit elasticity estimate in this case is something I would not now normally attempt in a preliminary investigation. In this instance, although it appears the court would consider it appropriate for the Commission to gather additional evidence on this elasticity estimate, I do not believe there is much to be gained by re-opening the record to explore the reliability of the particular elasticity estimate I used in my original opinion. As explained in the views of Commissioners Lodwick and Rohr (in which I join), the evidence pointing to a negative determination is clear and convincing without any explicit discussion of the relevant elasticities that underlie that determination.

^{23/} See *American Lamb Co. v. United States*, 785 F.2d 994, 1001 (Fed. Cir. 1986).

^{24/} See *infra* note 29 (explaining my reasoning for using the estimate of 3.5).

Before I conclude, I have one final observation about the general subject of the sources and reliability of elasticity data. Much attention has been given in this investigation to the question of how the Commission should go about the task of gathering reliable elasticity data during the course of its investigations. I respectfully submit that the concerns about how the Commission should gather elasticity data miss the most important issue regarding the explicit discussion of elasticities in Commission opinions. As I have emphasized above and explained in greater detail in my opinions in Cold-Rolled Carbon Steel Plates and Sheets from Argentina 25/ and Internal Combustion Forklift Trucks from Japan, 26/ every Commissioner must make judgments in every investigation about the essential elasticities of substitution, demand, and supply that characterize the aggregate forces at work in the industry at issue. When a Commissioner states one or more of the elasticity estimates underlying a decision on the ultimate issue of causation of material injury, that Commissioner is simply expressly stating conclusions of fact that otherwise would be implicit. When seen in their proper light, as conclusions of fact, elasticity estimates, whether express or implied, should be subjected to no more (or less) scrutiny regarding their reliability and support in the record than other important

25/ See supra note 14.

26/ See supra note 15.

conclusions of fact reached by Commissioners in the course of investigations. I submit that the most important issue regarding elasticities is not how elasticity data should be gathered, but rather whether Commissioners would better serve the parties, the public, and our reviewing courts by making their judgments about relevant elasticities explicit.

When we do gather evidence on the explicit numerical values of relevant elasticities, we are gathering opinion evidence not unlike the opinion evidence gathered in adjudicative proceedings. Elasticity estimates offered by the parties, their experts, or the Commission staff are like other expert opinion evidence or statistical surveys. While their precision will obviously depend on the skill and judgment of the expert computing them and the reliability of the data on which they are based, they are no more theoretical than estimates of reject rates on a production line or expert opinion testimony from a coroner about the cause of a crime victim's death. The reliability and relevance of elasticities can be questioned on the same basis that lawyers and other scholars question other surveys and opinion testimony. But just like other statistical evidence and opinion testimony, elasticity estimates are conclusions of fact; they are not guesses, theories, or theoretical models.

Causation Analysis and Lost Sales Evidence in This Investigation

To me there is no better way to explain the significance of a given volume of dumped imports than to estimate, as well as possible, the outside bounds of what I believe those imports actually "cost" the domestic industry in terms of lost revenues and lower prices.^{27/} In some investigations, we can generate a reasonable, explicit "ball park" quantitative judgment of the outside bounds of the lost revenues and price suppression suffered by the domestic industry.^{28/} To make such a judgment, I first reach conclusions about the elasticities that characterize the aggregate forces of demand, supply, and substitution at work in the industry, and then use those elasticity estimates to gauge the outer limits of the lower prices and lost revenues sustained by domestic producers. This approach estimates the outside bounds of the aggregate sales lost by the domestic industry without relying on anecdotal evidence regarding isolated, individual sales transactions.

^{27/} I have attempted, wherever possible, to explicitly indicate in actual numeric terms my best judgment about the bounds of the injury I conclude was caused by dumped imports. My colleagues on the Commission have not, however, pursued a similar approach and do not expressly state the results of their analysis in quantitative terms.

^{28/} I do not attempt to make a specific, explicit quantitative judgment about the outside bounds of the injury sustained by the domestic industry in all investigations, although it is fair to say that explicit use of relevant elasticities is standard in my decisions in final investigations.

My approach to analyzing causation (in particular the outside bounds of lost industry revenues) in my original opinion in this investigation was substantially the same as my approach in Cold-Rolled Carbon Steel Plates and Sheets from Argentina. In both cases, I assumed that demand was completely inelastic, that the domestic and dumped imported products were highly substitutable, and that domestic supply was elastic -- at least in the range of 3.5.^{29/} In the interest of brevity, for a fuller explanation of my analysis used initially in this case I refer the parties and the Court to my opinion on the most recent remand in the Argentine Steel case.^{30/} I do not rely on my original analysis for purposes of this remand.

^{29/} The evidence in this case relevant to domestic supply indicated that the domestic industry would be highly responsive to an increase in demand for line pipes and tubes. Capacity utilization in the industry was relatively low and falling over the period of investigation -- 33 percent in 1984, 32 percent in 1985, and 27 percent in 1986. See Report at A-14 (Table 5). Particularly over the short run, domestic firms would have been able to respond to an increase in demand without materially raising their marginal unit costs. Assuming this is a competitive industry (a reasonable assumption), one would expect that prices for line pipes and tubes would not increase by a large degree as producers increase their output, due to the low capacity utilization rates. This indicates that domestic supply is likely to be quite elastic in this industry, at least over the relevant range.

Financial data supplied to the Commission corroborated this finding. Net sales dropped by over 15 percent between 1985 and 1986, yet the cost of goods sold as a percentage of net sales remained almost constant. What this tells us is that even as this industry's performance improves, prices will not rise substantially, due in part to the large amount of unused capacity. See Report at A-19-21 (Tables 8-10).

^{30/} See Argentine Steel, supra note 4, at 52-59.

As I noted at the outset, for the purpose of this remand I have joined in the views of Commissioners Lodwick and Rohr. While I concur in my colleagues' consideration of lost sales in this investigation, I feel constrained to add some additional comments about the role of "lost sales" evidence in this and other investigations.

Lost sales evidence is collected by the Commission staff through questionnaires that ask domestic producers to identify specific instances where they believe they have lost business (or, in the case of lost revenue, had to reduce prices to avoid losing business) to unfair imports. After the questionnaires are returned to the Commission, staff contacts the customers cited in the specific transactions to confirm the allegations. Since the Commission's task in a Title VII investigation is to assess whether there has been (or, in a preliminary investigation, whether there is a reasonable indication of) material injury to an industry (not just one or more individual industry participants), lost sales evidence has no relevance unless it allows Commissioners to make some generalities about sales for the industry as a whole.

As I have noted on a number of previous occasions, I believe that the lost sales evidence collected by the Commission must be used very cautiously. In this case, I believe my colleagues have properly recognized the limited

utility of lost sales evidence and I concur in their discussion of that evidence in this investigation.^{31/}

I therefore concur with Commissioners Lodwick and Rohr that there is clear and convincing evidence of no reasonable indication of material injury or the threat of material injury by reason of imported Canadian line pipe and tube. Although I have some concerns about the traditional Commission analysis in Title VII cases, I determine that in the instant case, Commissioners Lodwick and Rohr have explained their negative determination in such a way that I am able to join fully in their opinion.

^{31/} For further discussion of my views on lost sales evidence, see, e.g., Certain Welded Carbon Steel Pipes and Tubes from India, Taiwan and Turkey, Inv. Nos. 731-TA-271-273 (Final), USITC Pub. 1839, at 49-50 (April 1986) (Views of Vice Chairman Liebeler and Commissioner Brunsdale); Argentine Steel, supra note 4, at 60-62. The Commission's Director of the Office of Economics also analyzed lost sales in a recent memorandum. See Memorandum from the Director, Office of Economics, Memorandum EC-J-010, at 1 (January 7, 1986).

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