

CERTAIN LIGHT-WALLED RECTANGULAR PIPES AND TUBES FROM TAIWAN

Determination of the Commission
in Investigation No. 731-TA-410
(Final) Under the Tariff Act
of 1930, Together With
the Information Obtained
in the Investigation

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United States International Trade Commission
Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-410 (Final)

LIGHT-WALLED RECTANGULAR PIPES AND TUBES FROM TAIWAN

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission determines, 2/ pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured 3/ or threatened with material injury 4/ by reason of imports from Taiwan of light-walled rectangular pipes and tubes, 5/ provided for in subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 21, 1988, following a preliminary determination by the Department of Commerce that imports of light-walled rectangular pipes and tubes from Taiwan were being sold

1/ The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(h)).

2/ Commissioners Lodwick and Rohr dissenting.

3/ Acting Chairman Brunsdale and Commissioner Cass determine that an industry in the United States is materially injured by reason of the subject imports.

4/ Commissioners Eckes and Newquist determine that an industry in the United States is threatened with material injury by reason of the subject imports. They further determine that material injury by reason of the subject imports would not have been found but for any suspension of liquidation of entries of the merchandise.

5/ For purposes of these investigations, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness of less than 0.156 inch (4 millimeters). Light-walled rectangular pipes and tubes were previously provided for in item 610.49 of the Tariff Schedules of the United States and were reported for statistical purposes under item 610.4928 of the Tariff Schedules of the United States Annotated.

at LTFV within the meaning of section 731 of the act (19 U.S.C. § 1673).

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of December 14, 1988 (53 F.R. 50303). The hearing was held in Washington, DC, on February 8, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF ACTING CHAIRMAN ANNE E. BRUNSDALE
AND COMMISSIONER RONALD A. CASS

Light-Walled Rectangular Pipes and Tubes from Taiwan
Investigation No. 731-TA-410 (Final)

March 20, 1989

We find that a domestic industry has been materially injured by reason of imports sold at less than fair value ("LTFV") of light-walled rectangular pipe and tube (hereinafter "LWR") from Taiwan. We assess the effects of those imports together with the effects of allegedly LTFV imports of LWR from Argentina. These Views explain the basis for our affirmative determination.

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

Bowing to prior decisions in which the Commission has consistently defined LWR as one like product,^{1/} Petitioners and Respondents agree that the like product under investigation in this case is light-walled rectangular pipe and tube.^{2/}

We see no reason on the record of this investigation to break with those prior determinations or with the parties' consensus.

^{1/} See, e.g., Certain Welded Carbon Steel Pipes and Tubes from Taiwan, USITC Pub. 1994 at 3-4, Inv. No. 731-TA-349 (Final), (hereinafter "Welded Carbon Steel Pipes") (Views of Chairman Liebler and Vice Chairman Brunsdale).

^{2/} Pre-Hearing Brief of Petitioners at 4; Pre-Hearing Brief of Ornatube at 4.

We therefore conclude that the like product in this case is LWR, and that the domestic industry consists of domestic producers of that product.

We are concerned, however, that the Commission not become so bound by tradition that it never revisits the like-product issue in steel cases. The Commission's early cases established narrow like-product definitions, and arguments in subsequent cases regarding like products have tended to seek even further divisions into ever narrower sub-categories of steel products. We are mindful certainly of the difficulties of reaching reasoned, consistent and economically sensible like-product decisions, and would not advocate that we ignore our earlier determinations. But over the years, we have learned a great deal about the production and marketing of steel, and we think that we ignore that experience when we and the parties adhere to worn precedent as if by rote.

Contrary to various arguments in steel cases that we narrow our long-standing definitions, we question whether our like-product definitions in steel cases are not already narrow and artificial.^{3/} In cases involving electronics, the Commission has

^{3/} Indeed, in earlier pipe and tube cases, the Commission has had to resort to a product-line analysis because the industry itself does not treat LWR as a separate product. Welded Carbon Steel Pipes, USITC Pub. 1994 at 12-13. Just three days ago, the Court of International Trade remanded the Commission's determination in Welded Carbon Steel Pipes because of erroneous comparisons between pipe and steel imports and product line production figures. Hannibal Industries Corp. v. United States, slip op. 89-32 at 4-5 (March 17, 1989). The court did recognize, however, that certain data were available only on a product line basis.
(continued...)

determined that components that perform the same overall function are like products, despite significant differences in performance characteristics.^{4/} In investigations involving agricultural products, Congress has instructed us to include firms at all points in the production chain if it makes economic sense to do so.^{5/} Though not without some disagreement over the application of the statutory standard, the Commission has included various levels of agricultural production in one domestic industry.^{6/} Steel seems to be unique in its amenability to rigid, narrowly defined product classifications.

Perhaps steel is sui generis, and the narrow classifications are as valid today as they were when first adopted. We are disturbed, however, that both the Commission and the parties are becoming complacent in analyzing the validity of these categories. A more rigorous review on a record sufficiently

^{3/}(...continued)

Id. at 7. There are, in fact, other reasons for treating LWR as a separate like product. For example, the only difference between rectangular and round pipe and tube is a minor finishing process, and other steel products are sometimes used interchangeably with LWR. Final Staff Report to the Commission on Inv. No. 731-TA-410 at A-8 (Final) (Mar. 6, 1989) (hereinafter "Report").

^{4/} Digital Readout Systems and Subassemblies Thereof from Japan, USITC Pub. 2150, Inv. No. 731-TA-390 (Final) (Jan. 1989) (hereinafter "Digital Readout Systems").

^{5/} Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, § 1326(a), 102 Stat. 1107, 1203 (to be codified at 19 U.S.C. § 1677(4)).

^{6/} Fresh, Chilled or Frozen Pork from Canada, USITC Pub. 2158, Inv. No. 701-TA-298 (Preliminary) (Feb. 1989).

developed to make a reasoned determination may be called for in the near future.

II. CUMULATION

The preliminary investigation of the imports at issue here was conducted jointly with an investigation covering imports of LWR from Argentina.^{7/} The Commission majority, including Acting Chairman Brunsdale, considered the LWR imports from Argentina and Taiwan separately and, because it determined that the domestic industry was independently threatened with material injury by reason of LTFV imports from both countries, it found it unnecessary to cumulate.^{8/} Commissioner Cass, having found a reasonable indication of material injury, assessed the cumulative effect of imports from both countries as required by statute.^{9/}

During this final investigation, however, the Department of Commerce, in response to a request for a postponement of Commerce's LTFV investigation by the predominant Argentinean respondent, Laminfer, extended the date for its final determination concerning the subject imports from Argentina to March 31, 1989.^{10/} Accordingly, the investigations concerning

^{7/} Light-Walled Rectangular Pipes and Tubes from Argentina and Taiwan, USITC Pub. 2098, Inv. Nos. 731-TA-409-410 (Preliminary) (July 1988).

^{8/} *Id.* at 10, n.25.

^{9/} *Id.* at 18 (citing 19 U.S.C. § 1677(7)(C)(iv)) (Additional Views of Commissioner Cass).

^{10/} 54 Fed. Reg. 1199 (1989).

imports from Argentina and Taiwan necessarily were separated. Different timetables notwithstanding, we must as a threshold matter consider whether, in assessing the question of causation of material injury in this investigation, the impact of imports from Taiwan and Argentina should be cumulatively assessed.^{11/}

Under Title VII, the Commission is required to assess cumulatively the volume and effect of imports from two or more countries of like products subject to investigation if such imports "compete with each other and with like products of the domestic industry in the United States market."^{12/} The Commission generally has examined the following four factors in order to determine whether those statutory criteria are met:

- (1) the degree of fungibility between the imports from different countries and between the imports and the domestic like product;
- (2) the presence (or absence) of sales or offers to sell in the same geographical market imports from other countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and

^{11/} See, e.g., Certain Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan, USITC Pub. 2156 at 67-73, Inv. Nos. 731-TA-426-28 (Preliminary) (Feb. 1989) (Additional Views of Commissioner Cass); Certain Malleable Cast-Iron Pipe Fittings from Japan, USITC Pub. 1987 at 7-9, Inv. No. 731-TA-347 (Final) (June 1987); Certain Malleable Cast-Iron Pipe Fittings from Thailand, USITC Pub. 2004 at 7-10, Inv. No. 731-TA-348 (Final) (Aug. 1987).

^{12/} 19 U.S.C. § 1677(7)(C)(iv).

- (4) whether the imports are simultaneously present in the market.^{13/}

In our view, the requirements for cumulating imports from Argentina with those from Taiwan are met. The evidence suggests that the subject imports of hot-rolled LWR, the product that accounts for the substantial majority of the volume of LWR sales under investigation, and the domestic like product are fungible.^{14/} Imports from Taiwan and Argentina frequently enter the United States through the same ports, e.g., in California, Texas, and Puerto Rico, and are sold in the same markets.^{15/} A substantial portion of domestically produced LWR and a significant majority of the imports from Taiwan and Argentina

^{13/} See, e.g., Telephone Systems, USITC Pub. 2156 at 68. These four factors do not add to or substitute for the two statutory factors--that imports (1) are subject to investigation and (2) compete with each other and with the domestic like product--but, instead, are used to assess the statutory factors. See Asociacion Colombiana de Exportadores de Flores v. United States, No. 88-172, slip op. (Ct. Int'l Trade Dec. 27, 1988). We note, too, that under the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 1330(b) (to be codified at 19 U.S.C. § 1677(7)(C)(v)), even where consideration of these factors leads to the appearance that cumulation might be appropriate, the Commission is not required to cumulate imports from a given country if it determines that imports of the product from that country are negligible and have no discernible adverse impact on the domestic industry. Since this investigation was initiated prior to enactment of the 1988 Act, however, § 1330(b) does not apply.

^{14/} Report at A-31-32. See also Official Transcript of Proceedings, Inv. Nos. 731-TA-409-410 (Feb. 8, 1989) (hereinafter "Tr.") at 34 (Petitioners' unrefuted acknowledgement that the subject imports and domestic hot-rolled LWR are fungible); id. at 49 (Petitioners stating that "the quality of the product coming in from both countries is equal to current domestic quality").

^{15/} Report at A-6; Petitioners' Pre-hearing Brief at 6-7.

ultimately are sold to end-users via distributors called steel service centers in essentially the same channels of distribution.^{16/} Finally, subject imports from both countries have been present in increasing numbers throughout the period of investigation.^{17/} Under such circumstances, and considering that neither Respondents Ornatube nor Laminfer dispute the propriety of cumulation in assessing causation of material injury in this investigation, we conclude that we are required under Title VII to cumulate imports from Taiwan and Argentina in determining whether the domestic industry has suffered material injury by reason of the subject imports.^{18/}

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS

As noted above, we both find that the domestic LWR industry has been materially injured by reason of LTFV imports of LWR from Taiwan and Argentina. Our assessments have been informed by analyses that draw on well-established economic principles. We feel that our methods of analysis provide for consistency in

^{16/} Report at A-6; Pre-hearing Brief of Petitioners at 8.

^{17/} See, e.g., Report at A-27.

^{18/} We note that, although Laminfer recognizes that "the antidumping law mandates that imports be cumulated in certain circumstances in making a material injury determination," Post-hearing Brief of Laminfer at 1, it argues that the Commission should not cumulate for purposes of assessing threat of material injury. *Id.* at 7-10. Since we determine that the subject imports have materially injured the domestic industry, we do not reach the issue of threat of material injury and, therefore, do not pass judgment on the merits of Laminfer's argument.

Commission determinations. Although our methods of analysis are similar in many respects and often lead to the same conclusion, there are certain differences in our approaches to the question of causation. We set forth our views on this issue seriatim.

A. Acting Chairman Brunsdale's Views on Causation

The Condition of the Domestic Industry

As I have noted in prior opinions, ascertaining the state of the domestic industry and its performance over the period of investigation is an important part of my analysis. It allows me to place in some context the impact of the imports under investigation, and particularly to assess the interaction between the dynamics of the market for the product and the imports under investigation. This analysis permits me, for example, to detect whether a decline in the condition of the industry began before the introduction of the dumped or subsidized imports, and whether the imports may have materially hastened the decline.^{19/} Correspondingly, I will look to see whether an industry that

^{19/} For example, in *Generic Cephalexin Capsules from Canada*, USITC Pub. 2143 at 30-32, Inv. No. 731-TA-423 (Preliminary) (Dec. 1988) (Dissenting Views of Acting Chairman Brunsdale), I noted that the industry had declined in a manner entirely consistent with the expiration of the patent on the like product and the introduction of stiff competition among producers. This strongly suggested that the imports had no material effect on the domestic industry.

shows indications of robust health has been deprived of even greater achievements by reason of the imports.20/

The domestic industry in this case, manufacturers of LWR, has shown three years of sustained, moderate growth. Domestic production grew from 194,917 tons in 1986 to more than 210,000 tons in 1987, although production was less robust during the first nine months of 1988.21/ Domestic shipment figures followed a similar trend.22/ Despite a 12 percent increase in capacity during 1986-1988, the industry's capacity utilization rate reached 73.8 percent during the first nine months of 1987, before dipping moderately to 68.5 percent during the first nine months of 1988.23/ However, all interim 1988 production and shipment figures, on an annualized basis, surpass the figures for 1985.

The industry's financial position has also shown some improvement over the period of investigation. Net sales increased by nearly 50 percent over the period 1985 through 1987, and net sales for interim 1988 were markedly higher than during the comparable period in 1987.24/ With the industry's costs of goods sold growing at about the same rate as net sales, gross

20/ Digital Readout Systems, USITC Pub. 2150 (Views of Acting Chairman Brunsdale).

21/ Report, Table 2.

22/ Id., Table 3.

23/ Id., Table 2.

24/ Id., Table 7.

profits grew at a much slower pace.^{25/} Operating income showed an even greater degree of fluctuation, and actually declined in 1986 from 1985 levels, though it rebounded strongly in 1987 and interim 1988.^{26/}

All of the employment indicators investigated by the Commission improved over the period of investigation. The number of employed workers increased by one-third, as did the number of hours worked by those workers, their total compensation, and their hourly rate of compensation.^{27/} Unlike the industry's production performance, employment data did not tail off in interim 1988, but registered modest increases.^{28/}

Petitioners and Respondents in this investigation directed our attention to two cases from our reviewing court that would appear, at first blush, to provide inconsistent instructions as to the legal significance of the state of the domestic industry on the Commission's injury analysis. Respondent Ornatube cites the Court of International Trade's decision in National Association of Mirror Manufacturers v. United States ^{29/} for the proposition that "when the statutory factors which the Commission considers indicate that the domestic industry is healthy, the

^{25/} Id.

^{26/} Id.

^{27/} Id., Table 5

^{28/} Id.

^{29/} 12 Ct. Int'l Trade ____, 696 F. Supp. 642 (1988).

Commission may indeed determine that the industry is not experiencing or facing material injury."^{30/} Petitioners point to the decision of that same court in Republic Steel Corp. v. United States,^{31/} which stated: "The ITC should not be engaged in a determination of whether an industry is 'healthy.' A 'healthy' industry can be experiencing injury from importations and an 'unhealthy' industry can be unaffected by importations."^{32/} Not surprisingly, Ornatube argues that the domestic LWR industry is healthy and, pursuant to Mirror Manufacturers, a negative determination is warranted. Petitioners state that the industry is not so healthy and, under Republic Steel, we must look for the effects of imports anyway.

Both interpretations of the Court of International Trade's opinions are overly broad. First, that court's review of our decisions is limited to whether our determinations have violated the law or are based on insufficient evidence.^{33/} Thus, even viewing the court's decisions as absolutely as the parties do here, these decisions do not necessarily provide us with guidance on which is the preferable means of analyzing a case. That the court leaves that decision for us does not mean that both possibilities are equally valid.

^{30/} Post-hearing Brief of Ornatube at 13-14 (quoting id. at 647).

^{31/} 8 Ct. Int'l Trade 29, 591 F.Supp. 640 (1984).

^{32/} Petitioner's Post-Hearing Brief at 11 (quoting id. at 649).

^{33/} 19 U.S.C. § 1516a(b)(1)(B); Sprague Electric Co. v. United States, 2 Ct. Int'l Trade 302, 529 F. Supp. 676, 682-83 (1981).

Second, the court in Mirror Manufacturers stated that the Commission "may" find that an industry is healthy and therefore not injured by reason of the subject imports. On the other hand, the Republic Steel court was more emphatic, denouncing the practice of deciding cases purely on the ground of an industry's relative health. The two cases can comfortably be read together if one considers the circumstances in which cases can come to the Commission. If the industry has fared so well over the period of investigation that it can reasonably be said that imports could have had no material effect on its fortunes, then under Mirror Manufacturers, the Commission "may" reach a negative result. This result is distinguishable from Republic Steel, in which the Commission's decision was "primarily based" on the "relatively healthy condition" of the industry 34/ and not on a reasoned conclusion that the state of the industry precludes a finding of injury "by reason of" the subject imports. Of course, we may conclude that, for identifiable reasons other than imports, the industry experienced such a marked decline that imports had no material sway over the industry's performance.35/

Within these two extremes, however, the Commission cannot stop its deliberations with the condition of the industry and go no further. Under Republic Steel, the Commission must tackle the more difficult problem posed by the antidumping laws: whether

34/ 591 F. Supp. at 649.

35/ All Terrain Vehicles from Japan, USITC Pub. 2163, Inv. No. 731-TA-388 (Final) (Mar. 1989) (hereinafter "ATVs").

the domestic industry is injured by reason of the subject imports. I note that, in this case, neither of the extremes set forth above is present. I therefore address the causation issue below.

Causation: The Injury-Import Connection

In a previous investigation concerning LWR from Taiwan,^{36/} I engaged in a series of calculations which demonstrated that the domestic industry had not been materially injured by reason of the dumped imports. Using the dumping margin generated by the Department of Commerce, I computed a maximum value for the "fair" price of the imports. By multiplying this price by the total quantity of Taiwanese imports, I calculated the additional revenue that the domestic industry could have received if it had replaced all of the subject imports at their maximum fair market value. Furthermore, I made all pertinent assumptions in favor of the petitioner. First, I assumed that the Taiwanese would sell no LWR at a "fair" price. Second, I assumed that purchasers of LWR would purchase the same amount at the "fair" price, thereby transferring to the domestic industry all of the benefit from the retreat of the Taiwanese imports. Finally, I assumed that any benefits from the withdrawal of the dumped imports would go to the domestic industry, and not to the foreign producers of "fair" imports. By making all of these assumptions in favor of the

^{36/} Welded Carbon Steel Pipes, USITC Pub. 1994 at 79-88 (Additional Views of Vice Chairman Brunsdale).

petitioner, I excluded all possibility that the industry suffered any greater degree of injury than by my calculation. Ultimately, I concluded that the revenues that petitioner would receive in the best of circumstances constituted an immaterial portion of the industry's net sales.

Petitioners here correctly point out that the situation in the present investigation is much different. The Taiwanese share of the domestic market is now larger, and the average dumping margin (according to Petitioners) is 12 percentage points above the earlier case's figure. Furthermore, in the instant case, we must cumulate Taiwanese imports with the Argentine imports, which enjoy an even a larger share of the market than the former and carry a whopping 92 percent (preliminary) dumping margin. According to Petitioners, if I were to use the methodology of the 1987 case, I should reach an affirmative result. Petitioners urge me to use this methodology once again.

I agree with Petitioners that application of my previous methodology would not rule out an affirmative determination in this case. However, it is also true that a negative determination cannot be ruled out if Respondents are given the benefit of every doubt. In these circumstances, it is impossible to reach a determination by the analytical short-cut of considering polar cases only. I must do what I usually do, which is to resolve these factual issues based on information developed during the Commission's investigation.

To apply the dumping laws properly, one needs to find whether there is a connection between the imports and the state of the domestic industry. Some have approached this matter by positing that a decline in the condition of the industry and a concomitant increase in imports constitutes a positive causal connection. I have discussed this approach in another context, and found it lacking.^{37/} If one looks only to the declining condition of the industry at a time when imports are increasing, the temptation is to assume that the imports caused the decline. This is related to a recognized method of economic modeling known as regression analysis: one analyzes two variables and, if there is a high degree of correlation between them, one concludes that there must be a causal connection between them. A valid regression analysis, however, requires (1) a set of data points sufficiently large so that one can discount other reasons for the cited correlation (including mere fortuity) or (2) some method for holding every other conceivable influence on the variables constant. Generally, the Commission has neither the time nor the resources to generate the voluminous data spanning many years that would be necessary to undertake a valid regression analysis between the imports and the condition of the industry.

I therefore take another approach, which is to organize the data on the record in a fashion that allows me to assess the

^{37/} Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, USITC Pub. 2103 at 43-44, Inv. No. 701-TA-287 (Final) (Aug. 1988) (Dissenting Views of Acting Chairman Brunsdale).

relationship between the imports and the condition of the industry according to basic principles of economics. These principles are that as the price of a product rises, consumers will purchase less of it and producers will produce more, all other things being equal.^{38/}

Taking these principles one step further, we can set out a few additional propositions. First, the change in supply of and demand for a product resulting from a change in its price will be different for different products. If the price of a necessity rises substantially, consumers will try to conserve, but will have to continue purchasing a given amount just to survive. Economists refer to this as inelastic demand. The consumers' reaction to a price increase for less essential products, or products for which close substitutes exist, will be greater, that is, demand is said to be elastic.^{39/}

One can evaluate the record of a dumping or countervailing duty investigation and assess whether demand for the subject like product is elastic or not. Is the like product a necessity or a luxury? Are there viable substitutes for the product? How much of one's income is devoted to purchasing the product? Although economists schooled in studying product markets are especially expert in making these judgments, with sufficient information

^{38/} See R. Heilbroner and L. Thurow, Understanding Microeconomics 43-47 (4th ed. 1978).

^{39/} To be precise, the elasticity of demand is the percentage decrease in demand for a product that will result from a one percent increase in the product's price.

even those less schooled in economic theory can develop well-reasoned elasticity estimates.

The elasticity of supply follows similar principles, except that as the price of a product rises, producers generally will try to supply more. If the nature of the industry is such that increasing supply is very difficult, supply is said to be inelastic, and vice versa.^{40/} Again, one can assess the record in an investigation and determine whether the supply of a product is elastic or inelastic. Is the industry running at full capacity, or could it easily increase production using existing plant and equipment? How feasible is entry into the industry, i.e., can manufacturers divert other equipment to manufacture this product? How easily can manufacturers divert shipments destined for other markets (e.g., exports) to this market? Again, those familiar with an industry can evaluate evidence relating to these factors relatively easily.^{41/}

^{40/} Economists define the elasticity of supply as the percentage by which supply of a product will increase as the result of a one percent increase in its price.

^{41/} Indeed, for over a year, I have asked the Commission's Office of Economics to prepare estimates of the supply, demand and substitution elasticities for every product subject to a Title VII investigation, and I have asked parties to comment on these estimates. The Office of Economics normally discusses the characteristics of the product and the industry involved in the investigation, and gives a range of elasticity estimates. I have been gratified to note that, as in this case, the parties rarely dispute the Office of Economics' analysis, though they may dispute which factors affecting the elasticities are most important and, therefore, at which end of the proposed range the elasticities actually fall.

Another phenomenon familiar to economists, business people, and consumers is that some products are more substitutable between themselves than are others. Products may not be substitutable because they are not useful for the same purposes, or because purchasers have strong preferences for one particular type or style or another. An increase in the price of one product will have little effect on the demand for a product that is not regarded by consumers as substitutable. On the other hand, if the price of a product that has close substitutes rises, one would logically expect consumer demand for the close substitute to rise substantially. The measure of this phenomenon is referred to as the elasticity of substitution.^{42/}

One can take these elasticity concepts and map out a method of answering the critical question posed in dumping and countervailing duty cases: has a domestic industry been materially injured by reason of dumped or subsidized imports? I discuss below the role each of these elasticities plays in this framework.

Elasticity of demand. In a dumping or countervailing duty case, the Commission must consider, among other things, whether the volume of low-priced imports under investigation ^{43/} had a

^{42/} The economist's definition of the elasticity of substitution is the percentage change in the ratio of the quantities demanded of two products that results from a one-percent change in the ratio of their prices.

^{43/} That is, low-priced relative to their "fair" price, not necessarily relative to the price charged by domestic producers. Underselling by the subject imports can be an important factor in
(continued...)

material impact on the domestic industry's output, sales, and market share.^{44/} The elasticity of demand, described above, connects the volume of the unfairly priced imports to the volume of the domestic production. If demand is elastic, the volume effect of unfairly traded imports is reduced by the fact that many price-sensitive purchasers who buy unfairly traded imports would not buy higher-priced domestic products if unfair imports were removed from the market. In contrast, if demand is inelastic, a significant share of the market served by unfair imports would be available to the domestic industry.^{45/}

Elasticity of supply. The Commission in dumping and countervailing duty cases must also assess the impact of the effect of the subject imports on the domestic price of the product.^{46/} The elasticity of supply provides this connection. If supply is elastic, i.e., producers can easily provide more product to the market in response to upward pressure on price,

^{43/}(...continued)

a determination, and the antidumping laws command that we give underselling due consideration. I have outlined in previous cases the criteria by which I evaluate the probative value of evidence of underselling. Welded Carbon Steel Pipe, USITC Pub. 1994 at 63-79.

^{44/} 19 U.S.C. § 1677(7)(B)(i), (C)(iii)(I).

^{45/} Thus, in Welded Carbon Steel Pipes, I assumed that demand was highly inelastic, i.e., if Taiwanese imports were fairly priced, the domestic industry would have picked up every one of those sales. In other words, I made the assumption most favorable to the petitioner. I discuss below whether this was a realistic assumption.

^{46/} 19 U.S.C. § 1677(7)(B)(ii), (C)(ii).

then the increased supply will counterbalance the upward pressure on the domestic price of the like product, and prices will remain relatively stable. We can conclude from this set of facts that dumped or subsidized-priced imports have had little price effect in the domestic market. At the opposite extreme, if supply is inelastic, i.e., relatively fixed, then the withdrawal of cheaply priced imports will not induce more production, and the price of the product in the domestic market will tend to rise.^{47/}

Elasticity of substitution. The role of demand and supply elasticities discussed above assumes that domestic purchasers of a product are equally satisfied with the domestic product and the unfair imports, and purchasers would make purchasing decisions based solely on price, i.e., that the elasticity of substitution between the domestic and the foreign product is high. That may be true for some products, but purchasers may also be influenced by differences in quality, style, delivery schedules, terms of sale, service, and other aspects of a transaction that affect the purchase decision. If the elasticity of substitution is high, the removal of dumped or subsidized imports from the market will result in more sales for the domestic producers, subject to other market characteristics such as the elasticity of demand. If the

^{47/} If one has sufficient data, one can also consider the elasticity of the supply of imports not under investigation. If the supply of such imports is elastic, that will further weaken the impact of unfair imports on domestic prices. Whether the Commission can develop in the course of an investigation the information necessary to work out import supply elasticity estimates for fair imports depends on the nature of the international market for the product under investigation.

elasticity of substitution is low in that non-price considerations play an important role in purchasing decisions, the impact of the dumped imports is diminished. Some purchasers will still purchase the imports despite the imposition of antidumping or countervailing duties. In that case, the causal connection between the imports and the condition of the domestic market is weakened.

Using the data developed during the investigation and the three elasticity concepts discussed above, it is a fairly straight-forward task to describe the price and volume effects of the unfair imports on the domestic industry. The last step is to assess the overall impact of the subject imports on the domestic industry.^{48/} Only one additional piece of information is necessary to complete the picture: to what extent are the imports unfairly priced? That question can be addressed by reference to the margins generated by the Department of Commerce.

Dumping and subsidy margins. The statute governing dumping cases requires the Department of Commerce to calculate the difference between the price actually charged for the dumped or subsidized imports in the United States as compared to one of three measures of a product's "fair" price (either its cost of production, its price in its home market, or its price in a third country, depending on the case). In countervailing duty cases, Commerce must calculate the value of the countervailable

^{48/} 19 U.S.C. § 1677(7)(B)(iii), (C)(iii).

subsidies. Commerce calculates this price difference in terms of a percentage of the price actually charged in the United States.

As some have suggested, the dumping or subsidy margin does not provide a precise measure of the price that would have been charged in the United States absent the dumping or subsidy.^{49/} However, they are the only data available on the difference between the dumped or subsidized price and a "fair" price. Furthermore, a larger dumping margin implies a larger difference between actual prices and those under fair trade conditions, other things being equal.^{50/}

Injury by Reason of Dumped Imports in this Investigation

Petitioners correctly state that the case for an affirmative result in this investigation is much stronger than in the previous LWR investigation completed in July 1987. First, the quantity of Taiwanese imports increased from 9,975 tons in 1986 to 14,770 tons in 1987, and in the first nine months of 1988 was greater than in all of 1987, at 15,747 tons.^{51/} Similarly, the

^{49/} However, the Court of International Trade has sanctioned reference to dumping or subsidy margins in Commission determinations. *Hyundai Pipe Co. v. United States*, 11 Ct. Int'l Trade ___, 670 F. Supp. 357 (1987).

^{50/} It is possible, as Commissioner Cass has suggested, to calculate the extent of the "pass-through," i.e., the extent to which foreign concerns would increase their prices in the United States market in order to achieve a fair price. I am not sure that the exercise is necessary to reach a just and reasoned result in most cases.

^{51/} Report, Table 14.

market penetration of Taiwanese imports rose from 3.8 percent in 1986 to 5.1 percent in 1987 and 6.4 percent in interim 1988.^{52/}

Furthermore, Taiwanese imports must now be cumulated with Argentine imports. Argentine imports amounted to only 1,846 tons in 1986, and thereafter increased to 14,744 tons in 1987 and 25,624 tons in the first nine months of 1988.^{53/} The market penetration of Argentine imports increased from 0.7 percent in 1986 to 5.1 percent in 1987 and 10.4 percent in interim 1988.^{54/} Combined, the Taiwanese and Argentine import penetration was 10.2 percent in 1987 and 16.7 percent in interim 1988.^{55/}

The dumping margins in this investigation are also very different from those in the 1987 investigation. Back then, the Commerce Department calculated a modest dumping margin of 17.29 percent.^{56/} In this case, Commerce has calculated dumping margins ranging from 5.51 percent for Respondent Ornatube to 40.97 percent for Vulcan and Yieh Hsing (now Yieh Mau). The weighted-average dumping margin for Taiwan is closer to 5.51

^{52/} Id., Table 16.

^{53/} Id., Table 14.

^{54/} Id., Table 16.

^{55/} Id.

^{56/} Relative to other dumping margins the Commission routinely sees, 17.29 percent is modest. Additional calculations would be necessary to approximate the portion of the dumping margin that would be passed through to equalize the United States and home market prices. The "fair" price will not be higher than the dumped price plus the dumping margin factor, and might well be somewhat lower.

percent than 40.97 percent because Ornatube is the largest Taiwanese exporter of LWR to the United States.^{57/} On the other hand, Commerce's preliminary dumping margins on sales by the dominant producer of Argentine imports is on the order of 92 percent.^{58/} A weighted-average dumping margin for Taiwanese and Argentine imports would be in the 50 percent range, a large margin by Commission standards.

Given the 16.7 percent share of the domestic market enjoyed by the Argentine and Taiwanese imports, and the relatively large weighted-average dumping margins, I can now determine whether the imports had a material impact on the domestic industry. As it now does in every investigation, the Commission's Office of Economics (OE) prepared estimates on the elasticities of demand, supply, and substitution for the LWR market,^{59/} making its preliminary estimates a part of the record before the hearing. Thus, the parties had the opportunity to consider and comment on

^{57/} An actual calculation is not possible without revealing confidential information.

^{58/} The Argentine respondent, Laminfer, argues that this calculation is fraught with errors, and will be substantially lower in Commerce's final determination. It further argues that use of this margin is unfair. Neither argument holds sway. First, Laminfer itself requested the extension at Commerce, so it cannot complain about the delay in a final dumping calculation. We at the Commission, however, must use the best information we have. 19 U.S.C. § 1677e(b). Furthermore, any unfairness is not directed at Laminfer, but rather at the Taiwanese, who must face a decision from the Commission cumulated with Argentine imports using a preliminary margin.

^{59/} USITC Memorandum EC-M-027 (Feb. 6, 1989).

the estimates,^{60/} and revisions were made in the final version.^{61/}

Price effect and the elasticity of supply. In its prehearing estimate on the supply elasticity of LWR, OE estimated it to be very high, numerically designated as greater than 10.^{62/} OE noted that the industry's capacity utilization rate is relatively low, on the order of 65-75 percent, and that producers can easily divert equipment producing other LWR products to LWR production.^{63/} In the posthearing memorandum, OE lowered the estimate to the numerical range of 5 to 10, noting that some domestic producers, in light of the voluntary restraint agreements (VRAs) reached with some steel producing countries, had experienced difficulties obtaining steel strip, the raw material needed to produce LWR.^{64/}

I agree with the final conclusions, and am inclined to believe that the actual supply elasticity falls at the low end of that range. The fluctuations in the domestic industry's capacity utilization during the period of investigation demonstrate the industry's ability to increase production in the short term. On

^{60/} Petitioners did not address the elasticity estimates at all. Ornatube provided a brief discussion. Post-hearing Brief of Ornatube 20-22. Much of this discussion was devoted to defending Taiwan's self-restraint program.

^{61/} USITC Memorandum EC-M-087 (Mar. 14, 1989).

^{62/} Memorandum EC-M-027 at 2-3.

^{63/} Id.

^{64/} Memorandum EC-M-087 at 3-5.

the other hand, the VRAs impose a cap on the amount of LWR that can be produced, particularly since producers must allocate available steel strip to a number of products. This will also affect producers' willingness to divert production from other steel products to LWR. The estimated supply elasticity of 5 is appropriate because it reflects these constraints on supply. But even with the supply estimate fixed at the low end of the OE range, the price effect of the unfair imports is still moderate. For example, a 4 percent increase in the price of LWR would result in a 20 percent increase in supply, more than enough to replace the subject imports entirely.

Volume effect and the elasticity of demand. The OE estimates of the demand elasticity for LWR were the same in the prehearing and posthearing memoranda.^{65/} OE noted that LWR has two significantly different uses, each of which suggests a different demand elasticity. First, LWR is used in construction and in various residential products associated with construction. For these products, the LWR is such a small part of the overall cost of construction, that demand is reasonably evaluated to be highly inelastic; presumably, few people would halt home construction and purchase less LWR because the price of LWR, a minuscule portion of the total construction cost, had risen. On the other hand, LWR is used in some decorative items, like furniture, in which the cost of the LWR is a large portion of the

^{65/} Memorandum EC-M-027 at 6-7; Memorandum EC-M-087 at 12-13.

overall cost of the item. On balance, the OE estimates an elasticity range from 0.5 to 1.2, covering the moderately inelastic to slightly elastic range.

I believe that the elasticity of demand for LWR is in the low end of this range. The OE estimate is only as high as it is because of the conclusion that the demand for decorative items made from LWR is elastic. However, in these items, the strength of LWR may not be crucial, and other materials like plastic tube and aluminum-formed sections may be substituted. Testimony before the Commission suggests that manufacturers have demonstrated a preference for LWR over other materials.^{66/} On balance, I conclude that demand is somewhat inelastic.

Elasticity of substitution. Prior to the hearing in this investigation, OE estimated that the elasticity of substitution between domestic and imported LWR was moderate to high, in the range of 2 to 5.^{67/} After hearing arguments from counsel for Ornatube, OE slightly revised its range to 1.5 to 4.5.^{68/}

Although imported and domestic LWR are interchangeable in many uses, several factors tend to limit their substitutability. The longer lead time for delivery of imports makes them less useful for purchasers that require just-in-time deliveries.

^{66/} Report at A-5.

^{67/} Memorandum EC-M-027 at 5-6.

^{68/} Memorandum EC-M-087 at 9-10.

Furthermore, purchasers that intend to chrome-plate the materials need a rust-free product, not a likely prospect following ocean freight from Argentina or Taiwan. Finally, Argentina and Taiwan do not make LWR from cold-rolled steel as do some domestic producers, so any advantage resulting from that difference rests with the domestic product.

On balance, I conclude that the range identified by OE is reasonable. I am not inclined to choose one extreme or another. The extent of the substitutability will ultimately depend on whether domestic purchasers are using more just-in-time inventory methods, whether they are chrome-plating more pipe, or whether for other reasons they need domestic LWR at a given point in time. One can fairly conclude, however, that the imports and the domestic product are reasonably substitutable, and that a large shift in the relative prices of the imports and the domestic product might be sufficient to change purchaser's buying decisions in most situations. A moderate to high elasticity of substitution is therefore appropriate.

The impact of the imports on the domestic industry. On this record, I conclude that the domestic industry is materially injured by reason of the LWR imports from Argentina and Taiwan. The cumulated weighted average dumping margin is large, indicating that the "fair" price of imports would be substantially higher than the dumped price in the short term. Demand being relatively inelastic, purchasers would buy roughly the same amount of LWR in the aggregate even with a substantial

rise in the price of LWR imports. The domestic and foreign product are sufficiently substitutable^{69/} that few purchasers would be expected to continue to purchase the subject LWR at a "fair" price. As those who had purchased Argentine and Taiwanese product sought other suppliers, the domestic producers would obtain a substantial share of that market.^{70/} The large volume of unfairly traded LWR from Argentina and Taiwan, representing a cumulated 16.7 percent of the market in the first nine months of 1988, indicates that the domestic industry would have gained materially from any such shift away from unfairly traded imports.

At the very least, this would have a substantial effect on the volume of LWR shipped by the domestic industry. Given the moderate to high elasticity of supply, the price effect would be minimal, though if demand for domestic LWR increased dramatically there would be a material effect on domestic prices also.^{71/}

^{69/} Indeed, the domestic product would seem to be preferable in several respects at a price equal to or below the import price.

^{70/} This is especially true since many other sources of steel products have entered into voluntary restraint agreements limiting their shipments to the United States. Report at A-33, n.1. While some of these countries could divert shipments from other steel products to pipe and tube, their ability to fill the void in competition with the domestic industry would be somewhat limited.

^{71/} That is, if the domestic industry reached capacity, or chose to limit production of pipe and tube for other reasons, the price would begin to rise.

B. Commissioner Cass' Views on Causation

I have explained at some length in other opinions the "unitary" or "comparative" approach that I employ in addressing the issues presented to the Commission in Title VII investigations and the statutory basis for such an approach.^{72/} I see no need to reiterate that explanation at great length here.

In sum, the comparative approach to the Title VII inquiry systematically addresses the three factors to which Title VII commands attention.^{73/} The approach consists of an explicit three-part analysis of the manner in which the subject imports

^{72/} See, e.g., Digital Readout Systems, USITC Pub. 2150 at 95-122 (discussing the differences between my approach and that of many other Commissioners) (Concurring and Dissenting Views of Commissioner Cass); 3.5" Microdisks and Media Therefor from Japan, USITC Pub. 2076 at 32-38, 59-96, Inv. No. 731-TA-389 (Preliminary) (Apr. 1988) (Additional Views of Commissioner Cass); Granular Polytetrafluoroethylene Resin from Italy and Japan, USITC Pub. 2112 at 47-71, Inv. Nos. 731-TA-385-386 (Final) (Aug. 1988) (hereinafter "PTFE") (Additional Views of Commissioner Cass); Certain Internal Combustion, Industrial Forklift Trucks from Japan, USITC Pub. 2082 at 109-48, Inv. No. 731-TA-377 (Final) (May 1988) (Additional Views of Commissioner Cass).

^{73/} Congress has directed the Commission to consider, in its evaluation of the causation of injury by LTFV imports, among other factors:

- (i) the volume of imports of the merchandise which is the subject of the investigation,
- (ii) the effect of imports of that merchandise on prices in the United States for like products, and
- (iii) the impact of imports of such merchandise on domestic producers of like products

19 U.S.C. § 1677(7)(B).

affected the domestic industry, and pointedly considers the effects of developing market conditions. The approach frames the inquiry in Title VII investigations by asking three separate, but related, questions: First, how have the volumes and prices of imports been affected by the sales at LTFV? Second, to what extent have the LTFV imports affected prices and, concomitantly, sales of the domestic like product? And, third, what effects have the changes in price and sales of the like product had on such variables as return on investment, employment, and wages in the affected domestic industry? Once this three-part inquiry is completed, the Commission must evaluate the significance of these effects and determine whether the injury caused or threatened by the dumped imports is material.^{74/}

Volumes and Prices of LTFV Imports

Although imports from both Taiwan and Argentina were negligible in 1985, they grew by multiples in both 1986 and 1987, and rose further in January-September 1988 in comparison with the same interim period in 1987.^{75/} In absolute terms, the subject imports of LWR from Argentina rose from a minuscule 121 tons in 1985 to a more noticeable 1,846 tons in 1986, then multiplied again to 14,744 tons in 1987, and increased appreciably again in

^{74/} See, e.g., Digital Readout Systems, USITC Pub. 2150 at 95-122 (Concurring and Dissenting Views of Commissioner Cass).

^{75/} See Report at A-27.

January-September 1988 to 25,624 tons.76/ During these same periods, the subject imports from Taiwan also multiplied in 1986 from 1985, growing from 406 tons to 9,975 tons, climbed further in 1987 to 14,770 tons, and rose again in interim 1988 to 15,747 tons.77/ Measuring the subject imports by value reveals similarly marked growth for both countries. In the case of Argentina, the value of subject imports multiplied from \$45,000 in 1985 to \$751,000 in 1986, to \$6.2 million in 1987, and to \$12.0 million in interim 1988.78/ And in the case of Taiwan, the value of subject imports climbed from \$216,000 in 1985 to \$4.2 million in 1986, to \$6.5 million in 1987, and further to \$8.5 million in the first nine months of 1988.79/

When we measure changes in the volumes of the subject imports by analyzing their share of the U.S. LWR market, we see a similar picture. Viewing their share of the domestic market in tonnage, we note that the subject imports from Argentina climbed from less than 0.05 percent in 1985 to 0.7 percent in 1986, surged to 5.1 percent in 1987, and then more than doubled to 10.4 percent in January-September 1988 alone.80/ By comparison, the subject Taiwanese imports' penetration of the U.S. market in

76/ Id. at Table 14.

77/ Id.

78/ Id.

79/ Id.

80/ Id. at Table 16.

tonnage rose from 0.2 percent in 1985 to 3.8 percent in 1986, increased to 5.1 percent in 1987, and climbed again in interim 1988 to 6.4 percent.^{81/} As was the case when we measured the absolute changes in the value of subject imports, we find that the value of such imports rose markedly in relative terms, too. Thus, we see that the share of the U.S. LWR market of subject imports from Argentina measured in value multiplied from less than 0.05 percent in 1985 to 0.5 percent in 1986, to 3.5 percent in 1987, and more than doubled to 7.1 percent in the first nine months of 1988.^{82/} And, in the case of Taiwan, we note that the subject imports' penetration of the domestic market measured in value rose from 0.2 percent in 1985 to 2.9 percent in 1986, climbed to 3.6 percent in 1987, and increased in interim 1988 to 5.0 percent.^{83/}

These volume changes do not of themselves indicate the impact of LTFV sales on those imports' volumes. That effect is more visible from the related effect of LTFV sales on prices of the subject imports.

The record suggests that dumping caused prices for these imports to decline by greatly varying amounts, overall amounting to a significant, but by no means dramatic, reduction in import prices. The dumping margins found by the Department of Commerce

^{81/} Id.

^{82/} Id.

^{83/} Id.

amounted to 5.51 percent ad valorem for Ornatube, 40.97 percent ad valorem for Vulcan and Yieh Hsing, and 29.15 percent ad valorem for all other Taiwanese imports.^{84/} In computing the margins, Commerce compared the United States price with the foreign market value of LWR sold by Ornatube to unrelated purchasers in its home market, and found margins on approximately [**] percent of sales.^{85/} Since Vulcan and Yieh Hsing did not respond to the antidumping questionnaire, however, Commerce used, inter alia, Petitioners' data to construct values for their margins, and employed the arithmetic average of the three named producers to arrive at the figure for all others.^{86/} Such disparate methods of computation of dumping margins raise different conceptual issues in our analysis.^{87/}

With respect to Argentina, Commerce preliminarily determined the dumping margin for Laminfer, which accounted for virtually all Argentinean exports of LWR to the United States during the period of investigation, to be 92.30 percent ad valorem.^{88/} Commerce based its margin on a comparison between the price charged to unrelated purchasers in the U.S. prior to importation with f.o.b. packed prices to unrelated purchasers in Argentina.

^{84/} 54 Fed. Reg. 5532, 5536 (1989); Report at A-3.

^{85/} Report at A-3.

^{86/} Id. at A-3.

^{87/} See ATVs, USITC Pub. 2163 at 57 (Additional Views of Commissioner Cass).

^{88/} 53 Fed. Reg. 46,898 (1988).

Although Laminfer argues that the margin is "meaningless",^{89/} it remains the best information available for purposes of the subject investigation.^{90/}

Respondent Ornatube urges the Commission to ignore the Commerce margins for Vulcan, Yieh Hsing and "all others", which are based on the best information available, and to rely, instead, on the only margin verified by Commission questionnaires, i.e., Ornatube's. Otherwise, Ornatube argues, it would be "penalized" unfairly for its competitors' lack of cooperation.^{91/} Moreover, Ornatube contends, (1) the Commission should ignore margins that are based on the "best information available" and, instead, "wherever possible, should use the

^{89/} Laminfer argues that the Commerce-determined margin is "meaningless" because Commerce (1) made clerical errors in its computation, (2) matched U.S. and home-market sales according to the first of three pipe dimensions (e.g., pipes measuring 15x15x1.2 might be compared indiscriminately with pipes measuring 15x45x2.0), (3) did not distinguish on the basis of finish (cold-rolled versus hot-rolled), (4) failed to adjust for Argentina's hyperinflation, and (5) did not account for Laminfer's volume discounts. Pre-hearing Brief of Laminfer at 30-33.

^{90/} See 19 U.S.C. § 1677e(c). See also New Steel Rails from Canada, USITC Pub. 2135 at 39-40, Inv. Nos. 701-TA-297 & 731-TA-422 (Preliminary) (Nov. 1988) (Additional Views of Commissioner Cass). I, too, note that we do not have a final determination from Commerce because, at Laminfer's express request, Commerce postponed completion of its final investigation. Although Laminfer contends that our use of Commerce's preliminary margin "would be unfair to Laminfer and would, in effect, punish it for availing itself of the right, conferred by statute, to request a postponement of a final LTFV determination," Post-hearing Brief of Laminfer at 10, that argument is not persuasive: We must proceed on the basis of the evidence before us, and no evidence of the dumping margin more credible than the figures preliminarily determined by Commerce is before us.

^{91/} Post-hearing Brief of Ornatube at 23.

margins of active respondents";^{92/} (2) that Commission use of Commerce's constructed value margins constitutes impermissible "double-counting";^{93/} (3) that it is "simply inconceivable" that three Taiwanese firms would have pricing structures so different as to yield margins different from each other by as much as 35 percent;^{94/} and (4) that its overall margin was "perhaps" half the amount identified by Commerce, and "probably" was close to zero.^{95/}

There may be merit in Ornatube's assertion that the margins calculated by Commerce overstate the actual price differences between sales for the Taiwanese market and for the U.S. market. Ornatube certainly is correct that, unless separate "effects" determinations are made with respect to each individual producer, some producers will be hurt by the pricing practices or legal strategies of other producers who may engage in more significant dumping or who, as here, may decline to cooperate in the Department of Commerce's investigation. None of Ornatube's

^{92/} Id.

^{93/} Id. I note that Ornatube cites *Algoma Steel Corp. v. United States*, 12 Ct. Int'l Trade ___, 688 F. Supp. 639, 645 n.7 (1988) for its contention that the Commission "has been adjured to avoid double-counting in its margins analysis, ...and the use of [best information available] margins at ITC, after they have been used by Commerce, amounts to a double-counting." However, Ornatube does not explain, and the record does not otherwise suggest, how the dumping margins calculated by Commerce in this investigation could have involved "double-counting" of the kind discussed by the Court of International Trade in Algoma.

^{94/} Id.

^{95/} Id. at 24-25.

arguments, however, persuades me that I am free to ignore the decision made by the Department of Commerce, either with respect to Ornatube, or with respect to other producers. I have discussed the reasons for this previously,^{96/} and do not find any of Ornatube's arguments to the contrary persuasive.

This does not, however, suggest, that the actual decrease in the price of Ornatube's or other producers' imports that occurred consequent to dumping is as great as the dumping margin computed by Commerce. Dumping margins, whether based on price comparisons or constructed values, generally do not constitute a precise measure of the change in prices of the subject imports resulting from the dumping. In most cases, as Ornatube alleges, the actual decline in price will be less than the full amount of the dumping margin.^{97/}

It will not always be possible to ascertain the change in import prices associated with dumping, but at least where the dumping calculation is based on price comparison (that is, where it measures the difference between foreign sales price and price for sale to the United States) an inference respecting the effect of dumping on import prices can usually be derived from information of record. As explained elsewhere,^{98/}

^{96/} See, e.g., PTFE, USITC Pub. 2112 at 55-68.

^{97/} See, e.g., ATVs, USITC Pub. 2163 at 53-54 (Additional Views of Commissioner Cass); Digital Readout Systems, USITC Pub. 2150 at 125 (Concurring and Dissenting Views of Commissioner Cass).

^{98/} See, e.g., Telephone Systems, USITC Pub. 2156 at 73-80 (Additional Views of Commissioner Cass).

the effect of LTFV sales on U.S. prices of imports can be estimated from the dumping margin, the sales of subject imports in the United States, and the sales of those products in the exporter's home market (or other country used for price comparison). In general, dumping leads to a decrease in the price of the dumped product by a fraction of the dumping margin that is roughly comparable to the share of the sales assessed in determining the existence of dumping that are made in the exporters' home market. In other words, the decrease in price will be a fraction of the dumping margin approximating the ratio of the subject producers' home market sales as a proportion of their combined home market and U.S. sales.^{99/}

In this investigation, home market sales of LWR for Ornatube and Laminfer--the two respondents who answered Commission questionnaires--represented the [***] majority of overall sales in the combined U.S. and home markets in 1988, the period when Commerce found dumping was occurring.^{100/} Accordingly, for Ornatube and Laminfer, dumping caused a decrease in the price of

^{99/} See, e.g., Digital Readout Systems, USITC Pub. 2150 at 125 (Concurring and Dissenting Views of Commissioner Cass); Microdisks, USITC Pub. 2076 at 82 (Additional Views of Commissioner Cass). Very often, an estimate of the decline in the price of the dumped import that is derived in this manner will be overstated to some extent, as it represents an approximate upper bound of that decrease. For a more complete explanation of this point, see USITC Memorandum EC-L-149, Assessing the Effects on the Domestic Industry of Price Dumping (May 10 & 18, 1988).

^{100/} See Letter from David Simon (counsel for Ornatube) to Kenneth R. Mason (Jan. 30, 1989) at Tables 1 & 3 (confidential version); Report at Table 13 (Laminfer).

LWR that was a significant fraction of the dumping margin for each of these firms. Turning to Vulcan and Yieh Mau, the Taiwanese respondents accounting for much smaller sales volumes in the United States, the record indicates that U.S. sales of LWR comprised the [***] majority of the combined U.S. and home market sales.^{101/} Thus, it is most likely that dumping resulted in a decline in these Respondents' U.S. prices that represents a smaller percentage of the dumping margin for these companies. However, the absence of actual price-based information respecting the differences between home market sales prices and U.S. sales prices reduces significantly the confidence with which any such inference can be drawn. In these circumstances, I must conclude that the record suggests that LTFV sales by these firms were made at prices that substantially reflect the full dumping margins.

The evidence before us indicates that dumping led to the declines in import prices and, concomitantly, to some increase in sales of the subject imports. The extent to which declines in prices of the imports subject to investigation cause increases in subject import sales is, in large measure, a function of the degree to which the imported goods are substitutable for the domestically produced article. For reasons explained in more detail below, the record indicates that the substitutability of

^{101/} See Post-hearing Brief of Ornatube at Collective Exhibit 1 (confidential version).

domestic hot-rolled LWR for the subject imports is quite high and the effect of LTFV sales on imports' and domestic like product's sales, hence, is more significant than would otherwise result.^{102/}

Prices and Sales of Domestic Like Product

I am persuaded that the record evidence as a whole in this investigation indicates that the price and volume changes for the subject imports that accompanied dumping adversely affected domestic prices and sales to a degree that, while not by any means large, rises above the level I would consider insignificant. As the data compiled from responses to Commission questionnaires indicate, production, domestic shipments, and overall sales (domestic shipments plus exports) of U.S.-produced LWR, as measured in tonnage, all declined in the first nine months of 1988 from the corresponding period in 1987.^{103/} Moreover, prices for domestically produced LWR for all four product types identified by staff for comparison purposes declined at some point in 1988.^{104/}

Such information about trends in sales and prices, standing alone, however, does not show that LTFV imports caused these

^{102/} In that context, the evidence leads me to believe that hot-rolled domestic LWR and the subject imports are fungible and that the elasticity estimates furnished in USITC Memorandum EC-M-087 insufficiently reflect the extent of their substitutability.

^{103/} See Report at Table 3.

^{104/} Id. at Table 17.

declines; by itself, the information concerning trends does not provide a very useful indication of the extent to which domestic production and prices were affected by LTFV imports.

Rather, an understanding of the U.S. market for the domestic and imported products is necessary for an assessment of the effects of the subject imports on domestic sales and prices. Analysis of the record respecting effects of the LTFV imports on prices and sales of the domestic like product necessarily calls for evaluation of consumers' or end-users' reactions to these products. While we can observe the prices at which imports and domestically-produced products are sold, we cannot divine the degree to which imports depressed or suppressed prices of the domestic like product, for example, without (among other things) analysis of evidence in the record of United States consumers' reaction to changes in the prices of the relevant products both in general and specific reaction to relative changes in imports prices and domestic products' prices. This, in turn, depends on the degree to which consumers see the domestic product and the subject imports as similar (substitutes).^{105/} The relative

^{105/} See, e.g., Telephone Systems, USITC Pub. 2156 at 80 (Additional Views of Commissioner Cass); Microdisks USITC Pub. 2076 at 83-86 (Additional Views of Commissioner Cass). The extent to which supply of the domestic like product is responsive to changes in the price of that product is also relevant in analyzing the effect of subject imports on domestic prices and sales, but its significance lies primarily in determining whether the impact of subject imports will be felt most heavily by domestic prices, or will instead principally affect sales of the domestic like product. See Microdisks, USITC Pub. 2076 at 85-86.

shares of the U.S. market for such products held by the imports and by U.S. production, which were noted above, also will affect the impact of the subject imports on the U.S. like product's prices and sales.

Domestic demand for LWR (both imported and domestically produced) is relatively unresponsive to variations in the price of LWR.^{107/} The responsiveness to changes in price of domestic demand for LWR, which is an intermediate product, depends in large measure on demand for the end product. The principal uses for LWR include fencing, window guards, and railings for construction and agriculture, and more decorative items such as furniture parts, athletic equipment, bicycles, lawn and garden equipment, commercial shelving, and towel racks.^{108/} For the items that account for most use of imported LWR, such as fencing, window guards and railings, demand depends largely on the amount of commercial and residential construction activity, rather than on decisions more particular to the specific use of the LWR. The record indicates that, because these items account for only a relatively small portion of the total cost of the structures in or about which they are used, the demand for them is relatively unresponsive to changes in the price of LWR. This

^{106/}(...continued)

domestic prices, or will instead principally affect sales of the domestic like product. See Microdisks, USITC Pub. 2076 at 85-86.

^{107/} See USITC Memorandum EC-M-087 at 11-13.

^{108/} Report at A-4.

could not be so true for other, more decorative uses, but, because of potential damage to the LWR finish, imported LWR is not used for these applications. Overall, the evidence in this investigation indicates that consumers are not likely to alter their purchasing of LWR significantly in response to changes in its price.^{109/} Other things being equal, this suggests that sales of LTFV imports of this product are more likely to replace sales of domestic LWR than if consumption of this product increased substantially when LWR prices decline.

Comparison of the imported product and the domestic like product similarly indicates a basis for belief that LTFV imports' effects were greater than might have been expected in other circumstances, as the products seem from consumers' vantage to be quite good substitutes for another. At the outset, the manufacturing process for hot-rolled skelp, which constitutes "at least 70-80 percent" of the domestic LWR market,^{110/} is virtually identical for all producers,^{111/} and LWR generally is produced according to set standards and specifications.^{112/} In other words, the subject imports and the vast majority of domestically produced LWR are, physically at least, fungible.

^{109/} The evidence suggests that price responsiveness for this product is within the range estimated by the Office of Economics, most probably not above the middle of that range.

^{110/} Tr. at 34 (testimony of the president of a domestic LWR producer)..

^{111/} Report at A-4-5.

^{112/} Id. at A-3-4.

The evidence in this investigation also indicates that purchasers perceive no significant differences in quality between the subject imports and U.S.-produced LWR.^{113/} The majority of domestic producers and importers, too, reported that differences in quality between the subject imports and domestic hot-rolled LWR were not a significant factor in their firms' sales.^{114/} Domestic producers testified that "the quality of the product coming in from both countries is equal to the current domestic quality."^{115/} In that light, it was not surprising to hear testimony from one domestic producer that most sales are "typically determined primarily on price."^{116/} The terms of sale (such as lead times) are not identical, but the imported LWR and hot-rolled domestically produced LWR appear to be close substitutes for each other.^{117/}

No one of these facts demonstrates the effect of the LTFV imports from Taiwan and Argentina on the prices and sales of the domestic LWR. When the relationship of these factors is viewed in context, however, either through use of an economic model that

^{113/} USITC Memorandum EC-M-087 at 10.

^{114/} Report at A-32.

^{115/} Tr. at 49 (referring to imports of hot-rolled LWR from Taiwan and Argentina); see also Tr. at 34.

^{116/} Id. at 49.

^{117/} Numerically, the evidence appears most consistent with an elasticity of substitution closer to the upper end of the range estimated by the Office of Economics than to the lower end of that range.

computes the effects of particular combinations of facts or through more intuitive aggregation, it appears that the LTFV imports from Taiwan and Argentina indeed have modestly reduced the prices at which the domestic LWR sells and have less modestly reduced sales of domestic LWR.^{118/} While these effects are not extremely large, they together appear significant.

Investment and Employment

The investment and employment information in the record is somewhat mixed. Petitioners acknowledge that some indicators of domestic industry performance, such as capacity, are "up",^{119/} but emphasize those indicators, such as capacity utilization and

^{118/} In the process of assessing the degree of injury to the domestic industry, I considered the analysis prepared by staff using the computable market-simulation, "Comparative Analysis of the Domestic Industry's Condition Lotus Template System", commonly known as the "CADIC model." I understand that in the case of each of the Taiwanese companies, the U.S. price of the LTFV imports was assumed to have declined by the full amount of the dumping margin consequent to dumping. In the case of the subject imports from Argentina, however, the U.S. price was assumed to have been less than it would have been absent dumping by a fraction of the dumping margin. The fraction depends directly on the share of the Argentinean products' combined sales in the exporter's home market and its U.S. market that was sold in the exporter's home market. The treatment of the price effect in the case of the Taiwanese exporters may have introduced an upward bias into the estimation of the price and quantity effects in the like product market. If so, the staff application of the CADIC model in this instance extends a slight benefit of the doubt to the Petitioners. Given the relatively small effects attributable to Taiwanese imports, however, the magnitude of the bias, if any, is necessarily small and, in any case, not dispositive.

^{119/} See Pre-hearing Brief of Petitioners at 20.

production, that are "down".^{120/} Respondents counter by arguing that the domestic industry is "healthy", and that Petitioners mislead the Commission by selectively "picking and choosing" such indicators.^{121/} After review of the record as a whole, I do not find the data on investment and employment trends probative in this investigation. These data are not inconsistent with a conclusion that the price and sales effects discussed above have had a significant adverse effect on employment and investment in the domestic LWR industry, although standing alone the data surely would not compel that conclusion.

In this regard, I note that Respondents argument respecting the industry's health is beside the point. As I have stated often, and occasionally at length,^{122/} the text of Title VII and its legislative history, as well as much of the practice implementing the Act, suggest that the issue of the domestic industry's "health" is relevant only for purposes of determining whether any injury to the domestic industry by reason of LTFV imports is material. Here, the industry's health is by no means

^{120/} See, e.g., *id.* at 15-20; Post-hearing Brief of Petitioners at 2-3; Tr. at 11-13.

^{121/} See, e.g., Post-hearing Brief of Ornatube at 1-5 (citing Tr. at 61); Post-hearing Brief of Laminfer at 1-6.

^{122/} See, e.g., Digital Readout Systems, USITC Pub. 2150 at 96-119 (Concurring and Dissenting Views of Commissioner Cass); Certain Brass Sheet and Strip from Japan and the Netherlands, USITC Pub. 2099 at 76-77, Inv. Nos. 731-TA-379-380 (Final) (July 1988) (Dissenting Views of Commissioner Cass); Nitrile Rubber from Japan, USITC Pub. 2090 at 48-49, Inv. No. 731-TA-385 (Final) (June 1988) (Additional Views of Commissioner Cass).

so strong as to raise appreciably the quantum of harm that must be deemed not to be "inconsequential, immaterial, or unimportant."123/

IV. CONCLUSION

For the foregoing reasons, we conclude that an industry in the United States is materially injured by reason of dumped imports of light-walled rectangular pipe and tube from Taiwan.

123/ See 19 U.S.C. § 1677(7)(A).

VIEWS OF COMMISSIONER ECKES AND COMMISSIONER NEWQUIST

We determine that an industry in the United States is threatened with material injury by reason of imports of light-walled rectangular pipes and tubes (LWR) from Taiwan that are being sold at less than fair value (LTFV). 1/ 2/

Condition of the domestic industry

To assess the condition of the domestic industry, the Commission considers, among other factors, apparent consumption of the like product, the capacity of the industry to produce the like product, capacity utilization, production, shipments, inventory levels, employment, and financial performance. 3/ The Commission has investigated the LWR industry several times since 1983, and it appears from the data in this investigation that the surviving U.S. producers are in somewhat better condition than

1/ Material retardation is not an issue in this investigation and will not be discussed further.

2/ In this final investigation, we adopt the definitions of like product and domestic industry determined in previous Commission investigations of LWR, including the preliminary phase of this investigation -- Light-walled Rectangular Pipes and Tubes from Argentina and Taiwan, Inv. No. 731-TA-410 (Preliminary). Nothing on the record in this final investigation would cause us to change those definitions. The product like the subject imports is domestically produced LWR, and the domestic industry consists of the producers of LWR.

3/ 19 U.S.C. 1677 (7)(C)(iii).

they were in 1982 and 1983. 4/

We might expect improved performance during a period when imports from traditional foreign suppliers were restricted by voluntary restraint agreements (VRAs) and apparent consumption of LWR was increasing. Consumption of LWR increased over 10 percent between 1985 and 1987 and then jumped almost 12 percent in interim 1988 compared with the same period in 1987. 5/

In fact, several industry performance indicators did improve from 1985 to 1987. Production increased over 18 percent from 179,172 tons in 1985 to 212,027 tons in 1987. The industry's capacity to produce in 1987 was 13.8 percent greater than it was in 1985. Capacity utilization rose to 66.2 percent in 1987 from 63.7 percent in 1985. 6/ Domestic shipments (which account for over 98 percent of total shipments) increased 16.6 percent from 1985 to 1987. 7/ Employment also increased from 312 workers in 1985 to 426 in 1987. 8/

Inventory levels, however, rose throughout the 1985-1987 period both in absolute terms and as a percent of shipments.

4/ For an earlier assessment of the industry, see Certain Welded Carbon Steel Pipes and Tubes From the Republic of Korea and Taiwan, Inv. Nos. 731-TA-131, 132, and 138 (Final), USITC Publication 1519 at A-9,10 (1984).

5/ Commission report (Report) at A-30. At the Commission hearing, petitioner claimed that there had not been such a "great upsurge" in consumption since 1973. Transcript of the Hearing (Tr.) at page 28.

6/ Report at A-8.

7/ Report at A-8, A-9.

8/ Report at A-11.

They continued to rise in interim 1988, despite the increase in domestic consumption of LWR. 9/

Several other indicators also deteriorated in interim 1988 as compared to interim 1987. Production dropped almost 3 percent; shipments declined slightly; and capacity utilization decreased five percentage points. 10/

The financial performance of the domestic LWR industry, was weak throughout the investigation period and the number of producers remaining in the industry continued to decline. 11/ 12/ Although aggregate net sales of LWR increased steadily, operating income as a percent of sales dropped from 4.6 percent in 1985 to 2.6 percent in 1986, and then increased slightly to 3 percent in 1987. The almost 29 percent rise in net sales during interim 1988 13/ was accompanied by an increase in the operating margin to 4.2 percent, but that operating margin is still slightly below the level in 1985. It also lags behind the performance of the producers' overall operations 14/ as well as

9/ Report at A-10.

10/ We note that capacity increased 4.7 percent in interim 1988 compared with interim 1987.

11/ Report at A-6.

12/ Report at A-15, Table 7.

13/ The cost of hot-rolled steel coil rose sharply in 1987 and interim 1988, resulting in substantial price increases for LWR that are reflected in the net sales increases. Report at A-9.

14/ Report at A-18.

that of the iron and steel industry as a whole. 15/

The domestic LWR industry certainly is performing at a higher level than it was before initiation of the VRAs. However, the decline in certain performance indicators occurred during a period of high demand for LWR, when imports from traditional foreign competitors were restricted. In our view, this industry is highly vulnerable to injury from unfairly traded imports from new sources of supply such as Taiwan.

Threat of Material Injury by Reason of LTFV Imports From Taiwan 16/17/

In considering whether imports subject to investigation threaten material injury to a domestic industry, the Commission is directed by the Trade and Tariff Act of 1984 to assess a number of factors, including the ability and likelihood of foreign producers to increase the level of exports to the United States; unused production capacity of foreign producers; any rapid increase in market penetration by the subject imports; the

15/ Report at A-18.

16/ Commissioner Eckes believes that the record of this investigation, as discussed in this opinion, could support a finding of material injury as well as threat of material injury based on his assessment of the statutory factors. In deference to the Court of International Trade (USX Corp. v. U.S., 682 F. Supp. 60, 63 n. 3 (C.I.T. 1988)), which has suggested that joint views "expedite the review process," he has joined with Commissioner Newquist in a "threat of material injury" determination

17/ Pursuant to 735(4)(B), 19 U.S.C. 1671d(4)(B), we determine that material injury by reason of the subject imports would not have been found but for any suspension of liquidation of entries of the merchandise.

probability that future imports from the subject country will enter the U.S. at prices that will suppress or depress domestic prices; substantial increases in import inventory levels; and any other adverse trends making injury by the subject imports probable.18/ 19/ 20/

The Commission was unable to obtain complete data on the LWR industry in Taiwan. The data that are available are confidential and can be discussed only in general terms.

18/ 19 U.S.C. 1677 (7) (F)

19/ Commissioner Eckes reached an affirmative determination concerning imports from Taiwan and, therefore, he finds it unnecessary to cumulate imports from that country with those from Argentina that are currently under investigation.

20/ Commissioner Newquist notes that the Court of International Trade held that, although cumulation for threat determinations is not mandated by statute, it may be a useful tool to be used at the Commission's discretion. *Asociacion Colombiana de Exportadores de Flores v. United States*, 693 F. Supp. 1165, 1171-72 (C.I.T. 1988), aff'd on remand, slip. op. 88-172 at 7-8 (C.I.T. Dec. 27, 1989).

It is unnecessary for me to cumulatively assess the price and volume effects of Taiwanese and Argentine imports to reach an affirmative threat determination in this investigation. However, I find that cumulation could well be appropriate in this case for a number of reasons. Although the Department of Commerce has extended the deadline for its LTFV determination with respect to imports from Argentina to March 31, 1989, Argentine imports clearly are subject to investigation, compete with the domestic like product and with imports from Taiwan, and have been marketed within a reasonably coincident period of time. Report at A-6, A-31, A-32; Petitioners' Prehearing Brief at 6-8, 29; Tr. at 49. Moreover, it appears that LTFV imports from Taiwan and Argentina have each been imported, priced, and distributed in such a way that reinforces the injurious effects of the other and increases the vulnerability of the domestic industry to an imminent threat of material injury. Specifically, during the period of investigation there has been rapid growth in the level of imports -- as well as in inventories of the subject imports -- from both countries, and imports from both Taiwan and Argentina have consistently undersold the domestic product.

However, this information indicates that Taiwan's LWR industry increased its capacity significantly during the period of investigation. Capacity and production of the reporting firms approximately doubled from 1985 to 1988. Although capacity utilization increased somewhat from 1985 to 1987, it dropped to almost 1985 levels in 1988. There appears to be substantial unused capacity for LWR production among Taiwan's producers. 21/

Imports from Taiwan increased from 406 tons in 1985 to 14,770 tons in 1987 and rose 73 percent in the interim 1987-1988 comparison. 22/ This import trend occurred despite the operation of Taiwan's self-restraint program for exports during part of the investigation period and despite any chilling effect the filing of this case in early 1988 may have had. These imports from Taiwan consistently undersold the domestic product throughout the period of investigation. 23/

Although the U.S. market for LWR was expanding rapidly during the investigation period, Taiwan captured an increasing share of that market, from 0.2 percent in 1985, to 5.1 percent in 1987. Even during the period of most rapid market growth, interim 1988, Taiwan continued to increase its market share to 6.4 percent, compared to 4.1 percent in the 1987 interim. The U.S. market share during interim 1988 was about the same as it was in 1985, but reflected a significant decline as compared to

21/ Report at A-22.

22/ Report at A-28, Table 14.

23/ Report at A-37-38, and Table 18.

interim 1987. 24/

There is no reason to assume that this upward trend in import volume and penetration will cease. Respondents maintain that Taiwan's export self-restraint program will prevent import volumes from rising to injurious levels. However, the information the Commission was able to obtain indicates considerable flexibility in the administration of Taiwan's export restraint program and, thus, the likelihood of continued expansion of LWR exports. 25/

Further reason to discount the program's effectiveness is found in the upward trend in import volume while the program has been in effect. Under the export restraint program, imports from Taiwan have more than doubled in two years. Also, there is no assurance that the program will be extended beyond its expiration date in September, 1989.

Import inventory levels increased during the period of investigation, both absolutely and as a percent of total imports from Taiwan. The increase is particularly evident in interim 1988.

Respondents argue that imports from Taiwan are "merely replacing Japan and other VRA suppliers who are now restrained by the VRA program." 26/ That is not very persuasive. The VRAs were intended to offer injured steel industries a period of

24/ Report at A-30, Table 16.

25/ Report at A-23 - A-25.

26/ Tr. at 85.

relief to allow them to invest to meet foreign competition. Unfairly traded imports from nontraditional suppliers act to diminish the effects of the VRA program and continue or resume injury. More importantly, the statutes ask the Commission to assess whether unfairly traded imports are a cause of material injury or threat to the domestic industry. 27/ Whether or not those imports are replacements for other imports is immaterial.

The domestic LWR industry was fortunate in that a rapidly expanding market in late 1987 and early 1988 allowed it to raise prices to help meet increased costs, or the industry would have been on the injured list again. However, the industry is limited in its ability to price at profitable levels when it continues to lose market share to unfairly traded imports from Taiwan.

Therefore, we determine that the domestic industry producing LWR is threatened with material injury by reason of LTFV imports from Taiwan.

27/ 19 U.S.C. 1673d(b).

Dissenting Views of Commissioner Seeley G. Lodwick

Inv. # 731-TA-410 (Final)

Light-Walled Rectangular Pipes & Tubes from Taiwan

I find that a domestic industry is not materially injured or threatened with material injury by reason of less than fair value imports of light-walled rectangular pipes and tubes (LWR) from Taiwan.¹ In the preliminary investigation, I found no reasonable indication of material injury in this industry by reason of imports from Taiwan. After reviewing the full record collected for this investigation, I do not find conditions to have changed sufficiently to warrant a finding of material injury. In fact, I recognize there has been a continuing improvement in the condition of the industry.

Like Product and Domestic Industry

I adopt the definitions of like product and domestic industry that have been used in this preliminary investigation and previous investigations of light-walled rectangular pipes and tubes (LWR).²

Condition of the Domestic Industry

In determining the condition of the domestic industry, the Commission considers, among other factors, domestic production, capacity,

Material retardation is not an issue in this case.

Light-Walled Rectangular Pipes and Tubes from Argentina and Taiwan, Inv. No. 731-TA-410 (Preliminary), USITC Pub 2098 at 4 and 6.

capacity utilization, domestic consumption, shipments, inventories, employment, and financial performance.³ No single factor is determinative. In each investigation the Commission must consider the particular nature of the relevant industry in making its determination. Examination of these factors reveals that the condition of the LWR industry has improved significantly over the period of this investigation.

Apparent U.S. consumption of LWR increased from 261,779 tons valued at \$140.3 million in 1985 to 288,446 tons valued at \$178.2 million in 1987. Consumption for the interim period 1988 is up considerably in both value and quantity terms over the interim 1987 period.⁴

Domestic production increased steadily throughout the period of investigation from 179,172 tons in 1985 to 194,917 tons in 1986 to 212,027 tons in 1987, however a modest decline was experienced in the interim 1988 period from the interim 1987 period.⁵ Capacity to produce LWR increased from 281,391 tons in 1985 to 325,721 tons in 1986, and declined slightly to 320,361 tons in 1987, and was 250,882 tons in interim 1988 as compared with 239,604 tons in interim 1987.⁶ Capacity utilization was 63.7% in 1985, fell to 59.8% in 1986, and rose to 66.2% in 1987. Interim 1988 capacity utilization was 68.5%, less than the interim 1987 level of 73.8%.⁷

³ 19 U.S.C. 1677 (7) (C) (iii).

⁴ Report of the Commission at A-30, Table 16.

⁵ Id. at A-8, Table 2.

⁶ Id. at A-8.

⁷ Id. at A-8.

The quantity of domestic shipments rose from 178,301 tons in 1985 to 193,018 tons in 1986 to 207,888 tons in 1987, and reached 168,783 tons in interim 1988 as compared with 170,808 tons in interim 1987.⁸ The value of domestic shipments increased steadily throughout the period.⁹ While the record indicates that inventories increased from 10,294 tons in 1985 to 12,827 tons in 1986 to 15,410 tons in 1987 and to 17,795 in interim 1988, I recognize the ratio of inventories to shipments remained small.¹⁰

The number of employees producing LWR increased steadily over the period of investigation from 312 in 1985 to 426 in 1987, and to 459 in interim 1988. Hours worked and wages paid also increased. Output of the product per hour worked has remained relatively constant since 1985.¹¹

Financial performance of the domestic industry showed considerable improvement throughout the period of investigation. Net sales of LWR increased substantially from \$64.4 million in 1985 to \$93 million in 1987 with the interim 1988 period showing impressive gains over the previous year. As a percent of net sales, the cost of goods sold showed slight increases since 1985. Also as a percent of sales, both operating income and net income dropped in 1986 from 1985, but have shown considerable improvement since and especially in the interim 1988 period.¹²

⁸ Id. at A-9, Table 3.

⁹ Id. at A-9.

¹⁰ Id. at A-10, Table 4.

¹¹ Id. at A-11, Table 5.

¹² Id. at A-15, Table 7.

In summary, the above indicators show dramatic improvement in the condition of the domestic industry during the period of our investigation, starting from an already healthy condition in 1985. Therefore, I conclude the domestic industry is not materially injured, nor in a condition to be vulnerable to material injury.

No Threat of Material Injury By Reason of Imports

In assessing the threat of material injury, the primary factors considered are the trends in market penetration of the subject imports, the probable effects those import prices have on domestic prices, the changes in the foreign industry's capacity and capacity utilization, the potential for product shifting, and other adverse trends indicating the probability of actual injury.¹³ The statute provides that any "threat of material injury is real and that actual injury is imminent." In addition, the Commission's "determination may not be made on the basis of mere conjecture or supposition."¹⁴

The subject imports from Taiwan have increased their U.S. market share from .2% to 6.4% in quantity and .2% to 5.0% in value terms during the period of investigation. During the same time, however, the market share of the domestic industry has also increased in value terms.¹⁵ Much of the Taiwanese and Argentine import penetration appears to be replacing the imports of other countries such as Japan, which are subject

¹³ 19 U.S.C. 1677(7)(F).

¹⁴ Id.

¹⁵ Report at page A-30, Table 16.

to quantity restrictions. ¹⁶

Over the period of investigation, production capacity in Taiwan has nearly doubled from 1985 to 1988. ¹⁷ However, capacity utilization has remained relatively flat. The Commission lacks complete data regarding the home market shipments and exports of Taiwan over the investigation period. However, the data does show that of all Taiwanese exports, those products entering the U.S. only make up about one fourth of the total Taiwanese exports in the interim 1988 period. ¹⁸ One can infer from the same data a clearly positive trend in Taiwan's export shipments to countries other than the U.S. over the investigation period. ¹⁹

Importers' inventories of Taiwanese steel have increased substan-

¹⁶ See the testimony before the U.S. International Trade Commission of Roger B. Schagrín, representing the Committee on Pipe and Tube Imports, regarding Investigation No. 332-270, "The Effects of the Steel Voluntary Restraint Agreements on U.S. Steel Consuming Industries." Mr. Schagrín testified:

... they (Voluntary Restraint Agreements) have had both a positive and some negative effects. The positive effect has been a significant reduction in the imports of pipe and tube from VRA countries. In 1984 they (VRA countries) held over 50% of the market. Through the VRA's, most of the reductions were caused by the very significant unfair trade duties that were then negotiated out in the VRA process. They (VRA countries) were awarded market shares of approximately 35 percent. That in itself was a significant reduction. Those (VRA quotas) have not been filled, and their market share is probably less than 30 percent. The negative effect has been that a good portion of that market share has been replaced by non-VRA countries. So we have a new set of competitors.

Transcript of the hearing at page 247.

¹⁷ Id. at A-22, Table 11.

¹⁸ Id.

¹⁹ Id. Taiwan's 1988 exports to countries other than the United States were larger than Taiwan's total production in 1985.

tially from 1986 to the interim 1988 period.²⁰ However, inventories represent only a small portion of the subject imports from Taiwan and a negligible share of total U.S. consumption in interim 1988.²¹

The Petitioners have claimed that there is substantial potential for product shifting and absent a positive determination in this case, the Taiwanese have an incentive to use their circular pipe-making facilities to produce LWR.²² However, as the Commission noted in the past, the respondents could not shift production from circular to LWR products "without idling the additional equipment needed to produce circular pipes and tubes which are not needed to produce LWR pipes and tubes."²³

Prices of the domestic produced product have increased substantially over the period of investigation. Prices of the Taiwanese imports have also increased substantially. However, there were reported margins of underselling in each of the product comparisons throughout the period of investigation.²⁴ The Petitioners have claimed that domestic prices would have increased by an even larger amount without this price suppressing effect by the Taiwanese imports.²⁵ I do not consider the Taiwanese imports to have a material price suppressing effect on the market, given the large increases in domestic prices. I consider the positive

²⁰ Id. at A-21, Table 10.

²¹ Id.

²² Petitioners' Post-Conference Brief at 30.

²³ Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-211 (Final), USITC Pub. 1799 (1986).

²⁴ Report at A-36.

²⁵ Petitioners' Pre-Hearing Brief at 14.

trends in the economic factors related to the condition of the domestic industry, as evidence that the domestic industry is unlikely to experience material injury in the foreseeable future.

The statute directs the Commission to address "any rapid increase in U.S. market penetration and the likelihood that the penetration will increase to an injurious level." The respondent cites several actions by the Taiwanese to reduce trade frictions with the United States, including the actions to appreciate the Taiwanese currency relative to the dollar.

²⁶ The appreciation of the Taiwanese currency by 23.3% in real terms since 1986 ²⁷, does reduce the likelihood of a surge of imports to injurious levels. ²⁸

Given the health of the domestic industry, the success of the Taiwanese to develop export markets outside of the U.S., the ability of the domestic industry to obtain higher prices in spite of increasing Taiwanese imports, and the appreciation in real terms of the Taiwanese currency relative to the dollar, I do not consider a potential increase in imports from Taiwan to be a real and imminent threat of material injury.

On two previous occasions, I have expressed reservations about the reliance of Taiwan's self restraint program. ²⁹ The information we

²⁶ Respondent's Post-Hearing Brief at page 6.

²⁷ Report at A-39, Table 19.

²⁸ A weaker dollar does make alternatives to the U.S. market more attractive for Taiwanese exports.

²⁹ See Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final) (1987) (Views of Commissioner Lodwick) and Light-Walled Rectangular Pipes and Tubes from Argentina and Taiwan (Preliminary) (1988) USITC Pub 2098 at 12.

have at hand shows that this program has not had much impact on the level of Taiwanese imports. The program is not administered by the government of Taiwan and there is no concrete commitment that it will be extended past September of this year. Since the program does not contain a specific allocation for LWR and has not been effectively administered, Taiwan's self-restraint program did not carry much weight in my determination.³⁰

I do not consider it necessary to cumulate imports from Argentina in this threat discussion.³¹ Monthly import statistics show that the Argentine producer Laminfer has stopped selling product in the United States.³² This disparity in current import volumes from the two countries makes a threat analysis on a cumulative basis most speculative.

I conclude that a domestic industry is not materially injured or threatened with material injury by reason of less than fair value imports of light walled rectangular pipes and tubes from Taiwan.

³⁰ Recently, the Court of International Trade affirmed my previous finding that the Taiwanese self restraint program carried "little weight" in my determination regarding no threat to this domestic industry. The Court found my negative determination of no material injury as "supported by the record and in accordance with law." Hannibal Industries, Inc. v. United States, slip op. 89-32 at 23 (CIT March 17, 1989).

³¹ The Court of International Trade recently found that, although cumulation for threat determinations is not mandated by statute, it may be a useful tool to be used at the Commission's discretion. Asociacion Columbiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1171-72 (CIT 1988), affirmed on remand, slip. op. 88-172 at 7-8 (CIT December 27, 1989).

³² Report at A-29 and Table 15. Respondent cites Argentine LWR is subject to a countervailing duty as of September 1988 and the discontinuation of the PEEEX export subsidy program as reasons for the removal of imports.

**ADDITIONAL AND DISSENTING VIEWS
COMMISSIONER DAVID B. ROHR**

**Light-Walled Rectangular Pipes and Tubes
from
Taiwan
Inv. No. 731-TA-410 (Final)**

I determine that the domestic industry producing light-walled rectangular pipes and tubes (LWR pipe) is not materially injured by reason of less than fair value (LTFV) imports from Taiwan. I further determine that the domestic industry producing LWR pipe is not threatened with material injury by reason of such imports.

I wish first to express my concurrence in the views of my colleague Commissioner Lodwick that the industry is not currently experiencing material injury.¹ Like him, having found no material injury, I do not find it necessary to address the question of causation. Also like Commissioner Lodwick, I do not find that the LTFV imports present a real and imminent threat of material injury to the domestic industry. I generally concur in the analysis of the factors he finds relevant to threat.

However, in past cases, I have set forth the particular framework which I use to analyze the issue of threat. I therefore set forth these additional views utilizing that framework. I conclude that imports from Taiwan are likely to continue to increase and continue to undersell the domestic product. However, in light of the

¹ I also concur in the definitions of the like product and domestic industry set forth in his views, which are the traditional like product and domestic industry definitions used in LWR pipe investigations. In concurring with his conclusion that the domestic industry is not currently experiencing material injury, I add, by way of amplification that I also do not find this industry to be particularly vulnerable to material injury. Obviously, the most "invulnerable" industry could be threatened by some level of imports. By concluding that this industry is not vulnerable to imports I am saying that there is nothing which suggests that this industry is especially vulnerable to imports.

recent performance of the domestic industry, I do not find that such imports pose a real and imminent threat of material injury to the domestic industry.

Threat of Material Injury

In order to assess whether LTFV imports pose a real and imminent threat of material injury to the domestic industry, I must first project what is likely to happen to the volume and price of the Taiwanese imports. Having made that projection, which I have indicated in the past requires an evaluation of the capabilities and intentions of the importers and exporters, I assess the effect such imports are likely to have on the domestic industry. I begin this analysis by looking at the factors listed in Section 771(7)(F)(i) of the Tariff Act of 1930.²

In this investigation, while we have been given a considerable amount of information about the operation of the Taiwanese voluntary restraint program, we have relatively little information about the actual operation of the Taiwanese industry. In such a situation, it is difficult to do other than conclude that imports are likely to increase. I note that between 1985 through 1988 Taiwanese production and capacity both doubled. Capacity utilization remained between 60 and 70

² Technically, the Omnibus Trade and Competitiveness Act of 1988 does not apply to this investigation. This does not preclude the application of any of those factors to the extent they might be relevant. I discuss certain of them below for the sake of completeness. Certain of the statutory factors are not relevant in the particular situation of this investigation. These include (I) (information about the subsidy), and (IX) (agricultural product shifting). I concur in the observations of Commissioner Lodwick with regard to product shifting. In addition there is no evidence of third country market dumping or any particular effects on product development in this industry. Several companies indicated that their production efforts were unaffected by the imports subject to investigation others indicated a range of adverse effects including effects on production.

percent, a level which leaves room for expansion even if capacity were not to increase further.³

Taiwanese imports have also climbed throughout the period of investigation. From the 1985 level of 406 tons, imports rose almost 10,000 tons in 1986 to almost 15,000 tons in 1987. Based on monthly import totals for the first 11 months of 1988, imports rose to almost 20,000 tons.⁴ In relation to U.S. consumption, Taiwanese imports have risen from 0.2 percent in 1985 to 5.1 percent in 1987, with a further rise in interim 1988 to 6.4 percent from 4.1 percent in comparable 1987. Finally, also with respect to the volume of imports, I note that inventories of Taiwanese material in the United States are also increasing steadily, and are likely to reach approximately 10 percent of annual Taiwanese LWR pipe shipments to the United States.

Other factors must also be considered in evaluating the possibility of a significant rise in the volume of Taiwanese imports. It is argued that the Taiwanese self restraint program is a counterbalancing factor that will hold down the volume of imports. The information we have received suggests that the program has not significantly affected the level of Taiwanese imports subject to this investigation. However, I note and concur with Commissioner Lodwick that third countries appear to be both significant and growing market for the Taiwanese than the U.S. market. The change in the U.S./Taiwan exchange rate also may make a surge in imports less likely. Similarly, to the extent that Taiwanese imports were increasing due to traditional importers seeking new unrestricted suppliers, this source of increased demand has also been filled.

³ I note that Taiwanese projections for 1989 indicate no further increase in capacity.

⁴ Report at A-29, Table 15

On the other hand, it must also be noted that the rising prices in the U.S. market are likely to make this market somewhat more attractive.⁵ Conversely, the declining margins of underselling point to a decline in at least the rate of growth of the imports. Both Taiwanese and domestic prices increased substantially over the period of investigation. Our data show a consistent pattern of underselling by the Taiwanese. Our data also show that the underselling margins declined consistently over the period. Accepting that the evidence suggests that lower prices are a significant reason in at least some purchasers' decisions, the declining margins would make the switch to Taiwan less attractive.

A partial conclusion can be drawn at this point. It is unlikely that Taiwanese imports will decline or even remain at their present level. The most reasonable conclusion is that Taiwanese imports would be likely to increase again, on the order of the increases experienced in 1987 and 1988. Further, it is reasonable to conclude that underselling by Taiwanese imports is likely to persist. Although the price margins seem likely to narrow further, it seems unlikely that the underselling would be totally eliminated.

These are only partial conclusions, however. The statute requires that to establish a real and imminent threat, the projected volume increases must rise to "injurious levels" and that the price underselling be likely to result in price suppression or depression.

With respect to the price impact of the imports, the evidence seems clear that price suppression or depression has not occurred in the most recent time periods. Further, I see no evidence for concluding that it is likely to occur in the reasonably imminent future. As noted above, although the Taiwanese (and in fact

⁵ Of course, the extent to which the U.S. market is more attractive also depends upon the change in the price of LWR pipe in third countries for which we have little information. I cannot place great weight on this factor.

the Argentine imports as well) imports undersold the domestic product through the period of investigation, the domestic price rose throughout the period of investigation. This would seem to establish that price depression did not occur. Price suppression, that is that prices did not rise as they should have, is, however, inherently more difficult to observe or establish. In this investigation, the most telling evidence supports the finding that price suppression did not occur at a recent, particularly significant point in time, when costs were rising, and so is unlikely in the imminent future.

It is generally conceded that there was a significant rise in raw material prices for the domestic industry in early 1988.⁶ This is reflected in many parts of our data, including our financial data. According to our financial data, the cost of goods sold, which includes raw material cost, for the industry rose over 27 percent. The same financial data shows that even with a small decline in volume sold, net sales rose over 28 percent. For net sales to increase in the face of a drop in volume, price had to rise. The conclusion to be drawn from the financial data is that the price rise was greater than the rise in costs.

Therefore, in a period in which imports were rising in volume, the domestic industry was able to raise its prices at a rate in excess of the rise in its costs. In such, I cannot conclude that price suppression has occurred. I see no evidence which persuades me that imports and prices which have not had any price

⁶ The Report at A-10 indicates a roughly 50 to 60 dollar per ton increase in the average price of hot-rolled sheet in late 1987 and the first half of 1988. Hot-rolled sheet prices are indicative of the prices of "skelp" the particular hot-rolled sheet used by the LWR industry.

suppressing or depressing effect in the last six to twelve months will suddenly develop such characteristics in the future.⁷

The more difficult question is whether the increase in volume is likely to rise to injurious levels in a reasonably imminent time frame. Several factors in addition to those discussed above must be considered. Most important are the condition of the domestic industry and the effect of Argentine and other imports.

In the middle of 1987, I concluded that the domestic LWR pipe industry was threatened with material injury. Because a majority of my colleagues did not agree with that conclusion, no duties were imposed on Taiwanese imports at that time. Since that time, as noted above, Taiwanese imports continued to increase and underselling continued to narrow. For the domestic industry, however, 1987 was a better year than was 1986. While not all indicators improved, most of the significant ones were up from their 1986 levels.⁸ Production, shipments, capacity utilization, hours worked, net sales, and operating income margin all improved.⁹

The interim 1988 indicators also tell a significant story. Production was down as were shipments, although only slightly.¹⁰ Capacity utilization was also down, but that decline was largely the result of a major increase in overall industry capacity.

⁷ Such a conclusion is not inconceivable, but there is no evidence here to warrant it.

⁸ I note that my 1987 determination of threat carried with it the finding that the industry was not at that time currently experiencing material injury. That determination was based principally on 1986 data.

⁹ I wish to note my concurrence with the description of the condition of the domestic industry provided by my colleague, Commissioner Lodwick.

¹⁰ The fact that production and shipments declined only slightly in 1988 during which the domestic industry increased its prices so significantly is also evidence of the strength of this industry in the market.

Employment indicators continued to improve, and the financial data showed significant improvement.

What this indicates is that, in the more than a year since I last examined this industry, the industry actually is stronger now than it was then, despite the presence of increasing imports which were underselling the domestic product. In such a situation, I cannot conclude that even the increases in Taiwanese imports that I foresee as probable are likely to injure the industry in any imminent period of time.

Finally, however, before I can draw any final conclusion, I must consider the effect of other imports on my assessment of the Taiwanese threat. As I have made clear in past opinions, I do not view "formal" cumulation as appropriate in the context of my threat analysis.¹¹ As I have also indicated, I do consider the presence of other imports in assessing the vulnerability of the domestic industry to the "threat" posed by imports from a particular country.

In this investigation, I therefore note two factors. The first is that imports as a whole were down during the period of investigation, due at least in part to the voluntary restraints imposed on the imports from many of the traditional supplying countries. The second is that the declines in total imports resulting from such VRA's were gradually erased by increases principally in Taiwanese and Argentine imports. The question remains whether the increase has resulted or will result in material injury.

¹¹ As the CIT itself points out, intentions are an important part of any threat analysis. *Hannibal Industries v. United States*, slip op. 89-32 at 15 (March 17, 1989). The intentions of one country to increase their exports to the United States simply cannot be cumulated with the capabilities of another country to do so. Having said this, I do believe that it would be improper for me to ignore the fact that other imports, particularly other imports subject to investigation, are in the market, have an effect on the market, and may result in a particular level and price of imports having an injurious impact when in other conditions they might not have such an effect.

Certainly, without the Taiwanese and Argentine imports, the domestic industry would be in an even stronger position than it is today. Gains that the domestic industry might have made from capturing the displaced supplies from countries now subject to VRA's have been reduced by the extent to which these two new suppliers entered the market. However, the issue under title VII is not whether the industry would be better off without the imports. The ultimate fact is that despite the increases in both Taiwanese and Argentine imports over the last 12 to 18 months the condition of the industry has improved. The most significant proof of that strength is that despite the presence of the imports, the industry was able to maintain a price increase that exceeded its increase in costs. I believe there is no evidence beyond mere speculation that the condition of the domestic industry will now decline to the level of material injury within a reasonable time frame. I therefore make a negative determination.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

Following preliminary determinations by the U.S. Department of Commerce that imports from Argentina and Taiwan of light-walled rectangular pipes and tubes, 1/ provided for in subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States (HTS), are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission, effective November 21, 1988, instituted investigations Nos. 731-TA-409-410 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's final investigations and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register on December 14, 1988 (53 F.R. 50303). 2/ The hearing was held in Washington, DC, on February 8, 1989. 3/

Commerce made a final affirmative LTFV determination for the investigation concerning light-walled rectangular pipes and tubes from Taiwan on January 30, 1989 (54 F.R. 5532, Feb. 3, 1989). Its final LTFV determination concerning Argentine light-walled rectangular pipes and tubes is due to be made no later than March 31, 1989 (the date for the final determination was extended (54 F.R. 1199, Jan. 12, 1989) at the request of Laminfer S.A., which accounted for the majority of Argentine exports of the subject product to the United States). The applicable statute directs that the Commission make its final injury determinations within 45 days after the final determinations by Commerce, or by March 20, 1989, with respect to Taiwan and May 15, 1989, with respect to Argentina.

Background

These investigations result from a petition filed on June 6, 1988, by the mechanical tubing subcommittee on the Committee on Pipe and Tube Imports and by the individual manufacturers of the product that are members of the subcommittee, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of light-walled rectangular pipes and tubes from Argentina and Taiwan. In response to that petition, the Commission instituted investigations Nos. 731-TA-409-410

1/ For purposes of these investigations, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness of less than 0.156 inch (4 millimeters). Light-walled rectangular pipes and tubes were previously provided for in item 610.49 of the Tariff Schedules of the United States and were reported for statistical purposes under item 610.4928 of the Tariff Schedules of the United States Annotated.

2/ Copies of cited Federal Register notices are presented in app. A.

3/ A list of witnesses who appeared at the hearing is presented in app. B.

(Preliminary) under section 733 of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) and, on July 27, 1988, determined that there was such a reasonable indication of material injury.

Countervailing duty petitions with respect to imports of the subject product from Argentina and Malaysia, neither of which is a "country under the agreement" within the meaning of section 701(b) of the Act and thus entitled to an injury determination by the Commission, were filed with the U.S. Department of Commerce on March 30, 1988, and May 24, 1988, respectively. Commerce issued its final affirmative countervailing duty determination and its countervailing duty order on imports of certain carbon steel welded pipe and tube products from Argentina on September 27, 1988 (53 F.R. 37619). The estimated net bounty or grant was 9.25 percent for light-walled rectangular pipes and tubes. Commerce issued its final negative countervailing duty determination on imports of the subject product from Malaysia on November 21, 1988 (53 F.R. 46904).

Light-walled rectangular pipes and tubes have been the subject of five final antidumping investigations conducted by the Commission since 1983. Final antidumping and countervailing duty investigations with respect to Spain were terminated effective February 4, 1985, following withdrawal of the petitions. A final antidumping investigation with respect to the Republic of Korea (Korea) was concluded in 1984 with an affirmative determination by the Commission. (The antidumping-duty order, however, was revoked on Oct. 21, 1985, following the negotiation of a voluntary restraint agreement with Korea). A final antidumping investigation with respect to Taiwan was concluded on January 17, 1986, with a unanimous negative determination by the Commission (investigation No. 731-TA-211 (Final), USITC Pub. 1799, January 1986). 1/ A final antidumping investigation with respect to Singapore was concluded in October 1986 with an affirmative determination (threat) by the Commission (investigation No. 731-TA-296 (Final), USITC Pub. 1907, November 1986). 2/ Another final antidumping investigation with respect to Taiwan was concluded in July 1987 with a negative determination by the Commission (investigation No. 731-TA-349 (Final), USITC Pub. 1994, July 1987). 3/

Nature and Extent of Sales at LTFV 4/

On November 21, 1988, the Department of Commerce published in the Federal Register its preliminary determination that imports of light-walled rectangular pipes and tubes from Taiwan are being, or are likely to be, sold in the United States at LTFV. Commerce also determined that critical circumstances exist with respect to imports of the subject merchandise from Taiwan, and instructed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption, on or after

1/ Commissioner Brunsdale abstained from voting.

2/ Chairman Liebler, Vice Chairman Brunsdale, and Commissioner Lodwick made negative determinations.

3/ Commissioner Eckes and Commissioner Rohr made affirmative determinations (threat).

4/ Commerce will make its final determination on Argentina on or before Mar. 31, 1989. A summary of that determination will be included in the final staff report to the Commission on investigation No. 731-TA-409 (Final).

August 23, 1988 (90 days prior to Nov. 21, 1988), and to require a cash deposit or bond for each entry in an amount equal to the estimated amount by which the foreign market value of the merchandise subject to these investigations exceeds the United States price.

Commerce made its final determination that imports of light-walled rectangular pipes and tubes from Taiwan are being, or are likely to be, sold at LTFV, and that critical circumstances do not exist with respect to imports of the subject merchandise from Taiwan, effective February 3, 1989. Commerce used data from Ornatube Enterprise Co., Ltd.'s (Ornatube) response to compare the United States purchase price with the foreign market value of light-walled rectangular pipes and tubes sold to unrelated purchasers in the home market. Commerce examined Ornatube's sales during January-June 1988, totaling * * * tons, valued at \$* * *, and found that * * * tons, valued at \$* * *, were sold at LTFV. Margins were found on approximately * * * percent of sales. Commerce used the petitioner's data for the U.S. price and foreign market value (based on the constructed value of light-walled rectangular pipes and tubes) for Vulcan Industrial Corp. (Vulcan) and Yieh Hsing Industries, Ltd. (Yieh Hsing), as these companies did not respond to the antidumping questionnaire. The estimated amount by which the foreign market value of the merchandise subject to investigation exceeded the U.S. price was 5.51 percent ad valorem for Ornatube, 40.97 percent ad valorem for Vulcan and Yieh Hsing, and 29.15 percent ad valorem for all other manufacturers/producers/exporters.

The Product

Description and uses

For the most part, the terms "pipes," "tubes," and "tubular products" can be used interchangeably. In some industry publications, however, a distinction is made between pipes and tubes. According to these publications, pipes are produced in large quantities in a few standard sizes, whereas tubes are made to customers' specifications regarding dimension, finish, chemical composition, and mechanical properties. Pipes are normally used as conduits for liquids or gases, whereas tubes are generally used for load-bearing or mechanical purposes. Nevertheless, in many cases, there is apparently no clear line of demarcation between pipes and tubes.

Steel pipes and tubes can be divided into two general categories according to the method of manufacture--welded or seamless. Each category can be further subdivided by grades of steel: carbon, heat-resisting, stainless, or other alloy. This method of distinguishing between steel pipe and tube product lines is one of several methods used by the industry. Pipes and tubes typically come in circular, square, or rectangular cross section.

Steel pipes and tubes are generally produced according to standards and specifications published by a number of organizations, including the American Society for Testing & Materials (ASTM), the American Society of Mechanical Engineers (ASME), and the American Petroleum Institute (API). Comparable organizations in other countries have also developed standard specifications for steel pipes and tubes.

The American Iron & Steel Institute (AISI) distinguishes among the various types of pipes and tubes according to six end uses: standard pipe, line pipe, structural pipe and tubing, mechanical tubing, pressure tubing, and oil country tubular goods. 1/

The light-walled rectangular pipes and tubes that are the subject of these investigations are rectangular (including square) welded carbon steel pipes and tubes having a wall thickness of less than 0.156 inch. These articles are supplied with rectangular cross sections ranging from 0.375 x 0.625 inch to 4 x 8 inches or with square cross sections from 0.375 to 6 inches. They are employed in a variety of end uses not involving the conveyance of liquids or gases. Principal uses include fencing, window guards, cattle chutes, and railings for construction and agricultural applications, and more decorative (but also functional) items such as furniture parts, athletic equipment, bicycles, lawn and garden equipment, store shelving, towel racks, and similar items. The product is generally produced to ASTM specification A-513 or specification A-500 and is commonly referred to in the industry as mechanical or ornamental tubing.

Manufacturing process

The manufacture of light-walled rectangular pipes and tubes begins with coils of flat-rolled steel, known as skelp, 2/ which are cut by a slitting machine into strips of the precise width needed to produce a desired diameter of tubing. The slit coils are fed into the tube mills, which cold-form the flat ribbon of steel into a tubular cylinder by a series of tapered forming rolls. The product is then welded along the joint axis.

There are various ways to weld pipes and tubes. The electric resistance weld (ERW) and the more efficient high-frequency weld are used in the manufacture of the subject products. In both welding processes, the joining edges are heated to approximately 2,600° F. Pressure exerted by rolls squeezes the heated edges together to form the weld. The high-frequency welding process is more costly than the ERW process, but it creates a stronger weld and can operate at twice the speed.

Immediately after welding, sizing rolls shape the tube to accurate diameter tolerances. It is at this point that the round tube is formed into a rectangle, square, or other desired shape by using forming rolls. 3/ This

1/ For a full description of these products, see Certain Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Determination of the Commission in Investigation No. 701-TA-168 (Final) . . . , USITC Publication 1345, February 1983.

2/ Skelp is a flat-rolled, intermediate product used as the raw material in the manufacture of pipes and tubes. It is typically an untrimmed band of hot- or cold-rolled sheet.

3/ Other products of circular cross section, such as standard and mechanical pipes and tubes, are frequently produced on the same pipe mills as light-walled rectangular pipes and tubes; the principal difference in the manufacturing processes is the use of additional forming rolls in the production of noncircular pipes and tubes.

process requires little additional expense. The product is cooled and then cut at the end of the tube mill by a flying shear or saw. The standard lengths of the product are 20 and 24 feet. Some producers have special "offline" cutters that are capable of cutting the product into a number of different lengths without leaving the imperfection of a "dimple" on the ends as is produced by the flying shear. This special cutting is done to customer specifications. At least seven U.S. producers and one producer in Taiwan have the additional capacity to galvanize light-walled rectangular pipes and tubes for certain end uses, such as patio furniture. The raw material required for chrome-plating applications is cold-rolled skelp, which is approximately 10-15 percent higher in price than hot-rolled skelp. Hot-rolled skelp is used in most (about 70 to 80 percent) light-walled rectangular pipe and tube production. 1/

Reportedly, several kinds of products, including steel angles, bars, rods, and channels can be used in place of light-walled rectangular pipes and tubes in many applications. Although these products are generally less expensive to purchase than rectangular pipes and tubes, their strength-to-weight ratio is inferior, and at least one U.S. producer has indicated that sales of these products have tended to be replaced by sales of the subject product in recent periods. 2/

U.S. tariff treatment

Light-walled rectangular pipes and tubes are provided for in subheading 7306.60.50 of the HTS, 3/ under a heading that includes welded nonalloy steel pipes and tubes of cross sections other than circular, having a wall thickness less than 4 mm. This product was previously classified in TSUS item 610.49. The column 1 general or most-favored-nation (MFN) rate of duty for this HTS subheading, applicable to imports from Argentina and Taiwan, is 8 percent ad valorem. 4/

1/ Transcript of the hearing, Feb. 8, 1989, p. 33.

2/ Transcript of the conference, p. 43.

3/ The Harmonized Tariff Schedule of the United States replaced the previous Tariff Schedules of the United States effective Jan. 1, 1989. Chapters 1 through 97 are based upon the internationally adopted Harmonized Commodity Description and Coding System through the 6-digit level of product description, with additional U.S. product subdivisions at the 8-digit level. Chapters 98 and 99 contain special U.S. classification provisions and temporary rate provisions, respectively.

4/ The rates of duty in rate column 1-general of the HTS are MFN rates and in general represent the final stage of the reductions granted in the Tokyo Round of the Multilateral Trade Negotiations. Column 1-general duty rates are applicable to imported products from all countries except those Communist countries and areas enumerated in general note 3(b) to the HTS, whose products are dutied at the rates set forth in column 2; the People's Republic of China, Hungary, Poland, and Yugoslavia are the only Communist countries eligible for MFN treatment. Among articles dutiable at column 1 general rates, particular products of enumerated countries may be eligible for reduced rates of duty or for duty-free treatment under one or more preferential tariff programs. Such tariff treatment is set forth in the special rates of duty subcolumn of column 1.

U.S. Channels of Distribution

Light-walled rectangular pipes and tubes sold in the United States by U.S. and foreign producers are sold either directly to unrelated final-product manufacturers or to steel distributors (steel service centers), which normally warehouse large quantities of several types of steel products. Steel service centers distribute approximately 74 percent of the imports from Argentina and Taiwan and about 43 percent of the product sold domestically by U.S. producers.

U.S. Producers

Light-walled rectangular pipes and tubes are made primarily by small, nonintegrated or partially integrated producers. A nonintegrated producer buys sheet steel to produce the subject product, whereas a partially integrated producer buys slabs, heats them, and then rolls the slabs into sheet. An integrated producer melts steel to make slabs.

From January 1985 to September 1988, 22 firms, in about 25 plants, manufactured light-walled rectangular pipes and tubes in the United States. The names of the producers, their plant locations, their respective shares of 1987 shipments, and their positions with regard to the petition are shown in table 1. One firm has ceased production since January 1985: Hughes Steel & Tube filed for bankruptcy in March 1987 and was liquidated shortly thereafter. * * *. At least two firms that ceased production of the subject product before 1985--Tex-Tube Division of Cyclops Corp., Houston, TX, and Vanex Tube, Niles, OH--retain the capacity to resume production.

As stated previously, rectangular pipes and tubes are processed from circular pipes and tubes, and most U.S. producers sell significant quantities of both products. However, because there is little demand for circular pipes and tubes made from thin-gauge sheet (less than 0.156 inch), virtually all such pipes and tubes are further processed into rectangular shapes. Products other than carbon steel pipes and tubes account for very little, if any, of U.S. producers' total production.

U.S. Importers

At least 31 firms, owning and/or operating steel service centers in the United States, have imported the subject product from Taiwan since 1984. * * *. At least 12 firms are known to have imported this material from Argentina. * * *. The steel service centers, which actually receive and warehouse the material, may or may not be at the same location as the importer of record. Most imports from Taiwan were received by service centers in California, Texas, and Puerto Rico in 1988; most imports from Argentina during 1988 have been received by service centers in Florida, Texas, Puerto Rico, California, and Pennsylvania.

Table 1

Light-walled rectangular pipes and tubes: U.S. producers, plant locations, estimated shares of domestic shipments in 1987, and position on the petition, by firms

Firm	Plant location	Share of shipments in 1987	Position on the petition
CPTI member firms:			
Bull Moose Tube Co.	St. Louis, MO Chicago, IL Gerald, MO Trenton, GA	***	Supports
Hannibal Industries, Inc.	Los Angeles, CA	***	Supports
Harris Tube	Los Angeles, CA	***	Supports
Maruichi American Corp.	Santa Fe Springs, CA	***	Supports
Searing Industries	Vernon, CA	***	Supports
Southwestern Pipe, Inc.	Houston, TX	***	Supports
Western Tube & Conduit	Long Beach, CA	***	Supports
Non-CPTI firms:			
American Tube	Phoenix, AZ Kokomo, IN	***	* * *
Armco, Inc.	Middletown, OH	***	* * *
Bayamon Steel Processors, Inc.	Bayamon, PR	***	* * *
Berger Industries	Edison, NJ	***	* * *
Bernard Epps & Co.	Los Angeles, CA	***	* * *
California Steel & Tube Co.	City of Industry, CA	***	* * *
Hanna Steel Corp.	Fairfield, AL	***	* * *
J. M. Tull Ind., Inc.	Norcross, GA	***	* * *
Lock Joint Tube Co., Inc.	South Bend, IN	***	* * *
LTV Steel Corp.-LTV Tubular Products	Elyria, IL	***	* * *
Miami Industries	Piqua, OH	***	* * *
Parthenon Metal Works	La Vergne, TN	***	* * *
Pittsburgh International	Fairbury, IL	***	* * *
Valmont Industries	Valley, NE	***	* * *

1/ Less than 0.5 percent.

2/ Did not respond to the questionnaire.

Source: Shares of domestic shipments estimated from data submitted in response to questionnaires of the U.S. International Trade Commission.

Consideration of Alleged Material Injury

Of the 22 firms known to have produced light-walled rectangular pipes and tubes in the United States since January 1985, 19 have supplied usable data to the Commission in response to its questionnaires. These firms accounted for approximately 85 percent of total U.S. production in 1987.

U.S. production, capacity, and capacity utilization

Data for reporting producers' production and capacity, summarized in table 2, show that U.S. producers' capacity to produce light-walled rectangular pipes and tubes increased by 15.8 percent from 1985 to 1986, decreased by 1.7 percent from 1986 to 1987, and increased again, by 4.7 percent, from January-September 1987 to January-September 1988. Part of the increase in capacity from 1985 to 1986 reflects * * *, and the reallocation of existing resources to increased production of the subject product by other firms. The decrease in capacity from 1986 to 1987 * * *.

Table 2

Light-walled rectangular pipes and tubes: U.S. production, average practical capacity, and capacity utilization, 1985-87, January-September 1987, and January-September 1988

Item	1985	1986	1987	Jan.-Sept.--	
				1987	1988
Production (tons).....	179,172	194,917	212,027	176,794	171,939
Average capacity (tons)..	281,391	325,721	320,361	239,604	250,882
Ratio of production to capacity (percent).....	63.7	59.8	66.2	73.8	68.5

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Production increased by 18.3 percent from 1985 to 1987, then decreased by 2.8 percent from January-September 1987 to January-September 1988. The greater increase in capacity over production from 1985 to 1986 resulted in a decrease in capacity utilization of nearly 4 percentage points. Capacity utilization increased from 1986 to 1987 by about 6 percentage points; however, from January-September 1987 to January-September 1988 it decreased by about 5 percentage points.

U.S. producers' intracompany consumption, domestic shipments, and exports

Only about 1 to 2 percent of the U.S.-produced product is internally consumed, i.e., fabricated by producers into intermediate or finished products. An even lesser amount is exported, as shown in table 3. Domestic shipments, which account for over 98 percent of U.S. producers' total shipments, increased by 16.6 percent from 1985 to 1987. From January-September 1987 to January-September 1988, they decreased by 1.2 percent. In value terms,

Table 3

Light-walled rectangular pipes and tubes: U.S. producers' intracompany consumption, domestic shipments, and exports, 1985-87, January-September 1987, and January-September 1988

Item	1985	1986	1987	Jan.-Sept.--	
				1987	1988
Domestic shipments: <u>1/</u>					
Quantity (tons).....	178,301	193,018	207,888	170,808	168,783
Value (1,000 dollars)... <u>2/</u>	101,740	114,657	140,515	112,464	128,075
Average unit value					
(per ton) <u>4/</u>	\$626	\$639	\$676	\$658	\$759
Exports:					
Quantity (tons).....	***	***	***	***	***
Value (1,000 dollars)...	***	***	***	***	***
Average unit value					
(per ton).....	***	***	***	***	***

1/ Includes intracompany shipments, which account for 1 to 2 percent of total domestic shipments.

2/ Data are for firms accounting for 91 percent of reported shipments.

3/ Data are for firms accounting for 93 percent of reported shipments.

4/ Computed from data supplied by firms providing information on both quantity and value of shipments.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

domestic shipments increased by 38.1 percent from 1985 to 1987 and by 13.9 percent from January-September 1987 to January-September 1988.

Average unit values for domestic shipments increased by 8.0 percent during 1985-87 and by 15.3 percent from January-September 1987 to January-September 1988. U.S. producers have indicated that the rise in average unit values for domestic shipments between the interim 1987 and 1988 periods is the result of price increases in hot-rolled steel coil (skelp) in 1987 and 1988, during which time there reportedly were shortages of steel, causing some producers to be put on allocation by their steel suppliers. 1/ Staff contacts by telephone with producers have yielded a variety of responses on the issue of steel-price increases and shortages. * * *.

According to data obtained by Commission staff in annual steel reports, the weighted-average net price (f.o.b. mill) of domestic hot-rolled sheet and strip remained fairly constant at \$284-\$296 per ton during January 1986-June 1987, and then rose steadily to \$364 per ton in April-June 1988, as shown in the following tabulation (in dollars per ton): 2/

1/ Transcript of the hearing, pp. 28, 42, 53 and 69.

2/ Annual Survey Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize, USITC Pubs. 1981, 2019, and 2115, September 1986, 1987, and 1988.

<u>Period</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Jan.-Mar.....	293	289	350
Apr.-June.....	295	296	364
July-Sept.....	286	314	<u>1/</u>
Oct.-Dec.....	284	323	<u>1/</u>

1/ Not available.

Because of substantial domestic freight charges, most shipments remain within a certain region. 1/ * * *.

Inventories

End-of-period inventories of reporting producers are shown in table 4. The data show an increase in inventories of 41.1 percent from December 31, 1985, to December 31, 1987, and an increase of 16.8 percent from September 30, 1987, to September 30, 1988. As a share of the preceding year's U.S. shipments, inventories generally increased over the period.

Table 4

Light-walled rectangular pipes and tubes: U.S. producers' inventories, as of Dec. 31, 1985, 1986, and 1987, and as of Sept. 30, 1987, and 1988 1/

<u>Item</u>	<u>As of Dec. 31--</u>			<u>As of Sept. 30--</u>	
	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1987</u>	<u>1988</u>
Inventories (tons).....	10,924	12,827	15,410	15,233	17,795
Ratio of inventories to shipments (percent).....	6.1	6.6	7.4	<u>2/</u> 6.7	<u>2/</u> 7.9

1/ Firms accounting for 96 percent of reported U.S. shipments in 1987 provided inventory information.

2/ Based on annualized shipments.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Employment

Data on reporting producers' employment, shown in table 5, show that the average number of production and related workers producing light-walled rectangular pipes and tubes in U.S. plants increased by 36.4 percent from 1985 to 1987. The average number of these workers rose by 1.1 percent from January-September 1987 to January-September 1988. Hours worked, total compensation, and hourly compensation increased similarly. Productivity declined by 3.3 percent from 1985 to 1987 and by 4.1 percent from January-

1/ Transcript of the conference, pp. 50-51.

Table 5

Average number of production and related workers producing light-walled rectangular pipes and tubes in U.S. plants, hours worked by such workers, output per hour worked, total compensation and average hourly compensation paid to such workers, and unit labor costs of production, 1985-87, January-September 1987, and January-September 1988 1/.

Item	1985	1986	1987	Jan.-Sept.--	
				1987	1988
Average number of production and related workers producing the subject product.....	312	404	426	454	459
Hours worked by production and related workers producing the subject product (1,000 hours).....	595	735	775	575	583
Total compensation paid to production and related workers producing the subject product (1,000 dollars).....	7,986	10,013	10,577	7,522	8,191
Hourly compensation paid to production and related workers producing the subject product.....	\$13.42	\$13.62	\$13.65	\$13.13	\$14.05
Output (production) of the subject product per hour worked (tons) <u>2/</u>	0.23	0.20	0.23	0.26	0.25
Unit labor cost of producing the subject product (per ton) <u>2/</u>	\$57.25	\$66.93	\$60.20	\$49.77	\$55.70

1/ Data are for firms accounting for 83 percent of reported U.S. shipments in 1987.

2/ Computed using data supplied by firms providing information on both production and employment.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

September 1987 to January-September 1988. Unit labor costs increased by 16.9 percent from 1985 to 1986, declined by 10.1 percent between 1986 and 1987, and increased by 11.9 percent between interim periods 1987 and 1988. One firm, * * *, reported a permanent reduction of * * * workers or * * * percent of its production force during * * *, citing that it was unable to achieve the volume of production necessary to employ these workers.

Financial experience of U.S. producers

Twelve producers, accounting for 82 percent of 1987 shipments reported by firms responding to the Commission's questionnaires, provided usable income-and-loss data on the overall operations of their establishments within which light-walled rectangular pipes and tubes are produced, as well as on their operations producing light-walled rectangular pipes and tubes. 1/ Nearly all the producers indicated, in one form or another, that providing complete and accurate data for the subject product was exceedingly difficult because of two factors. These are: (1) the light-walled rectangular pipe and tube operations are relatively minor, and detailed cost information is not maintained for this segment, and (2) the product is processed with other products on the same equipment by the same employees without segregation of respective product costs. Review of questionnaire allocation procedures used revealed no improper selection of methodologies that would materially misstate the actual costs of the subject product.

Overall establishment operations.--Aggregate income-and-loss data on overall establishment operations are presented in table 6. For the period 1985-87, light-walled rectangular pipes and tubes accounted for 24.7 percent of the overall establishment operations of reporting firms on the basis of net sales. Other products produced in the establishments include mechanical and structural tubing, electric-welded round steel tubing, and slothole casing. Overall establishment sales of the producers 2/ increased from \$273.8 million in 1985 to \$311.4 million in 1986, and then increased to \$367.4 million in 1987, the highest level in the 1985-87 period. The 1987 results represented an 18.0-percent increase from 1986 and a 34.2-percent increase from 1985. Two producers experienced widely divergent results from 1985 to 1987. * * *. Interim-period aggregate net sales show an improvement from \$244.0 million in interim 1987 to \$309.0 million in interim 1988, an increase of 26.6 percent.

Notwithstanding the shorter time frame for interim 1988 than for the complete annual periods, and the fact that one less producer reported, 3/ operating profits were at their highest in this period. The operating profit was \$23.5 million, or 7.6 percent of net sales, compared with \$16.4 million, \$15.9 million, \$14.5 million, and \$11.3 million in 1985, 1986, 1987, and interim 1987, respectively. The respective operating margins for the four earlier periods were 6.0 percent, 5.1 percent, 4.0 percent, and 4.6 percent. * * *. Aggregate interim net income before taxes increased dramatically, from \$9.6 million in interim 1987 to \$21.5 million in interim 1988, or by 123.9 percent.

1/ The firms are * * *.

2/ * * * and * * * did not report any data for 1985. These firms accounted for * * * percent of overall sales and * * * percent of light-walled rectangular pipe and tube sales in 1986.

3/ * * *.

Table 6

Income-and-loss experience of U.S. producers 1/ on the overall operations of their establishments within which light-walled rectangular pipes and tubes are produced, accounting years 1985-87 and interim periods ended Sept. 30, 1987, and Sept. 30, 1988

Item	1985	1986	1987	Interim period ended Sept. 30--	
				1987	1988
<u>Value (1,000 dollars)</u>					
Net sales.....	273,758	311,440	367,358	244,023	309,018
Cost of goods sold.....	<u>239,828</u>	<u>274,226</u>	<u>327,534</u>	<u>216,369</u>	<u>265,659</u>
Gross profit.....	33,930	37,214	39,824	27,654	43,359
General, selling, and administrative expenses...	<u>17,577</u>	<u>21,326</u>	<u>25,287</u>	<u>16,365</u>	<u>19,876</u>
Operating income.....	16,353	15,888	14,537	11,289	23,483
Interest expense.....	5,427	5,032	4,478	1,774	1,747
Other income or (loss), net.	<u>(74)</u>	<u>80</u>	<u>121</u>	<u>99</u>	<u>(213)</u>
Net income before income taxes.....	10,852	10,936	10,180	9,614	21,523
Depreciation and amorti- zation included above.....	<u>5,646</u>	<u>6,527</u>	<u>6,818</u>	<u>4,361</u>	<u>4,849</u>
Cash flow <u>2/</u>	<u>16,498</u>	<u>17,463</u>	<u>16,998</u>	<u>13,975</u>	<u>26,372</u>
<u>Share of net sales (percent)</u>					
Cost of goods sold.....	87.6	88.1	89.2	88.7	86.0
Gross profit.....	12.4	11.9	10.8	11.3	14.0
General, selling, and administrative expenses...	6.4	6.8	6.9	6.7	6.4
Operating income.....	6.0	5.1	4.0	4.6	7.6
Net income before income taxes.....	<u>4.0</u>	<u>3.5</u>	<u>2.8</u>	<u>3.9</u>	<u>7.0</u>
<u>Number of firms reporting</u>					
Operating losses.....	0	1	1	0	0
Net losses.....	3	3	3	2	1
Data.....	10	12	12	11	11

1/ The firms are * * *.

2/ Cash flow is defined as net income or loss plus depreciation and amortization.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Operations producing light-walled rectangular pipes and tubes.--Aggregate income-and-loss data on light-walled rectangular pipes and tubes are presented in table 7. Aggregate net sales increased by 20.2 percent, from \$64.4 million in 1985 ^{1/} to \$77.4 million in 1986, and by 20.1 percent to \$93.0 million in 1987. * * *. Interim aggregate net sales reflect a substantial increase of 28.9 percent, from \$56.8 million in interim 1987 to \$73.1 million in the same period in 1988.

Aggregate operating profits, after a decline in 1986 to \$2.0 million from \$3.0 million in 1985, increased substantially to \$2.8 million in 1987, or by 40.0 percent from 1986. * * *. Interim period aggregate operating profits also showed significant improvement, from \$1.6 million in interim 1987 to \$3.1 million in interim 1988, an increase of 90.1 percent.

On a per-ton basis, there was an increase in average sales prices from \$517 in 1985 to \$531 in 1986 and to \$559 in 1987, or an increase of 8.1 percent from 1985 to 1987. The average sales price increased by 20.0 percent from interim 1987 to interim 1988. Cost of goods sold followed a similar pattern, rising from \$460 in 1985 to \$481 in 1986 and to \$508 in 1987, for an increase of 10.4 percent from 1985 to 1987. Cost of goods sold increased by 18.5 percent from interim 1987 to interim 1988.

Capital expenditures, research and development expenses, and value of property, plant, and equipment.--Capital expenditures by U.S. producers for property, plant, and equipment used in the production of all establishment products and light-walled rectangular pipes and tubes are presented in table 8. Investment in production facilities in which light-walled rectangular pipes and tubes are produced is shown in table 9. Several of the producers indicated that product-specific data for these categories had to be estimated because their records did not segregate light-walled rectangular pipe and tube data from that of other products using the same facilities.

Research and development expenses for light-walled rectangular pipes and tubes are shown in the following tabulation (in thousands of dollars):

<u>Item</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>Interim period ended Sept. 30--</u>	
				<u>1987</u>	<u>1988</u>
All products of establish- ments.....	***	***	***	***	***
Light-walled rectangular pipes and tubes.....	***	***	***	***	***
Number of firms reporting...	9	9	9	9	9

^{1/} There were two fewer producers reporting in 1985 than in 1986 and 1987.

Table 7

Income-and-loss experience of U.S. producers 1/ on their operations producing light-walled rectangular pipes and tubes, accounting years 1985-87 and interim periods ended Sept. 30, 1987, and Sept. 30, 1988

Item	1985	1986	1987	Interim period ended Sept. 30--	
				1987	1988
	Value (1,000 dollars)				
Net sales.....	64,399	77,418	93,000	56,762	73,140
Cost of goods sold.....	57,269	70,064	84,464	52,029	66,245
Gross profit.....	7,130	7,354	8,536	4,733	6,895
General, selling, and administrative expenses...	4,140	5,371	5,760	3,104	3,799
Operating income.....	2,990	1,983	2,776	1,629	3,096
Interest expense.....	1,006	1,185	1,139	491	514
Other income, net.....	126	31	22	17	20
Net income before income taxes.....	2,110	829	1,659	1,155	2,602
Depreciation and amorti- zation included above.....	1,504	2,087	2,167	1,266	1,326
Cash flow <u>2/</u>	3,614	2,916	3,826	2,421	3,928
	Share of net sales (percent)				
Cost of goods sold.....	88.9	90.5	90.8	91.7	90.6
Gross profit.....	11.1	9.5	9.2	8.3	9.4
General, selling, and administrative expenses...	6.4	6.9	6.2	5.5	5.2
Operating income.....	4.6	2.6	3.0	2.9	4.2
Net income before income taxes.....	3.3	1.1	1.8	2.0	3.6
	Value per unit (dollars per short ton)				
Net sales.....	517	531	559	547	657
Cost of goods sold.....	460	481	508	502	595
Gross profit.....	57	50	51	3/ 46	62
General, selling, and administrative expenses...	33	37	35	30	34
Operating income.....	24	3/ 14	3/ 17	16	28
Other income (expense).....	(8)	(8)	(7)	(5)	(5)
Net income before income taxes.....	16	6	10	11	23
	Number of firms reporting				
Operating losses.....	1	3	4	5	3
Net losses.....	2	4	5	5	3
Data.....	10	12	12	11	11

1/ The firms are * * *.

2/ Cash flow is defined as net income or loss plus depreciation and amortization.

3/ Figures do not foot due to rounding.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 8

Light-walled rectangular pipes and tubes: Capital expenditures by U.S. producers, accounting years 1985-87 and interim periods ended Sept. 30, 1987, and Sept. 30, 1988

Item	1985	1986	1987	Interim period ended Sept. 30--	
				1987	1988
All products of establishments:					
Land and land improvements (1,000 dollars)....	42	104	0	0	0
Building and leasehold improvements (1,000 dollars).....	1,343	512	88	29	75
Machinery, equipment, and fixtures (1,000 dollars).....	6,301	4,291	4,994	3,572	2,953
Total (1,000 dollars)..	7,686	4,907	5,082	3,601	3,028
Number of firms reporting 1/.	8	10	10	9	9
Light-walled rectangular pipes and tubes:					
Land and land improvements (1,000 dollars)....	0	5	0	0	0
Building and leasehold improvements (1,000 dollars).....	12	125	21	1	8
Machinery, equipment, and fixtures (1,000 dollars).....	1,619	1,179	1,063	766	683
Total (1,000 dollars)..	1,631	1,309	1,084	767	691
Number of firms reporting....	7	8	8	7	7

1/ Firms accounting for * * * percent of total capital expenditures in 1986 were unable to provide data for 1985.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 9

Light-walled rectangular pipes and tubes: Value of property, plant, and equipment of U.S. producers, accounting years 1985-87 and interim periods ended Sept. 30, 1987, and Sept. 30, 1988

Item	As of end of accounting year--			Interim period ended Sept. 30--	
	1985	1986	1987	1987	1988
All products of establishments:					
Original cost					
(1,000 dollars).....	82,052	103,112	108,092	94,984	99,271
Book value (1,000 dollars).	47,877	59,759	56,942	52,710	49,471
Number of firms reporting....	10	11	11	10	10
Light-walled rectangular pipes and tubes:					
Original cost					
(1,000 dollars).....	14,029	17,536	18,450	15,986	16,949
Book value (1,000 dollars).	8,551	9,345	8,977	8,611	8,353
Number of firms reporting....	6	7	7	7	7

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Rate of return.--The Commission requested total establishment assets of the producers to calculate rates-of-return on total assets. None of the large producers provided such information; therefore, a meaningful industry rate of return could not be calculated. Returns on sales rates could be calculated, however, and comparable industry data were obtained from the Quarterly Financial Report for analysis. These data are shown in the following tabulation (in percent):

<u>Item</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>Interim period</u>	
				<u>ended Sept. 30--</u>	<u>1987</u> <u>1988</u>
Overall establishments:					
Operating margins:					
Respondents.....	6.0	5.1	4.0	4.6	7.6
Industry <u>1/</u>	4.1	3.6	3.3	4.1	9.5
Light-walled rectangular pipes and tubes:					
Operating margins					
Respondents.....	4.6	2.6	3.0	2.9	4.2
Industry <u>2/</u>	3.6	4.5	5.0	5.8	6.8

1/ Iron and Steel Industry, Total assets under \$25 million, Quarterly Financial Report, Fourth quarter, 1985, 1986, 1987, third quarter 1987, and third quarter 1988.

2/ Fabricated Metal Products, Total assets under \$25 million, Quarterly Financial Report, Fourth quarter, 1985, 1986, 1987, third quarter 1987, and third quarter 1988.

Capital and investment.--The Commission requested U.S. producers to describe any actual or potential negative effects of imports of light-walled rectangular pipes and tubes from Argentina and Taiwan on their firms' growth, development and production efforts, investment, and ability to raise capital. Their replies follow:

* * * * * *

Consideration of the Question of
Threat of Material Injury

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors 1/ 2/--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

1/ Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

2/ The Omnibus Trade and Competitiveness Act of 1988 amended section 771(7)(F) of the Tariff Act of 1930 by adding two items to section 771(7)(F)(i) (19 U.S.C. §§ 1677(7)(F)(i)(IX) and (X)), and by adding section 771(7)(F)(iii) (19 U.S.C. § 1677(7)(F)(iii)) in its entirety. Whereas these investigations were initiated prior to the effective date of the amendments, they are presented here for information.

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product. 1/

The available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury." Available information on U.S. inventories of the subject products (item (V) above); foreign producers' operations (items (II) and (VI) above); and any other threat indicators, if applicable (item (VII) above), follows. Subsidies (item (I) above), "product-shifting" (item (VIII) above), and the agricultural product provision (item (IX) above) are not at issue in these investigations, and whereas evidence of dumping in third-country markets does not apply to these investigations, no such evidence has been revealed.

U.S. inventories of subject merchandise from Argentina and Taiwan

According to data received from importers of Argentine-produced material, as shown in table 10, from September 30, 1987, to September 30, 1988, importers' inventories increased from * * * tons to about * * * tons. As a ratio to imports, inventories increased from * * * percent to * * * percent between interim periods 1987 and 1988. The firms holding inventories accounted for at least * * * percent of imports from Argentina during the interim 1988 period, and are located in * * *. From September 30, 1987, to September 30, 1988, importers' inventories from Taiwan increased from * * * tons to approximately * * * tons. As a ratio to imports, inventories increased from * * * percent to * * * percent between interim periods 1987 and 1988. The

1/ Section 771(7)(F)(iii) of the act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

Table 10
Light-walled rectangular pipes and tubes: Importers' inventories of Taiwan- and Argentine-produced material, as of Dec. 31, 1985, 1986, and 1987, and as of Sept. 30, 1987, and 1988 1/

Item	As of Dec. 31--			As of Sept. 30--	
	1985	1986	1987	1987	1988
Argentina: <u>1/</u>					
Inventories (tons).....	***	***	***	***	***
Ratio of inventories to imports <u>2/</u> (percent)....	***	***	***	***	***
Taiwan: <u>4/</u>					
Inventories (tons).....	***	***	***	***	***
Ratio of inventories to imports <u>2/</u> (percent)....	***	***	***	***	***

1/ Data are for firms accounting for virtually 100 percent of imports from Argentina.

2/ As reported by questionnaire respondents.

3/ Based on annualized shipments.

4/ Data are for firms accounting for about 73 percent of imports from Taiwan.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

firms holding inventories accounted for at least * * * percent of imports from Taiwan during the interim 1988 period and are located in * * *.

Ability of foreign producers to generate exports and the availability of export markets other than the United States

Information supplied by counsel for Ornatube regarding the capacity of the industry in Taiwan to produce light-walled rectangular pipes and tubes is shown below in table 11. The data pertain to three Taiwan producers, Ornatube Enterprise Co., Ltd., Vulcan Industrial Corp., and Yieh Mau Corp. (formerly Yieh Hsing). Data regarding the entire industry's capacity, production, shipments, and exports are not available. 1/

1/ According to Mr. C.Y. Tang, Special Advisor to the Taiwan Steel and Iron Industries Association (State Telegram 04064, Unclassified, June 29, 1988), eight firms in 1988 were permitted to export steel pipe and tube products to the United States under Taiwan's self-restraint program. These firms were: Yieh Mau, Kao Hsing Chang, Far East, Ornatube, Vulcan, Chiao Yi, Yung Yun, and Yi Long. All but Kao Hsing Chang and Far East had applied for export to the United States under the "mechanical" tube category (TSUSA item 610.4928) during January-May 1988. In addition, one importer * * *, has identified Feng Hsin Iron and Steel Co., Ltd. as a Taiwan producer from whom it bought light-walled rectangular pipe and tube during the investigation period.

Table 11

Light-walled rectangular pipes and tubes: Taiwan 1/ capacity, production, and exports, 1985-88 and projected 1989

Item	1985	1986	1987	1988	Projected 1989
Capacity (tons) <u>2/</u>	***	***	***	***	***
Production (tons).....	***	***	***	***	<u>3/</u>
Capacity utilization (percent).....	61.3	64.9	67.3	62.6	<u>3/</u>
Home-market shipments (tons).....	***	***	***	***	<u>3/</u>
Exports to--					
United States (tons).....	***	***	***	***	<u>3/</u>
All other (tons).....	***	***	***	***	<u>3/</u>
Total (tons).....	***	***	***	***	<u>3/</u>

1/ Data include only Ornatube, Vulcan, and Yieh Mau.

2/ Capacity is based on plants operating between * * * hours per week, * * * days per year.

3/ Complete data are not available.

Source: Posthearing brief submitted on behalf of Ornatube, Feb. 14, 1989, collective exhibit 1, and the Jan. 30, 1989, submission on behalf of Ornatube, Tables 1 and 3.

Capacity for the three Taiwan producers increased by 85.4 percent from 1985 to 1988 (interim period data are not available). Capacity is expected to remain the same in 1989. Production increased by 89.4 percent from 1985 to 1988. Information on projected production for 1989 is not available. Capacity utilization increased from 61.3 percent in 1985 to 67.3 percent in 1987, then declined to 62.6 percent in 1988. Data submitted by the three Taiwan producers are insufficient to develop trends in shipments and exports during the investigation period.

Counsel for Ornatube also submitted information on Taiwan's "Self-Restraint Program for Steel Exports to the United States." 1/ Under this program, developed by the Ministry of Economic Affairs, Board of Foreign Trade (BOFT), and administered by the Taiwan Steel and Iron Industries Association (TSIIA) (a private organization), as of January 1, 1988, each producer was given a specific monthly export allocation (or "restricted quota") totaling, in the aggregate, 6,673 short tons (80,076 short tons annually) for structural and mechanical pipe (which includes light-walled rectangular pipes and tubes, among many other products). 2/ The maximum quota for pipe and tube exports is the "restricted quota" level; however, the quota system is also broken down by "fixed" and "free" quotas. The "fixed" quota for 1988 for all steel exports was 330,000 short tons, 3/ which was allocated by TSIIA to each mill, based on

1/ The Taiwan "self-restraint" program is not part of the President's Program on Voluntary Restraints of Exports to the United States. In September 1984, the President outlined a nine-point program designed to assist the U.S. steel industry in a number of areas, including trade. Under this program, the U.S. Government would negotiate surge-control arrangements (and self-initiate proceedings under the trade laws, if necessary) with understandings, or suspension agreements, with countries "whose exports to the United States have increased significantly in recent years due to an unfair surge in imports." Unfair surges were described in the President's decision as dumping, subsidization, or diversion from other importing countries that have restricted access to their markets. The countries that have signed voluntary restraint agreements (VRAs), which cover the steel pipes and tubes under investigation, are as follows:

Australia	Japan
Austria	Mexico
Brazil	People's Republic of China
Czechoslovakia	Poland
East Germany	Portugal
European Community (excluding Portugal and Spain, which have separate agree- ments)	Republic of Korea
Finland	Romania
Hungary	Trinidad and Tobago
	South Africa
	Spain
	Venezuela
	Yugoslavia

Petitioners in previous investigations concerning the subject product have asserted that one reason countries that did not export to the United States previously are able to do so now is a void in the market place previously filled by imports from countries that have signed VRAs with the United States. Petitioners have also argued that the impetus for increased imports from new entrants in the U.S. market comes from U.S. importers that are turning to these suppliers in an attempt to retain their share of the market. The VRA program is scheduled to expire in September 1989, unless renewed by the current Administration. Taiwan's self-restraint program is also due to expire in September 1989.

2/ Ornatube's posthearing brief, Feb. 14, 1989, p. 30.

3/ Ornatube's posthearing brief, Feb. 14, 1989, collective exhibit 1.

each mill's percentage of actual total steel exports during the period January 1, 1987, through September 30, 1987. The "free" quota is allocated among five categories of steel exports (wire rope, stainless pipe, structural and mechanical pipe, stainless drawn wire, and wire nails) according to their historical shares of total steel exports. The "free" quota for 1988 consists of the following items: the "self-control" export quota of 27,000 metric tons (29,762 short tons), a "flexible usage" allocation of 60,000 metric tons (66,138 short tons), any additional tonnage that BOFT decides to permit, and any unused fixed quota returned to BOFT. ^{1/} "Fixed" quota assignments can be transferred under various rules, and "free" quota allotments are bid on the open market by Taiwan exporters seeking additional quota amounts beyond their fixed quota allotments.

According to information submitted by counsel for Ornatube (Posthearing brief, collective exhibit 1, and a submission dated Jan. 30, 1989, tables 1 and 3, and narrative text), the 1988 "restricted" quotas for Ornatube, Vulcan, and Yieh Mau total * * * metric tons (* * * short tons) per year, whereas the 1988 "fixed" and "free" quotas for these companies, added together, actually exceed the "restricted" figure and total * * * metric tons (* * * short tons) per year.

Although the Taiwan self-restraint program contains many types of quotas with different export amounts allowed for each type, the maximum amount of exports of light-walled rectangular pipes and tubes allowed under the program is equal to the amount of "restricted" quota. The aggregate annual restricted quotas for the three producers (* * * short tons) and the total for all producers (80,076 short tons) far exceed the total quantity of imports of light-walled rectangular pipes and tubes from Taiwan for 1987 (14,770 short tons) and for January-November 1988 (19,463 short tons).

Moreover, the Department of Commerce verification report for Ornatube, dated January 17, 1989, reveals that * * *, stating at page 15:

In verifying the metric ton figure for this transaction, we found a discrepancy between certain documents. * * *. The tonnage shown on the invoice matched both the purchase order ... and the company's accounting records.

Further, the verification report indicates at page 10 that the Department of Commerce personnel reviewed documentation for "free" allotment licenses for Ornatube for * * * metric tons (* * * short tons) during the period January-June 1988, in addition to its normal "fixed" quota of * * * metric tons (* * * short tons) per month. The license amounts would imply exports of * * * short tons of light-walled rectangular pipes and tubes to the United States during the Department of Commerce investigation period of January-June 1988. However, Department of Commerce figures for total exports by Ornatube examined during the period reveal * * * short tons exported.

^{1/} Ornatube's posthearing brief, Feb. 14, 1989, collective exhibit 1; and Ornatube's submission of Jan. 30, 1989, paraphrase of Ornatube's translation, by David Simon, of the "Proclamation of the Board of Foreign Trade," p. 3.

Staff contact with the Office of the United States Trade Representative indicates that it does not collect information on this self-restraint program, as it is unilateral in nature, and there are no government-to-government agreements to monitor or to enforce. ^{1/}

According to information supplied by the Argentine Association of Pipe and Tube Manufacturers, there are 12 manufacturers of light-walled rectangular pipes and tubes in Argentina, including Laminfer and Leon Romagnoli. Aggregate data for the 12 firms are shown in table 12. The data show that Argentine capacity, after remaining constant from 1985 to 1986, increased by 33.1 percent in 1987, and by 35.0 percent in January-September 1988 from its level in the corresponding period of the previous year. While production increased by 74.1 percent from 1985 to 1987 and by 49.1 percent from January-September 1987 to January-September 1988, capacity utilization increased from 42.5 percent to 55.7 percent and from 83.9 percent to 92.7 percent in those periods, respectively. As a share of its production, Argentine exports increased from 2.9 percent in 1985 to 24.5 percent in 1987 and from 16.9 percent in January-September 1987 to 50.8 percent in January-September 1988. The United States' share of these exports exceeded 90 percent from 1985 to 1987. However, it decreased from January-September 1987 to January-September 1988 by almost 32 percentage points. The Association expects production and capacity to decrease by 12 percent and 11 percent, respectively, in 1989.

Table 12
Light-walled rectangular pipes and tubes: Argentine capacity, production, and exports, 1985-87, January-September 1987, and January-September 1988

Item	1985	1986	1987	Jan.-Sept.--	
				1987	1988
Capacity (tons).....	119,290	119,290	158,746	67,548	91,158
Production (tons).....	50,757	65,388	88,361	56,672	84,477
Capacity utilization (percent).....	42.5	54.8	55.7	83.9	92.7
Domestic shipments (tons)..	46,438	63,168	62,663	41,365	44,871
Exports to--					
United States (tons).....	1,322	2,391	19,951	8,832	25,913
All other (tons).....	143	178	1,707	764	17,006
Total (tons).....	1,465	2,569	21,658	9,596	42,919
Share of production that was exported (percent)...	2.9	3.9	24.5	16.9	50.8
Share of total exports to--					
United States (percent)...	90.2	93.1	92.1	92.0	60.4
All other (percent).....	9.8	6.9	7.9	8.0	39.6
Total (percent).....	100.0	100.0	100.0	100.0	100.0

Source: Argentine Association of Pipe and Tube Manufacturers, as submitted to the U.S. Embassy in Argentina at the request of the U.S. International Trade Commission.

^{1/} Telephone conversation on Feb. 13, 1989, with the Assistant to the Director of Trade Policy for Steel Issues.

Although the Association did not report any trend on total Argentine exports in 1989, it projected that sales in its domestic market would decrease by 17 percent, that exports to the United States and to Europe would decrease by 65 percent and 30 percent, respectively, and that exports to Asian and Latin American countries would grow by 150 percent.

The data supplied by Laminfer, S.A., the principal Argentine exporter to the United States, show that its capacity * * * (table 13). * * *.

Table 13

Light-walled rectangular pipes and tubes: Laminfer's capacity, production, domestic shipments, and exports, 1985-87, January-September 1987, January-September 1988, and projected 1989

Item	1985	1986	1987	Jan.-Sept.--		Projected 1989
				1987	1988	
Capacity (tons) <u>1</u> /.....	***	***	***	***	***	***
Production (tons).....	***	***	***	***	***	***
Capacity utilization (percent) <u>2</u> /.....	***	***	***	***	***	***
Domestic shipments (tons)..	***	***	***	***	***	***
Exports to:						
United States (tons).....	***	***	***	***	***	***
All other (tons).....	***	***	***	***	***	***
Total (tons).....	***	***	***	***	***	***
Share of production that was exported (percent)...	***	***	***	***	***	***
Share of total exports to--						
United States (percent)..	***	***	***	***	***	***
All other (percent).....	***	***	***	***	***	***
Total (percent).....	***	***	***	***	***	***

1/ Includes round pipes and tubes. * * *.

2/ Calculated by dividing production of round and rectangular pipes and tubes by capacity for both products.

Source: Laminfer, S.A., submission dated Jan. 10, 1989, Exhibit 1-A.

Consideration of the Causal Relationship Between Imports of
the Subject Merchandise and the Alleged Material Injury

Imports

U.S. imports for consumption, total and from selected sources, are shown in table 14. After declining by 16.6 percent from 1985 to 1986, largely because of a considerable reduction of imports from Japan, total imports of light-walled rectangular pipes and tubes increased by 15.7 percent in 1987 and by 56.2 percent from January-September 1987 to January-September 1988. Increases in the latter periods are largely due to imports from Argentina and Taiwan, which increased 55 times from 1985 to 1987 and nearly tripled from January-September 1987 to January-September 1988. As a share of total imports, imports from these countries have increased rapidly.

About 53 percent of the imports from Argentina between January 1985 and September 1988 entered through Houston, TX. Other ports of entry for the Argentine product include San Juan, PR; Tampa, FL; Philadelphia, PA; and recently, Los Angeles, CA, and New Orleans, LA. The bulk of imports from Taiwan, more than 73 percent, entered through Los Angeles, CA, and San Francisco, CA. Other ports of entry for the Taiwan product include Bridgeport, CT; Philadelphia, PA; Charleston, SC; Tampa, FL; New Orleans, LA; Portland, OR; Seattle, WA; San Juan, PR; and Houston, TX.

Monthly import statistics, shown in table 15, appear to confirm the assertion made by counsel for Laminfer 1/ that it has not sold any light-walled rectangular pipes and tubes to the United States since May 1988. (The last entry into the United States occurred in July 1988, which could have been sold and/or exported in May 1988.) Counsel for Laminfer has explained the reasons it ceased exports to the United States after May 1988 as follows: 2/ (1) the

Table 14

Light-walled rectangular pipes and tubes: U.S. imports for consumption, by selected sources, 1985-87, 1/ January-September 1987, and January-September 1988

Source	1985	1986	1987	Jan.-Sept.--	
				1987	1988
	Quantity (tons)				
Argentina.....	121	1,846	14,744	5,756	25,624
Taiwan.....	406	9,975	14,770	9,105	15,747
Subtotal.....	527	11,821	29,514	14,861	41,371
Japan.....	62,737	23,169	21,696	14,513	17,462
Canada.....	5,004	7,447	14,969	10,202	10,293
All other.....	15,210	27,167	14,379	10,785	9,533
Total.....	83,478	69,604	80,558	50,361	78,659

Continued

1/ Transcript of the hearing, p. 125.

2/ Transcript of the hearing, p. 126.

Table 14--Continued

Light-walled rectangular pipes and tubes: U.S. imports for consumption, by selected sources, 1985-87, 1/ January-September 1987, and January-September 1988

Source	1985	1986	1987	Jan.-Sept.--	
				1987	1988
Value, c.i.f. duty-paid (1,000 dollars)					
Argentina.....	45	751	6,170	2,372	12,028
Taiwan.....	216	4,208	6,462	3,767	8,467
Subtotal.....	261	4,959	12,632	6,139	20,495
Japan.....	28,065	11,494	11,107	7,267	10,629
Canada.....	3,330	3,764	7,499	4,910	6,359
All other.....	6,919	11,257	6,401	4,658	4,763
Total.....	38,575	31,474	37,639	22,974	42,246
Average unit value, c.i.f. duty-paid					
Argentina.....	\$372	\$407	\$418	\$412	\$469
Taiwan.....	532	422	437	414	538
Average.....	495	420	428	413	495
Japan.....	447	496	512	501	609
Canada.....	666	505	501	481	618
All other.....	455	414	445	432	500
World average..	462	452	468	456	537
Percent of total quantity					
Argentina.....	0.1	2.7	18.3	11.4	32.6
Taiwan.....	0.5	14.3	18.3	18.1	20.0
Subtotal.....	0.6	17.0	36.6	29.5	52.6
Japan.....	75.2	33.3	26.9	28.8	22.2
Canada.....	6.0	10.7	18.6	20.3	13.1
All other.....	18.2	39.0	17.8	21.4	12.1
Total.....	100.0	100.0	100.0	100.0	100.0

1/ Because of a lag in reporting, official import statistics include some "carry-over" data for merchandise imported, but not reported, in prior periods (usually the previous month). Beginning in 1987, Commerce extended its monthly data compilation cutoff date by about 2 weeks in order to significantly reduce the amount of carry-over. Therefore, official statistics for January 1987 include data that would previously have been carried over to February 1987. However, in order to avoid an apparent overstatement of the January 1987 data, the carry-over data from 1986 that would have included in January 1987 official statistics as of the previous cutoff date have been excluded. Commerce isolated these 1986 carry-over data and has not included them in official statistics for 1986 or January 1987, since their inclusion in either period would result in an apparent overstatement. With respect to imports from Taiwan, this carry-over amounted to 865 tons, with a value of \$346,000.

Note.--Because of rounding, numbers may not add to totals shown.

Source: Compiled from official statistics of the U.S. Department of Commerce, as amended for Argentina in December 1987 (addition of 1,664 tons, valued at \$748,418) and March 1988 (addition of 1,585 tons, valued at \$673,301).

Table 15

Light-walled rectangular pipes and tubes: U.S. imports for consumption, by selected sources and by months, January 1987-November 1988

(In tons)

Month	1987		1988	
	Argentina	Taiwan	Argentina	Taiwan
January.....	0	2,151	3,281	3,803
February.....	18	2,953	3,182	2,621
March.....	218	318	3,298	1,363
April.....	1,090	42	0	672
May.....	991	153	5,219	189
June.....	1,000	380	10,328	1,362
July.....	0	493	316	1,423
August.....	1,846	847	0	2,158
September....	593	1,767	0	2,157
October.....	2,095	1,528	0	1,904
November.....	3,243	2,053	0	1,811
December.....	3,650	2,086	1/	1/

1/ Not available.

Source: Compiled from official statistics of the U.S. Department of Commerce.

PEEX program, by which an exporter could earn as much as 15 percent of the FOB value of an exported product, was repealed by the Argentine Government, and (2) a countervailing duty cash deposit rate of 9.25 percent was imposed on imports of the subject merchandise into the United States beginning September 1988. The petition in these investigations was filed on June 6, 1988.

Apparent U.S. consumption and market penetration

As shown in table 16, overall U.S. consumption of light-walled rectangular pipes and tubes, by quantity, increased by 10.2 percent from 1985 to 1987 and by 11.9 percent from January-September 1987 to January-September 1988. In terms of value, consumption increased by 27.0 percent and 25.8 percent in the same periods, respectively. As a share of consumption, total imports from Argentina and Taiwan increased from 0.2 percent in 1985 to 10.2 percent in 1987 and from 6.7 percent in January-September 1987 to 16.7 percent in January-September 1988. Similar levels of penetration are evident in terms of value.

Table 16

Light-walled rectangular pipes and tubes: Apparent U.S. consumption and ratios of imports to consumption, 1985-87, January-September 1987, and January-September 1988

(Quantity in tons; value in thousands of dollars)						
Period	Apparent U.S. con- sumption 1/	Ratio (percent) of imports to consumption--				Total
		For Argentina	For Taiwan	Subtotal	For all other sources	
Quantity						
1985.....	261,779	2/	0.2	0.2	31.7	31.9
1986.....	262,622	0.7	3.8	4.5	22.0	26.5
1987.....	288,446	5.1	5.1	10.2	17.7	27.9
Jan.-Sept--						
1987.....	221,169	2.6	4.1	6.7	16.1	22.8
1988.....	247,443	10.4	6.4	16.7	15.1	31.8
Value						
1985.....	140,315	2/	0.2	0.2	27.3	27.5
1986.....	146,131	0.5	2.9	3.4	18.1	21.5
1987.....	178,154	3.5	3.6	7.1	14.0	21.1
Jan.-Sept--						
1987.....	135,438	1.8	2.8	4.5	12.4	17.0
1988.....	170,321	7.1	5.0	12.0	12.8	24.8

1/ Domestic shipments and intracompany consumption plus imports.

2/ Less than 0.05 percent.

Note.--Because of rounding, numbers may not add to totals shown.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

Prices

Domestic producers estimated that 56 percent of their light-walled rectangular tubing is sold to end users, whereas the remainder is sold to distributors. 1/ Sales to end users are generally made on a contract basis, with prices and quantities specified for a 3- to 6-month period. Most sales to distributors are made on a spot basis, although two producers grant quarterly contracts to distributors. Three producers reported that distributors are given a 5-percent discount on prices quoted to selected end users. 2/

Most importers of light-walled rectangular pipes and tubes from Taiwan and Argentina sell exclusively to distributors. These sales are generally made on a contract basis, specifying prices, quantities, and approximate shipment dates. Only two importers reported prices on sales to end users.

Most producers' shipments are concentrated within a 500-mile radius of their production facilities. Only one U.S. producer, Bull Moose Tube Co., St. Louis, MO, reported serving the entire U.S. market. 3/ Except for two importers located in Puerto Rico, who sell only within Puerto Rico, the importers that responded to the Commission questionnaires primarily supply * * *.

Domestic producers generally quote prices f.o.b. mill. A few producers distribute price lists, with most of their sales discounted from these lists. Producers provide standard 1/2 to 1 percent/10 net 30 days "net period with cash discounting" schemes. They typically negotiate specific quantities, tubing specifications, and release schedules. Minimum quantity orders vary from 1,120 to 40,000 pounds, with premiums reaching 35 percent for subminimum orders. The average lead time between a customer's order and shipment ranged from 7 to 45 days.

Importers generally quote prices f.o.b. dock, and two importers distribute price lists. Prices are usually established through negotiation, along with quantities, quantity discounts, and delivery times. Sales terms are net 30 days, and minimum quantity purchase requirements range from none to 44,000 pounds. The importers' average lead time between order and shipment ranged from 60 to 150 days.

In some cases the imported product is not acceptable to certain end users. Manufacturers that chrome plate their material generally require cold-rolled, rust-free pipes and tubes. 4/ Argentina and Taiwan do not appear to compete in the domestic cold-rolled pipe and tube market. 5/ Cold-rolled light-walled

1/ The estimate of the percentage of domestic light-walled rectangular tubing sold to end users is a weighted average, by total shipments, of the estimates reported by the domestic producers.

2/ * * *.

3/ Transcript of the conference, p. 21.

4/ Transcript of the hearing, pp. 32, 35, and 36. * * *.

5/ Don Woodruff of Bull Moose agreed that they do not compete with imports in the cold-rolled pipe and tube market (transcript of the hearing, pp. 34-35). David Simon, counsel for Ornatube, stated that domestic producers have complete domination and control over the market for cold-rolled light-walled rectangular pipes and tubes (Feb. 14, 1989, posthearing brief, p. 22). * * *.

rectangular pipes and tubes are priced at a premium of 10 to 15 percent above the hot-rolled product and account for roughly 20 to 30 percent of the U.S. market. 1/ The majority of domestic producers and importers reported that differences in quality between the U.S.-produced and imported hot-rolled products were not a significant factor in the firms' sales of light-walled rectangular pipes and tubes. In general, both domestic and imported light-walled rectangular pipes and tubes were acceptable to distributors.

The Commission requested U.S. producers and importers of light-walled rectangular pipes and tubes from Argentina and Taiwan to provide f.o.b. prices to distributors on their largest quarterly sales of the following items: 2/

Product 1: ASTM A-513 (mechanical) or A-500 grade A (ornamental) tubing, carbon welded, pickled and oiled, 1/2-inch square, 0.065 inch nominal (+ or - 10 percent) wall thickness, 20 foot to 40 foot mill lengths.

Product 2: ASTM A-513 (mechanical) or A-500 grade A (ornamental) tubing, carbon welded, black, 1-inch square, 0.065 inch nominal (+ or - 10 percent) wall thickness, 20 foot to 40 foot mill lengths.

Product 3: ASTM A-513 (mechanical) or A-500 grade A (ornamental) tubing, carbon welded, black, 1-1/2-inch square, 0.065 inch nominal (+ or - 10 percent) wall thickness, 24 foot to 40 foot mill lengths.

Product 4: ASTM A-513 (mechanical) or A-500 grade A (ornamental) tubing, carbon welded, black, 2-inch square, 0.065 inch nominal (+ or - 10 percent) wall thickness, 24 foot to 40 foot mill lengths.

Six domestic producers, accounting for 66 percent of 1987 shipments of light-walled rectangular pipes and tubes, provided usable price data. 3/ * * *. * * * reported prices for products 2 and 4, but was unable to break out shipments by individual products. * * * submitted prices from its price list for products 1-4, and * * * produced monthly average selling prices, but neither company was able to break out shipments by largest sale or by individual product. * * * submitted 1987 quarterly price-range information for products 2, 3, and 4, and reported that the low prices were representative of the prices that were charged for their largest sales. Trends in the prices that were reported by these four companies were consistent with price trends shown in the following tables.

Six importers of light-walled rectangular pipes and tubes from Argentina provided usable, but limited, price data. Thirteen importers provided usable price data concerning imports of light-walled rectangular pipes and tubes from Taiwan.

1/ Transcript of the hearing, pp. 33-34.

2/ Although U.S. producers sell 56 percent of their product to end users, no importers reported prices for sales to end users. For purposes of trends and comparisons, prices were requested only for sales to distributors.

3/ * * *.

Domestic prices.--Domestic light-walled rectangular pipe and tube weighted-average prices for the four products showed sharp increases over the period January-March 1986 through July-September 1988 (tables 17 and 18).

Product 1's price fluctuated slightly in 1986 and then increased throughout the remaining investigation period. Overall, the price moved from \$9.89 per hundred feet in January-March 1986 to \$12.26 in July-September 1988, an increase of 24 percent.

The price for product 2 also increased during the investigation period. In January-March 1986, a hundred feet sold for \$20.17. In July-September 1988, this same quantity sold for \$26.14, an increase of 30 percent.

Whereas the price for product 3 fell slightly throughout 1986, it rose sharply during subsequent quarters, increasing from \$30.72 per hundred feet in January-March 1987 to \$41.95 in April-June 1988, an increase of 37 percent. The price then fell back to \$40.96 in the third quarter of 1988, posting an overall increase of 34 percent for the investigation period.

As with the previous three products, the price for product 4 fluctuated during 1986 before increasing rapidly from \$41.14 per hundred feet in January-March 1987 to \$53.34 in July-September 1988. The weighted-average price for this product increased by 30 percent for the investigation period.

The range of the lowest and highest sales prices for U.S.-produced light-walled rectangular pipes and tubes during 1987 is presented by product in the following tabulation, compiled from data submitted in response to questionnaires of the U.S. International Trade Commission (in dollars per hundred feet):

Period	Product 1	Product 2	Product 3	Product 4
1987:				
Jan.-Mar.....	\$8.80-12.83	\$18.69-28.30	\$27.86-43.15	\$31.98-50.12
Apr.-June....	8.44-12.75	19.47-27.54	26.96-40.79	37.98-50.50
July-Sept....	9.46-13.73	19.92-26.75	31.57-42.19	40.86-52.28
Oct.-Dec.....	7.96-12.31	15.28-32.09	31.90-45.25	43.01-55.55

Argentine prices.--Argentine weighted-average prices for the four products also showed overall increases during the period of investigation (table 17). ^{1/}

Prices for the imported product 1 rose steadily, from * * * in October-December 1986 to \$10.62 in July-September 1988, an increase of * * * percent. The imported product was priced below the domestic product in all eight quarters for which data were reported, with margins ranging from 11.4 to 22.2 percent.

^{1/} Five of the 34 Argentine weighted-average prices presented in table 17 were calculated using three or more data points. The remaining 29 weighted-average prices were calculated from 2 or fewer observations.

Table 17

Light-walled rectangular pipes and tubes: Weighted-average f.o.b. sales prices to distributors in the United States, U.S.- and Argentine-produced products, and margins of underselling, by quarters, January 1986-September 1988

Period	Product 1			Product 2			Product 3			Product 4		
	U.S.	Argentina	Margin									
	--Per 100 foot--		Percent									
1986:												
Jan.-Mar.....	\$9.89	1/	1/	\$20.17	\$ ***	***	\$30.64	1/	1/	\$41.11	\$ ***	***
Apr.-June....	9.88	1/	1/	20.65	1/	1/	31.25	1/	1/	41.60	1/	1/
July-Sept....	9.66	1/	1/	20.31	1/	1/	30.40	1/	1/	40.82	1/	1/
Oct.-Dec.....	9.80	\$ ***	***	19.99	***	***	30.23	\$ ***	***	40.50	***	***
1987:												
Jan.-Mar.....	9.74	***	***	20.42	***	***	30.72	***	***	41.14	***	***
Apr.-June....	10.96	***	***	21.87	***	***	32.57	***	***	43.23	***	***
July-Sept....	11.10	***	***	23.41	***	***	36.82	***	***	45.42	***	***
Oct.-Dec.....	11.61	***	***	24.85	***	***	39.71	***	***	48.18	***	***
1988:												
Jan.-Mar.....	12.04	***	***	26.22	21.18	19.2	41.79	***	***	50.88	***	***
Apr.-June....	11.94	***	***	26.30	20.82	20.8	41.95	***	***	53.75	***	***
July-Sept....	12.26	10.62	13.4	26.14	21.94	16.1	40.96	32.50	20.7	53.34	***	***

1/ No sales reported.

Note.--Percentage margins were calculated from unrounded figures; therefore, margins cannot always be calculated directly from the rounded prices in the table.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 18

Light-walled rectangular pipes and tubes: Weighted-average f.o.b. sales prices to distributors in the United States, U.S.- and Taiwan-produced products, and margins of under/(over) selling, by quarters, January 1986-September 1988

Period	Product 1			Product 2			Product 3			Product 4		
	U.S.	Taiwan	Margin									
	--Per 100 foot--		Percent									
1986:												
Jan.-Mar.....	\$9.89	1/	1/	\$20.17	1/	1/	\$30.64	1/	1/	\$41.11	1/	1/
Apr.-June....	9.88	\$ ***	***	20.65	\$ ***	***	31.25	\$ ***	***	41.60	\$ ***	***
July-Sept....	9.66	***	***	20.31	16.60	18.3	30.40	***	***	40.82	36.45	10.7
Oct.-Dec.....	9.80	8.23	16.1	19.99	16.67	16.6	30.23	27.65	8.5	40.50	***	***
1987:												
Jan.-Mar.....	9.74	8.67	11.0	20.42	17.99	11.9	30.72	27.76	9.6	41.14	37.37	9.2
Apr.-June....	10.96	***	***	21.87	***	***	32.57	1/	1/	43.23	1/	1/
July-Sept....	11.10	***	***	23.41	***	***	36.82	***	***	45.42	1/	1/
Oct.-Dec.....	11.61	***	***	24.85	21.56	13.2	39.71	***	***	48.18	***	***
1988:												
Jan.-Mar.....	12.04	11.01	8.5	26.22	22.63	13.7	41.79	37.22	10.9	50.88	***	***
Apr.-June....	11.94	***	***	26.30	23.14	12.0	41.95	1/	1/	53.75	1/	1/
July-Sept....	12.26	11.52	6.0	26.14	23.00	12.0	40.96	42.77	(4.4)	53.34	62.35	(16.9)

1/ No sales reported.

Note.--Percentage margins were calculated from unrounded figures; therefore, margins cannot always be calculated directly from the rounded prices in the table.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Prices for the imported product 2 fluctuated during the period of investigation, rising from * * * in January-March 1986 to \$21.94 in July-September 1988. The weighted-average price for this product increased by * * * percent for the investigation period. The imported product was priced below the domestic product in all nine of the quarters for which data were reported, with margins ranging from 8 to 23 percent.

Prices for the imported product 3 rose from * * * in October-December 1986 to * * * in July-September 1987, an increase of * * * percent. The Argentine product 3 price was below the domestic price during the eight quarters for which data were reported. Margins ranged from 13 to 29 percent.

Prices for the imported product 4 fluctuated during the period of investigation, rising from * * * in January-March 1986 to * * * in July-September 1988. Prices for this product increased by * * * percent during the investigation period. The Argentine product 4 was priced from 5 to 30 percent below the domestic product during the nine quarters for which data were reported.

The staff was unable to determine price ranges for the Argentine-produced light-walled rectangular pipes and tubes because importers did not report sufficient price-range information.

Taiwan prices.--Prices for the light-walled rectangular tubing products from Taiwan also increased during the period of investigation (table 18). Prices for product 1 increased by * * * percent from April-June 1986 to July-September 1988. The Taiwan product was priced below the domestic product in all 10 quarters for which comparable data were available, with margins ranging from 6 to 17 percent. 1/

Data reported for product 2 show a price increase of * * * percent for the April-June 1986 to July-September 1988 period. Import prices peaked at \$23.14 in April-June 1988, then fell back to \$23.00 in July-September 1988. During the 10 quarters with comparable data, the imported product's prices were below the domestic prices. Margins ranged from 11 to 18 percent.

Prices for product 3 rose sharply, from * * * in April-June 1986 to \$42.77 in July-September 1988, an increase of * * * percent. The Taiwan product was priced below the domestic product in seven of the eight quarters for which comparable data were available, with margins ranging from 8 to 19 percent.

Prices for the Taiwan-produced product 4 increased by * * * percent during the investigation period, rising from * * * in April-June 1986 to \$62.35 in July-September 1988. During six of the seven quarters for which comparable data were reported, the imported product was priced from 7 to 13 percent below the domestic product.

The staff was unable to determine price ranges for the Taiwan-produced light-walled rectangular pipes and tubes because importers did not report sufficient price-range information.

1/ Eighteen of the 35 Taiwan weighted-average prices presented in table 18 were calculated using 3 or more data points. The remaining 17 weighted-average prices were calculated from 2 or fewer observations.

Lost sales and lost revenue

* * * producers of light-walled rectangular pipe and tube submitted instances of alleged lost sales and lost revenues. Thirty-five companies were named in these allegations. Because of the different methods by which the * * * companies reported the lost sale and lost revenue information, total quantity and value cannot be summed. The majority of the instances cited involved competition from Argentine-produced pipe and tube. Conversations with purchasers contacted by staff are summarized below.

* * *.--* * * named * * * in three lost sales allegations occurring in * * *. * * * sizes of light-walled rectangular pipes and tubes of mixed tonnage and length were listed in these allegations. * * * could not verify the specific transactions but reported that * * * had purchased close to * * * tons of Argentine light-walled rectangular pipes and tubes in 1988. * * * 's major suppliers are * * *. * * * supplied * * * percent of their pipe and tube until 1988.

* * *.--* * * alleged a lost sale on * * * to * * *. * * * sizes of light-walled rectangular pipe and tube of mixed tonnage and length were listed in this allegation. * * * reported that they bought * * * tons of Argentine tubing from * * * on * * *. * * * also bought * * * tons of the Argentine product from * * * on * * *. * * * stated that in both cases, at the time of the purchase, * * * was not aware that the tubing was from Argentina. * * * estimated that * * * percent of * * * 's product line was U.S.-produced, but that imports are occasionally purchased because of the lower price.

* * *.--* * * alleged a lost sale on * * * to * * *. * * * sizes of light-walled rectangular pipe and tube of mixed tonnage and length were listed in this allegation. * * * could not recall the specific transaction, but reported that in 1988 they purchased Argentine tubing from * * *. * * * reported that the majority of their pipe and tube is domestically produced. * * * bought from * * * years ago but now purchases mainly from * * * because it offers a greater variety of pipe and tube sizes.

* * *.--* * * alleged a lost sale on * * *, of tubing valued at * * * to * * *. * * * reported that they have not bought imported tubing in the last * * *. * * * 's main suppliers are * * *. * * * used to be a supplier, but they priced themselves out of the market. * * * also made one or two buys from * * * last year. * * * believes that * * * gets its tubing from * * *.

* * *.--* * * alleged a lost sale on * * * to * * *. * * * sizes of light-walled rectangular pipe and tube of mixed tonnage and length were listed in this allegation. * * * stated that they did not purchase any foreign tubing at that time. * * * commented that * * * is when the domestic producers increased their prices, and while some representatives of domestic firms did contact him, he did not receive any price quotes for an order. * * * added that he purchases primarily U.S.-produced tubing, but he does stock foreign product along with the domestic product for * * * of the * * * sizes that he inventories. These * * * sizes are the most popular sizes that he sells and the lower price is the reason for stocking the foreign product.

* * *.--* * * alleged a lost sale of light-walled rectangular pipe and tube valued at * * * to * * * in * * *. Seven different products were included in the alleged order. * * * reported that she did purchase Argentine pipe and tube in * * * because of the price difference between the imported and the domestic product. * * * said that for * * * company to purchase foreign tubing over domestic tubing there has to be a tremendous difference in price to compensate for the cost of maintaining larger inventories. Last * * *, * * * reported, the foreign tubing was available at up to 25 percent less than the domestic product. * * * said that the prices are now much closer together.

* * *.--* * * named * * * in * * * lost sale allegations, * * * of which occurred in * * * and * * * in * * *. The total value involved in the allegations was * * *. * * * stated that imported tube was delivered during * * *, but that it was ordered in * * *. * * * said that 90 percent of their product line is U.S.-produced, but that imports are occasionally purchased because of the lower price.

* * *.--* * * alleged the loss of a sale of * * * tons of light-walled rectangular tubing to * * * in * * * due to price competition from Taiwan-produced tubing. Representatives of * * * could not recall the specific transactions, but reported that their firm, as a rule, receives bids for U.S. products only from mills in * * *.

* * *.--* * * alleged the loss of a sale of * * * tons of light-walled rectangular tubing to * * * in * * * to tubing imported from Taiwan. Representatives of * * * could not recall the specific transactions, but reported that their firm also receives bids for U.S. products only from mills in * * *.

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during January 1986-September 1988 the nominal value of the Argentine austral depreciated by 92.6 percent against the U.S. dollar, while the value of the currency of Taiwan appreciated by 36.5 percent (table 19). 1/ Adjusted for relative movements in producer price indexes, the real value of the Argentine austral depreciated by 1.9 percent against the U.S. dollar over the periods for which data were available, 2/ and the currency of Taiwan appreciated by 23.3 percent relative to January-March 1986 levels.

1/ International Financial Statistics, December 1988, except as stated.

2/ The most recent real exchange rate data for the currency of Argentina is for October-December 1987.

Table 19

Nominal exchange rates of the Argentine austral and the New Taiwan dollar in U.S. dollars, real exchange-rate equivalents, 1/ and producer price indexes in Argentina and Taiwan, 2/ indexed by quarters, January 1986-September 1988

Period	Argentina				Taiwan		
	U.S. pro-ducer price index	Pro-ducer price index	Nominal exchange-rate index	Real exchange-rate index <u>3/</u>	Pro-ducer price index	Nominal exchange-rate index	Real exchange-rate index <u>3/</u>
	--US dollars/austral--				--US dollars/NT\$--		
1986:							
Jan.-Mar...	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apr.-June..	98.1	107.8	94.3	103.6	99.8	102.3	104.1
July-Sept..	97.6	127.9	82.3	107.9	98.9	104.9	106.3
Oct.-Dec...	98.0	150.9	69.6	107.2	98.2	108.1	108.4
1987:							
Jan.-Mar...	99.1	176.9	57.0	101.7	97.2	112.3	110.2
Apr.-June..	100.7	204.4	49.7	100.9	96.4	121.1	116.0
July-Sept..	101.9	275.1	37.3	100.7	95.7	128.8	121.0
Oct.-Dec...	102.3	428.2	23.4	98.1	94.7	132.8	122.9
1988:							
Jan.-Mar...	102.7	<u>4/</u>	18.3	<u>4/</u>	93.2	137.2	124.5
Apr.-Jun...	104.7	<u>4/</u>	11.8	<u>4/</u>	94.5	136.9	123.9
July-Sept..	105.6	<u>4/</u>	7.4	<u>4/</u>	95.4	136.5	123.3

1/ Exchange rates expressed in U.S. dollars per unit of foreign currency.

2/ Producer price indexes--intended to measure final product prices--are based on average quarterly indexes presented in line 63 of the International Financial Statistics.

3/ The indexed real exchange rate represents the nominal exchange rate adjusted for relative movements in producer price indexes in the United States and the respective foreign country. Producer prices in the United States increased 5.6 percent between January 1986 and September 1988 compared with a 4.6-percent decrease in Taiwan and a 328.2-percent increase in Argentina as of October-December 1987, the last period for which its producer price index is reported.

4/ Not available.

Note.--January-March 1986=100.0.

Source: Central Bank of China, Financial Statistics, March 1988; International Monetary Fund, International Financial Statistics, December 1988.

APPENDIX A

THE COMMISSION'S AND COMMERCE'S FEDERAL REGISTER NOTICES

**INTERNATIONAL TRADE
COMMISSION**

[Investigations Nos. 731-TA-409-410
(Final)]

**Certain Light-Walled Rectangular
Pipes and Tubes From Argentina and
Taiwan**

AGENCY: United States International
Trade Commission.

ACTION: Institution of final antidumping
investigations and scheduling of a
hearing to be held in connection with
the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-409-410 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina and Taiwan of light-walled rectangular pipes and tubes,¹ provided for in item 610.49 of the Tariff Schedules of the United States (subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States), that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determinations on or before January 30, 1989, and the Commission will make its final injury determinations by March 20, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general

¹ For purposes of these investigations, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness less than 0.156 inch (4 millimeters). Light-walled rectangular pipes and tubes are currently reported for statistical purposes under item 610.4928 of the *Tariff Schedules of the United States annotated*.

application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207 as amended, 53 FR 33041 *et seq.* (August 29, 1988)), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202-252-1172), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of light-walled rectangular pipes and tubes from Argentina and Taiwan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on June 6, 1988, by the mechanical tubing subcommittee on the Committee on Pipe and Tube Imports and by the individual manufacturers of the product that are members of the subcommittee. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 28277, July 27, 1988).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their

representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3 as amended, 53 FR 33041 *et seq.* (August 29, 1988)), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33041 *et seq.* (August 29, 1988)), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on January 24, 1989, and a public version will be issued thereunder, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on February 8, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 31, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on February 3, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is February 3, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to

a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analysis, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.22. Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 14, 1989. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before February 14, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary of the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33041 *et seq.* (August 29, 1988)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than February 21, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. The notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 7, 1988.

[FR Doc. 88-28776 Filed 12-13-88; 8:45 am]

BILLING CODE 7020-02-M

International Trade Administration

(A-583-803)

Final Determination of Sales at Less Than Fair Value; Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that light-walled welded rectangular carbon steel tubing (LWRT) from Taiwan is being, or is likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or threatening material injury to, a United States industry.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT:
Barbara Williams or Kathleen
McNamara, Office of Agreements,
Compliance, Import Administration,
International Trade Administration, U.S.
Department of Commerce, 14th Street
and Constitution Avenue, NW.,
Washington, DC 20230; telephone: (202)
377-0405 (Williams) or 377-3434
(McNamara).

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that LWRT from Taiwan is being, or is likely to be, sold in the United States at less than fair value, pursuant to section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On November 14, 1988, we made an affirmative preliminary determination (53 FR 46800, Nov. 21, 1988). The following events have occurred since the publication of that notice.

We verified the questionnaire response from Ornatube Enterprise Inc., Ltd. (Ornatube) in Taiwan between December 5 and 8, 1988.

On January 4, 1989, the Department held a public hearing. Interested parties also submitted comments for the record in their pre-hearing briefs of December 28, 1988 and in their post-hearing briefs of January 11, 1989. Interested members of the public submitted additional comments dated December 28, 1988, December 29, 1988, and January 5, 1989 regarding China Steel Corporation's two-tier pricing policy.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the *Tariff Schedules of the United States, Annotated* (TSUSA) to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified solely according to the appropriate HTS item number(s). As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The products covered by this investigation are light-walled welded carbon steel pipes and tubes of

rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch, which are currently provided for under HTS item number 7306.80.5000.

Period of Investigation

The period of investigation for LWRT from Taiwan extends from January 1, 1988 through June 30, 1988.

Fair Value Comparisons

To determine whether Ornatube's sales in the United States of LWRT from Taiwan were made at less than fair value, we compared United States price with foreign market value, using the data provided in Ornatube's responses.

To determine whether Yieh Hsing's or Vulcan's sales in the United States of LWRT from Taiwan were made at less than fair value, we compared United States price, based on the best information available, with foreign market value, also based on the best information available. We used the best information available for Yieh Hsing and Vulcan, as required by section 778(c) of the Act, because appropriate responses were not submitted.

United States Price

For Ornatube, we based United States price on purchase price (PP), in accordance with section 772(b) of the Act, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on the C&F, C&F&C, CIF, or CIFC packed prices to U.S. customers. We made deductions from purchase price for ocean freight, marine insurance, brokerage, port charges and discounts, where appropriate. We then added to this adjusted U.S. price value-added taxes incurred on merchandise sold in the home market which are rebated, or which are not collected, by reason of the exportation of the merchandise to the United States. We then made a deduction from the tax-inclusive price for inland freight.

We disallowed a claimed duty drawback for the China Steel rebate on the cost of steel coils. Instead, we accounted for this payment to Ornatube as a circumstance-of-sale adjustment (see adjustments to foreign market value). We disallowed a claimed "waiting charge" adjustment to inland freight charges on export sales, because we were unable to verify to which sales, or to how many, this waiting charge applied.

Since neither Yieh Hsing nor Vulcan responded to our questionnaire, we did not have specific data as to the quantities and prices of the subject

merchandise sold to the United States by the two companies. Therefore, we used the price information provided in the petition as the best information available, pursuant to section 778(c) of the Act. We used the U.S. purchase price in the United States as specified in the petition and made deductions for freight, insurance, handling charges, and U.S. customs duty.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated Ornatube's foreign market value (FMV) based on delivered C&F packed prices to unrelated purchasers in Taiwan. We made a deduction from these prices for inland freight. In order to adjust for any differences in packing between the two markets, we deducted Taiwanese packing costs from FMV and added U.S. packing costs, using packing costs submitted in Ornatube's questionnaire response and information received during verification.

In accordance with 19 CFR 353.15 of our regulations, we made circumstance-of-sale adjustments to FMV for differences in credit expenses and commissions. During verification, Ornatube was not able to provide adequate documentation for the home-market credit expenses it reported in its response. Therefore, we made no deduction from FMV for home-market credit expenses. We added to FMV the full amount of credit and banking expenses incurred on U.S. sales. We added U.S. commissions and deducted indirect selling expenses (adjusted to reflect verified salesmen's salaries) incurred on home market sales up to the amount of any commission expense incurred on sales to the United States, in accordance with 19 CFR 353.15(c) of our regulations. With respect to the indirect selling expenses used as an offset to U.S. commissions, we disallowed the portion of these expenses attributable to sales management salaries, because we consider management costs part of general and administrative expenses. We verified that the job duties of sales management personnel include responsibility for foreign sales as well as administrative functions unrelated to sales in the home market.

In addition, we made circumstance-of-sale adjustments to FMV for expenses incurred in purchasing "free" allotment for exports to the United States and for the rebate Ornatube received from China Steel on its purchases of raw material used in LWRT exported to the United States. We prorated this rebate to reflect the fact that Ornatube uses imported steel (not subject to the rebate)

as well as coils from China Steel in the production of LWRT.

We adjusted FMV for the estimated value-added tax burden on U.S. sales.

We did not make any difference-in-merchandise adjustment because, although Ornatube based its price comparisons in some cases on merchandise with slightly different physical characteristics, it did not specify any cost differences between the merchandise.

Finally, we disallowed an adjustment to inland freight expenses for split shipments.

As we did not have specific data with respect to the quantities and prices of the subject merchandise sold in Taiwan by Yieh Hsing and Vulcan, we used the constructed value of the merchandise provided in the petition as the best information available, in accordance with section 776(c) of the Act. The constructed value calculated in the petition was based on domestic production costs adjusted for differences in manufacturing costs in Taiwan, with the statutorily mandated addition of 10 percent of the cost of manufacture for general expenses and 8 percent of the cost of manufacture and general expenses for profit.

Currency Conversions

For comparisons involving purchase price transactions, we used the official exchange rates in effect on the dates of sale, in accordance with 19 CFR 353.56(a)(1) of the Commerce regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by Ornatube.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of LWRT from Taiwan. Under section 735(a)(3) of the Act, the Department must determine if:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Based on our analysis of the Department's import data, we find that imports of LWRT from Taiwan have not been massive over a relatively short period of time and there has been no substantial increase in imports following the initiation of this investigation.

Although imports decreased over the pre-filing period and increased subsequent to the filing, a similar pattern is observed in 1987. It is also true that aggregate imports for the post-filing period exceed imports of LWRT for the same period in 1987. However, the same relationship is evident for the pre-filing period in 1988 and the same period one year earlier. Thus it appears this trend is one of year-to-year increase in imports of LWRT from Taiwan and is unrelated to the filing of the petition. Moreover, imports in the five months following the initiation of this investigation exceed imports in the five months previous to the filing by only 4.11 percent. For these reasons, we determine that the requirements of section 735(a)(3)(B), and thus of section 735(a)(3), are not met. Critical circumstances do not exist with respect to imports of LWRT from Taiwan.

Interested Party Comments

General Comments

Comment 1: Both petitioner and respondent argue that the dumping margin we calculated for purposes of our preliminary determination for all other manufacturers, producers, and exporters was incorrect. Petitioner argues that the margin should not be based solely on Ornatube's margin, but rather on the weighted average of the margins for Ornatube, Vulcan, and Yieh Hsing. Respondent argues that the "all other" margin should be based not on Ornatube's margin, but on the highest margin found in the investigation (*i.e.*, the margin for Yieh Hsing and Vulcan).

DOC Position: We agree with petitioner that a weighted average should be used to calculate the rate for all other manufacturers, producers, and exporters. Normally, the Department uses this methodology to calculate a margin for all other manufacturers,

producers, and exporters. However, as there is no information on the record in this investigation which would allow us to reasonably calculate a weighted average, we have used a straight average of the respondents' margins for "all others."

Comment 2: Ornatube states that a circumstance-of-sale adjustment should be made for the steel coil price rebate Ornatube receives from China Steel Corporation upon the export of merchandise produced from steel purchased from China Steel. Respondent argues that circumstance-of-sale adjustments for similar rebate programs have been made in previous LTFV determinations, and that there has been no recent proliferation of two-tiered pricing schemes to warrant reevaluation by the Department of its treatment of such programs. In fact, respondent states, the courts have sustained the authority of the Department to make adjustments for such rebates in the past. Ornatube asserts that the rebate is received only on proof of export and that the rebate is directly related to each particular export transaction. Further, respondent states that the economic effect of the rebate is identical to the economic effect of a duty drawback, a program for which we would make an adjustment.

Petitioner argues that the rebate is not a circumstance of sale, but rather a difference in production costs for the products in the two markets. Petitioner argues further that granting the circumstance-of-sale adjustment for this rebate would undermine the policies underlying the antidumping and countervailing duty laws, and DOC's regulations. Petitioner asserts that DOC's authority to grant this adjustment is discretionary, and that DOC should exercise this discretion and disallow the adjustment.

The Department has allowed circumstance-of-sale adjustments for similar input price rebates in the past. See *Certain Welded Carbon Steel Standard Pipe and Tube From India, Final Determination of Sales At Less Than Fair Value*, 52 FR 9089, March 17, 1987. At the time of the preliminary determination, the Department had become concerned that allowing such circumstance-of-sale adjustments might indirectly facilitate the maintenance of barriers to trade that give rise to such two-tiered pricing schemes. For that reason, we announced our intention to reconsider this practice, and requested comments from interested parties. We received several comments on this issue from interested members of the public. Interested parties state that the

legislative history of the circumstance of sale provision makes clear that the intent of Congress in enacting this provision was that circumstance-of-sale adjustments would be made only for expenses or services that are a direct result of selling the product. They contend that export payments such as receipt of a lower price in a two-tiered pricing system, unlike the specific kinds of circumstances of sale enumerated in the Commerce regulations, do not reflect differences in selling expenses. The interested parties assert that export payments are additional revenues or benefits to exporters and do not affect the terms of the transactions between the seller and its customers. They contend the rebate is intrinsically a part of the seller-supplier relationship, rather than the seller-buyer relationship. Further, they state that counting the rebate as a circumstance of sale will only serve to encourage trade barriers which protect domestic industries and distort trade. For these reasons, interested members of the public state that the Department should exercise its discretionary authority (an authority upheld in the past by the Court of International Trade, see *Sawhill Tubular Div., Cyclops Corp. v. United States*, 666 F. Supp. 1550 (CIT 1987)) and disallow the rebate from China Steel as a circumstance of sale.

DOC Position: After considering the arguments presented by the parties and other interested persons, we are not persuaded that we should depart from the precedent in *Sawhill Tubular Div., supra*, 666 F. Supp. 1550. The export rebate received by Ornatube is directly related to and, in fact, directly contingent upon the export sale of the merchandise. Therefore, we have made a circumstance-of-sale adjustment to FMV for the steel coil price rebate, in accordance with 19 CFR 353.15 of our regulations.

The Department is aware of the argument that the granting of a circumstance-of-sale adjustment in this type of situation could encourage higher foreign tariffs and two-tier pricing. However, at this time, administrative consistency requires granting the adjustment. Other fora and other legal processes, such as the rulemaking currently contemplated by the Department, exist to address the issue of whether, in fact, adjustments in this and similar situations are appropriate.

Comment 3: Petitioner and respondent both note that the Department should correct certain errors made in its calculations of the margins in the preliminary determination. These errors involve the gross home market

price and gross U.S. price used in our calculations, the calculation of commissions on U.S. sales and indirect selling expenses on home market sales, and the calculation of the credit costs on U.S. sales.

DOC Position: We agree with all but one of these comments and have corrected these calculations in the final determination. Regarding respondent's comment that we incorrectly converted indirect selling expenses to New Taiwan dollars, these expenses were in fact converted to U.S. dollars.

Comment 4: Respondent claims that circumstance-of-sale adjustments should not be made for interest charges reported as "credit expenses" in the response and miscellaneous bank charges reported as "direct expenses" which were incurred on sales in the United States. Ornatube asserts that these expenses were not incident to bringing the merchandise to the place of delivery and, therefore, no adjustment should be made for such expenses. Petitioner asserts that the adjustment for credit expenses is correct because the charges are directly related to the sale of the merchandise.

DOC Position: We consider these expenses to be directly related to the sale of LWRT to the United States. Therefore, we have included them in our circumstance-of-sale adjustments.

Comment 5: Respondent states that if the Department makes a circumstance-of-sale adjustment using credit expenses on U.S. sales, it should use the credit expenses as reported in the response, rather than an allocation formula. Respondent states that it reported actual expenses for each sale and that the method used in calculating those expenses were verified. Therefore, there is no justification for imputing costs.

Petitioner contends that the U.S. credit expenses reported by Ornatube do not appear to account properly for imputed credit expenses between the date of shipment and the date of payment. Petitioner states that the Department's credit methodology used in the preliminary determination properly accounted for actual and imputed credit expenses, using the interest rate provided by Ornatube.

DOC Position: We verified that the credit expenses claimed on U.S. sales as reported in the response were accurate. Therefore, we have made a circumstance-of-sale adjustment using credit expenses incurred on U.S. sales as they are reported in the response, rather than using imputed credit expenses.

Comment 6: Petitioner states that Ornatube's home market indirect selling

expense claim improperly includes the salaries of sales management personnel in addition to salesmen's salaries. Petitioner argues that expenses for sales management personnel should be considered general expenses and, therefore, should be not be included as an offset to U.S. market commissions. Ornatube asserts that the Department should use the amount reported in the response for indirect selling expenses. This amount includes both salaries of sales management personnel and salesmen's salaries.

DOC Position: We agree with petitioner and have disallowed sales management salaries as an adjustment. We consider management expenses to be general and administrative expenses which should not be included in indirect selling expenses.

Comment 7: Petitioner states, with regard to critical circumstances, that the requirements of section 735(a)(3)(B) of the Act are met. Petitioner contends that there has been a substantial increase in the volume of imports of LWRT from Taiwan within a relatively short period. Respondent argues that there have not been massive imports and that any increase in the second half of 1988 is a seasonal effect and not a surge connected with this investigation.

DOC Position: We agree with respondent that the requirements of section 735(a)(3)(B) of the Act are not met. There was no substantial surge in imports of this material from Taiwan during the period subsequent to the initiation of this investigation.

Comment 8: Petitioner states that the requirements of section 735(a)(3)(A)(ii) of the Act are met with regard to critical circumstances. Petitioner argues that even if margins are below 25 percent in this case, a finding of critical circumstances is still justified because the Department has found in two previous investigations that LWRT from Taiwan was sold at LTFV in the United States. While neither investigation resulted in a final affirmative injury determination, petitioner argues that these cases still provided imputed knowledge to importers that LWRT from Taiwan was being sold at LTFV in the United States.

Respondent states that critical circumstances do not exist in this case because the requirements of subsections 735(a)(3)(A)(i) or (ii) of the Act are not met. Respondent argues that prior findings of sales at less than fair value (LTFV) do not satisfy section 735(a)(3)(A)(i); rather, there must be prior findings of dumping, i.e., both sales at LTFV and injury. Regarding subsection (ii), Ornatube contends that,

because the International Trade Commission found no injury in previous investigations of this merchandise from Taiwan, importers had no reason to believe that the subject merchandise was being sold injuriously at LTFV in the United States.

DOC Position: The Department has found that the requirements of section 735(a)(3)(B) of the Act are not met. Accordingly, critical circumstances do not exist in this case.

Petitioner's Comments

Comment 9: Petitioner argues that we should disallow the credit expense claimed on home market sales. Petitioner contends that the respondent bears the burden of substantiating any claimed adjustments to FMV, and in this case, the Department was unable to verify home market credit expenses. According to petitioner, Ornatube's company-wide accounts receivable figures are not accurate indicators of Ornatube's home market credit expenses and, therefore, should not be used as "best information available" to determine credit expenses incurred on LWRT sold in the home market.

DOC Position: We agree. During verification, the Department realized that Ornatube was unable to determine and document which home market sales incurred credit expense. Furthermore, Ornatube claimed that up to half of its home market sales were on a cash basis. Consequently, the use of any average expense for all sales would have been highly distortive.

Comment 10: Petitioner argues that we incorrectly calculated the indirect tax burden for U.S. sales. Petitioner notes that, under 19 U.S.C. 1677a(d)(1)(C), an adjustment is to be made only for those indirect taxes that the exported merchandise would have borne if sold in the home market, and asserts that, if the merchandise had been sold in the home market, it would not have incurred movement charges.

DOC Position: The Department's position is the VAT tax should be applied to exported merchandise in exactly the same way that it is applied to goods sold in the home market. Under the Taiwanese law, merchandise is taxed at the gross price to the customer, inclusive of all services and expenses, such as inland freight. We agree with petitioner, however, that offshore movement charges could not have been incurred in a home market sale. We have adjusted our calculation by subtracting ocean freight, marine insurance, brokerage and port charges from U.S. price before determining the estimated tax burden. We did not deduct inland freight before determining

the tax-inclusive price, because inland freight expenses can be incurred on a home market sale.

Comment 11: Petitioner states that the Department should deny Ornatube's request that split shipment and waiting charges be added to inland freight expenses for sales to Central Taiwan. Petitioner argues that the company's request should be denied because Ornatube was not able to provide documentation on which shipments, if any, incurred these extra charges.

DOC Position: We agree. We have disallowed any addition to inland freight expenses for split shipment and waiting charges.

Comment 12: Petitioner asserts that if the Department decides to make a circumstance-of-sale adjustment for China Steel's two-tiered pricing of coil, then to be consistent it must also make a circumstance-of-sale adjustment for expenses incurred through the buying of "free" allotment. (Under the Taiwan export licensing program, an approved applicant may pay a specified amount to the Taiwan Steel and Iron Industry Association to be allowed to export additional tonnage of certain steel products, above and beyond the company's regular allotment for steel exports. During the period of investigation, Ornatube participated in this program and paid for the ability to export additional tonnage of steel pipe under the "free" allotment provision of the program.)

DOC Position: We agree. In our calculations, we made a circumstance-of-sale adjustment for the expense incurred in buying "free" allotment for exports to the United States.

Comment 13: Petitioner states that total salesmen's salaries should be allocated over total home market sales of all products, not just home market LWRT sales.

DOC Position: We verified that sales personnel responsible for LWRT sales in the home market also sell water pipe in the home market. Additional salesmen are responsible for selling other products in the home market. Therefore, in our calculations, we allocated salesmen's salaries over both LWRT and water pipe in the home market.

Ornatube's Comments

Comment 14: With regard to section 735(a)(3)(A)(ii) of the Act, Ornatube argues that the Department's use of the 25 percent dumping margin as a test of importers' knowledge of LTFV sales is an abuse of its discretionary powers. Respondent states that it is unrealistic to expect importers to know that the exporter is selling the subject merchandise in the United States at

LTFV when the importer has no knowledge of the exporter's home market prices. Respondent points to errors in the Department's preliminary determination calculations of dumping margins as evidence of the difficulty of determining whether LTFV sales exist.

DOC Position: Section 735(a)(3)(A)(ii) of the Act requires us to determine whether importers knew or should have known that the merchandise was being sold at less than fair value. For purposes of consistency, the Department's practice has been to consider estimated margins of 25 percent or greater to be sufficient to impute knowledge of dumping.

Comment 15: Ornatube asserts that in its calculations the Department should use the verified packing expenses as reported in the response, rather than another method of calculation.

DOC Position: We agree.

Comment 16: Ornatube contends that the proper amount for credit expense on transaction #3 in the verification report is the amount reported for the sale in the response. The company asserts that an extra charge included on verification documents is not associated with the particular sale and, therefore, should not be included as a credit expense.

DOC Position: We verified that the credit expenses incurred were as stated in Ornatube's response.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of LWRT from Taiwan that are entered or withdrawn from warehouse, for consumption, on or after November 21, 1988, the date of publication of the preliminary determination in the Federal Register. The Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Ornatube Enterprise	5.51
Vulcan Industrial Corp.	40.97
Yieh Hsing Industries, Ltd.	40.97
All Other Manufacturers/Producers/Exporters	29.15

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on LWRT from Taiwan as defined in the "Scope of Investigation" section of this notice, entered or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,
*Assistant Secretary for Import
Administration.*

January 30, 1989.

[FR Doc. 89-2584 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-05-M

APPENDIX B

LIST OF WITNESSES WHO APPEARED AT THE HEARING

CALENDAR OF PUBLIC HEARINGS

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject : Certain Light-Walled
Rectangular Pipes
and Tubes from
Argentina and Taiwan

Invs. No. : 731-TA-409 and 410 (Final)

Date and Time : February 8, 1989 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room 101 of the United States International Trade Commission, 500 E Street, S.W. in Washington.

In support of the imposition of
antidumping duties:

Schagrin Associates
Washington, D.C.
on behalf of

Greg Guandolo, Inside Sales Manager,
Bull Moose Tube Co.

Don Woodruff, Southeast Regional
Sales Manager, Bull Moose Tube Co.

Chuck Nezzler, President,
Hannibal Industries, Inc.

Roger B. Schagrin)
Paul W. Jameson)--OF COUNSEL
Mark C. Del Bianco)

