

# CERTAIN LIGHT-WALLED RECTANGULAR PIPES AND TUBES FROM ARGENTINA

Determination of the Commission  
in Investigation No. 731-TA-409  
(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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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-409 (Final)

LIGHT-WALLED RECTANGULAR PIPES AND TUBES FROM ARGENTINA

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 Argentina 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 Argentina were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. § 1673).

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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/ Chairman Brunsdale and Vice Chairman 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.

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 CHAIRMAN ANNE E. BRUNSDALE  
AND VICE CHAIRMAN RONALD A. CASS

Light-Walled Rectangular Pipes and Tubes from Argentina  
Investigation No. 731-TA-409 (Final)

May 15, 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 pipes and tubes (hereinafter LWR) from Argentina. In this investigation, as in the companion investigation of LWR imports from Taiwan,<sup>1/</sup> we assess the effects of the subject imports from Argentina together with the effects of LTFV imports of LWR from Taiwan.<sup>2/</sup> These Views explain the basis for our affirmative determination in this investigation.

I. BACKGROUND

The preliminary investigation that preceded this final investigation was conducted jointly with an investigation covering imports of LWR from Taiwan.<sup>3/</sup> Subsequent to those

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<sup>1/</sup> Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, USITC Pub. 2169, Inv. No. 731-TA-410 (Final) (Mar. 1989) (hereinafter "LWR from Taiwan")

<sup>2/</sup> See id. at 3, 6-9 (Views of Acting Chairman Brunsdale and Commissioner Cass).

<sup>3/</sup> See Light-Walled Rectangular Pipes and Tubes from Argentina and Taiwan, USITC Pub. 2098, Inv. Nos. 731-TA-409-410 (Preliminary) (July 1988).

preliminary investigations, the predominant Argentine respondent, Laminfer, requested that the Department of Commerce postpone its LTFV determination of LWR imports from Argentina. Pursuant to that request, and in accordance with statute, Commerce extended the date for its final determination concerning the subject imports from Argentina to March 31, 1989.<sup>4/</sup> Accordingly, the investigations concerning imports from Argentina and Taiwan necessarily proceeded to decision at different times.<sup>5/</sup>

Notwithstanding the separation of these investigations, in our final determination in LWR from Taiwan we considered as a threshold matter in analyzing injury from Taiwanese LWR imports whether the impact of imports from Taiwan and Argentina should be assessed cumulatively.<sup>6/</sup> After reviewing the evidence in light of the statute and Commission practice, we concluded that the requirements for cumulating imports from Argentina with those from Taiwan were met.<sup>7/</sup> We then determined that the domestic LWR industry had been materially injured by reason of LTFV imports of LWR from Taiwan and Argentina.<sup>8/</sup>

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<sup>4/</sup> 54 Fed. Reg. 1199 (1989). See 19 U.S.C. § 1673d(a)(2)(A).

<sup>5/</sup> See LWR from Taiwan, supra note 1, at 6-7 (Views of Acting Chairman Brunsdale and Commissioner Cass).

<sup>6/</sup> Id. at 7.

<sup>7/</sup> Id. at 7-9.

<sup>8/</sup> Id. at 49 (Views of Acting Chairman Brunsdale and Commissioner Cass).

We also note that Commissioner Eckes, too, concluded that the record in that investigation "could support a finding of  
(continued...)

## II. LIKE PRODUCT AND DOMESTIC INDUSTRY

As we noted in LWR from Taiwan, Petitioner and Respondents in that proceeding, in keeping with prior decisions in which the Commission has consistently defined LWR as one like product,<sup>9/</sup> agreed that the like product under investigation in that case was all light-walled rectangular pipes and tubes.<sup>10/</sup> Since Laminfer has not taken issue with the like product definition, we see no reason on the record of this investigation to break with those prior determinations. We therefore conclude that the like product in this case is LWR, and that the domestic industry consists of domestic producers of that product.

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<sup>8/</sup>(...continued)

material injury as well as threat of material injury." Id. at 54 n. 16 (Views of Commissioners Eckes and Newquist). Commissioner Eckes explained that he had decided to join Commissioner Newquist in a "threat of material injury" determination, rather than join us in drafting a majority opinion, "in deference to the Court of International Trade..., which has suggested that joint views 'expedite the review process,'" id. (citing USX Corp. v. United States, 12 Ct. Int'l Trade \_\_\_, 682 F. Supp. 60, 63 n.3 (1988)). We read the court's statement in that footnote -- that "a single majority opinion with the necessary dissents or additional views would expedite the review process" -- as encouraging Commissioners in such circumstances to join their colleagues who found present injury in order to create a majority determination.

<sup>9/</sup> LWR from Taiwan, USITC Pub. 2169 at 3 (Views of Acting Chairman Brunsdale and Commissioner Cass) (citing Certain Welded Carbon Steel Pipes and Tubes from Taiwan, USITC Pub. 1994 at 3-4, Inv. No. 731-TA-349 (Final) (Views of Chairman Liebeler and Vice Chairman Brunsdale)).

<sup>10/</sup> Id. (citing Pre-Hearing Brief of Petitioners at 4; Pre-Hearing Brief of Ornatube at 4).

### III. CUMULATION

As noted above, we cumulated the subject imports of LWR from Taiwan and Argentina in LWR from Taiwan. In this investigation, we are confronted with the mirror image of the issue we faced then, i.e., whether it is appropriate to cumulate imports from Taiwan with those from Argentina. For the reasons below, we conclude that the statute requires us to cumulate imports from the two countries under the circumstances of this investigation.

As we observed in LWR from Taiwan, the Commission is required under Title VII to assess cumulatively the effects of imports from two or more countries of products subject to investigation if such imports "compete with each other and with like products of the domestic industry in the United States market."<sup>11/</sup> 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

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<sup>11/</sup> 19 U.S.C. § 1677(7)(C)(iv).

- (4) whether the imports are simultaneously present in the market.<sup>12/</sup>

In our view, the requirements for cumulating imports from Taiwan with those from Argentina are met. The evidence suggests that the subject imports of hot-rolled LWR, which account for the substantial majority of the volume of LWR sales under investigation, are essentially fungible, both with one another and with the domestic like product.<sup>13/</sup> Imports from Argentina and Taiwan frequently enter the United States through the same ports, e.g., in California, Texas, and Puerto Rico, and are sold

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<sup>12/</sup> See, e.g., Certain Telephone Systems and Subassemblies Thereof from Japan, Korea and Taiwan, USITC Pub. 2156 at 68, Inv. Nos. 731-TA-426-428 (Preliminary) (Feb. 1989) (Additional Views of Commissioner Cass). 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 des Flores v. United States*, 12 Ct. Int'l Trade \_\_\_\_, 704 F. Supp. 1068 (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.

<sup>13/</sup> Final Staff Report to the Commission on Inv. No. 731-TA-410 at A-31-32 (hereinafter Taiwan Report). 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").

in the same markets.<sup>14/</sup> A substantial portion of domestically produced LWR and a significant majority of the imports from Argentina and Taiwan ultimately are sold to end-users via distributors, called steel service centers, in essentially the same channels of distribution.<sup>15/</sup> Finally, subject imports from both countries have been present in increasing numbers throughout the period of investigation.<sup>16/</sup> Under such circumstances, and considering that Respondent Laminfer does not 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 Argentina and Taiwan in determining whether the domestic industry has suffered material injury by reason of the subject imports.<sup>17/</sup>

#### IV. MATERIAL INJURY BY REASON OF LTFV IMPORTS

In this investigation, we conclude, as we did previously, that the domestic LWR industry is materially injured by reason of

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<sup>14/</sup> Taiwan Report at A-6; Prehearing Brief of Petitioners at 6-7.

<sup>15/</sup> Taiwan Report at A-6; Prehearing Brief of Petitioners at 8.

<sup>16/</sup> See, e.g., Taiwan Report at A-27.

<sup>17/</sup> 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 (Feb. 15, 1989), 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.

dumped imports of LWR from Argentina when cumulated with those from Taiwan. Imports of LWR from Argentina and Taiwan were investigated simultaneously in investigations 731-TA-409 (Argentina) and 731-TA-410 (Taiwan); the public hearings for the two investigations were held jointly; and Respondent Laminfer actively intervened in the Taiwan investigation (opposing cumulation there of imports from Argentina). Rather than fully restate our analysis set forth in LWR from Taiwan, we incorporate here the views set forth in that investigation.<sup>18/</sup> The analyses set forth in our prior investigation apply equally here, as the facts adduced in the two investigations and arguments advanced in them by parties are virtually identical. We add here only a brief exposition of that analysis and its application.

First, we should note that our interpretations of the statutory inquiry directed by Title VII, while closely related, are not identical. We both read the statute as directing as clear and accurate an examination of actual effects of the subject, unfairly traded imports as possible. The factors to be considered in such an examination are set forth in Title VII, but the precise means for analysis of those factors is left to each commissioner, and we do not follow exactly the same analytical route.

We also note that some factual evidence of record in this investigation differs in minor respects from that in our prior

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<sup>18/</sup> See LWR from Taiwan, USITC Pub. 2169 at 3-49 (Views of Acting Chairman Brunsdale and Commissioner Cass).

investigation. The most significant difference is that in its final determination in this investigation Commerce lowered the dumping margin for LTFV imports of LWR from Argentina from its preliminary determination of 92.30 percent ad valorem<sup>19/</sup> to 56.26 percent ad valorem.<sup>20/</sup> Petitioners essentially argue that, even at the lower rate, the dumping margin is still "large", and that the domestic LWR industry is suffering material injury by reason of dumped imports from Argentina.<sup>21/</sup> Respondent Laminfer, in contrast, contends, as it argued with respect to the preliminary margin, that even the significantly lower margin has "no basis in reality,"<sup>22/</sup> and that the domestic industry is "increasingly healthy economically" and thus is not materially injured.<sup>23/</sup>

We believe that the Petitioners' argument is more fully in accord with the entire record. Although the dumping margin for Argentina is not so large as previously indicated, the evidence respecting the volumes of imports, the magnitude of dumping, and

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<sup>19/</sup> 53 Fed. Reg. 46,900 (1988).

<sup>20/</sup> 54 Fed. Reg. 13,913, 13,914 (1989).

<sup>21/</sup> See Reply Brief of Petitioners at 1-3 (Apr. 7, 1989).

<sup>22/</sup> Post-hearing Brief of Laminfer at 2 (Apr. 7, 1989). Laminfer disputes the accuracy of the final dumping margin "because it was not calculated using actual sales and cost data, but rather on the basis of what Commerce termed 'best information available' (once again, allegations of the petitioners)." As each of us stated in LWR from Taiwan, however, the Commission must consider the dumping margin determined by Commerce, even if that margin was computed using only the "best information available." LWR from Taiwan, USITC Pub. 2169 at 26 & n.58, 37 & n.90.

<sup>23/</sup> Post-hearing Brief of Laminfer at 1 (Apr. 7, 1989).

the markets for LWR from Argentina and Taiwan indicates the existence of a large gap between the actual, dumped price of LWR from Argentina and Taiwan and the "fair" price of such imports. As we explained in our views in LWR from Taiwan, the effect of these imports appears to have been to reduce sales of domestic LWR in the U.S. significantly and less significantly to suppress prices for domestic LWR.

LWR is used principally for such items as fencing, window guards, and railings for construction and agriculture. Demand for LWR, thus, depends largely on the amount and value of commercial and residential construction activity. The record shows that U.S. consumers of LWR do not vary the amount of LWR purchased as the price of LWR changes. This relative inelasticity of demand for LWR accords with other record evidence that the lower price of the subject imports did not produce increased overall demand for the domestic like product.

Further, the domestic and foreign product are relatively substitutable. The uses of LWR for which the timing of shipments and the risk to the product's finish pose problems are not ones for which the subject imports are employed. Hence, the record supports Petitioners' contention that the lower, dumped prices of the subject imports increased sales of those imports at the expense of sales of the domestic like product. The existence of available domestic capacity to produce LWR is consistent with evidence of moderate to high elasticity of supply. While this supports the evidence offered by Petitioners that the domestic

industry was able to supply the bulk of purchases by customers who bought the subject imports, it also supports evidence relied on by Respondents to show that the effect of the subject imports on prices of the domestic like product was slight.

In sum, we find that the total effect of the Argentinean and Taiwanese imports on domestic producers' revenues was not great, but suggests an impact well above de minimis and within the range we have found to be consistent with material injury. Moreover, as we noted in LWR from Taiwan, other data of record 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, we note that Laminfer's argument respecting the industry's health is not dispositive. Each of us has explained before the impact of industry health on our analysis,<sup>24/</sup> and Laminfer's arguments do not suggest to either of us that a negative result is indicated here. Specifically, we do not regard the law as containing a requirement that an industry be "unhealthy" in order to demonstrate the requisite injury from

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<sup>24/</sup> See, e.g., LWR from Taiwan, USITC Pub. 2169 at 12-15 (views of Acting Chairman Brunsdale), 48 (views of Commissioner Cass); Digital Readout Systems and Subassemblies Thereof from Japan, USITC Pub. 2150 at 34-35 (Views of Acting Chairman Brunsdale), 117-19 (Concurring and Dissenting Views of Commissioner Cass), Inv. No. 731-TA-390 (Final) (Jan. 1989); 3.5" Microdisks and Media Therefor from Japan, USITC Pub. 2170 at 52-57, Inv. No. 731-TA-389 (Final) (Mar. 1989) (Dissenting Views of Commissioner Cass).

unfairly traded imports, as Laminfer's argument implies. In this investigation, for example, the industry's health is by no means so strong as to raise appreciably the quantum of harm that constitutes material injury, harm that must be deemed not to be "inconsequential, immaterial, or unimportant."25/

#### V. 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 pipes and tubes from Taiwan.

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25/ 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 Argentina that are being sold at less than fair value (LTFV). 1/

Like Product and Domestic Industry

The domestic industry against which the impact of alleged LTFV imports is to be assessed is defined in the Tariff Act of 1930 as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major portion of the total domestic production of that product." 2/ A like product, in turn, is defined as a product that is "like, or in the absence of like, most similar in characteristics and uses with the [imported] article." 3/

In this final investigation, we adopt the same like product and domestic industry determinations reached in the Commission's recent final antidumping investigation on certain light-walled

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1/ There has been no allegation in this investigation that the establishment of a domestic industry has been materially retarded by reason of the subject imports.

2/ 19 U.S.C. § 1677(4)(A).

3/ 19 U.S.C. § 1677(10).

rectangular pipes and tubes from Taiwan 4/ and in the preliminary investigation on imports of this product from both Taiwan and Argentina. 5/ Thus, we find the like product to be domestically produced light-walled rectangular pipes and tubes (LWR) and the domestic industry to be the domestic producers of LWR.

Condition of the Domestic Industry

When evaluating the condition of the domestic industry, the Commission considers, among other factors, apparent consumption of the like product, shipments, the capacity of the industry to produce the like product, production, capacity utilization, inventory levels, employment, and financial performance. 6/ In our recent final investigation on LWR imports from Taiwan, we found the domestic industry to be in better condition than in 1982 and 1983 when earlier investigations on this product were

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4/ Certain Light-Walled Rectangular Pipes And Tubes From Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989).

5/ Light-walled Rectangular Pipes and Tubes from Argentina and Taiwan, Invs. Nos. 731-TA-409-410 (Preliminary), USITC Pub. 2098 (July 1988) at 3-6. The final investigation on LWR from Taiwan, ibid, was concluded March 20, 1989. The instant investigation by the Commission was postponed, due to the grant of respondent Laminfer's request for an extension at Commerce, which postponed the final determination by Commerce to March 30, 1989. See Final Determination of Sales at Less Than Fair Value: Light Walled Rectangular Carbon Steel Tubing from Argentina, 54 Fed. Reg. 13913 (April 6, 1989).

6/ 19 U.S.C. § 1677 (7)(C)(iii).

conducted. 7/ We attributed this improvement to increasing U.S. consumption over the period of investigation as well as the presence of voluntary restraint agreements on steel imports (VRAs). 8/ 9/

Various indicators show improvement in the condition of the domestic industry from 1985 to 1987. 10/ Production, domestic shipments, and employment all increased during this period. 11/ Domestic production capacity and capacity utilization also

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7/ See, e.g., 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).

8/ Certain Light-walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410, USITC Pub. 2169 (March 1989) at 52, A-30. With respect to the impact of VRAs on domestic steel producers, see, e.g., The Western U.S. Steel Market: Analysis of Market Conditions and Assessment of the Effects of Voluntary Restraint Agreements on Steel-Producing and Steel-Consuming Industries, Inv. No. 332-256, USITC Pub. 2165 (March 1989).

9/ In this Opinion, we shall cite the Staff Report issued in conjunction with the Commission's determination in LWR from Taiwan, which contains the same information obtained in the investigative record for this investigation.

10/ A more detailed discussion of industry performance appears in our opinion on LWR from Taiwan. USITC Pub. 2169 at 52-53. We incorporate it here by reference.

11/ Taiwan Report at A-8, A-9, and A-11.

increased over this period. 12/ Inventory levels rose, however, both in absolute terms and as a percentage of shipments. 13/

By interim (January-September) 1988, the domestic industry's performance showed some signs of weakening. Despite a significant increase in domestic consumption, domestic production and shipments declined slightly compared with the interim period in 1987, 14/ and domestic inventories continued to increase. 15/

Notwithstanding increases in production, shipments, and net sales over much of the period of investigation, the financial performance of the domestic LWR industry has been mixed. The aggregate value of net sales rose steadily during the period of investigation, and increased by almost 29 percent in interim 1988, reflecting an increase in the cost of hot-rolled steel coil and a corresponding increase in the price of LWR. 16/ Nevertheless, the number of producers remaining in the industry

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12/ Id. at A-8.

13/ Id. A-10.

14/ Taiwan Report at A-8, A-9, and A-30.

15/ Taiwan Report at A-10. We also note that domestic production capacity increased 4.7 percent in interim 1988 compared with interim 1987, and capacity utilization decreased roughly 5 percent. Id. at A-8.

16/ Id. at A-9 and A-13.

declined. 17/ In 1986, three of 12 firms responding to Commission producer questionnaires reported operating losses on their LWR operations, and four firms reported operating losses in 1987. 18/ Operating income as a percent of sales declined by almost 50 percent from 1985 to 1986, before increasing slightly in 1987. In interim 1988, the industry operating margin increased again, but it remained slightly below the level in 1985. The operating margin also lagged behind the performance of the producers' overall operations, 19/ as well as that of the iron and steel industry as a whole. 20/

In sum, despite both an increase in demand for LWR (particularly over the period 1987 through September 1988), and the presence of voluntary restraint agreements limiting imports from traditional foreign suppliers of LWR, there are areas wherein the condition of the domestic industry has not improved and has even declined. In our view, this industry is vulnerable to injury caused by unfairly traded imports from sources of supply like Argentina.

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17/ Id. at A-6.

18/ Id. at A-15.

19/ Id. at A-18.

20/ Id. at A-18.

Threat of Material Injury by Reason of LTFV Imports From Argentina 21/

The statute directs us to consider certain factors when determining whether imports subject to investigation threaten material injury to a domestic industry. 22/ These factors include the ability and likelihood of foreign producers to increase their level of exports to the United States; unused production capacity of foreign producers; any rapid increase in market penetration by the subject imports; the 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. 23/ 24/

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21/ Pursuant to 19 U.S.C. §1671(d)(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.

22/ 19 U.S.C. § 1677(7)(F).

23/ Commissioner Eckes reached an affirmative determination concerning imports from Argentina and, therefore, he finds it unnecessary to cumulate imports from that country with those from Taiwan that were recently the subject of final affirmative determinations by the Commission and Department of Commerce. An antidumping order has been issued against those imports. 54 Fed. Reg. 12467 (March 27, 1989).

24/ Commissioner Newquist notes that although it would be permissible to cumulatively assess certain effects of LTFV imports of LWR from both Argentina and Taiwan, he has not done so  
(continued...)

The information available on the record before the Commission indicates that the Argentine LWR industry has substantially increased its production capacity, from 119,290 tons in 1985 and 1986 to 158,746 tons in 1987. Figures for the interim periods again indicate a major expansion in capacity--from 67,548 tons in interim 1987 to 91,158 tons in interim 1988. 25/ Capacity utilization also increased throughout the period of investigation. 26/

The trends with respect to the volumes of LTFV imports from Argentina demonstrate an ability on the part of Argentine producers to increase, or reduce, their exports to the United

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24/ (...continued)

in this investigation, inasmuch as he concludes that the subject imports from Argentina, standing alone, pose a threat of material injury to the domestic industry. See Certain Light Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989) at 55 n.20.

25/ Counsel for respondent Laminfer has stated that the interim data, calculated on the basis of "practical" capacity, are more representative than the data regarding annual capacity, which are based on a concept of "theoretical" capacity. Regardless, the trends under either definition reflect a substantial increase in capacity during the period 1987 through interim 1988. Taiwan Report at A-25, Table 12; EC-M-161 at 8.

26/ Id. The use of a different definition of production capacity, as noted above, accounts in part for a much higher capacity utilization rate in the interim periods than for 1985-1987, annually. On an annual basis, reported capacity utilization increased from 42.5 percent in 1985 to 55.7 percent in 1987. Interim data reflect 83.9 percent capacity utilization in interim 1987 and 92.7 percent capacity utilization in interim 1988. Report at A-25, Table 12.

States very rapidly. The quantity of imports from Argentina rose from 121 tons in 1985 to 1,846 tons in 1986, and then jumped to 14,744 tons in 1987. The subject imports also rose dramatically during interim 1988, increasing from 5,756 tons in January to September 1987 to 25,624 tons in January to September 1988. 27/ This increase occurred in spite of a complete cessation of Argentine imports of LWR into the United States after July, 1988. 28/ The increase in Argentine imports was most notable in May and June of 1988, just prior to and soon after the filing of the petitions initiating these investigations. 29/

Although the U.S. market for LWR expanded during the period of investigation, Argentina was able to capture a rapidly increasing share of the market, until the sudden cessation of imports in mid-1988. 30/ In 1985, the Argentine imports held less than 0.05 percent of the U.S. market, and in 1986, 0.7 percent. By 1987, Argentine imports had captured 5.1 percent of the U.S. market. In spite of the mid-1988 cessation of export

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27/ Id. at A-27.

28/ Id. at A-29.

29/ Id.

30/ Apparent U.S. consumption of LWR expanded by ten percent from 1985-1987 and again, by roughly twelve percent, during the interim period 1988 compared to the interim period in 1987. Taiwan Report at A-30.

shipments to the United States, Argentine imports accounted for 10.4 percent of the market during the January to September 1988 interim period, compared to only 2.6 percent in the same period of 1987. 31/

In addition to these steady increases in import penetration levels, inventory levels for Argentine imports increased substantially both by volume and as a percent of the total Argentine imports during the latter part of the period of investigation. This increase was particularly evident during the 1988 interim period, just prior to the cessation of imports. 32/

LTFV imports of light-walled rectangular pipes and tubes from Argentina were sold at prices substantially below domestic prices throughout the period of investigation. The pricing data collected by the Commission show that import prices rose from 1986 to 1988, as did domestic prices, but that the imports undersold domestic LWR for all products and time periods for which comparative data were available. 33/ The Commission confirmed a number of reported sales lost to imports from Argentina. 34/ Notwithstanding the longer lead times required

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31/ Taiwan Report at A-30.

32/ Id. at A-21. The exact figures are confidential.

33/ Taiwan Report at A-34, Table 17.

34/ Id. at A-37-A-38.

for the delivery of imported LWR from Argentina, imported and domestically produced LWR are largely interchangeable, and purchasers generally reported lower price as the reason for purchasing the subject imports. 35/

Laminfer, the principal Argentine exporter, argued that other export markets have become more attractive than the United States and, thus, imports from Argentina do not pose a threat to the domestic industry. 36/ However, since producers in Argentina shipped over 90 percent of their expanding exports to the United States each year until interim 1988, 37/ it is reasonable to conclude that the U.S. market would again be an attractive export market if the Argentine imports were not facing antidumping duties. 38/

Laminfer further contends that various developments relating to Argentine export subsidy programs and a recent investigation into those programs by the Department of Commerce also reduce the likelihood of future exports of LWR to the United States from

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35/ Id. at A-37-A-38.

36/ Posthearing Brief on Behalf of Laminfer S.A. at 8.

37/ Taiwan Report at A-25, Table 12.

38/ We are not persuaded that, in the absence of antidumping duties, third countries would remain more attractive export markets than the United States due to the relative strength of their currencies vis-a-vis the U.S. dollar. See Tr. at 127; Petitioners' Post-Hearing Brief at 5.

Argentina. Laminfer reports that in June 1988, it formally renounced any rights to claim benefits under the Argentine Government's export subsidy program known as the "PEEX."<sup>39/</sup> This program, authorizing a grant to exporters in the amount of 15 percent of the F.O.B. value of certain exports (including LWR), has also apparently now been repealed by the Argentine Government.<sup>40/</sup> According to Laminfer, it was the PEEX program that "was responsible for the increase in Argentine imports."<sup>41/</sup>

The PEEX and several other Argentine export subsidy programs were also the subjects of a recent countervailing duty investigation by Commerce, wherein Commerce imposed a final countervailing duty rate on LWR imports from Argentina in the amount of 9.25 percent.<sup>42/</sup>

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<sup>39/</sup> See Pre-Hearing Brief on Behalf of Laminfer, S.A. at 22-23.

<sup>40/</sup> Id. See also Commerce's Final Determination in Countervailing Duty Investigation of Certain Welded Carbon Steel Pipe and Tube Products from Argentina, 53 Fed. Reg. 37619, 37623 (Sept. 27, 1988).

<sup>41/</sup> Pre-Hearing Brief on Behalf of Laminfer, S.A., at 22.

<sup>42/</sup> Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products from Argentina, 53 Fed. Reg. 37619, 37628 (Sept. 27, 1988). Because Argentina is not a "country under the [GATT] Agreement" on Subsidies and Countervailing Measures, for purposes of section 701(b) of the Act, Argentina is not entitled to an injury determination by the Commission in CVD investigations.

(continued...)

Laminfer contends that these developments -- the present unavailability of PEEEX benefits and the 9.25 percent cash deposit required on all imports of LWR from Argentina 43/ -- now pose major obstacles to future exports of LWR from Argentina to the United States for the foreseeable future. 44/

We have carefully considered this argument by Laminfer, particularly in light of the statutory command that any affirmative threat determination by the Commission must be based upon evidence that "the threat of material injury is real and that actual injury is imminent." 45/ We recognize that the imposition of CVD duties and rescission of the PEEEX export subsidy program may well reduce the incentive on the part of Argentine LWR producers to export to the United States. However, we are not persuaded that these developments eliminate incentives

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42/ (...continued)

Compare 19 U.S.C. §§ 1303 and 1671. We note that in its final CVD determination, Commerce found that Laminfer had not received benefits under the PEEEX program during the period of review, although benefits may well have been paid at other times over the period under investigation by the Commission. The 9.25 percent duty was imposed to countervail other subsidy programs.

43/ The 9.25 percent cash deposit would be required until such time as Commerce could complete an administrative review of its determination, which cannot be requested until September 1989, or, presumably, until such time as that determination may be reversed by the Court of International Trade.

44/ Pre-Hearing Brief on Behalf of Laminfer, S.A. at 23-24.

45/ 19 U.S.C. §1677(7)(F)(ii).

to continue to export LWR at less-than-fair-value or dispel the threat of material injury which we find supported by our consideration of other statutory threat factors.

First, it is true that exports from Argentina have largely ceased since June 1988, when Laminfer renounced any claim to benefits under PEEEX shortly before that program was repealed. However, it was also in June 1988 that the petition was filed in this investigation, and thus it is not clear to us that the cessation of exports from Argentina was not "tactical maneuvering after the filing of an antidumping petition" to which the Commission may give little or no weight. 46/ Second, it would seem that the claimed effect of the repeal of the PEEEX program would apply in respect to all Argentine exports of LWR, not only exports to the United States. Yet, since mid-1988, exports to third countries have increased, not decreased. 47/

In addition, data concerning the pricing of Argentine imports belies the suggestion that the sole incentive for export sales to the United States was to capture PEEEX export bounties

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46/ Phillip Brothers, Inc. v. United States, 640 F. Supp. 1340, 1346 (C.I.T. 1986).

47/ Staff Report at A-25, Table 12. Moreover, respondent has not demonstrated to our satisfaction that other countries are now more attractive than the United States as export markets for the sale of Argentine LWR, due to relative strength of their currencies vis-a-vis the U.S. dollar.

ranging as high as 15 percent, or that the loss of such bounties coupled with the imposition of a 9.25 percent countervailing duty on Argentine LWR will necessarily preclude future exports at less than fair value. We note that the dumping margins pertaining to LTFV imports from Argentina have been calculated to be 56.26 percent ad valorem. 48/ Further, in a number of Commission pricing comparisons, the subject imports undersold domestically produced LWR by margins in excess of 20 and as much as 30 percent. 49/ Thus, we are not persuaded that in the absence of offsetting antidumping duties, significant quantities of LWR imports from Argentina will not continue, as they did throughout much of the period of investigation, to be sold in the United States at less than fair value.

Argentina has substantial capacity to produce LWR, a deteriorating domestic economy that will depress domestic consumption, and, therefore, the need to export LWR. 50/ The strong U.S. market will continue to be an attractive target for these exports.

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48/ Final Commerce Determination, 54 Fed. Reg. 13914 (April 6, 1989).

49/ Taiwan Staff Report at A-34, Table 17.

50/ Taiwan Staff Report at A-25, Table 12.

The domestic LWR industry was able to enjoy a rapidly expanding market during the latter part of this investigative period. Thus, it was able to raise prices to meet escalating costs and avoid a deteriorating condition in the industry. However, the industry would have great difficulty pricing its product at profitable levels if it were to continue to lose market share to unfairly traded imports from Argentina.

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



Dissenting Views of Commissioner Seeley G. Lodwick

Inv. # 731-TA-409 (Final)

Light-Walled Rectangular Pipes & Tubes from Argentina

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 Argentina.<sup>1</sup>

In the companion case regarding imports of light-walled rectangular pipes and tubes from Taiwan,<sup>2</sup> I defined the like product and domestic industry consistent with previous findings<sup>3</sup> and I determined that this industry is not materially injured nor in a condition to be vulnerable to injury. Since I determined this industry is not materially injured and in fact in an improved condition since 1985, I did not examine the issue of causation.<sup>4</sup> Further, I found it inappropriate and speculative to cumulate for purposes of a threat analysis, subject imports from Taiwan and Argentina, given the disparity in recent import volume levels between the two countries.<sup>5</sup> I reaffirm these findings in this case, as the record pertaining to these issues and factors is the same as in the

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

<sup>2</sup> Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub 2169 at 59.

<sup>3</sup> Light-Walled Rectangular Pipes and Tubes from Argentina and Taiwan, Invs. Nos. 731-TA-409 & 410 (Preliminary), USITC Pub at 4 and 6.

<sup>4</sup> Light-Walled Rectangular Pipes and Tubes from Taiwan (Final) at 62.

<sup>5</sup> Id. at 66.

companion case regarding Taiwan.

The remaining issue for me to address concerns the threat of injury by the subject imports from Argentina.

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. <sup>6</sup> 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." <sup>7</sup>

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 subject imports from Argentina have increased their U.S. market share from 0% in 1985 to 5.1% in 1987 (10.4% in interim 1988) in quantity and from 0% in 1985 to 3.5% in 1987 (7.1% in interim 1988) in value terms during the period of investigation. <sup>8</sup> During the same time, however, the market share of the domestic industry has also increased in

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<sup>6</sup> 19 U.S.C. 1677(7)(F).

<sup>7</sup> Id.

<sup>8</sup> Report of the Commission at A-30, Table 16.

value terms.<sup>9</sup> It is my view that much of the Taiwanese and Argentine import penetration appears to be replacing the imports of other countries such as Japan, which are subject to quantity restrictions.<sup>10</sup>

Argentina's capacity utilization increased from 42.5% in 1985 to 55.7% in 1987.<sup>11</sup> The data show steep increases in capacity utilization to near full capacity in the interim periods.<sup>12</sup> These interim numbers may have upward biases because of differences in reporting techniques. That is, according to the respondent, the lower capacity utilization figures represented a "theoretical" capacity utilization and new methods illustrate a "practical" capacity.<sup>13</sup>

Over the period of investigation, the Argentineans have success-

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<sup>9</sup> Id.

<sup>10</sup> See the testimony before the U.S. International Trade Commission of Roger B. Schagrin, 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. Schagrin 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.

<sup>11</sup> Staff Report at A-25, table 12.

<sup>12</sup> Id.

<sup>13</sup> Posthearing Brief on Behalf of Laminfer S.A. (April 7, 1989) at 7-8.

fully developed export markets outside of the U.S. The share of total Argentinean exports coming to the U.S. has decreased from 90.2% in 1985 to 60.4% in the interim 1988 period. <sup>14</sup> The Argentineans ceased shipments to the U.S. as of May 1988, so it seems they have had success in diverting these exports to other countries.

The petitioners have argued that there is a potential for product shifting to LWR from circular pipe and tubing. <sup>15</sup> As mentioned before, this is not a relevant consideration because it could not occur "without idling the additional equipment needed to produce circular pipes and tubes which are not needed to produce LWR pipes and tubes." <sup>16</sup>

The Respondent cites three reasons which reduce the likelihood of future injury from Argentinean imports. These include the weaker U.S. dollar relative to other currencies, a countervailing duty imposed on Argentinean imports entering the U.S. of 9.25%, and the termination of the export subsidy PEEEX program. <sup>17</sup> The dollar depreciation and the duties serve as a means to divert Argentine exports away from the U.S. to other countries, while the PEEEX program determination reduces the incentive to export regardless of destination.

Importers' inventories of Argentinean steel have increased substantially over the period of investigation. <sup>18</sup> However, inventories repre-

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<sup>14</sup> Id. staff report at A-37, Table 12.

<sup>15</sup> Petitioner's Post-Conference Brief at 30.

<sup>16</sup> Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-211 (Final), USITC Pub. 1799 (1986).

<sup>17</sup> Laminfer's Pre-Hearing Brief (February 3, 1989) at 22 and 27-8.

<sup>18</sup> Id. at A-21, table 10.

sent only a small portion of the subject imports from Argentina and a very small share of total U.S. consumption in interim 1988. <sup>19</sup>

Prices of the domestically produced product have increased substantially over the period of investigation. Prices of the Argentinean imports have also increased substantially. However, there were reported margins of underselling in each of the product comparisons since late 1986. <sup>20</sup> The Petitioners have claimed that domestic prices would have increased by an even larger amount without this price suppressing effect of the imports. <sup>21</sup> I do not consider the Argentinean imports to have a material price suppressing effect on the market, given the large increases in domestic prices.

Given the health of the domestic industry, the success of the Argentineans to develop export markets outside of the U.S., encouraged in part because of a weaker U.S. dollar; the ability of the domestic industry to obtain higher prices in spite of increasing Argentinean imports, and the imposition of a countervailing duty in the U.S. on Argentinean imports, I do not consider a potential increase in imports from Argentina to be a real and imminent threat of material injury.

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 Argentina.

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<sup>19</sup> Id.

<sup>20</sup> Report at A-33 and A-36.

<sup>21</sup> Petitioners' Pre-Hearing Brief at 14.



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

**Light-Walled Rectangular Pipes and Tubes  
from  
Argentina  
Inv. No. 731-TA-409 (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 Argentina. I further determine that the domestic industry producing LWR pipe is not threatened with material injury by reason of such imports.

For purposes of these views, I incorporate my earlier views as expressed in *Certain Light-Walled Rectangular Pipes and Tubes from Taiwan*, Determination of the Commission in Investigation No. 731-TA-410 (Final), USITC Publication 2169 at 67 (March 1989)(Taiwan LWR opinion). I further concur in the views of my colleague, Commissioner Lodwick, contained in this investigation.

I wish only to add certain elements of the analysis of the issue of threat. First, my analysis of the Argentine industry and imports leads me to conclude that imports are likely to continue to come into the U.S. market, but that the exponential growth of such imports is unlikely to continue.<sup>1</sup> Second, it is likely that these imports will come into the U.S. market at prices below the domestic product. It is unlikely, however, that this will have an impact on U.S. prices, as I have concluded that they did not have such an impact during the period of

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<sup>1</sup> Within the U.S., the market vacuum caused by the imposition of the VRA's has been largely resolved and, in Argentina, the incentives to export to the U.S. lessened by the elimination of the subsidy program. Therefore while it is unlikely that the current lack of any imports from Argentina will continue, several of the major factors behind the exponential growth of the imports over the period of investigation no longer apply.

investigation.<sup>2</sup> Finally, as I stated in the Taiwan LWR opinion, given the condition of the domestic industry, I cannot conclude that any potentially adverse effects from these imports are likely to be a cause of material injury within a time frame that can reasonably be described as imminent.<sup>3</sup>

I have therefore made a negative determination.

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<sup>2</sup> This is explained more fully in the Taiwan LWR opinion at pages 70-72.

<sup>3</sup> *Id.* at 72-74.

## 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/

On January 30, 1989, and March 30, 1989, Commerce made its final determinations that light-walled rectangular pipes and tubes from Taiwan and Argentina, respectively, are being sold in the United States at LTFV, and published notices in the Federal Register (54 F.R. 5532 and 54 F.R. 13913, respectively). On March 20, 1989, the Commission issued its determination that an industry in the United States is materially injured or threatened with material injury by reason of imports of light-walled rectangular pipes and tubes from Taiwan, and published a notice in the Federal Register (54 F.R. 12960). The Commission is scheduled to vote on the investigation concerning light-walled rectangular pipes and tubes from Argentina on May 9, 1989, and to issue its final determination on that investigation on May 15, 1989.

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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.

## 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 (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/

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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).

## Nature and Extent of Sales at LTFV

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 Argentina 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 Argentina 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 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 this investigation exceeds the United States price.

Commerce made its final determination that imports of light-walled rectangular pipes and tubes from Argentina 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 Argentina effective April 6, 1989. Commerce used the petitioner's data for the U.S. price and foreign market value (based on the average home-market price for light-walled rectangular pipes and tubes) for Laminfer, S.A., which accounted for virtually all exports of the subject merchandise to the United States during the period of investigation. Petitioner's data were used because Laminfer submitted new questionnaire responses during and after the verification process, which must be disregarded under Commerce Department regulations. The estimated amount by which the foreign market value of the merchandise subject to investigation exceeded the U.S. price was 56.26 percent ad valorem.

## Report Format

This report is designed to be used in conjunction with the Commission report entitled Certain Light-Walled Rectangular Pipes and Tubes from Taiwan: Determination of the Commission in Investigation No. 731-TA-410 (Final) . . ., USITC Publication 2169, March 1989. That report includes information relevant to the investigation on imports from Argentina as well as to that on imports from Taiwan with respect to the product, U.S. channels of distribution, U.S. producers, U.S. importers, consideration of alleged material injury, consideration of the question of threat of material injury, and consideration of the causal relationship between imports of the subject merchandise and the alleged material injury.



APPENDIX A

THE COMMISSION'S AND COMMERCE'S FEDERAL REGISTER NOTICES

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**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,<sup>1</sup> 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

<sup>1</sup> 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 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

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**INTERNATIONAL TRADE  
COMMISSION**

(Investigation No. 731-TA-410 (Final))

**Light-Walled Rectangular Pipes and  
Tubes From Taiwan; Import  
Investigation Determination**
*Determination*

On the basis of the record<sup>1</sup> developed in the subject investigation, the Commission determines,<sup>2</sup> 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<sup>3</sup> or threatened with material injury<sup>4</sup> by reason of imports from Taiwan of light-walled rectangular pipes and tubes,<sup>5</sup> 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 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 FR 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.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 20, 1989. The views of the Commission are contained in USITC Publication 2169 (March 1989), entitled 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.

By Order of the Commission.

Kenneth R. Mason,  
*Secretary.*

Issued: March 23, 1989.

[FR Doc. 89-7420 Filed 3-28-89; 8:45 am]

BILLING CODE 7020-02-M

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

<sup>2</sup> Commissioners Lodwick and Rohr dissenting.

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

<sup>4</sup> 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.

<sup>5</sup> 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 810.49 of the Tariff Schedules of the United States and were reported for statistical purposes under item 810.4928 of the Tariff Schedules of the United States Annotated.

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# Notices

Federal Register

Vol. 54, No. 65

Thursday, April 6, 1989

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[A-357-802]

**Final Determination of Sales at Less Than Fair Value: Light-Walled Welded Rectangular Carbon Steel Tubing From Argentina**

**AGENCY:** Import Administration,  
International Trade Administration,  
Department of Commerce.

**ACTION:** Notice.

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**SUMMARY:** We determine that light-walled welded rectangular carbon steel tubing from Argentina is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist

with respect to imports of the subject merchandise from Argentina. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Argentina as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the date of publication of this notice, whether these imports are materially injuring, or threatening with material injury, an industry in the United States.

**EFFECTIVE DATE:** April 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Alain Letort or Richard Capwell, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-2312 (Capwell).

**SUPPLEMENTARY INFORMATION:**

**Final Determination**

We have determined that light-walled welded rectangular carbon steel tubing from Argentina is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated margin of sales at less than fair value is 56.26 percent *ad valorem*, as shown in the "Continuation of Suspension of Liquidation" section of this notice.

**Case History**

On November 14, 1988, we made an affirmative preliminary determination in this case (53 FR 46898—November 21, 1988). The following events have occurred since the publication of that notice.

On November 18, 1988, in response to our deficiency letter of October 26, 1988, we received a revised response from Laminfer S.A. ("Laminfer") of Rosario, Argentina, which accounted for virtually all exports of the subject merchandise to the United States from Argentina during the period of investigation. On December 1, 1988, we received a request from counsel for Laminfer to participate in the hearing scheduled for January 4, 1989. On December 7, 1988, less than a week before the verification, Laminfer submitted a completely revised response, supplemented a day later by a submission on advertising expenses incurred in the home market. We verified the responses submitted by Laminfer from December 12 to December 17, 1988, in Rosario. On

December 27, 1988, counsel for Laminfer withdrew its request to participate in the hearing. With the agreement of the petitioners, we cancelled the hearing schedule for January 4, 1989.

On December 28, 1988, we received a revised response from Laminfer as a result of our findings at verification. On January 4, 1989, we received initial briefs from petitioners and respondent. The same day, counsel for Laminfer requested that we postpone the date of the final determination until not later than 135 days after the date of publication of the preliminary determination, pursuant to section 735(a)(2)(A) of the Act. On January 6, 1989, we issued a notice postponing the final determination until March 31, 1989 (54 FR 1199—January 12, 1989). We received written comments from petitioners and respondent with respect to the verification on March 20, 1989, and rebuttal briefs from both parties on March 22, 1989.

**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 product covered by this investigation consists of light-walled welded carbon steel pipes and tubes of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch, currently classifiable under item number 7306.60.50.00 of the HTS.

**Period of Investigation**

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

**Fair-Value Comparisons**

To determine whether the sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value as specified below.

For the reasons cited below, we have determined, in accordance with section 776(c) of the Act (19 U.S.C. 1677e(c)), that use of the best information otherwise available (BIA) is appropriate in this case. This statutory provision requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation."

Subsequent to our preliminary determination in this case, and less than a week before verification, Laminfer submitted on December 7, 1988, a revised response supplementing and correcting its earlier submissions. In addition to correcting obvious clerical errors and reformatting the tapes in a more consistent and computer-readable manner than was previously the case, Laminfer's December 7 submission contained changes in product matches and corrections to the finishes, the dimensions, the weights, and the dates of sale for both home-market and U.S. sales.

At the outset of the verification the following week, Laminfer submitted to the Department's case analysts on site in Argentina a completely new listing of U.S. sales replacing that submitted on December 7, 1988. By Laminfer's own admission, this substitution was motivated by the fact that the dates of sale and the sale prices reported in the December 7 response were in error, which caused Laminfer to report certain sales that were outside the period of investigation.

As the verification proceeded, the Department's case analysts discovered that Laminfer mistakenly had not reported all sales of such or similar merchandise in the home market, as required by the questionnaire pursuant to section 773(a) of the Act (19 U.S.C. 1677b(a)). Instead, acting on its belief that round tubing sold in the home market was most similar to the merchandise sold in the United States, Laminfer had reported home-market sales consisting almost exclusively of round tubing, leaving a considerable number of sales of rectangular (including square) tubing unreported. Laminfer then submitted at the verification site a new listing of home-market sales of rectangular (including square) tubing and asked that it be verified. The case analysts verified this new information after warning Laminfer that the Department was not likely to accept such a massive revision this late in an investigation.

As a result of this delay in the verification process, a number of deductions and adjustments claimed by Laminfer were either not verified (theoretical versus actual weight, foreign inland insurance, sales commissions in the United States, home-market packing, inventory carrying costs, and bad debt) or were only partially verified. For example, Laminfer withdrew its claim that an adjustment be made to allow for physical differences in the merchandise sold in Argentina and the United States, which was no longer valid since the adjustment had been calculated on the basis of comparisons between round tubing sold in the home market and rectangular (including square) tubing sold in the United States, and reintroduced the previously calculated differences in merchandise as an adjustment to allow for differences in quantities sold in both markets. At verification, Laminfer documented only one of the sixty monthly difference-in-merchandise/difference-in-quantity adjustments it claimed, an adjustment which it selected itself and which had already been elaborated on in the response. As time had run out because of Laminfer's own delays and mistakes, the Commerce analysts were unable to select at random other products and other months to verify, which they normally would have done.

Subsequent to the verification, on December 28, 1988, three months after the original questionnaire response was due and a month and a half after our preliminary determination, Laminfer submitted to the Department yet another revised response that incorporated all the changes mentioned above. While the Department allows minor revisions to questionnaire responses after the preliminary determination and during verification, it is well-established Department policy not to accept new responses after the preliminary determination because at that point in an investigation there is insufficient time for the Department to analyze and verify properly the new information. Had we accepted this information for use in this determination, we would have been required to analyze, among other things, Laminfer's new product matches, costs relating to difference-in-quantity adjustments, and new U.S. and home-market sales data within the strict statutory deadlines of the investigation.

The untimely submission of key information only days before, during, and after the verification precluded the Department from conducting a reasonable and thorough analysis of this information prior to the verification, just as petitioners were unable to comment

on the new responses. Because the recalculations and revisions carried out at verification substantially exceeded any methodological problems and mathematical errors that are commonly found, the Department cannot properly base its determination on the information submitted during and after verification by the respondent. It is the responsibility of respondents to provide an accurate and complete response prior to the preliminary determination and verification so that the Department may fully analyze the response and other parties may comment on it. The purpose of verification is to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department (see *Chinsung v. United States*, Slip op. 89-15 [Court of International Trade—February 7, 1989]). For these reasons, we have disregarded all of Laminfer's responses for purposes of this final determination. Accordingly, we used the information in the petition as BLA for purposes of this final determination.

#### United States Price

Since we did not have specific data as to the quantities and prices of the subject merchandise sold in the United States, we used the price information provided in the petition as the best information available, pursuant to section 776(c) of the Act. We deducted freight, U.S. customs duties, and brokerage and handling charges from the United States price estimated by petitioners. We made an addition to United States price for indirect taxes which were later rebated by reason of the exportation of the subject merchandise to the United States, in accordance with section 772(d)(1)(C) of the Act. Consistent with our practice in past investigations [see, e.g., *Barbed Wire and Barbless Fencing Wire From Argentina; Final Determination of Sales at Less Than Fair Value* (50 FR 38563—September 23, 1985)], we limited the addition to 6.34 percent of the value of the exported product, which is the amount of allowable indirect taxes found to have been paid by Laminfer in the concurrent countervailing duty investigation of the subject merchandise [see *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products from Argentina* (53 FR 37619—September 27, 1988)].

#### Foreign Market Value

Since we did not have specific data with respect to the quantities and prices of the subject merchandise sold in Argentina or third countries, we used

the average home-market price of the subject merchandise provided in the petition as the best information available, pursuant to section 776(c) of the Act.

#### Critical Circumstances

The petitioner alleges that "critical circumstances" exist with respect to imports of LWRT from Argentina. Under section 735(a)(3) of the Act, critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(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 Bureau of the Census import data, we find that imports of LWRT from Argentina have not been massive over a relatively short period of time. Therefore, we need not address the issues of whether importers knew, or should have known, that the exporters were selling the subject merchandise at less than its fair value, or whether there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation.

In light of the above, we determine that critical circumstances, within the meaning of section 735(a)(3) of the Act, do not exist with respect to imports of LWRT from Argentina.

#### Interested Party Comments

##### General Comments

*Comment 1.* Respondent argues that its third-country sales, particularly those to France, provide a more appropriate basis of comparison with sales to the United States because sales to France and the United States are made in comparable quantities while home-market sales are made in smaller quantities than U.S. sales.

Petitioners, however, contend that non-physical characteristics such as sales volume are irrelevant in selecting similar merchandise for purposes of fair-value comparisons. Since there are sufficient home-market sales with which to compare sales to the United States, the Department has no legal basis to use third-country sales in making fair-value comparisons.

*Doc Response.* We agree with petitioners, and have disregarded Laminfer's third-country sales for purposes of this final determination.

*Comment 2.* Respondent submits that sales of the subject merchandise are made at vastly different levels of trade in Argentina and in the United States. In Argentina, Laminfer sells relatively small quantities of LWRT to a large number of wholesalers, retailers, and end-users, while in the United States it sells very large quantities of LWRT to a small number of trading companies. Respondent argues therefore that the Department should use only those home-market sales made at the nearest comparable commercial level of trade to sales in the United States, i.e., sales to wholesalers, in making its fair-value comparisons.

*Doc Response.* Because we are using the best information otherwise available in making our final determination, this point is moot.

*Comment 3.* Respondent argues further that, even if the Department should use sales to wholesalers in Argentina as a basis of comparison for sales to trading companies in the United States, an adjustment is necessary to account for differences in commercial levels of trade affecting price comparability between the two countries.

Petitioners argue, however, that level-of-trade adjustments are predicted solely on the basis of cost differences among various levels of trade in the domestic market. According to petitioners, the Department, upheld by the Court of International Trade, has consistently denied such a claim where different levels of trade do not exist in the home market, or where differences in cost cannot be quantified. Because Laminfer did not provide any evidence of cost differences among levels of trade in its domestic market, petitioners argue, there is no basis for a level-of-trade adjustment in this case.

*DOC Response.* See response to Comment 2.

*Comment 4.* Respondent contends that, because Laminfer sells LWRT in Argentina in much smaller quantities than in the United States, the Department should make an adjustment to foreign market value to allow for

these differences in quantities. Laminfer claims that the Department verified these differences, quantified in the September 26, 1988 response but mistakenly labeled as difference-in-merchandise adjustments.

Petitioners argue that the Act and Commerce Regulations allow a difference-in-quantity adjustment only in cases where the amount of any price differential is wholly or partly due to differences in the quantities sold. Petitioners note that, as a matter of policy, the Department does not make a quantity adjustment based solely on cost savings arising from differences in production runs or differences in the cost of raw materials. In addition, petitioners claim that Laminfer incorrectly quantified the proposed adjustment by dividing monthly costs by the tonnage sold during the month. Because there is no correlation between the variable costs of LWRT manufactured in a given month and the amount of LWRT sold in the same month, Laminfer's methodology does not accurately measure variances in home-market costs. For these reasons, petitioners argue, the Department should deny this claimed adjustment.

*DOC Response.* See response to Comment 2.

*Comment 5.* Respondent contends that the Department erred in not subtracting home-market commission expenses from foreign market value while it added U.S. commission expenses thereto.

Petitioners argue that the Department acted correctly, since the home-market commission expenses claimed by Laminfer are not really commission expenses but actually social welfare payments to company employees. As such, these payments are considered to be intracompany transfers of funds, which are part of the general expenses of the company, rather than costs directly related to particular sales.

*DOC Response.* See response to Comment 2.

*Comment 6.* Respondent claims that, in making an adjustment to account for the differences in selling LWRT by actual weight in the home market and by theoretical weight in the United States, the Department erred (1) by comparing the wrong columns of data, (2) in using only two weighted averages across all categories of merchandise, and (3) in adding, rather than subtracting, the cost difference to foreign market value.

Petitioners contend that the Department should disallow this claimed adjustment because Laminfer could not substantiate this adjustment at verification, nor could it confirm the actual weight of LWRT sold in the

United States. Regardless of whether this adjustment is appropriate or not, petitioners concur with the Department's methodology at the preliminary determination since in some cases the product sold in the United States was more expensive than the home-market product.

*DOC Response.* See response to Comment 2.

*Comment 7.* Respondent claims that the Department should make a circumstance-of-sale adjustment for differences in advertising expenses for purposes of the final determination.

Petitioners argue that the advertising samples submitted by Laminfer are neither product-specific nor aimed at a later purchaser of the merchandise, but rather are of a generic nature and targeted to Laminfer's own customers. The Department should therefore follow its regulations and disallow this adjustment.

*DOC Response.* See response to Comment 2.

*Comment 8.* Respondent claims that the Department erred in disallowing Laminfer's claimed circumstance-of-sale adjustment for differences in inventory carrying costs, because these costs bear a direct relationship to the sales being investigated.

Petitioners argue that the Department should disallow this adjustment since the Commerce officials were unable to verify it.

*DOC Response.* See response to Comment 2.

#### *Petitioners' Comments*

*Comment 9.* Petitioners claim the December 7, 1988 response, which was submitted sixteen days after the publication of the preliminary determination and five days before the departure of the verification team for Argentina, was untimely and precluded the Department from analyzing the information therein contained before verification. Because the revisions submitted by Laminfer were so substantial as to constitute a new response, petitioners argue further, the Department should follow its established policy not to accept entire or even partial responses shortly before or during verification and use the best information available for purposes of the final determination.

*DOC Response.* We agree. See our discussion of this issue in the Fair Value Comparisons section of this notice *supra*.

*Comment 10.* Petitioners claim that Laminfer erred in removing all sales of round mechanical tubing from its most recent submission of home-market sales.

Because omitting sales of round mechanical tubing would so greatly reduce the number of product matches as to bring the validity of our fair-value comparisons into question, petitioners argue, either Laminfer should resubmit new home-market sales data including round mechanical tubing or the Department should obtain such data from prior submissions by Laminfer.

*DOC Response.* See response to Comment 2.

*Comment 11.* Petitioners submit the Department should disallow deductions to foreign market value for foreign inland insurance, packing, bad debt, and inventory carrying costs, because Commerce officials were unable to verify them.

*DOC Response.* See response to Comment 2.

#### *Respondent's Comments*

*Comment 12.* Respondent argues that critical circumstances, as defined in section 733(e)(1) of the Act, do not exist with respect to imports of LWRT from Argentina.

*DOC Response.* We agree. Although we maintain that our preliminary affirmative determination of critical circumstances was justified based on the information available to us at the time, import data released since the preliminary determination show that imports of LWRT from Argentina were not massive in the months immediately preceding and following the preliminary determination. Therefore, our final determination with respect to critical circumstances is negative.

*Comment 13.* Respondent argues that the Department erred in using the month of sale and the first listed dimension as criteria for matching home-market sales to U.S. sales. For purposes of the final determination, respondent claims, the Department should match up sales in the two markets by month of sale, then by finish, and then by similarity in at least two dimension.

*DOC Response.* See response to Comment 2.

*Comment 14.* Respondent claims that the Department erred in not deducting certain "other discounts" from Laminfer's home-market prices although the preliminary determination does not mention that these discounts were disallowed.

*DOC Response.* See response to Comment 2.

#### *Currency Conversion*

We made currency conversions as of the date of sale in accordance with § 353.56(a)(1) of our regulations. We made all currency conversions using the

daily exchange rates certified by the Federal Reserve Bank of New York.

#### **Continuation of Suspension of Liquidation**

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of LWRT from Argentina 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 U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 56.26 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

Because our final critical circumstances determination with respect to imports of LWRT from Argentina is negative, we are terminating the retroactive suspension of liquidation ordered at the time of the preliminary determination. The U.S. Customs Service shall reimburse all cash deposits paid or bonds posted on entries of LWRT from Argentina made prior to November 21, 1988.

Article VI:5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products from Argentina* (53 FR 37619—September 27, 1988), which is 9.25 percent *ad valorem*, will be subtracted from the dumping margin for deposit or bonding purposes.

#### **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 in this case, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. If, however, the ITC determines that material injury, or threat of material injury, does exist, we will issue an antidumping duty order

directing Customs officers to assess an antidumping duty on LWRT from Argentina which is entered, or withdrawn from warehouse, for consumption, on or after the date on which liquidation was suspended. The antidumping duty will equal the amount by which the foreign market value of the subject merchandise exceeds United States price.

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

March 30, 1989.

Timothy N. Bergan,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 89-8197 Filed 4-5-89; 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 Nezzar, President,  
Hannibal Industries, Inc.

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







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INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C. 20436

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