

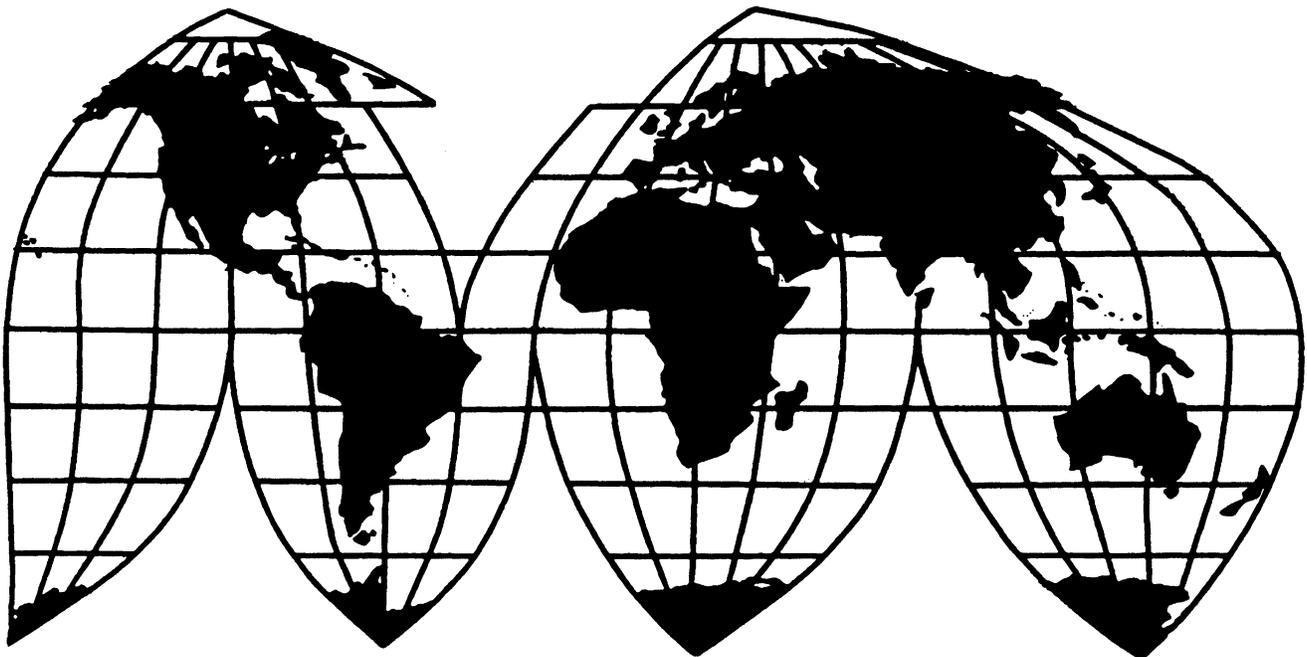
# Lawn and Garden Steel Fence Posts From China

Investigation No. 731-TA-1010 (Preliminary)

Publication 3521

June 2002

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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



# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1010 (Preliminary)

## LAWN AND GARDEN STEEL FENCE POSTS FROM CHINA

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of U-shaped or hat-shaped lawn and garden fence posts made of steel and/or any other metal, weighing one pound or less per foot, provided for in subheading 7326.90.85 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

On the basis of the record developed in the subject investigation, the Commission also determines,<sup>3</sup> pursuant to section 733(a) of the Act, that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from China of other fence posts made of steel and/or other metal including tee, farm, and sign posts weighing one pound or less per foot, provided for in subheading 7326.90.85 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at LTFV.

### COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

### BACKGROUND

On May 1, 2002, a petition was filed with the Commission and Commerce by Steel City Corporation, Youngstown, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of lawn and garden steel fence posts from

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

<sup>2</sup> Vice Chairman Hillman and Commissioner Miller dissenting.

<sup>3</sup> Commissioner Bragg dissenting.

China. Accordingly, effective May 1, 2002, the Commission instituted antidumping duty investigation No. 731-TA-1010 (Preliminary).

## VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of U-shaped or hat-shaped lawn and garden fence posts made of steel and/or any other metal, weighing 1 pound or less per foot, from China that are allegedly sold in the United States at less than fair value (LTFV).<sup>1 2</sup>

Based on the record in this investigation, we also determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of other fence posts made of steel and/or other metal, including tee, farm, and sign posts weighing 1 pound or less per foot, from China that are allegedly sold in the United States at LTFV.<sup>3</sup>

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>4</sup> In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”<sup>5</sup>

The Court of Appeals for the Federal Circuit has stated that the purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations and that the “reasonable indication” standard requires more than a finding that there is a “possibility” of material injury.<sup>6</sup> It also has noted that, in a preliminary investigation, the “[t]he statute calls for a reasonable indication of injury, not a reasonable indication of need for further inquiry.”<sup>7</sup> Moreover, the U.S. Court of International Trade recently has reaffirmed that in applying the reasonable indication “standard for

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<sup>1</sup> Commissioner Lynn M. Bragg finds that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of U-shaped or hat-shaped lawn and garden fence posts made of steel and/or other metal, weighing 1 pound or less per foot, and other fence posts made of steel and/or other metal including tee, farm, and sign posts weighing 1 pound or less per foot from China. Commissioner Bragg finds one domestic like product coterminous with the scope of the investigation. See footnotes 52 and 53 of these Views. Commissioner Bragg joins parts I, II, III, and IV of these views except to the extent otherwise indicated.

<sup>2</sup> Vice Chairman Hillman and Commissioner Miller found no reasonable indication of material injury or threat thereof by reason of subject imports from China. See their Dissenting Views.

<sup>3</sup> Whether the establishment of an industry is materially retarded is not an issue in this investigation.

<sup>4</sup> 19 U.S.C. §§ 1671b(a), 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int’l Trade 1999). We note that no party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

<sup>5</sup> American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>6</sup> American Lamb, 786 F.2d at 1004.

<sup>7</sup> Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

making a preliminary determination regarding material injury or threat of material injury, the Commission may weigh all evidence before it and resolve conflicts in the evidence.”<sup>8</sup>

As discussed below, we determine that there is a reasonable indication that the domestic industry producing U-shaped or hat-shaped lawn and garden fence posts made of steel and/or any other metal, weighing 1 pound or less per foot, is materially injured by reason of the subject imports. However, we also determine that the record of this preliminary investigation contains clear and convincing evidence that the domestic industry producing other fence posts made of steel and/or other metal, including tee, farm, and sign posts weighing 1 pound or less per foot is neither materially injured nor threatened with material injury by reason of the subject imports.<sup>9</sup>

## II. DOMESTIC LIKE PRODUCT

### A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>10</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>11</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . .”<sup>12</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>13</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>14</sup> The Commission looks for clear dividing lines among possible like products, and disregards minor variations.<sup>15</sup> Although the Commission must accept the determination of the Department of Commerce

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<sup>8</sup> R-CALF, 74 F.Supp. 2d at 1368 (Ct. Int’l Trade 1999).

<sup>9</sup> Commissioner Bragg dissenting.

<sup>10</sup> 19 U.S.C. § 1677(4)(A).

<sup>11</sup> Id.

<sup>12</sup> 19 U.S.C. § 1677(10).

<sup>13</sup> See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>14</sup> See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

<sup>15</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the domestic like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent

(continued...)

(“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>16</sup>

## **B. Product Description**

The scope of this investigation as defined by Commerce in its notice of initiation covers the following imported merchandise:

all lawn and garden steel fence posts, in whatever form, shape, or size, that are produced in the PRC. The fence posts included within the scope of this investigation weigh up to 1 pound per foot and are made of steel and/or any other metal. Imports of these products are classified under the following categories: fence posts, studded with corrugations, knobs, studs, notches or similar protrusions with or without anchor [plates]. These posts are normally “U” shaped or “hat” shaped or any other similar shape excluding round or square tubing or pipes.

These posts are normally made in two different classes, light and heavy duty. Light duty lawn and garden posts are normally made of 14 gauge steel (0.068 inches - 0.082 inches thick), 1.75 inches wide, in 3, 4, 5, or 6 foot lengths. These posts normally weigh approximately 0.45 pounds per foot and are packaged in mini-bundles of 10 posts and master bundles of 400 posts. Heavy duty lawn and garden fence posts are normally made of 13 gauge steel (0.082 inches - 0.095 inches thick), 3 inches wide, in 5, 6, 7, and 8 foot lengths. Heavy duty posts normally weigh approximately 0.90 pounds per foot and are packaged in mini-bundles of 5 and master bundles of 200. Both light duty and heavy duty posts are included within the scope of the investigation.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheading: 7326.90.85.35. Fence posts classified under subheading 7308.90 are also included within the scope of the investigation if the fence posts are made of steel and/or metal.

Specifically excluded from the scope are “tee” posts, farm posts, and sign posts, provided that the posts weigh over 1 pound per foot. Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (“Customs”) purposes, the written description of the merchandise under investigation is dispositive.<sup>17</sup>

The products at issue are metal posts that weigh up to 1 pound per foot. These posts are produced in a variety of forms, shapes, and sizes, but do not include round or square tubing or pipes.

“Lawn and garden fence posts” (or “U-posts”) are made of cold-worked mild steel and/or other metal, are U-shaped or hat-shaped, are characterized by a row of holes and tabs to help secure fencing to

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<sup>15</sup> (...continued)  
consideration of an industry adversely affected by the imports under consideration.”).

<sup>16</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

<sup>17</sup> 67 FR 37388, 37388 (May 29, 2002).

them by bending the tabs over the fence material, and weigh up to 1 pound per foot.<sup>18</sup> An anchor plate is crimped or riveted near the lower end of the post to stabilize it once driven into the ground.<sup>19</sup> Lawn and garden fence posts are designed to support fencing in home and garden applications.<sup>20</sup>

Other metal posts weighing 1 pound or less primarily consist of tee-posts and angle-posts. Tee-posts weighing 1 pound or less per foot are made by rolling red-hot high-carbon steel into a “T” shape.<sup>21</sup> Tee-posts normally have an attached anchor plate for added stability in the ground. These posts may be smooth or have a row of studs molded along their length to support fencing but require wire clips to hold the fence material to the post.<sup>22</sup> Tee-posts have primarily farm and industrial uses, including containing animals, supporting plants and trees and controlling erosion.<sup>23</sup>

Angle-posts weighing 1 pound or less per foot are likewise produced from hot-rolled high-carbon steel, and are sturdy enough to support plants and trees as grape stakes and orchard stakes. These posts are normally characterized by evenly spaced holes or notches along their length and require wire, plastic ties, or other fasteners to secure the plant or tree.<sup>24</sup>

### **C. Domestic Like Product**

Petitioner,<sup>25</sup> Steel City, contends that the domestic like product in this investigation should be lawn and garden steel fence posts.<sup>26</sup> Despite focusing on U-posts, Steel City specifically requested that Commerce define the scope of this investigation to include all metal posts weighing 1 pound or less per foot because of concern over circumvention attempts by Chinese producers if an antidumping duty order were to be issued against Chinese imports of lawn and garden steel fence posts.<sup>27 28</sup>

Respondent,<sup>29</sup> MAT, does not dispute Petitioner’s proposed like product definition for purposes of this preliminary phase of the investigation.<sup>30</sup>

Despite the Petitioner’s focus on U-posts, the Commission cannot limit its analysis of the domestic like product to only lawn and garden fence posts. The Commission must define the domestic like product(s) in reference to the articles “subject to investigation,” not just those that have actually been

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<sup>18</sup> Confidential Report, as revised by Memoranda INV-Z-091, June 13, 2002, and INV-Z-093, June 14, 2002, (“CR”) at I-3, n.13, I-6, and I-9; Public Report (“PR”) at I-3, n.13, I-5, and I-7 to I-8.

<sup>19</sup> CR at I-6; PR at I-5; Conference Transcript (“Tr.”) at 61-62 (Mr. Lee); Steel City Corporation (“Steel City”) Postconference Brief at 8-9.

<sup>20</sup> CR at I-5; PR at I-4 to I-5.

<sup>21</sup> CR at I-3, n.10 and I-11 to I-12; PR at I-3, n.10 and I-9.

<sup>22</sup> CR at I-7 and nn.30 and 34; PR at I-6 and nn.30 and 34.

<sup>23</sup> CR at I-7 and n.32; PR at I-5 to I-6 and n.32.

<sup>24</sup> CR at I-9, I-11 and n.50; PR at I-7, I-9 and n.50.

<sup>25</sup> Petitioner is Steel City Corporation (“Steel City”).

<sup>26</sup> See, e.g., Conference Tr. at 10-11 (Mr. Speece).

<sup>27</sup> See, e.g., Petition at 6, n.4; Conference Tr. at 23-24 (Ms. Stras).

<sup>28</sup> We note that Petitioner, Steel City, and its counsel mistakenly believed, and failed to confirm, that there was no domestic production of other metal fence posts weighing 1 pound or less per foot, despite having included these products in the proposed scope of the investigation.

<sup>29</sup> Respondent is Midwest Air Technologies (“MAT”).

<sup>30</sup> See, e.g., Conference Tr. at 48-49 (Mr. Lee).

imported.<sup>31</sup> Because there is domestic production of other fence posts made of steel and/or other metal, including tee, farm, and sign posts weighing 1 pound or less per foot that correspond to the scope of investigation,<sup>32</sup> the Commission must address whether it should find a single domestic like product of domestically produced articles coextensive with the scope, or two domestic like products -- one consisting of lawn and garden fence posts and the other consisting of other fence posts made of steel and/or other metal, including tee, farm, and sign posts weighing 1 pound or less per foot (hereinafter “tee- and angle-posts”).

## 1. Physical Characteristics and Uses

Lawn and garden fence posts are produced from cold-worked mild steel formed into “U” or “hat” shapes. Lawn and garden fence posts are characterized by a row of holes and tabs to help secure fencing to them by bending the tabs over the fence material.<sup>33</sup> Homeowners in suburban and rural areas use lawn and garden fence posts for numerous home and garden applications, including pet containment, plant and sapling supports, garden protection, property boundaries, and safety barriers.<sup>34</sup> Lawn and garden steel fence posts are made in both light-duty and heavy-duty weight classes.<sup>35</sup>

Tee-posts, whether under or over 1 pound per foot, are used to support plants and trees, fencing on farms and ranches (e.g., for cattle and horse containment), and erosion-control fencing (silt posts).<sup>36</sup> Tee-posts normally have an attached anchor plate for added stability in the ground. These posts may be smooth or have a row of studs molded along their length to support fencing but require wire clips to hold the fence material to the post.<sup>37</sup> Tee-posts weighing 1 pound or less per foot are sturdier than Steel City’s lawn and garden steel fence posts of comparable weight because of the hardness and tensile strength of the steel.<sup>38</sup> Steel angle-posts, whether under or over 1 pound per foot, are also strong enough to support plants and trees as grape stakes and orchard stakes. Like smooth tee-posts, angle-posts are normally characterized by holes or notches along their length and require wire, plastic ties, or other fasteners to secure the plant or tree.<sup>39</sup>

## 2. Interchangeability

Although there are overlaps in general uses of lawn and garden fence posts and other metal posts, there are limitations to the degree of interchangeability. On the one hand, tee- and angle-posts are not typically employed by residential users because there is no convenient way to attach the wire. According to Petitioner, customers value the convenience of “user-friendly” lawn and garden fence posts. On the

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<sup>31</sup> See, e.g., 19 U.S.C. § 1677(10); Fresh Garlic from the People’s Republic of China, Inv. No. 731-TA-683 (Final), USITC Pub. 2825 (November 1994) at I-7.

<sup>32</sup> CR at III-1; PR at III-1 to III-2.

<sup>33</sup> CR at I-6; PR at I-5.

<sup>34</sup> CR at I-5; PR at I-4.

<sup>35</sup> Light-duty lawn and garden posts are normally made of 14 gauge steel (.068 inch - .082 inch thick), 1 3/4 inches wide by 3 feet, 4 feet, 5 feet, and 6 feet long. These posts weigh approximately 0.45 pound per foot. Heavy-duty lawn and garden posts are usually made of 13 gauge steel (.082 inch - .095 inch thick), 3 inches wide by 5 feet, 6 feet, 7 feet, and 8 feet long. These posts normally weigh 0.90 pound per foot. See, e.g., Petition at 10.

<sup>36</sup> CR at I-7; PR at I-5 to I-6.

<sup>37</sup> CR at I-7 and nn.30 and 34; PR at I-6 and nn.30 and 34.

<sup>38</sup> CR at I-7 to I-8, n.35; PR at I-6 and n.35.

<sup>39</sup> CR at I-9; PR at I-7. See also CR at I-7, n.34; PR at I-6, n.34.

other hand, lawn and garden fence posts are not strong enough for use in agriculture and farm fencing and are not preferred in erosion control.<sup>40</sup>

### 3. Channels of Distribution

In general, both lawn and garden fence posts and tee- and angle-posts are sold to distributors, rather than end users.<sup>41</sup> Steel City contends that lawn and garden fence posts are usually sold in home-improvement or home-hardware retail stores while tee-posts are sold in farm and ranch supply stores. Although Steel City acknowledges that tee-posts may also be sold in home-improvement stores with lawn and garden fence posts, it maintains that these retail stores usually only stock one size of tee-post while displaying a wide range of sizes and lengths of lawn and garden fence posts.<sup>42</sup> Steel City's reported customer list for its lawn and garden steel fence posts \*\*\* overlap with other domestic producers' customer lists for their tee- and angle-posts weighing 1 pound or less per foot.<sup>43</sup>

### 4. Customer and Producer Perceptions

Steel City contends that its lawn and garden fence posts are not interchangeable with any other domestic product, including grape stakes, tee-posts, farm posts, and sign posts.<sup>44</sup> Petitioner asserts that these other posts, which are produced in steel mills from reheated railway rail or other scrap steel, are very hard and will break rather than bend like lawn and garden fence posts.<sup>45</sup> Other producers of metal posts weighing 1 pound or less per foot agree. \*\*\* domestic producers of tee-posts and angle-posts weighing 1 pound or less per foot reported that their posts do not compete with Steel City's lawn and garden steel fence posts.<sup>46</sup>

\*\*\* of overlap in customers purchasing lawn and garden fence posts and tee- and angle-posts suggests that customers also perceive these two products to be distinct.

### 5. Manufacturing Facilities and Production Processes

No U.S. producer produces both lawn and garden fence posts and other metal posts weighing 1 pound or less per foot.<sup>47</sup> Steel City produces lawn and garden steel fence posts either by stamping or by roll forming mild steel strip. Both stamping and roll forming are cold-working processes that do not require the steel to be heated prior to being bent into "U" or "hat" shaped profiles. Instead, Steel City fabricates steel strip into U-posts at ambient temperature through a combination of forming and piercing dies (stamping) and successive rolls (roll forming).<sup>48</sup>

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<sup>40</sup> See e.g., Conference Tr. at 15-16 (Mr. Speece).

<sup>41</sup> CR at I-15; PR at I-11.

<sup>42</sup> CR at I-15; PR at I-11. Conference Tr. at 16 (Mr. Speece).

<sup>43</sup> Steel City and importers of U-shaped fence posts weighing 1 pound per foot or less reported \*\*\* as their customers. Two or three of the domestic producers of tee-posts and angle-posts weighing 1 pound or less per foot cited their customers as \*\*\*. CR at I-16, nn.71-72; PR at I-12, nn.71-72.

<sup>44</sup> CR at I-13; PR at I-10; Conference Tr. at 15, 34-35, 40-41 (Mr. Speece) and 38-39 (Mr. Hendricks).

<sup>45</sup> CR at I-13; PR at I-11; Steel City Postconference Brief at 2-3.

<sup>46</sup> CR at I-13 to I-14; PR at I-11.

<sup>47</sup> CR at III-1 and n.2; PR at III-1 and n.2.

<sup>48</sup> CR at I-9 to I-10; PR at I-7 to I-8.

Tee- and angle-posts, whether under or over 1 pound per foot, are hot-rolled from either scrapped railway rail or newly cast rail-quality billet steel, rather than being cold-stamped from sheared mild-steel strip or cold-rolled from slit mild-steel coil like Petitioner's product.<sup>49</sup> In the rolling process, either split portions of reheated rail in a re-rolling mill or newly cast steel billets in a minimill pass through a series of mill stands with grooved rolls that progressively reduce and shape the hot steel into posts. After rolling, posts are cut to desired lengths.<sup>50</sup>

## 6. Price

According to questionnaire responses, per-pound unit values for Steel City's commercial U.S. shipments of lawn and garden fence posts ranged from \$\*\*\* to \$\*\*\* during the reporting period – considerably higher than the unit values of \$\*\*\* to \$\*\*\* per pound for domestic tee- and angle-posts weighing 1 pound or less per foot.<sup>51</sup>

As a whole, the differences between lawn and garden fence posts and other metal posts weighing 1 pound or less per foot in physical characteristics, channels of distribution, producer perceptions, manufacturing facilities and processes, and price constitute a clear dividing line for purposes of this like product analysis. Therefore, based on the foregoing, we find two domestic like products in this preliminary phase investigation. The first domestic like product consists of U-shaped or hat-shaped lawn and garden fence posts made of steel and/or any other metal ("lawn and garden fence posts" or "U-posts"). The second domestic like product consists of other fence posts made of steel and/or other metal, including tee, farm, and sign posts weighing 1 pound or less per foot ("tee- and angle-posts" or "other metal posts").<sup>52 53</sup>

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<sup>49</sup> CR at I-11; PR at I-9.

<sup>50</sup> CR at I-11 to I-12; PR at I-9 to I-10.

<sup>51</sup> CR at I-16 to I-17; PR at I-12.

<sup>52</sup> Commissioner Bragg defines a single domestic like product consisting of all lawn and garden steel fence posts weighing 1 pound or less per foot, coterminous with the scope of the investigation. Commissioner Bragg finds that the preliminary record provides insufficient evidence to support a division of the products covered by Commerce's scope into two or more domestic like products. Although the record in the preliminary phase of this investigation indicates differences in manufacturing facilities and processes, producers' perceptions, price, and physical characteristics, the limited record data do indicate some similarities in uses and channels of distribution among U-shaped and T-shaped posts, farm posts, and sign posts weighing 1 pound or less per foot. CR at I-4 n.16, I-5, I-7-9, I-15; PR at I-3 n.16, I-4-7. In addition, the record is incomplete as to interchangeability and customer perceptions for T-shaped posts, farm posts, and sign posts weighing 1 pound or less per foot. CR at I-4; PR at I-3-4. Importantly, neither party addressed the question of two separate like products for all lawn and garden fence posts weighing 1 pound or less per foot, which has limited the record information available for the Commission's review. Accordingly, Commissioner Bragg finds that the record does not provide a clear dividing line between the various products upon which clear distinctions among product types may be made. Rather, Commissioner Bragg finds that there is insufficient evidence in this preliminary record investigation to support two separate domestic like products, and therefore defines one like product consisting of all lawn and garden steel fence posts, coterminous with the scope.

Furthermore, in accordance with the American Lamb standard for preliminary phase investigations, Commissioner Bragg finds that an outcome determinative definition of the domestic like product at this preliminary stage is not appropriate given the incomplete and mixed information regarding the definition of the like product. Even if the current record reasonably supported a finding of two separate like products, there nonetheless remain significant ambiguities regarding the likelihood of imminent threat of material injury by reason of subject imports of T-shaped posts, farm posts, and sign posts, especially in light of the concerns highlighted by the petitioner about possible product shifting by subject producers toward T-shaped posts, farm posts, and sign posts, as well as the

(continued...)

### III. DOMESTIC INDUSTRY <sup>54</sup>

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . . .”<sup>55</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>56</sup>

Based on our finding that there are two domestic like products, we determine that there are two domestic industries in this investigation. One domestic industry consists of all domestic producers of lawn and garden fence posts, which is only Steel City. The second domestic industry consists of all domestic producers of other metal posts weighing 1 pound or less per foot, which includes Cascade Steel Rolling Mills, Inc., Jersey Shore Steel Co., SMI Steel Arkansas/Southern Post Co., and W. Silver, Inc.<sup>57 58</sup>

### IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS OF LAWN AND GARDEN FENCE POSTS<sup>59 60</sup>

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the

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<sup>52</sup> (...continued)

respondents’ concern about the possible unreliability of the HTS data due to inclusion of nonsubject merchandise. Therefore, Commissioner Bragg defines a single like product consisting of all lawn and garden steel fence posts weighing 1 pound or less per foot, coterminous with Commerce’s scope.

<sup>53</sup> Commissioner Bragg also considered whether to expand the domestic like product definition beyond the scope of the investigation to include lawn and garden fence posts weighing over 1 pound per foot. The evidence in the record of this preliminary phase of the investigation indicates that there are differences in physical characteristics, uses, channels of distribution, customer perceptions, price, manufacturing facilities, and interchangeability between U-shaped lawn and garden metal fence posts weighing 1 pound or less per foot and T-shaped posts, farm posts, and sign posts weighing over 1 pound per foot. CR at I-7-8, I-11, I-16-17; PR at I-5-7, I-9, I-12-13. In addition, Commissioner Bragg finds that there is limited data in the record concerning all T-shaped posts, farm posts, and sign posts. Thus, for the purposes of the preliminary investigation, Commissioner Bragg does not expand the definition of the domestic like product beyond the scope to include T-shaped posts, farm posts, and sign posts weighing over 1 pound per foot.

<sup>54</sup> There is no issue regarding related parties in this preliminary phase investigation.

<sup>55</sup> 19 U.S.C. § 1677(4)(A).

<sup>56</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F. 3d 1352 (Fed. Cir. 1996).

<sup>57</sup> The companies listed are those that responded to the Commission’s questionnaires in this investigation. CR at III-1 to III-2; PR at III-1 to III-2.

<sup>58</sup> Based upon her definition of a single domestic like product, Commissioner Bragg finds that the domestic industry consists of all domestic producers of lawn and garden steel fence posts weighing 1 pound or less per foot, including all U.S. producers of U-shaped posts, T-shaped posts, farm posts, and sign posts.

<sup>59</sup> There is no issue regarding negligibility because imports of lawn and garden fence posts from China constitute 100 percent of total imports of those products. CR/PR at Table IV-2.

<sup>60</sup> Commissioner Bragg finds that subject imports are not negligible given that imports from China constitute virtually all U.S. imports for the 12-month period preceding the filing of the petition. CR/PR at Table IV-2.

imports under investigation.<sup>61</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>62</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>63</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>64</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>65</sup>

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of lawn and garden fence posts from China that are allegedly sold in the United States at less than fair value.

#### A. Conditions of Competition

The following conditions of competition for lawn and garden fence posts are pertinent to our analysis in this investigation.

Demand for lawn and garden fence posts is driven by residential housing needs in the United States.<sup>66</sup> Apparent U.S. consumption of lawn and garden fence posts increased by \*\*\* percent between 1999 and 2000 and by \*\*\* percent between 2000 and 2001, before declining by \*\*\* percent in the first quarter of 2002 when compared to the first quarter of 2001.<sup>67</sup> Steel City anticipates continued increases in demand if the market for new housing continues to grow at its current pace.<sup>68</sup> MAT agrees with Steel City that demand for lawn and garden fence posts has been increasing over the period examined.<sup>69</sup>

The record indicates that lawn and garden fence post demand is seasonal. The \*\*\* of Steel City’s sales of such posts are made on a contract basis. Steel City typically signs contracts in August, September, and/or October of the year preceding the delivery of the product to the customer. It produces the product from November through February, and ships the product to customers from March through

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<sup>61</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>62</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also *Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>63</sup> 19 U.S.C. § 1677(7)(A).

<sup>64</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>65</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>66</sup> The record of this investigation indicates that other forms of metal posts are not directly interchangeable with lawn and garden fence posts. Steel City’s reported customer list for its lawn and garden steel fence posts \*\*\* overlap with other domestic producers’ customer lists for their tee-posts and angle-posts weighing 1 pound or less per foot. \*\*\* domestic producers of tee-posts and angle-posts weighing 1 pound or less per foot reported that their posts do not compete with Steel City’s lawn and garden steel fence posts. Moreover, Steel City’s belief that the only domestically produced products covered by the scope of this investigation were its lawn and garden steel fence posts indicates that it was completely unaware of other metal posts weighing 1 pound or less per foot in its domestic market. CR at I-13 to I-14, I-16; PR at I-10 to I-12; Conference Tr. at 22-25 (Ms. Stras).

<sup>67</sup> CR/PR at Table C-4.

<sup>68</sup> See, e.g., Conference Tr. at 27-28, 36 (Mr. Hendricks).

<sup>69</sup> See, e.g., MAT Postconference Brief at 4. MAT also maintains that, in order to reduce administrative costs and streamline orders, purchasers consider non-price factors, such as a high level of service, sufficient production capacity, and broad product mix, when choosing a supplier and that these requirements preclude Steel City from selling its product to “big box” purchasers. See, e.g., MAT Postconference Brief at 6-8.

June.<sup>70</sup> About 65 to 70 percent of Steel City's lawn and garden fence posts are shipped during the Spring season.<sup>71</sup>

The only two known sources of supply of lawn and garden fence posts in the domestic market are U.S. and Chinese producers. Steel City is the only known U.S. producer of lawn and garden fence posts,<sup>72</sup> whereas Hangzhou Hongyuan Sportsware Co., Ltd. (hereinafter called "Hangzhou") was the only reporting producer of lawn and garden fence posts in China.<sup>73</sup> Steel City, which supplies a relatively small, and declining, share of the U.S. market, is only operating at \*\*\* of its reported capacity of \*\*\* pounds.<sup>74</sup> Moreover, Steel City maintains \*\*\* inventories that are equivalent to about \*\*\* of its annual sales.<sup>75</sup> Hangzhou is operating at nearly \*\*\* of its \*\*\* pound capacity and its output is \*\*\* to U.S. sales.<sup>76</sup> Although Hangzhou maintains \*\*\* inventories in China, there are inventories of lawn and garden fence posts from China totaling approximately \*\*\* pounds in the United States.<sup>77</sup>

The degree of substitutability between lawn and garden fence posts produced in the United States and those produced in China is a point of contention between Steel City and MAT. Steel City acknowledges that the anchor plates on its lawn and garden fence posts are crimped to the post while the anchor plates on the Chinese imports are riveted to the post; however, Steel City contends that its customers have never questioned the quality of Steel City's lawn and garden fence posts, focusing instead on price.<sup>78</sup> Respondent, MAT, argues that it is not in direct competition with Steel City because MAT can supply its customers with a higher-quality product, broader product mix, and larger production volumes than Steel City.<sup>79</sup> According to MAT, home center purchasers also prefer the Chinese post because of its riveted anchor post and powder-based paint finish.<sup>80</sup>

The record indicates that U.S. and Chinese lawn and garden fence posts are used interchangeably. While the conflicting claims between the parties regarding quality cannot be resolved based on the record in the preliminary phase of this investigation, the lower prices offered by Chinese

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<sup>70</sup> See, e.g., Steel City Postconference Brief at 14-15 and Conference Tr. at 27 (Mr. Hendricks).

<sup>71</sup> See, e.g., Conference Tr. at 27 (Mr. Hendricks).

<sup>72</sup> Although Steel City is the only domestic producer of lawn and garden steel fence posts today, another larger domestic producer of lawn and garden steel fence posts, Gilbert & Bennett, closed its operations in 1998. See, e.g., Conference Tr. at 9 (Mr. Speece).

<sup>73</sup> Hangzhou is not the only Chinese manufacturer/exporter, although it claims to represent \*\*\* percent of production and exports. All of the \*\*\* importers other than \*\*\* appear to be supplied by Chinese producer(s) other than Hangzhou. CR at VII-1, n.1; PR at VII-1, n.1.

<sup>74</sup> CR/PR at Table C-4. These data appear to reflect a more reasonable estimate of capacity than the estimate that appears in Steel City's postconference brief, which is highly dependent upon certain expectations concerning number of worker shifts and use of idled equipment. In any final investigation, we intend to explore further the domestic industry's ability to supply the U.S. market and the implications arising from this supply situation.

<sup>75</sup> CR/PR at Table C-4.

<sup>76</sup> CR/PR at Table VII-1.

<sup>77</sup> CR/PR at Table VII-2.

<sup>78</sup> See, e.g., Steel City Postconference Brief at 8-9; Conference Tr. at 13 (Mr. Speece) and 79 (Ms. Stras).

<sup>79</sup> See, e.g., MAT Postconference Brief at 8-9.

<sup>80</sup> See, e.g., MAT Postconference Brief at 9.

suppliers (for at least some sizes) and the absence of apparent quality concerns expressed by \*\*\* do not suggest that the Chinese product is viewed in the market as superior to the domestic product.<sup>81 82</sup>

## **B. Volume of the Subject Imports of Lawn and Garden Fence Posts**

Section 771(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>83 84</sup>

By quantity, imports of lawn and garden fence posts from China declined from \*\*\* pounds in 1999 to \*\*\* pounds in 2000, but then increased to \*\*\* pounds in 2001.<sup>85</sup> Between interim 2001 and interim 2002, subject imports decreased from \*\*\* pounds to \*\*\* pounds. By value, subject imports initially decreased from \$\*\*\* in 1999 to \$\*\*\* in 2000, but then increased to \$\*\*\* in 2001. Between interim 2001 and 2002, subject imports declined in value from \$\*\*\* to \$\*\*\*.<sup>86 87</sup>

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<sup>81</sup> CR/PR at Tables V-1 to V-4 (price differences); CR at V-11 to V-12 (\*\*\*); PR at V-5.

<sup>82</sup> Based on her definition of the domestic industry, Commissioner Bragg finds the following additional conditions of competition to be pertinent to her analysis. Apparent U.S. consumption decreased irregularly over the POI from \*\*\* pounds in 1999 to \*\*\* pounds in 2001 (equal to a \*\*\* percent decrease overall), but between interim (January through March) 2001 and interim 2002, apparent U.S. consumption increased \*\*\* percent. Regarding supply to the U.S. market, although petitioner manufactures 100 percent of U-shaped fence posts production in the United States, petitioner accounts for only \*\*\* percent of production of the single, broader like product in the United States. Importantly, Commissioner Bragg finds that the record evidence is limited regarding the market competition between U-shaped posts and other fence posts covered by the scope of the investigation.

In addition, Commissioner Bragg notes that there is a seasonal business cycle for the U.S. steel fence post industry based on the fact that a majority of orders are placed in August through October, with shipments sent March through June. Given that the seasonality may influence both volume and price data, it will be important in any final investigation to further examine the seasonal business cycle of the domestic industry for a more complete analysis.

<sup>83</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>84</sup> Commissioner Bragg finds that despite the decrease in apparent U.S. consumption, the volume of U.S. shipments of subject imports irregularly increased by \*\*\* percent between 1999 and 2001, from \*\*\* pounds in 1999 to \*\*\* pounds in 2001. CR/PR at Table C-1. Between the interim periods, the volume of U.S. shipments of subject imports increased by another \*\*\* percent from interim 2001 to interim 2002. Subject imports’ share of the U.S. market increased from \*\*\* percent in 1999 to \*\*\* percent in 2001, but the market share of subject imports \*\*\* declined between the interim periods. U.S. importers captured market share at the expense of the domestic producer, as the domestic producer’s share of the U.S. market declined over the POI from \*\*\* percent in 1999 to \*\*\* percent in 2001, and then to \*\*\* percent in interim 2002. Nonsubject imports were not present in the U.S. market throughout the POI.

Respondents contend, however, that there is a problem with the petitioner’s volume analysis because the HTS numbers used were allegedly inflated due to the inclusion of metal or steel fence posts weighing more than 1 pound per foot. Nonetheless, the questionnaire data compiled by Commission staff indicate that the volume of subject imports has increased significantly. Furthermore, on a value basis, U.S. shipments of subject imports increased by \*\*\* percent between 1999 and 2001, and decreased by \*\*\* percent between interim periods. CR/PR at Table C-1. Thus, notwithstanding Respondents concerns regarding the import data, the preliminary record provides a reasonable indication that the absolute and relative volume of subject imports increased significantly.

<sup>85</sup> CR/PR at Table IV-2. We note that all imports of metal posts weighing 1 pound or less per foot were lawn and garden steel fence posts.

<sup>86</sup> CR/PR at Table IV-2.

<sup>87</sup> Although MAT is the \*\*\* U.S. importer of U-posts from China, \*\*\* importers (presumably unable to sell \*\*\* to the home centers emphasized by MAT) have increased their import volumes since 1999, collectively rising from

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By quantity, subject imports' market share of U.S. shipments was substantial and continued to grow over the period examined, increasing from \*\*\* percent in 1999 to \*\*\* percent in 2000 and to \*\*\* percent in 2001. Between interim periods 2001 and 2002, subject imports' market share of U.S. shipments increased from \*\*\* percent to \*\*\* percent.<sup>88</sup>

The volume of subject imports increased at the expense of the domestic industry, whose shipments continually declined from \*\*\* pounds in 1999 to \*\*\* pounds in 2000 to \*\*\* pounds in 2001, and from \*\*\* pounds in interim 2001 to \*\*\* pounds in interim 2002.<sup>89</sup>

By quantity, the market share of the domestic industry declined from \*\*\* percent in 1999, its highest level during the period examined, to \*\*\* percent in 2000 and to \*\*\* percent in 2001.<sup>90</sup> The domestic industry's market share was \*\*\* percent, compared with \*\*\* percent in interim 2001.<sup>91</sup>

For purposes of this preliminary determination, we find the volume of subject imports and the increase in volume to be significant in absolute terms and relative to consumption in the United States.<sup>92</sup>

### **C. Price Effects of the Subject Imports of Lawn and Garden Fence Posts**

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>93</sup>

The available data in this investigation indicate that domestic lawn and garden fence posts and subject imports are largely interchangeable.<sup>94</sup> Lawn and garden fence posts are produced in eight standard sizes, which suggests that these posts are not a highly differentiated product.<sup>95</sup>

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<sup>87</sup> (...continued)

\*\*\* pounds in 1999 to \*\*\* pounds in 2000 and to \*\*\* pounds in 2001. In the first quarter of 2002, such imports were \*\*\* pounds compared to \*\*\* pounds in the first quarter of 2001. Derived from Confidential Report and importer questionnaires.

<sup>88</sup> CR/PR at Table C-4.

<sup>89</sup> CR/PR at Table C-4.

<sup>90</sup> CR/PR at Table C-4.

<sup>91</sup> CR/PR at Table C-4.

<sup>92</sup> In addition, we note that subject imports increased significantly relative to production in the United States. CR/PR at Tables C-1 and C-4.

<sup>93</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>94</sup> CR at II-4; PR at II-3.

<sup>95</sup> Light-duty lawn and garden fence posts are normally made of 14 gauge steel (.068 inch - .082 inch thick), 1 3/4 inches wide by 3 feet, 4 feet, 5 feet, and 6 feet long. These posts weigh approximately 0.45 pound per foot. Heavy-duty lawn and garden fence posts are normally made of 13 gauge steel (.082 inch - .095 inch thick), 3 inches wide by 5 feet, 6 feet, 7 feet, and 8 feet long. These posts weigh about 0.90 pound per foot. See, e.g., Petition at 10.

The Commission collected pricing data for four lawn and garden steel fence post products: two light-duty lawn and garden fence post products (pricing products 1 and 2)<sup>96</sup> and two heavy-duty lawn and garden fence post products (pricing products 3 and 4).<sup>97</sup> Price comparisons for pricing products 1, 2, 3, and 4 were possible in a total of 13 quarters from January 1999 through March 2002. Underselling by the subject imports was mixed. The record indicates that prices for Chinese light-duty lawn and garden fence posts (with \*\*\* sales volumes) were generally at or below prices for Steel City's product throughout the period examined.<sup>98</sup> In contrast, the record indicates that prices for Chinese heavy-duty lawn and garden fence posts generally were above prices for Steel City's product.<sup>99 100</sup>

Chinese prices for lawn and garden fence posts increased between 1999 and 2000, and generally \*\*\* since the first quarter of 2000.<sup>101</sup> Domestic prices for lawn and garden fence posts also generally \*\*\* throughout the period examined.<sup>102</sup>

Steel City does not appear to adjust its prices in response to competition from the subject imports.<sup>103</sup> There is some evidence, however, that domestic prices have been suppressed relative to costs. The industry's unit cost of goods sold (COGS) has increased by \*\*\* percent between 1999 and 2001, and

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<sup>96</sup> Pricing Product 1 consists of light-duty lawn and garden fence posts, 14 gauge thick, 1-3/4 inches wide by 4 feet tall. Pricing Product 2 consists of light-duty lawn and garden fence posts, 14 gauge thick, 1-3/4 inches wide by 5 feet tall. CR at V-3; PR at V-2.

<sup>97</sup> Pricing Product 3 consists of heavy-duty lawn and garden fence posts, 13 gauge thick, 3 inches wide by 5 feet tall. Pricing Product 4 consists of heavy-duty lawn and garden fence posts, 13 gauge thick, 3 inches wide by 6 feet tall. CR at V-3; PR at V-2.

<sup>98</sup> For pricing product 1, the Chinese product was priced above the U.S. product in 3 quarters, with margins ranging from \*\*\* to \*\*\* percent and averaging 1.1 percent. In the other 10 quarters (for pricing product 1), the Chinese product was priced below the U.S. product, with margins ranging from \*\*\* to \*\*\* percent and averaging 7.0 percent. For pricing product 2, the Chinese product was priced below the U.S. product in all 13 quarters, with margins ranging from \*\*\* to \*\*\* percent and averaging 13.7 percent. CR at V-4; PR at V-3; CR/PR at Tables V-1 and V-2.

<sup>99</sup> For pricing product 3, the Chinese product was priced above the U.S. product in all 13 quarters, with margins ranging from \*\*\* to \*\*\* percent and averaging 27.9 percent. For pricing product 4, the Chinese product was priced above the U.S. product in 12 quarters, with margins ranging from \*\*\* to \*\*\* percent and averaging 8.7 percent. In the remaining quarter (for pricing product 4), the Chinese product was priced below the U.S. product, with a margin of \*\*\* percent. CR at V-11; PR at V-4; CR/PR at Tables V-3 and V-4.

<sup>100</sup> We note, however, that record evidence regarding prices is mixed. The parties did not argue that Chinese prices were higher than domestic prices, as the data for heavy-duty U-posts suggest. Moreover, import AUVs (and export AUVs) for Chinese U-posts generally are \*\*\* than domestic shipment AUVs, even though the importers' U.S. shipment AUVs are \*\*\* than the domestic AUVs. Finally, quotations for Chinese U-posts from two suppliers (both from February 2002) indicate prices below Steel City's price list for all products – Shandong offered a range of light-duty U-posts at 49-56 percent below Steel City's list price, and heavy-duty U-posts at 31-35 percent below Steel City's list price; Jackson Wire offered a range of light-duty U-posts at 30-42 percent below Steel City's list price, and heavy-duty U-posts at 6-11 percent below Steel City's list price. See, e.g., Petition exhibits 1 and 6.

<sup>101</sup> CR/PR at Tables V-1 to V-4. The price of the \*\*\* Chinese product (pricing product 2) has been erratic and has declined in recent quarters. CR/PR at Table V-2.

<sup>102</sup> CR/PR at Tables V-1 to V-4.

<sup>103</sup> In any final phase investigation, we intend to explore further MAT's argument that "big box" stores such as Home Depot, Lowe's, and Menard's prefer suppliers with a broader product mix and higher production capacity. The record in the preliminary phase of this investigation is not clear as to whether Steel City is "qualified" to supply "big box" retailers.

the ratio of cost of goods sold to net sales has also steadily risen over the period examined.<sup>104</sup> We intend to examine more closely the possible price suppressing effects of subject imports in any final phase investigation.<sup>105</sup>

Two of Steel City's allegations of lost sales remain unconfirmed because the purchasers in question, \*\*\*, have refused to respond to the Commission's inquiries. A third purchaser, \*\*\*, has denied Steel City's lost sales allegation, but to date has refused to provide important details.<sup>106</sup>

The limited record in the preliminary phase of this investigation is mixed with respect to underselling, indicates stable domestic prices, and does not support allegations of lost sales due to the subject imports. Therefore, on balance, we do not find the price effects of the subject imports to be significant.

#### **D. Impact of the Subject Imports of Lawn and Garden Fence Posts**

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>107</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>108 109 110</sup>

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<sup>104</sup> The domestic industry's unit (per pound) COGS increased from \$\*\*\* in 1999 to \$\*\*\* in 2000 to \$\*\*\* in 2001, and from \$\*\*\* in interim 2001 to \$\*\*\* in interim 2002. The domestic industry's COGS to net sales ratio increased from \*\*\* percent in 1999 to \*\*\* percent in 2000 to \*\*\* percent in 2001, and from \*\*\* percent in interim 2001 to \*\*\* percent in interim 2002. CR/PR at Table C-4.

<sup>105</sup> Commissioner Bragg finds that the preliminary record provides a reasonable indication of significant negative effects on the U.S. prices by reason of the subject imports. The pricing data show that price levels for both subject imports and the domestic like product were relatively \*\*\* or increased \*\*\* over the POI. CR/PR at Tables V-1-4 & Figures V-1-4. More specifically, quarterly price comparisons were mixed, as the Chinese product was priced below the U.S. product in 24 out of 52 quarters, equal to a 46.2 percent incidence of underselling, with underselling margins averaging 10.9 percent. CR at V-4; PR at V-3; CR/PR at Tables V-1-4. In addition, the average unit values of U.S. shipments and net sales declined by \*\*\* percent and \*\*\* percent, respectively, despite the \*\*\* unit COGS from 1999 to 2001. CR/PR at Table C-1. Thus, the increasing ratio of COGS/sales from \*\*\* percent in 1999 to \*\*\* percent in 2000, and to \*\*\* percent in 2001 corroborates that the domestic industry is experiencing a cost/price squeeze driven by declining price levels influenced by subject imports. CR/PR at Table C-1.

<sup>106</sup> CR at V-11 to V-13; PR at V-4-5. \*\*\* indicated that \*\*\*, and that \*\*\*. It did not give further details about its \*\*\*, \*\*\*. CR at V-11 to V-12 and n.11; PR at V-5 and n.11.

<sup>107</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

<sup>108</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812 to 813 (Prelim.), USITC Pub. 3155 at 25, n.148 (Feb. 1999).

<sup>109</sup> The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping duty proceeding as part of its consideration of the impact of imports. See 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce estimated a dumping margin of 51 to 89 percent for subject Chinese product. 67 FR 37388, 37390 (May 29, 2002).

<sup>110</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and

(continued...)

With respect to the impact of the subject imports, available data indicate that Steel City has experienced declining U.S. sales throughout the period examined,<sup>111</sup> despite an increase in apparent U.S. consumption.<sup>112</sup> Conversely, sales of lawn and garden fence posts from China increased throughout the period examined.<sup>113</sup> As a result, Steel City has seen its market share decline from \*\*\* percent in 1999 to \*\*\* percent in 2001, and to \*\*\* percent in the first quarter of 2002.<sup>114</sup> Steel City's production of lawn and garden fence posts fell by nearly \*\*\* in 2000, and remained more than \*\*\* percent below 1999 levels in 2001.<sup>115</sup> Capacity utilization fell from \*\*\* percent in 1999 to \*\*\* percent in 2000, \*\*\* percent in 2001, and \*\*\* percent in the first quarter of 2002.<sup>116</sup>

Consistent with the decline in production and sales volumes, Steel City reduced its inventory levels by more than \*\*\* between 1999 and 2001 and cut levels of hours worked and wages paid by nearly \*\*\* percent.<sup>117</sup> These reductions allowed the company to maintain manageable inventory levels (\*\*\* percent of annual shipments), generally \*\*\* levels of productivity for its work force of \*\*\* (down from \*\*\*), and \*\*\* unit labor costs of \*\*\* throughout the period examined.<sup>118</sup>

Steel City's financial performance declined over the period examined, as the quantity of net sales fell by \*\*\* percent between 1999 and 2001, and was \*\*\* percent lower in the first quarter of 2002 than in the first quarter of 2001.<sup>119</sup> The value of net sales followed a similar trend, as unit sales values \*\*\* at

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<sup>110</sup> (...continued)

Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

<sup>111</sup> Steel City \*\*\* export sales of lawn and garden fence posts. Steel City's U.S. shipments, by quantity, declined from \*\*\* pounds in 1999 to \*\*\* pounds in 2000 to \*\*\* pounds in 2001 and from \*\*\* pounds in interim 2001 to \*\*\* pounds in interim 2002. CR/PR at Table C-4.

<sup>112</sup> Apparent U.S. consumption of lawn and garden fence posts, by quantity, increased from \*\*\* pounds in 1999 to \*\*\* pounds in 2000 to \*\*\* pounds in 2001, and decreased \*\*\* from \*\*\* pounds in interim 2001 to \*\*\* pounds in interim 2002. CR/PR at Table C-4.

<sup>113</sup> U.S. shipments by Chinese importers of lawn and garden fence posts increased from \*\*\* pounds in 1999 to \*\*\* pounds in 2000 to \*\*\* pounds in 2001 and from \*\*\* pounds in interim 2001 to \*\*\* pounds in interim 2002. CR/PR at Table C-4.

<sup>114</sup> CR/PR at Table C-4.

<sup>115</sup> Steel City's production of lawn and garden fence posts decreased from \*\*\* pounds in 1999 to \*\*\* pounds in 2000, then increased \*\*\* to \*\*\* in 2001. Between interim periods 2001 and 2002, Steel City's production increased from \*\*\* pounds to \*\*\* pounds. CR/PR at Table C-4.

<sup>116</sup> CR/PR at Table C-4.

<sup>117</sup> Steel City's inventory of lawn and garden fence posts, by quantity, decreased from \*\*\* pounds in 1999 to \*\*\* pounds in 2001, but increased \*\*\* from \*\*\* pounds in interim 2001 to \*\*\* pounds in interim 2002. Hours worked by Steel City's employees declined from \*\*\* hours in 1999 to \*\*\* hours in 2001. Between interim periods 2001 and 2002, hours worked \*\*\* at \*\*\* hours. Wages paid decreased from \$\*\*\* in 1999 to \$\*\*\* in 2001. From interim 2001 to interim 2002, wages paid declined from \$\*\*\* to \$\*\*\*. CR/PR at Table C-4.

<sup>118</sup> Steel City's production workers numbered \*\*\* in 1999, but declined to \*\*\* in 2000 and to \*\*\* in 2001. Between interim 2001 and interim 2002, the number of Steel City's production workers \*\*\* at \*\*\*. Steel City's productivity decreased from \*\*\* pounds per hour in 1999 to \*\*\* pounds per hour in 2001. From interim 2001 to interim 2002, Steel City's productivity increased from \*\*\* pounds per hour to \*\*\* pounds per hour. CR/PR at Table C-4.

<sup>119</sup> Steel City's net sales, by quantity, declined from \*\*\* pounds in 1999 to \*\*\* pounds in 2000 to \*\*\* pounds in 2001 and from \*\*\* pounds in interim 2001 to \*\*\* pounds in interim 2002. CR/PR at Table C-4.

\$\*\*\* per pound throughout the period examined.<sup>120</sup> Steel City's costs, however, did not remain stable, as a result of continuously increasing factory overhead.<sup>121</sup> The company's unit cost of goods sold (COGS) rose from \*\*\* in 1999 to \*\*\* in 2000, \*\*\* in 2001, and \*\*\* in the first quarter of 2002, while its unit SG&A expense fluctuated \*\*\* over the period examined.<sup>122</sup> As a result, Steel City saw its operating income decline from \*\*\* in 1999 to \*\*\* in 2000 and to \*\*\* in 2001. Operating income of \*\*\* in the first quarter of 2002 was \*\*\* below the company's operating income level in the first quarter of 2001.<sup>123</sup> As a result, Steel City has essentially \*\*\* capital expenditures.<sup>124</sup>

Thus, the record in this investigation indicates that, by gaining significant market share at the expense of Steel City, imports of lawn and garden fence posts from China have had a significant adverse impact on the domestic industry, as reflected in the declining levels of shipments, production, and employment combined with rising levels of volume-dependent costs, and a marked decline in profitability.<sup>125</sup>

## CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing U-shaped or hat-shaped lawn and garden fence posts made of steel and/or any other metal, weighing 1 pound or less per foot, is materially injured by reason of subject imports from China that are allegedly sold in the United States at less than fair value.<sup>126</sup>

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<sup>120</sup> Steel City's net sales, by value, decreased from \$\*\*\* in 1999 to \$\*\*\* in 2000 and to \$\*\*\* in 2001, and from \$\*\*\* in interim 2001 to \$\*\*\* in interim 2002. CR/PR at Table C-4.

<sup>121</sup> Staff Worksheet dated June 13, 2002.

<sup>122</sup> Steel City's unit SG&A expense increased from \$\*\*\* in 1999 to \$\*\*\* in 2000, but \*\*\* at \$\*\*\* in 2001, interim 2001, and interim 2002. Steel City's SG&A expenses were consistently equivalent to \*\*\* percent of its net sales. See, e.g., CR/PR at Tables C-4 and VI-2.

<sup>123</sup> CR/PR at Table C-4.

<sup>124</sup> CR/PR at Table C-4.

<sup>125</sup> Based on her definition of the domestic industry, Commissioner Bragg finds that U.S. production decreased by \*\*\* percent from \*\*\* pounds in 1999 to \*\*\* pounds in 2001, and decreased by an additional \*\*\* percent between interim periods. CR/PR at Table C-1. In addition, U.S. shipments, number of production workers, net sales, and capital expenditures, also dropped over the POI. CR/PR at Table C-1. The deterioration of the domestic industry's performance is further evidenced by declines in operating income of \*\*\* percent over the POI, from \*\*\* in 1999 to only \*\*\* in 2001, and the ratio of operating income/sales, which decreased from \*\*\* percent in 1999 to \*\*\* percent in 2001. CR/PR at Table C-1. Thus, the preliminary record provides a reasonable indication that the increased presence of lower-priced subject imports in the U.S. market has had a significant adverse impact on the domestic industry.

<sup>126</sup> Commissioner Bragg finds, on balance, the record as well as the significant data concerns that arise under the American Lamb standard for preliminary investigations warrants an affirmative determination that there is a reasonable indication that an industry in the United States is presently, materially injured by reason of imports of all lawn and garden steel fence posts weighing 1 pound or less per foot from China that are allegedly sold in the United States at less than fair value.

**V. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS OF OTHER METAL POSTS<sup>127 128</sup>**

**A. Conditions of Competition**

The following conditions of competition for tee- and angle-posts are pertinent to our analysis in this investigation.

Demand for tee- and angle-posts is driven by agricultural and industrial needs in the United States.<sup>129</sup> Demand for tee- and angle-posts has not experienced the same growth as demand for lawn and garden fence posts. Tee-post producers characterize demand as “stable.”<sup>130</sup> Apparent U.S. consumption of tee- and angle-posts, in fact, decreased by \*\*\* percent in 2000 and by \*\*\* percent in 2001.<sup>131</sup>

Domestic producers are the only known source of supply of tee- and angle-posts in the U.S. market. There are no known imports of tee- and angle-posts in the relevant weight range.<sup>132</sup> There are four known producers of tee- and angle-posts weighing 1 pound or less per foot in the United States: SMI, W.Silver, Jersey Shore Steel, and Cascade Steel.<sup>133</sup>

U.S. producers’ capacity has \*\*\* throughout the period examined.<sup>134</sup> Capacity utilization was generally \*\*\* during the period examined, rising from \*\*\* percent in 1999 to \*\*\* percent in 2000 and to \*\*\* percent in 2001.<sup>135</sup> U.S. producers’ end-of-period inventories increased by \*\*\* percent from 1999 to 2001, but were lower in interim 2002 to interim 2001.<sup>136</sup>

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<sup>127</sup> Commissioner Bragg does not join Section V of these Views.

<sup>128</sup> This case presents the novel question of how the negligibility provision of the statute, 19 U.S.C. § 1677(24), which requires termination of investigations where imports account for less than 3 percent of total imports, is to be applied when there are no imports of the product from any country. Thus, the total of subject imports of these products is the same as, not less than, the total imports from all countries. While one could argue that zero imports of “other” fence posts from China is less than three percent of “total” imports of those articles, even though there are no “total” imports, the issue is essentially moot as we find no reasonable indication of material injury or threat of material injury by reason of subject imports from China.

<sup>129</sup> CR at I-3, n.10; PR at I-3, n.10. Tee-posts have primarily farm and industrial uses. They are used for supporting plants and trees, and have been adopted by the construction industry as the “method of choice” for erosion control. Angle-posts are sturdy enough to support plants and trees as grape or orchard stakes. CR at I-7, n.32, and I-9; PR at I-6, n.32, and I-7.

<sup>130</sup> CR at II-3; PR at II-2.

<sup>131</sup> Apparent U.S. consumption was \*\*\* percent higher in the first quarter of 2002 than in the first quarter of 2001. CR/PR at Table C-5.

<sup>132</sup> CR/PR at Table C-5; Petition at 6, n.4. Imports of tee, farm, and sign posts currently weigh more than 1 pound per foot. CR/PR at Tables C-2 and C-5.

<sup>133</sup> CR/PR at Table III-1.

<sup>134</sup> Capacity for the domestic industry has \*\*\* pounds on an annual basis throughout the period examined. CR/PR at Table C-5.

<sup>135</sup> CR/PR at Table C-5.

<sup>136</sup> CR/PR at Table C-5.

**B. Volume of the Subject Imports of Other Metal Posts**

We do not find volume of the subject imports to be significant because there is no subject import volume of other metal posts weighing 1 pound or less per foot.<sup>137</sup>

**C. Price Effects of the Subject Imports of Other Metal Posts**

We do not find significant price effects by reason of subject imports because there are no subject imports of other metal posts weighing 1 pound or less in the domestic market.<sup>138</sup> None of the U.S. producers reported any lost sales or lost revenues attributable to the subject tee- or angle-posts.<sup>139</sup>

**D. Impact of the Subject Imports of Other Metal Posts**

The performance of the domestic industry deteriorated between 1999 and 2001, before recovering somewhat in the first quarter of 2002.<sup>140</sup> These trends, however, are consistent with trends in apparent U.S. consumption during the period examined. We do not find a significant impact by reason of subject imports on the domestic industry because there are no subject imports of other metal posts weighing 1 pound or less per foot.<sup>141</sup>

**VI. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS OF OTHER METAL POSTS FROM CHINA**

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>142</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”<sup>143</sup> In making our determination, we have considered all factors that are relevant to this investigation.<sup>144</sup> Based on an evaluation of the relevant statutory factors, we determine that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of other metal posts weighing 1 pound or less per foot from China that are allegedly sold in the United States at less than fair value.

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<sup>137</sup> CR/PR at Table C-5.

<sup>138</sup> CR/PR at Table C-5.

<sup>139</sup> CR/PR at Table V-6.

<sup>140</sup> CR/PR at Table C-5.

<sup>141</sup> CR/PR at Table C-5.

<sup>142</sup> 19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

<sup>143</sup> 19 U.S.C. § 1677(&)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallverken Nederland B.V. v. United States, 744 F. Supp. 281 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

<sup>144</sup> 19 U.S.C. § 1677(7)(F)(i). Factors I (regarding countervailing subsidies) and VII (regarding raw and processed agricultural products) are inapplicable to this antidumping duty investigation.

We note that, consistent with the decrease in apparent U.S. consumption over the period examined, the domestic industry is experiencing decline in profitability as well as other performance indicators.<sup>145</sup> However, we nonetheless find no reasonable indication of a threat of material injury by reason of the subject imports.

The evidence in the preliminary phase of this investigation indicates that there are no imports of other metal posts weighing 1 pound or less per foot.<sup>146</sup> We note that Petitioner has expressed concern that Chinese suppliers “may” produce light-weight tee, farm, or sign posts for sale as lawn or garden fence posts in contrast with current practice.<sup>147</sup> The record suggests that this concern is highly speculative, especially in light of the lack of competition that currently exists between domestically produced lawn and garden fence posts and tee- and angle-posts, notwithstanding the fact that the latter appear to be priced substantially lower than the former on a per-pound basis.<sup>148</sup> Because there have been no imports of the subject merchandise, we find no likelihood of substantially increased imports. We also note that the record indicates that Hangzhou, which accounted for \*\*\* percent of Chinese production of all subject merchandise (including lawn and garden fence posts), has shipped only lawn and garden fence posts, but not other metal posts in the requisite weight range, to the United States during the period examined, and has \*\*\* to add or change production capacity or production in China.<sup>149</sup> We therefore find that there is no evidence of excess capacity that likely would result in a substantial increase in imports of “other” fence posts in the imminent future.<sup>150</sup> Given the lack of pricing effects we found above, we see no likelihood that any future imports will have significant adverse price effects. For similar reasons, there is little, if any, indication in this investigation that Hangzhou is maintaining significant inventories of subject merchandise or that Hangzhou is planning to engage in product-shifting in the imminent future. As previously discussed, we found no adverse impact suffered by the domestic industry due to subject imports of other metal posts. Thus, there have been no negative effects on the domestic industry’s development and production efforts, by reason of subject imports. Finally, for the reasons stated above, we do not find any other demonstrable adverse trends that would indicate imminent harm to the domestic industry by subject imports.

## CONCLUSION

For the reasons stated above, we determine that there is no reasonable indication that the domestic industry producing other fence posts made of steel and/or other metal including tee, farm, and sign posts weighing 1 pound or less per foot is materially injured or threatened with material injury by reason of subject imports from China that are allegedly sold in the United States at less than fair value.

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<sup>145</sup> Apparent U.S. consumption, by quantity, declined from \*\*\* pounds in 1999 to \*\*\* pounds in 2000, and to \*\*\* pounds in 2001. Apparent U.S. consumption increased from \*\*\* pounds in interim 2001 to \*\*\* pounds in interim 2002. CR/PR at Table C-5.

<sup>146</sup> CR/PR at Table C-5.

<sup>147</sup> Petition at 6, n.4.

<sup>148</sup> CR at I-13 to I-14 (lack of competition), CR at I-16 to I-17 and n.73 (different prices and unit values); PR at I-10 to I-11 (lack of competition), PR at I-12 and n.73 (different prices and unit values).

<sup>149</sup> CR at VII-1, n.1; PR at VII-1, n.1.

<sup>150</sup> We also note there is no evidence of antidumping duty findings or orders on the subject merchandise in other countries.



## **DISSENTING VIEWS OF VICE CHAIRMAN JENNIFER A. HILLMAN AND COMMISSIONER MARCIA E. MILLER**

Based on the record in this investigation, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of lawn and garden steel fence posts from China that are allegedly sold in the United States at less than fair value (“LTFV”).

### **I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS**

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>1</sup> In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”<sup>2</sup>

The Court of Appeals for the Federal Circuit has stated that the purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations and that the “reasonable indication” standard requires more than a finding that there is a “possibility” of material injury.<sup>3</sup> It also has noted that, in a preliminary investigation, the “[t]he statute calls for a reasonable indication of injury, not a reasonable indication of need for further inquiry.”<sup>4</sup> Moreover, the CIT recently has reaffirmed that in applying the reasonable indication “standard for making a preliminary determination regarding material injury or threat of material injury, the Commission may weigh all evidence before it and resolve conflicts in the evidence.”<sup>5</sup>

As we discuss below, based on the record of this preliminary investigation, we define the domestic like product to be consistent with the scope of the investigation; that is, all metal posts weighing one pound or less per foot, and consequently define the domestic industry as all producers of such posts. We further find that the record of this preliminary investigation contains clear and convincing evidence that this domestic industry is neither materially injured nor threatened with material injury by reason of the subject imports.

### **II. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY**

#### **A. In General**

To determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise,

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<sup>1</sup> 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int’l Trade 1999).

<sup>2</sup> American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>3</sup> American Lamb, 785 F.2d at 1004.

<sup>4</sup> Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>5</sup> R-CALE, 74 F. Supp.2d at 1368 (Ct. Int’l Trade 1999).

the Commission first defines the “domestic like product” and the “industry.”<sup>6</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>7</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . .”<sup>8</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>9</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>10</sup> The Commission looks for clear dividing lines among possible like products, and disregards minor variations.<sup>11</sup> Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>12</sup>

## **B. Product Description**

In its notice of initiation, Commerce defined the imported merchandise within the scope of this investigation as:

all lawn and garden steel fence posts, in whatever form, shape, or size, that are produced in the PRC. The fence posts included within the scope of this investigation weigh up to 1 pound per foot and are made of steel and/or any other metal. Imports of these products are classified under the following categories: fence posts, studded with corrugations, knobs, studs, notches or similar protrusions with or without anchor [plates]. These posts are normally “U” shaped or “hat” shaped or any other similar shape excluding round or square tubing or pipes.

These posts are normally made in two different classes, light and heavy duty. Light duty lawn and garden posts are normally made of 14 gauge steel (0.068 inches - 0.082 inches thick), 1.75 inches wide, in 3, 4, 5, or 6 foot lengths. These posts normally weigh approximately 0.45 pounds per foot and are packaged in mini-bundles of 10 posts and master bundles of 400 posts. Heavy duty lawn and garden fence posts are normally made of 13 gauge steel (0.082 inches -

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<sup>6</sup> 19 U.S.C. § 1677(4)(A).

<sup>7</sup> 19 U.S.C. § 1677(4)(A).

<sup>8</sup> 19 U.S.C. § 1677(10).

<sup>9</sup> See, e.g., *NEC Corp. v. Dep’t of Commerce and U.S. Int’l Trade Comm’n*, 36 F. Supp. 2d 380 (Ct. Int’l Trade 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See *Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>10</sup> See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

<sup>11</sup> *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991).

<sup>12</sup> *Hosiden Corp. v. Advanced Display Manufacturers*, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

0.095 inches thick), 3 inches wide, in 5, 6, 7, and 8 foot lengths. Heavy duty posts normally weigh approximately 0.90 pounds per foot and are packaged in mini-bundles of 5 and master bundles of 200. Both light duty and heavy duty posts are included within the scope of the investigation.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheading: 7326.90.85.35. Fence posts classified under subheading 7308.90 are also included within the scope of the investigation if the fence posts are made of steel and/or metal.

Specifically excluded from the scope are “tee” posts, farm posts, and sign posts, provided that the posts weigh over 1 pound per foot. Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (“Customs”) purposes, the written description of the merchandise under investigation is dispositive.<sup>13</sup>

Thus, the scope explicitly excludes tee posts and other posts over one pound per foot in weight, but includes such posts up to one pound per foot in weight.<sup>14</sup>

### **C. Domestic Like Product**

Parties to this investigation agreed, for purposes of this preliminary phase investigation, that the domestic like product should consist of lawn and garden steel fence posts weighing up to one pound per foot. Petitioner argued that the like product should not be expanded beyond the scope to include tee posts, farm posts, or sign posts weighing over one pound per foot, which are outside the scope of the investigation.<sup>15</sup> Respondent did not oppose petitioner’s like product definition, although it indicated that, in any final investigation, the Commission should consider expanding the like product.<sup>16</sup>

In this investigation, the scope includes all metal fence posts up to one pound per foot (with the explicit exception of round or square tubing or pipes). The domestic product corresponding to that scope includes several types of fence posts, including U-shaped posts, angle posts, and tee posts. Petitioners incorrectly stated that, apart from its lawn and garden steel fence posts (hereinafter called “U-shaped posts”), there was no other domestic production of posts corresponding to those in the scope.<sup>17</sup> As Commission Staff readily ascertained, however, there is quite a large volume of such production, such that, in 2001, petitioner’s own production accounted for about \*\*\* percent of total domestic production of the product corresponding to that in the scope.<sup>18</sup>

No party to this investigation has indicated that we should consider dividing the domestic product corresponding to the scope into more than one like product. In past investigations, when the Commission has faced the issue of whether to find multiple like products based upon alleged distinctions among types of products, it has looked for clear dividing lines in characteristics and uses of the various

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<sup>13</sup> 67 FR 37388, 37388 (May 29, 2002).

<sup>14</sup> This scope is nearly identical to that proposed by petitioner in its petition. We note that, in the petition, petitioner stated that the proposed scope “covers all posts 1 lb. and under, whatever they are called, if made of steel and/or metal.” Petition at 6 n.4.

<sup>15</sup> Petitioner’s Postconference Brief at 5-6; Conference Transcript (“Tr.”) at 14-17 (Testimony of Mr. Speece).

<sup>16</sup> Tr. at 46-49 and 64 (Testimony of Mr. Lee).

<sup>17</sup> Tr. at 23-25 (Testimony of Mr. Speece and Ms. Stras).

<sup>18</sup> Confidential Staff Report, as revised by memoranda INV-Z-091 (June 13, 2002) and INV-Z-093 (June 14, 2002) (“CR”) at I-2 n.6 and Table III-1, Public Staff Report (“PR”) at I-2 n.6 and Table III-1.

products.<sup>19</sup> If the Commission has been unable to find clear dividing lines between the range of products within the scope of the investigation, the Commission usually has determined that there is one like product.<sup>20</sup>

Nonetheless, we have examined the record with respect to this issue. As for physical uses and characteristics, all the posts are made of steel, although the U-shaped posts at issue are made from mild steel, while the tee posts and angle-shaped posts are made from rail-quality steel.<sup>21</sup> All the posts have a similar shape and have tabs, holes, or lugs to secure fencing, although the cross-sectional profile differs and the presence of holes and studs also differs; an anchor plate is often attached to the lower end of the post to stabilize it.<sup>22</sup> All posts are used for support purposes, including to support fencing and plants,<sup>23</sup> although the record indicates that the extent of overlap in uses between U-shaped posts, tee posts and angle-shaped posts up to one pound per foot in weight may be somewhat limited. The record contains no direct evidence of customer perceptions, but \*\*\* domestic producers of tee posts and angle-shaped posts weighing up to one pound per foot indicated that their posts do not compete with petitioner's U-shaped posts.<sup>24</sup> With respect to channels of distribution, the record indicates that all posts are sold to distributors instead of end-users.<sup>25</sup> The record indicates that U-shaped posts weighing up to one pound per foot are produced using different manufacturing facilities, production processes, and production employees than the other posts.<sup>26</sup> The record also indicates some difference in price, with U-shaped posts being generally more expensive.<sup>27</sup>

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<sup>19</sup> See Nippon Steel, Slip Op. 95-57 at 11; Torrington, 747 F. Supp. At 748-49.

<sup>20</sup> Steel Concrete Reinforcing Bars From Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 4-8 (April 1997)(subject small and large size bars were defined as a single product); Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, . . . and the United Kingdom, Inv. Nos. 701-319-332, . . . and 347-353 and 731-TA-573-579, . . . and 612-619 (Final), USITC Pub. 2664 at 12-14 (August 1993) (single like product of sheet and plate corresponding to scope); Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-TA-362 and 731-TA-707-710 (Final), USITC Pub. 2910 at I-8 (July 1995)(“no clear dividing line between pipe of two inches or less and pipe greater than two inches in outside diameter.”); Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Inv. Nos. 701-TA-363 and 364 and 731-TA-711-717 (Final), USITC Pub. 2911 at I-10 (August 1995)(Commission found heavyweight drill pipe was not a separate like product from other types of drill pipe, *i.e.*, standard-weight drill pipe, with the primary distinction being in the thickness of the walls.); Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, Inv. Nos. 731-TA-458 and 459 (Final), USITC Pub. 2383 at 8 and 10 (May 1991)(“a continuum product without clear dividing lines between the multiple like products...[a]lthough there are many distinct end uses for different types of PET film....essential characteristics common to all PET film”); see also Professional Electric Cutting and Sanding/Grinding Tools From Japan, Inv. No. 731-TA-571 (Final), USITC Pub. 2658 at 8-10, and 49-51 (July 1993)(Commission found two like products based on operating element – cutting tool and sanding/grinding tool – refusing to further subdivide more narrowly into 28 families of tools).

<sup>21</sup> CR at I-9 - I-12, PR at I-7 - I-10.

<sup>22</sup> CR at I-6 - I-12, PR at I-5 - I-10.

<sup>23</sup> CR at I-5 - I-9, PR at I-4 - I-7.

<sup>24</sup> CR at I-13 - I-14, PR at I-10 - I-11

<sup>25</sup> CR at I-15, PR at I-11 - I-12

<sup>26</sup> CR at I-9 - I-12, PR at I-7 - I-10

<sup>27</sup> CR at I-16 - I-17, PR at I-12

On balance, we do not find sufficient evidence of a clear dividing line to permit us to find more than one domestic like product, nor has any party argued that we should do so.<sup>28</sup> The petitioner defined a scope of investigation much broader than the allegedly injurious subject imports, and much broader than the product made by petitioners. While petitioner was apparently unaware of the large volume of domestic production of products corresponding to their broad scope, this production nonetheless exists, and must be taken into account when examining the domestic industry producing the like product. Thus, we define one domestic like product that corresponds to the scope of this investigation; that is, all metal posts (excluding round or square tubing or pipes) up to one pound per foot in weight, including U-shaped posts, tee posts, and angle-shaped posts.

#### **D. Domestic Industry**

Section 771(4) of the Act defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product.”<sup>29</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.<sup>30</sup> Based on our finding that there is one domestic like product in this investigation consisting of all metal posts up to one pound per foot in weight, we determine that there is a single domestic industry consisting of all domestic producers of such posts.<sup>31</sup>

### **III. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS**

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.<sup>32</sup> In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic

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<sup>28</sup> While there is some record evidence that could support expanding the like product to include posts over one pound per foot in weight, the record does not permit us to reach such a determination in this preliminary investigation.

<sup>29</sup> 19 U.S.C. § 1677(4)(A).

<sup>30</sup> See, e.g., Dynamic Random Access Memory Semiconductors of One Megabit and Above From Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Inv. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People’s Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 and n.19 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); see, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Invs. Nos. 701-TA-363-364 (Final) and Invs. Nos. 731-TA-711-717 (Final), USITC Pub. 2911, at I-15 (Aug. 1995) (not including threaders in the casing and tubing industry because of “limited levels of capital investment, lower levels of expertise, and lower levels of employment”).

<sup>31</sup> This industry includes petitioner as well as at least four other companies – Cascade Steel Rolling Mills, Inc.; Jersey Shore Steel Co.; SMI Steel-Arkansas Southern Post Co.; and W. Silver Inc. There are several other potential producers of the domestic like product that did not respond to the Commission’s questionnaire. CR at I-11 n.54, I-12 n.57, and III-1 - III-2, PR at I-9 nn.54 and 57, and III-1 - III-2.

<sup>32</sup> 19 U.S.C. §§ 1671b(a) and 1673b(a).

producers of the domestic like product, but only in the context of U.S. production operations.<sup>33</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>34</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>35</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>36</sup>

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports of lawn and garden fence posts from China that are allegedly sold in the United States at less than fair value.

#### **A. Conditions of Competition**

When performing our analysis in this investigation, we took into account the following conditions of competition:

There are at least three types of products contained within the domestic like product: U-shaped posts, tee posts, and angle-shaped posts. U-shaped posts are produced domestically only by the petitioner, and its production in 2001 accounted for only \*\*\* percent of total domestic production of the like product.<sup>37</sup>

While all the types of posts within the like product are used to support fencing and plants, they also have some distinctions. In particular, the record indicates that there is no significant competition between U-shaped posts, on the one hand, and tee posts and angle-shaped posts on the other. \*\*\* responding U.S. producers other than petitioner stated that their posts do not compete with petitioner’s U-shaped posts.<sup>38</sup> Petitioner stated that there was no interchangeability between its product and any other domestic product.<sup>39</sup> The record also shows that, while there were some common customers for petitioner’s product and importers of subject product, there was \*\*\* overlap between these customers and those for domestically produced tee posts and angle-shaped posts up to one pound per foot.<sup>40</sup>

The record in this preliminary investigation indicates a moderate to high degree of substitutability between domestically produced U-shaped posts and subject imports.<sup>41</sup> While respondent Midwest Air Technologies (“MAT”) argued that the subject imports have some quality advantages,<sup>42</sup> the record does not provide substantial evidence of any meaningful quality differences.

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<sup>33</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>34</sup> 19 U.S.C. § 1677(7)(A).

<sup>35</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>36</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>37</sup> CR and PR at Table III-1.

<sup>38</sup> CR at I-13 - I-14, PR at I-10 - I-11.

<sup>39</sup> CR at I-13 - I-14, PR at I-10 - I-11. Although petitioner specifically referred to posts weighing over one pound per foot, its statements regarding interchangeability would apply equally to the domestic product weighing up to one pound per foot. In fact, apparently due to the lack of interchangeability and competition, petitioner was unaware of the substantial domestic production of tee posts and angle-shaped posts under one pound per foot.

<sup>40</sup> CR at I-16, PR at I-12.

<sup>41</sup> CR at II-4 - II-5, PR at II-3 - II-4.

<sup>42</sup> CR at II-5, PR at II-4.

From 1999 to 2001, apparent domestic consumption of metal posts weighing one pound or less per foot fell by \*\*\* percent, from \*\*\* pounds to \*\*\* pounds.<sup>43</sup> There were no imports of metal posts weighing one pound or less per foot from any countries other than China over the period of investigation.<sup>44</sup>

## **B. Volume of the Subject Imports**

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>45</sup>

Subject imports consisted solely of U-shaped fence posts; there were no subject imports of other products within the scope of investigation. U.S. shipments of subject imports increased \*\*\* percent as measured by quantity over the period 1999-2001, from \*\*\* pounds in 1999 to \*\*\* pounds in 2000 and \*\*\* pounds in 2001.<sup>46</sup> Subject imports’ share of apparent domestic consumption rose \*\*\*, from \*\*\* percent in 1999 to \*\*\* percent in 2000 and \*\*\* percent in 2001.<sup>47</sup> The volume of U.S. shipments of subject imports relative to U.S. production rose from \*\*\* percent in 1999 to \*\*\* percent in 2000 and \*\*\* percent in 2001.<sup>48</sup>

We find that the volume of subject imports is significant, both in absolute terms and relative to domestic consumption and production. However, we have noted that subject imports consist entirely of U-shaped metal posts weighing 1 pound or less per foot. As discussed above, the record indicates that these subject imports compete only with domestically produced U-shaped metal posts weighing 1 pound or less per foot; there is no meaningful competition with other domestic products. Thus, any effect of subject import volumes is limited to this small portion of the total domestic industry.

## **C. Price Effects of the Subject Imports**

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>49</sup>

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<sup>43</sup> CR and PR at Table IV-3. Consumption rose \*\*\* from 1999 to 2000, from \*\*\* pounds to \*\*\* pounds.

<sup>44</sup> CR and PR at Table IV-2.

<sup>45</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>46</sup> CR and PR at Table IV-3. Subject imports increased \*\*\* percent from 1999 to 2001, from \*\*\* pounds in 1999 to \*\*\* pounds in 2001. CR and PR at Table IV-2.

<sup>47</sup> CR and PR at Table IV-3.

<sup>48</sup> See CR and PR at Table C-1.

<sup>49</sup> 19 U.S.C. § 1677(7)(C)(ii).

Subject imports compete with only a small share of overall domestic production,<sup>50</sup> and there is no indication on the record that prices of U-shaped fence posts have any effect on other posts within the domestic like product. This lack of competition between the subject imports and most of the domestic product makes a finding of significant price effects highly unlikely.

The Commission collected quarterly data comparing prices for four U-shaped lawn and garden fence post products. These products alone accounted for \*\*\* percent of U.S. importers' shipments of subject merchandise for the period, but only \*\*\* percent of U.S. producers' commercial U.S. shipments.<sup>51</sup> The pricing data show subject imports overselling the domestic product in more than \*\*\* percent of the available comparisons.<sup>52</sup> Given this record, and the fact that subject imports compete with only a small share of domestic production, we find that there has not been significant underselling by subject imports.

The record similarly does not indicate significant negative price effects from the subject imports. U.S. prices in all product categories for which data were collected \*\*\* during the period, with \*\*\* gains for products 1, 3 and 4.<sup>53</sup> Given this record, and the fact that subject imports do not compete with the vast majority of domestic production, we find that subject imports have not depressed or suppressed prices to a significant degree.

#### **D. Impact of the Subject Imports**

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."<sup>54</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."<sup>55 56</sup>

Although several financial and performance indicators of the U.S. industry declined over the period,<sup>57</sup> we find no correlation between the condition of the industry and the subject imports. As discussed above, the volume of the subject imports affects only a small segment of the industry. Moreover, we found that subject imports are having no significant negative price effects. Similarly,

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<sup>50</sup> CR and PR at Table III-1.

<sup>51</sup> CR at V-3 - V-4, PR at V-2 - V-3. The low coverage of U.S. producers' shipments is due to the small share of domestic production accounted for by U-shaped posts, the only domestic product that competes with subject imports.

<sup>52</sup> CR and PR at Tables V-1 - V-4.

<sup>53</sup> CR and PR at Tables V-1 - V-4. From the first quarter of 1999 to the first quarter of 2001, per-pound prices for U.S. product 1 increased from \*\*\* to \*\*\*; for U.S. product 2, prices \*\*\*; for U.S. product 3, prices increased from \*\*\* to \*\*\*; and for U.S. product 4, prices increased from \*\*\* to \*\*\*.

<sup>54</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

<sup>55</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>56</sup> The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce announced estimated dumping margins for the subject merchandise from China ranging from 51 to 89 percent. 67 FR 37388, 37390 (May 29, 2002).

<sup>57</sup> CR and PR at Table C-1.

subject imports do not compete with domestic producers that account for the vast majority of domestic production,<sup>58</sup> and thus cannot be having a significant impact on the domestic industry.

Thus, given our finding on domestic like product and industry (which resulted from the broad scope in this investigation), we find no reasonable indication that subject imports have had a significant adverse impact on the domestic industry.

#### **IV. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV SUBJECT IMPORTS FROM CHINA**

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>59</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”<sup>60</sup> In making our determination, we have considered all factors that are relevant to this investigation.<sup>61</sup> Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of lawn and garden fence posts from China that are allegedly sold in the United States at less than fair value.

As discussed above, our finding of no present material injury is based primarily on the lack of substantial competition between subject imports and the vast majority of domestic production. There is no indication on the record that subject imports of products other than U-shaped posts are imminent.<sup>62</sup> There is also no indication that the composition of the domestic industry will imminently change such that U-shaped fence posts will become a substantially larger share of domestic production. Thus, the record does not indicate any threat that subject imports will have a significant price depressing or suppressing effect, or any other significant impact on the domestic industry.

#### **CONCLUSION**

For the reasons stated above, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of lawn and garden fence posts from China that are allegedly sold in the United States at less than fair value.

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<sup>58</sup> CR and PR at Table III-1.

<sup>59</sup> 19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

<sup>60</sup> 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

<sup>61</sup> 19 U.S.C. § 1677(7)(F)(i). Factors I (regarding countervailable subsidies) and VII (regarding raw and processed agricultural products) are inapplicable to this antidumping investigation.

<sup>62</sup> With respect to subject U-shaped fence posts, the record indicates no imminent \*\*\* increase in production or capacity in China. CR and PR at Table VII-1.



## PART I: INTRODUCTION

### BACKGROUND

This investigation results from a petition filed by Steel City Corporation (“Steel City”), Youngstown, OH, on May 1, 2002, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of lawn and garden steel fence posts<sup>1</sup> from China. Information relating to the background of the investigation is provided below.<sup>2</sup>

<i>Date</i>	<i>Action</i>
May 1, 2002 . . . . .	Petition filed with Commerce and the Commission; <sup>3</sup> institution of Commission investigation (67 FR 30963, May 8, 2002)
May 21 . . . . .	Commerce’s notice of initiation (67 FR 37388, May 29, 2002)
May 22 . . . . .	Commission’s conference <sup>4</sup>
June 17 . . . . .	Commission’s vote
June 17 . . . . .	Commission’s determinations sent to Commerce
June 24 . . . . .	Commission’s views sent to Commerce

### SUMMARY DATA

Table C-1 presents a summary of data on the U.S. market for metal posts weighing 1 pound or less per foot (which corresponds to products covered by the scope of the investigation);<sup>5</sup> table C-2 presents a summary of data on the U.S. market for metal posts weighing over 1 pound per foot (which covers products that are outside the scope of the investigation but which may be candidates for inclusion within the domestic like product); table C-3 presents a summary of data on the U.S. market for all metal posts (sum of tables C-1 and C-2); table C-4 presents a summary of data on the U.S. market for U-shaped metal posts weighing 1 pound or less per foot (which covers only products produced by petitioner Steel

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<sup>1</sup> The scope of the investigation includes all “lawn and garden steel fence posts,” in whatever form, shape, or size, that are produced in China, weigh up to 1 pound per foot (about 1.49 kilograms per meter), and are made of steel and/or any other metal. These posts are normally “U” shaped or “hat” shaped or any other similar shape excluding round or square tubing or pipes. A complete description of the imported product subject to investigation is presented in the section of this report entitled *The Subject Product*.

Imports of these products are classified under Harmonized Tariff Schedules of the United States (HTS) subheading 7326.90.85 at a general rate of duty of 2.9 percent *ad valorem* (the statistical reporting number is 7326.90.8535). Fence posts classified under subheading 7308.90 (with general rates of duty from 0.6 percent to 1.1 percent) are also included within the scope of the investigation if the fence posts are made of steel and/or other metal.

<sup>2</sup> *Federal Register* notices cited in the tabulation are presented in app. A.

<sup>3</sup> The petition alleged dumping margins, based on a comparison between export price and normal value, ranging from 51 to 89 percent.

<sup>4</sup> A list of witnesses appearing at the conference is presented in app. B.

<sup>5</sup> Although petitioner identified the product it produces and the product being imported as being lawn and garden steel fence posts weighing 1 pound or under per foot, it defined the subject product to include all metal posts (except round or square tubing or pipes).

City<sup>6</sup> for consideration of a domestic like product that excludes subject posts other than U-shaped posts); and table C-5 presents a summary of data on the U.S. market for other than U-shaped metal posts weighing under 1 pound per foot (difference of tables C-1 and C-4).<sup>7</sup>

## THE SUBJECT PRODUCT

In its notice of initiation, Commerce defined the subject merchandise to be:

All lawn and garden steel fence posts, in whatever form, shape, or size that are produced in China. The fence posts included within the scope of this investigation weigh up to 1 pound per foot and are made of steel and/or any other metal. Imports of these products are classified under the following categories: fence posts, studded with corrugations, knobs, studs, notches or similar protrusions with or without anchor [plates]. These posts are normally “U”-shaped or “hat”-shaped, or any other similar shape excluding round or square tubing or pipes.

These posts are normally available in two different weight classes, light- and heavy-duty. Light-duty lawn and garden posts are normally made of 14-gauge steel (0.068 inches - 0.082 inches thick), 1.75 inches wide, in 3-, 4-, 5-, or 6-foot lengths. These posts weigh approximately 0.45 pounds per foot and are packaged in mini bundles of 10 posts and master bundles of 400 posts. Heavy-duty lawn and garden fence posts are normally made of 13-gauge steel (0.082 inches - 0.095 inches thick), 3 inches wide, in 5-, 6-, 7-, or 8-foot lengths. Heavy-duty posts normally weigh approximately 0.90 pounds per foot and are packaged in mini bundles of 5 and master bundles of 200. Both light-duty and heavy-duty posts are included within the scope of the investigation.

Imports of these products are classifiable under the following HTS subheading: 7326.90.8535.<sup>8</sup> Fence posts classified under subheading 7308.90<sup>9</sup> are also included within the scope of the investigation if the fence posts are made of steel and/or metal.

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<sup>6</sup> Petitioner Steel City is the only domestic producer of U-shaped steel posts weighing 1 pound or less per foot. Steel City refers to its product as “lawn and garden steel fence posts” and stated that it was the only domestic producer of the product. Steel City stated in its petition and testified at the conference that it did not believe that there were any imports or domestic production of metal posts weighing 1 pound or less per foot in shapes other than the U-shape it produces, but to avoid circumvention, it was including tee, farm, and sign posts if they weigh 1 pound or less per foot. (Petition, pp. 1, 5, and 6; conference transcript, pp. 24-25, 34-35, and 40-41.) All importers completing the Commission’s questionnaire reported that their imports of subject merchandise weighing 1 pound or less per foot were all the U-shaped metal posts that petitioner expected. However, four domestic producers reported producing tee or angle-shaped metal posts that weigh 1 pound or less per foot, and their data are included in those shown in table C-1. Whereas petitioner believed that it accounted for all domestic production of the subject product, in 2001 it actually accounted for \*\*\* percent of total reported domestic production of the subject product.

<sup>7</sup> There were no reported imports for table C-5 because no importer reported imports of any shapes other than the U-shaped posts petitioner expected in the 1 pound or less per foot weight category. Table C-5 includes the reported data of the four U.S. producers of subject merchandise other than the petitioner.

<sup>8</sup> HTS statistical reporting number 7326.90.8535 covers iron or steel “fence posts, studded with corrugations, knobs, studs, notches, or similar protrusions, with or without anchor plates.”

<sup>9</sup> HTS subheading 7308.90 covers certain structural components, of iron or steel.

Specifically excluded from the scope are “tee” posts, farm posts, and sign posts, provided that the posts weigh over 1 pound per foot.<sup>10</sup> Although the HTS subheadings are provided for convenience and U.S. Customs Service (“Customs”) purposes, the written description of the merchandise under investigation is dispositive.<sup>11</sup>

### DOMESTIC LIKE PRODUCT ISSUES

This section presents information on both imported and domestically produced metal fence posts weighing 1 pound or less per foot, as well as information related to the Commission’s “domestic like product” determination.<sup>12</sup> Petitioner states that it is the only producer of “lawn and garden fence posts” and that lawn and garden fence posts constitute one domestic like product. Petitioner believes that all lawn and garden fence posts are currently produced from steel.<sup>13</sup> Petitioner further believes that the only domestically produced or imported fence posts weighing 1 pound or less per foot are U-shaped and that there are no tee posts, farm posts, or sign posts under 1 pound per foot of either domestic<sup>14</sup> or foreign origin currently being produced. However, petitioner expressed concern about possible evasion of any order if tee, farm, or sign posts were produced to lighter weights and sold as lawn and garden fence posts.<sup>15</sup> As previously mentioned, tee posts, farm posts, and sign posts are specifically excluded from the scope of the petition, but only if they weigh over 1 pound per foot. Therefore, any tee posts, farm posts, and sign posts weighing 1 pound or less per foot are included in the scope of the petition.

Although not challenging the domestic like-product definition at this stage, counsel for respondent Midwest Air Technologies (MAT) questions the validity of the 1-pound delineation, the limited extent of products (both the limiting to metal posts and the limiting to U-shaped posts), and their end uses.<sup>16</sup> Counsel stated that it was not necessary to question the like product at this stage of the

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<sup>10</sup> Tee posts, also known as T-posts, are made by rolling red-hot steel into a “T” shape. These posts do not have tabs or holes to help secure fencing to them and have primarily farm and industrial uses. However, only tee posts, farm posts, and sign posts weighing over 1 pound per foot are excluded from the scope.

<sup>11</sup> See 67 FR 37388, May 29, 2002.

<sup>12</sup> The Commission’s decision regarding the appropriate domestic products that are “like” or “most similar in characteristics and uses” to the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities, production processes, and production employees; and where appropriate, (6) price.

<sup>13</sup> Petitioner expressed concern about possible evasion of any order by addition of another metal to dilute steel. Petition, footnote 3, p. 5; and Ms. M. Stras, counsel for petitioner, conference transcript, p. 23. As previously mentioned, the scope to the petition is limited to “metal” (not just to steel) fence posts.

<sup>14</sup> As previously stated, according to questionnaire responses, there are in fact at least three domestic producers of metal tee posts weighing 1 pound or less per foot and at least one domestic producer of metal angle posts weighing 1 pound or less per foot.

<sup>15</sup> Petition, footnote 4, p. 6; and Ms. M. Stras, counsel for petitioner and Mr. S. Speece, Vice President of Production, Steel City, conference transcript, pp. 23-25.

<sup>16</sup> Mr. A. Lee, counsel for respondent, conference transcript, pp. 47-49. Specifically, Mr. Lee mentioned that the 1 pound per foot distinction is not a clear dividing line--that U-shaped posts could be produced to over 1 pound per foot and that tee posts could be produced to less than 1 pound per foot. As far as end use is concerned, he questioned the limitation to just lawn and garden, stating that “[f]undamentally, a fence post is used to hold fences. It doesn’t matter if you’re holding out or in cattle, kids, dogs, pests.” He also commented that welded pipe is used in lawn and garden fence post applications. He further stated that, whereas petitioner had included metal other than steel (although it recognizes that metal posts currently are made only of steel), it does not identify whether other

(continued...)

investigation, and to do so generally means that the Commission would need to go get more information which “almost automatically requires a final investigation,” which counsel did not believe was warranted.<sup>17</sup> Counsel further stated that “the domestic industry should, at this point, be just Steel City.”<sup>18</sup>

Although there are a variety of other posts,<sup>19</sup> this part of the report is limited to a discussion of (1) U-shaped metal posts weighing 1 pound or less per foot (petitioner’s product and the only subject imports reported in Commission questionnaires), (2) metal posts weighing 1 pound or less per foot that have cross-sectional appearances other than U-shaped,<sup>20</sup> and (3) metal posts weighing over 1 pound per foot.<sup>21</sup>

### Physical Characteristics and Uses

Subject U-shaped posts weighing 1 pound or less per foot are specifically designed to support fencing in numerous home and garden applications. The petition states that these posts “are mainly used by homeowners in suburban and rural areas for lawn and garden applications. These posts are used for pet containment, tomato stakes, garden protection, property boundaries, sapling supports, safety barriers

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<sup>16</sup> (...continued)

materials could substitute at a later stage. Ibid. Commerce’s scope specifically excludes posts made from pipe and specifically includes only posts made of steel and/or metal.

<sup>17</sup> Mr. A. Lee, counsel for respondent, conference transcript, p. 49.

<sup>18</sup> Mr. A. Lee, counsel for respondent, conference transcript, p. 65. However, Mr. Lee stated that if a final investigation were required, he “would probably say [the domestic like product] should be expanded. I would say that if you do go to a final, I think it would be worth the Commission’s efforts to expand the domestic industry.” Ibid., p. 64.

<sup>19</sup> Fencing, plants and trees, and signs can also be supported by lengths of numerous other steel, metal, or non-metallic products. Examples of steel or metal products include bars of various cross-sectional shapes and small-diameter pipes and tubes, among others. However, these products, lacking the tabs of the subject U-shaped metal posts weighing 1 pound or less per foot, require the use of clips, ties, hooks, or other fasteners to support and hold the fence material in place. Likewise, wood, plastic, fiberglass, or other non-metallic stakes or posts can support fencing but fence material must usually be fastened by stapling, wire ties, or by other means.

<sup>20</sup> The Commission’s questionnaires collected information on all non-tubular metal posts weighing 1 pound or less per foot because the product scope excluded tee, farm, and sign posts only if they weigh over 1 pound. Three producers of metal tee posts weighing 1 pound or less per foot and one producer of metal angle posts that weigh 1 pound or less per foot completed the Commission’s questionnaire.

<sup>21</sup> The Commission’s questionnaires collected information on all non-tubular metal posts weighing over 1 pound because petitioner’s product brochure included in the petition, exh. 1, discussed farm and sign posts which appeared to weigh 1.25 pounds per foot (shipping weights of 750 or 875 pounds for bundles of 100 6-foot or 7-foot posts, respectively). Four producers of metal tee posts weighing over 1 pound per foot and one producer of metal angle posts weighing over 1 pound per foot completed the Commission’s questionnaire. Petitioner \*\*\* on its production of metal farm and sign posts over 1 pound per foot in its questionnaire response. \*\*\* testimony at the conference that the last time these posts were produced was a year and a half to 2 years ago and the firm continues to “have a very large inventory, which is why it continues to be in our literature.” Mr. S. Speece, Vice President of Production, Steel City, conference transcript, p. 39. Although metal posts over 1 pound would arguably include petitioner’s production of U-shaped farm and sign posts over 1 pound, petitioner states that its attempts to produce such posts were a failure. Also, as discussed in the following sections, petitioner’s production processes for all of its U-shaped posts are the same, regardless of weight, and its attempts to sell these posts over 1 pound per foot into other markets were unsuccessful because they were not strong enough. Mr. R. Hendricks, Vice President, Steel City, and Mr. S. Speece, Vice President of Production, Steel City, conference transcript, pp. 34 and 38-39.

and many other uses.”<sup>22</sup> Petitioner states that its U-shaped posts weighing 1 pound or less per foot are not appropriate for use as farm posts because they are too light and bend too easily.<sup>23</sup> Petitioner specifically tried to sell its posts to support grape vines (grape stakes) but was unsuccessful at penetrating the grape-stake market because its U-shaped posts were too soft and would not hold up, and petitioner attributed this to the weight of the grape stakes being over 1 pound per foot.<sup>24</sup> Petitioner also specifically tried to expand into the farm and sign post market by producing heavier (over 1 pound per foot) U-shaped metal posts that it identified in its product brochure as “farm and sign posts.” However, since its production process is limited to using a steel soft enough for its existing cold presses, it did not produce a strong enough post to compete in the farm and sign post market.<sup>25</sup>

Subject U-shaped metal posts weighing 1 pound or less per foot are characterized by a row of holes and tabs to help secure fencing to them by bending the tabs over the fence material.<sup>26</sup> An anchor plate is crimped or bolted near the lower end of the post to stabilize it once driven into the ground. Of the eight different duty-weight and length combinations, petitioner believes that the 4-foot and 5-foot lengths are the most representative of the light-duty U-shaped metal posts sold in the U.S. market and that 5-foot and 6-foot lengths are the most representative of the heavy-duty U-shaped metal posts sold in the U.S. market.<sup>27</sup> U-shaped metal posts weighing 1 pound or less per foot are not an intermediate product for the production of downstream products. Rather, these posts are produced as a finished product in various convenient lengths and are sold through retail channels for use “as is” without the need for additional preparatory work for their primary application of supporting residential lawn and garden fencing. Both petitioner and respondent concur that they are not aware of any product or industry-set standards for U-shaped metal posts weighing 1 pound or less per foot of either domestic or foreign origin.<sup>28</sup>

Metal tee posts, so called because they have a solid “T”-shaped cross-section, are typically used to support fencing on farms and ranches, e.g., for cattle and horse containment, although they are also used for erosion-control and landscaping.<sup>29</sup> Metal studded tee posts, whether under or over 1 pound per

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<sup>22</sup> Petition, p. 7.

<sup>23</sup> Mr. S. Speece, Vice President of Production, Steel City, conference transcript, p. 15.

<sup>24</sup> Mr. S. Speece, Vice President of Production, Steel City, conference transcript, pp. 34-35 and 40-41. According to Mr. S. Speece, the grape stakes “definitely would be over 1 pound, because ours were not heavy enough.” *Ibid.*, p. 41. In fact, grape stakes are available in several weights, some of which are less than 1 pound per foot. There are at least three sizes of grape stakes offered by domestic producers, 0.95 pound per foot, 1.25 pound per foot, and 1.33 pounds per foot. See product descriptions at <http://www.smi-southernpost.com/products/posts.asp>. However, since petitioner’s heavy-duty U-shaped posts are about 0.9 pounds per foot, it would appear that many, if not all, grape stakes may indeed be heavier than petitioner’s product.

<sup>25</sup> According to petitioner, even though the posts weighed over 1 pound per foot, because of the soft steel these posts would bend too easily. E.g., with a sign affixed, petitioner stated that its U-shaped post would “corkscrew in the wind.” Mr. R. Hendricks, Vice President, Steel City, and Mr. S. Speece, Vice President of Production, Steel City, conference transcript, pp. 38-39.

<sup>26</sup> Petitioner characterizes these tabs for securing the wire as being much more “user friendly,” compared with tee posts. Conference transcript, p. 15.

<sup>27</sup> Petition, p. 11.

<sup>28</sup> \*\*\*, Steel City, electronic communication, via counsel for petitioner, June 4, 2002; and Mr. A. Lee, counsel for respondent, electronic mail communication with staff, June 5, 2002.

<sup>29</sup> Mr. S. Speece, Vice President of Production, Steel City, conference transcript, p. 15. See also product descriptions at <http://www.smi-southernpost.com/products/posts.asp>.

foot, are suitable for supporting plants,<sup>30</sup> and trees,<sup>31</sup> and for supporting erosion-control fencing (silt posts).<sup>32</sup> Metal tee posts normally have an attached anchor plate for added stability in the ground.<sup>33</sup> These posts are normally characterized by a row of studs molded along their length<sup>34</sup> to support fencing but require wire clips to hold the fence material to the post. According to petitioner, metal tee posts are generally much heavier and sturdier,<sup>35</sup> and will break off rather than bend like petitioner's U-shaped lawn and garden fence post.<sup>36</sup> Light-weight metal tee posts and/or metal grape stakes weighing 1 pound or less per foot are available from three of the five domestic producers of subject metal posts weighing 1 pound or less per foot that responded to the Commission's questionnaires.<sup>37</sup>

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<sup>30</sup> E.g., tee posts (usually smooth rather than studded) may be used as grape stakes. \*\*\*, W. Silver, Inc., (W. Silver) telephone interview with staff, June 6, 2002. Tee posts of several sizes are offered by SMI Steel-Arkansas/Southern Post Co. (SMI/Southern Post): 0.95 pounds per foot, 1.25 pounds per foot, and 1.33 pounds per foot. See product descriptions at <http://www.smi-southernpost.com/products/posts.asp>.

<sup>31</sup> Although U-shaped metal posts weighing 1 pound or less per foot may be used by individual consumers to stake out their trees in their yards, tee posts are required by most metropolitan areas to stabilize newly planted trees in the first few years of growth and help prevent costly replacement in the event of high winds or flooding. See product descriptions at <http://www.smi-southernpost.com/products/posts.asp>.

<sup>32</sup> Again, individual consumers may purchase U-shaped metal posts weighing 1 pound or less per foot for use in erosion control in their yards. However, the construction industry has adopted tee posts, both over and under 1 pound per foot, as "the method of choice" for erosion control to prevent top soil from eroding during the excavation process of construction. See product descriptions at <http://www.smi-southernpost.com/products/posts.asp> which describe both lightweight (0.95 pound per foot) and heavier (1.25 pounds per foot) tee silt posts. SMI/Southern Post states that it is one of the country's largest suppliers of these posts to the construction industry. Ibid.

<sup>33</sup> Studded tee posts are available from SMI/Southern Post with or without anchor plates. SMI/Southern Post Internet site at <http://www.smi-southernpost.com>.

<sup>34</sup> In addition to studded tee posts, Chicago Heights also produces a smooth tee post, characterized by holes along the length of the web rather than studs along the flange surface opposite the web as for a studded tee post. Company Internet site at <http://www.chicagoheightssteel.com>. Chicago Heights did not respond to the Commission's questionnaire.

<sup>35</sup> For example, a 5-foot light-duty U-shaped metal post weighs 2.50 pounds, whereas a common (1.25 pounds per foot) tee post of the same length weighs 6.25 pounds. Mr. S. Speece, Vice President of Production, Steel City, conference transcript, pp. 15-16. (As previously mentioned, petitioner was unaware of any production of tee posts weighing 1 pound or less per foot.) However, even though there are some light-weight (1 pound or less) tee posts, they are sturdier than petitioner's U-shaped post of comparable weight because of the hardness and tensile strength of the steel, as described below in *Manufacturing Facilities and Production Employees*.

<sup>36</sup> Mr. S. Speece, Vice President of Production, Steel City, conference transcript, p. 15.

<sup>37</sup> As previously mentioned, petitioner makes no tee posts. Additionally, Jersey Shore Steel Co. (Jersey Shore) produces only angle-shaped posts. Cascade Steel Rolling Mills, Inc. (Cascade Steel) and SMI/Southern Post produce light-weight studded tee posts weighing 0.95 pounds per foot, and W. Silver produces a light-weight studded tee post weighing 0.85 pounds per foot. \*\*\*, Cascade Steel, telephone interview with staff, June 6, 2002; \*\*\*, SMI/Southern Post, telephone interviews with staff, June 5, 2002; and \*\*\* W. Silver, telephone interview with staff, June 6, 2002.

U-channel posts<sup>38</sup> over 1 pound per foot are used as farm posts and highway sign posts. One domestic producer offers a lug-type U-channel post over 1 pound per foot that is suitable for supporting barbed or electric wire fencing.<sup>39</sup> U-channel posts over 1 pound per foot are also heavy and sturdy enough to support plants and trees, e.g., for grape stakes<sup>40</sup> and for fruit-tree saplings (orchard stakes) but these posts require wire clips, plastic tape, or other types of fasteners to secure the plant or tree. U-channel highway sign posts weigh over 1 pound per foot and have closely spaced holes along their length for attaching a highway or traffic sign by nuts and bolts. Such posts suitable for displaying highway signs are both heavier and longer than petitioner's U-shaped metal posts<sup>41</sup> and are typically sold to municipal, state, and federal agencies instead of being marketed in retail stores.<sup>42</sup>

Steel angle-shaped posts (angle posts), whether under or over 1 pound per foot, are also sturdy enough to support plants and trees as grape stakes and orchard stakes. These posts are normally characterized by evenly spaced holes or notches along their length and require wire or plastic ties, or other fasteners, to secure the plant or tree. Angle posts weighing 1 pound or less per foot are available from Jersey Shore Steel Co. one of the five domestic producers of subject product.<sup>43</sup>

### **Manufacturing Facilities and Production Employees**

U-shaped metal posts weighing 1 pound or less per foot are currently produced by Steel City either by stamping or by roll forming light-gauge mild steel.<sup>44</sup> Both stamping and roll forming are cold-

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<sup>38</sup> As described in the section titled *Manufacturing Facilities and Production Employees*, completely different manufacturing processes, using different grades of steel, are typically used to produce petitioner's U-shaped metal posts weighing 1 pound or less per foot (which are produced by cold-forming steel strip and result in a post that is less hard and has less tensile strength) compared with U-shaped metal posts weighing over 1 pound (which are produced by hot-rolling steel rail or rail-quality steel billet). To avoid confusion, henceforth these U-shaped metal posts produced by the hot-forming rolling process will be referred to as U-channel posts. There was no reported production of U-channel posts weighing 1 pound or less, but even if there were, such posts would have completely different product characteristics (e.g., hardness and tensile strength) because of their production process and they would still be referred to as U-channel posts to distinguish them from the cold-formed U-shaped metal posts made by petitioner.

<sup>39</sup> Franklin Industries Co. (Franklin Industries) has a "self-fastening" U-channel post (weighing 1.12 pounds per foot) that is characterized by a row of lug hooks (instead of studs) along its length to fit around (rather than tabs that can be bent around) and hold fence material to the post. Franklin Industries, Internet site at <http://www.franklinindustries.com>.

<sup>40</sup> As previously mentioned, petitioner stated that it had found that its 7-foot heavy-duty U-shaped metal posts weighing 1 pound or less per foot were not strong enough to provide the necessary support for grape stakes. Mr. S. Speece, Vice President of Production, Steel City, conference transcript, p. 34; and petitioner's postconference brief, footnote 12, p. 6.

<sup>41</sup> For example, Franklin Industries produces U-channel sign posts weighing up to 4 pounds per foot and SMI/Southern Post produces U-channel sign posts in lengths from 6 to 14 feet. Company Internet sites <http://www.franklinindustries.com> and <http://www.smi-southernpost.com>.

<sup>42</sup> Mr. S. Speece, Vice President of Production, Steel City, conference transcript, p. 37.

<sup>43</sup> Jersey Shore produces angle fence posts weighing 0.52, 0.71, and 0.88 pounds per foot. \*\*\*, Jersey Shore, telephone interview with staff, June 7, 2002. Jersey Shore also produces metal angle posts weighing over 1 pound per foot.

<sup>44</sup> Mild steel is a less-hard steel with considerably lower tensile strength compared to higher-quality steels (e.g., rail steel). Steel City's production process compiled from the petition, pp. 7-8; Mr. S. Speece, Vice President of Production, Steel City, written submission for staff conference, May 22, 2002, pp. 3-4; Mr. S. Speece, Vice

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working processes and do not require the steel being heated prior to being bent into shape. Stamping starts with a steel strip that is sheared, or a coil strip that is cut, to the proper width and pre-set post length. The sheared or cut strip is placed in a forming die that shapes it into a shallow U-shaped fence profile. The formed post is then pushed down by an air cylinder to the piercing die and an operator inserts an anchor plate into the die. This station punches holes and lugs along the length of the post and crimps on the anchor plate.

Roll forming starts with the steel in coil form, slit to the proper width. The steel slits are run through successive rolls that form U-shaped post profiles. A roll former includes a flying cut-off that can be set for any length post. The formed post is then placed along with an anchor plate into the piercing die that punches holes and tabs along the post's length and crimps the anchor plate onto the post.

Subsequently, in both production processes, formed and assembled posts are removed from the die and stacked on a buggy, ready for cleaning and painting. Posts are hung on the paint line and are sent through a washer that cleans them and applies a phosphate rust inhibitor before entering a drying oven. A water-based air-dry paint is applied at the dip tank. The finished posts are then conveyed down the line to allow the paint to dry. At the banding station, a Universal Product Code label is automatically attached. Posts are removed from the conveyor and stacked into mini bundles. Automated banding heads band the ends of the bundles with one-half-inch steel strapping. The mini bundles are then stacked on buggies to form master bundles which are banded for either shipment or for warehouse storage.

To the best of petitioner's knowledge, the Chinese production process for U-shaped metal posts weighing 1 pound or less per foot is basically identical to its own except for the packaging.<sup>45</sup> Whereas steel bands and seals are the packaging materials in the United States, petitioner believes that Chinese producers use twine and plastic tarp mat to package their posts.<sup>46</sup> Counsel for respondent, however, states that there are two other differences between the imported and the domestic product: (1) the attachment of the plate to the post (riveted for the Chinese product and crimped for the domestic product) and (2) the paint on the Chinese post is powder-based whereas the paint on the domestic post is air-dried.<sup>47</sup>

Petitioner does not produce any other types of posts using the equipment, production processes, or employees used to produce its U-shaped metal posts.<sup>48</sup> However, although petitioner's production equipment is dedicated to the production of U-shaped metal posts (and sits idle when there is no U-

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<sup>44</sup> (...continued)

President of Production, Steel City, conference transcript, pp. 12-13; and \*\*\*, Steel City, electronic communications, through counsel for petitioner, with staff, June 4 and 7, 2002.

<sup>45</sup> Mr. S. Speece, Vice President of Production, Steel City, conference transcript, p. 13.

<sup>46</sup> Petition, p. 15.

<sup>47</sup> Mr. A. Lee, counsel for respondent, conference transcript, pp. 61-62. Mr. Lee states that because of these differences in production, his client says its product is superior to the domestic product. Ibid.

<sup>48</sup> Petitioner does not produce any tee posts. Mr. S. Speece, Vice President of Production, Steel City, conference transcript, p. 40. However, as previously mentioned, in an attempt to expand its market, Steel City did use the same equipment used to produce subject U-shaped posts weighing 1 pound or less per foot to produce heavier (over 1 pound per foot) U-shaped posts that it identified in its product brochure as "farm and sign posts" by the stamping and piercing process described above. Petitioner describes this attempt as a "bad experiment" that was unsuccessful since its product was not strong enough and therefore not competitive in the farm and sign post market, and so petitioner stated that, after trying for a couple of years, it "took its lumps and went home." Mr. R. Hendricks, Vice President, Steel City, conference transcript, p. 38.

shaped metal post production), the employees that make the U-shaped metal posts are used to make other products produced by Steel City.<sup>49</sup>

Posts manufactured by all other reporting domestic producers (of all weights—whether under or over 1 pound per foot, and including tee posts, angle-shaped posts, and U-channel posts), along with other products produced by these firms, are rolled from either scrapped railway rail or newly cast rail-quality billet steel,<sup>50</sup> rather than being cold-stamped from sheared mild-steel strip or cold-rolled from slit mild-steel coil as was described for petitioner’s product. For example, Franklin Industries,<sup>51</sup> Jersey Shore,<sup>52</sup> and W. Silver,<sup>53</sup> are re-rolling mills that hot-roll tee posts, U-channel posts, angle-shaped posts, and other products of various shapes from short sections of scrapped railway rails.<sup>54</sup> The rail is first heated in a reheat furnace to more than 2,300 degrees Fahrenheit in preparation for slitting along the length into the head (top), web (middle), and foot (base) portions.<sup>55</sup> Generally, tee posts are rolled from the head portion of the rail, whereas other types of posts are rolled from the various portions of the split rail, depending on the size and shape of the post. In contrast, Cascade Steel<sup>56</sup> is a “minimill” that casts billets by a continuous casting machine fed by molten steel produced from steel scrap that was melted in an electric arc furnace. From these billets, Cascade Steel hot-rolls studded tee posts and other products.<sup>57</sup> SMI/Southern Post have hot-rolling facilities to produce a wide range of posts and other products from both scrap rail and new billet steel.<sup>58</sup> In the rolling process, either reheated split rail portions (in a re-rolling mill) or newly cast steel billets (in a minimill) are passed through a series of mill stands with

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<sup>49</sup> Mr. R. Hendricks, Vice President, Steel City, conference transcript, p. 33.

<sup>50</sup> High-carbon rail steel offers several performance advantages over mild steel. The high strength (high yield point) of rail steel provides stiffness to rail-steel products. Likewise, its high strength-to-weight ratio offers advantages of added strength with reduced weight. Plus, rail steel can be readily sheared, punched, and welded. Chicago Heights, “About Rail Steel,” Internet site at <http://www.chicagoheightssteel.com/railsteel.htm>; and Jersey Shore, “Mild Steel vs. Rail Steel,” Internet site at <http://www.jssteel.com/advantages/mild-steel.asp>.

<sup>51</sup> Franklin Industries hot-rolls studded tee posts, smooth tee posts, U-channel sign posts, angles, and various merchant bars from scrapped rail steel. Franklin Industries Internet site at <http://www.franklinindustries.com>.

<sup>52</sup> Jersey Shore hot-rolls angles for fence posts, grape stakes, orchard posts, sign posts, garage-door supports, shelving braces, and road-barricade legs. Jersey Shore Internet site at <http://www.jssteel.com>.

<sup>53</sup> W. Silver hot-rolls studded tee posts, concrete reinforcing bars, and angles from scrapped rail steel. \*\*\*, W. Silver, telephone interview with staff, June 6, 2002.

<sup>54</sup> An additional producer, which has not responded to the Commission’s questionnaire, is Chicago Heights. Chicago Heights hot-rolls studded tee posts, smooth (non-studded) tee posts, U-channel sign posts, and various construction-related sections and bars from scrapped rail steel. Chicago Heights Internet site at <http://chicagoheightssteel.com>.

<sup>55</sup> For an overview of the re-rolling process, see Jersey Shore, “Rail Steel from Jersey Shore Steel Company,” at Internet site [http://www.jssteel.com/information/rolled\\_steel.asp](http://www.jssteel.com/information/rolled_steel.asp); and Jersey Shore, “From Railroad Rails to High-Strength Angle Iron, the Jersey Shore Steel Manufacturing Process,” at Internet site <http://www.jssteel.com/advantages/manufacturing.asp>.

<sup>56</sup> Cascade Steel hot-rolls studded tee posts and bars of various shapes from newly cast billet steel. \*\*\*, Cascade Steel, telephone interview with staff, June 6, 2002.

<sup>57</sup> An additional producer which has not responded to the Commission questionnaire is Sheffield Steel Corp. (Sheffield Steel). Sheffield Steel hot-rolls studded tee posts and bars of various shapes from newly cast billet steel. Sheffield Steel Internet site at <http://www.sheffieldsteel.com>.

<sup>58</sup> SMI/Southern Post produces studded tee posts and U-channel sign posts. \*\*\*, SMI/Southern Post, telephone interviews with staff, June 5, 2002.

grooved rolls that progressively reduce and shape the hot steel into posts.<sup>59</sup> Generally, studs on a studded tee post are rolled in the last stand of the rolling mill. After rolling, posts are cut to desired lengths. A piercing press punches holes along the length of U-channel posts and angle posts. Anchor plates are attached to tee posts by crimping. Once posts have been allowed to cool, they are cleaned and then either painted with rust-inhibiting paint, hot-dip galvanized, or left uncoated. Finished posts are gathered into bundles, with the number of posts per bundle varying by their individual weights (determined by their shape, size, and length), either for shipment or for warehouse storage.

### **Interchangeability and Customer and Producer Perceptions**

As previously discussed, petitioner contends that, although its U-shaped metal posts weighing 1 pound or less per foot are fully interchangeable with the subject imports,<sup>60</sup> it sees no interchangeability between its product and any other domestic product; petitioner specifically included grape stakes and other tee posts, farm posts, and sign posts in the list of domestic products which were not like its product.<sup>61</sup> Petitioner noted that domestic producers of these other posts are steel mills that reheat railway rail or other scrap steel and shape it into their very strong and hard posts which will break rather than

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<sup>59</sup> Post of various sizes and shapes, and other products, can be rolled on the same rolling mill by substituting the appropriate grooved rolls.

<sup>60</sup> Steel City reportedly performed extensive testing but found the Chinese-made U-shaped metal posts weighing 1 pound or less per foot to be “equal to Steel City fence posts in every aspect including, size, weight, paint, strength, and quality.” (Mr. S. Speece, Vice President of Production, Steel City, written submission for staff conference, May 22, 2002, p. 2; and conference transcript, pp. 10-11.) Petitioner’s counsel asserts that customers perceive domestically produced and imported U-shaped metal posts weighing 1 pound or less per foot as being substitutable with no product differences and that price, rather than quality, is the prime consideration by major hardware retailers. Ms. M. Stras, counsel for petitioner, conference transcript, pp. 7 and 78.) Petitioner notes further that there is no brand recognition or customer loyalty for the U.S.-made product nor any quality difference to attract customers to the higher-priced U.S. product. (Petition, p. 27.)

Respondent agrees that the imported product is at least equal in quality to Steel City’s product; in fact counsel for respondent argued that certain purchasers consider that (1) the riveted anchor plate of respondent’s imported product provides a more stable bond to the post and therefore is more resistant to twisting than domestic posts and (2) the powder-based paint on respondent’s imported fence posts is higher quality, provides a better finish, and is more durable than the regular air-dry spray-paint of the domestic product. (Mr. A. Lee, counsel for respondent, conference transcript, pp. 61-62.) Respondent’s counsel asserts that the imported product is lower priced, in spite of its higher quality, because of the market power of large-volume retailers, although he states that the lower prices still reflect to some extent the previous low-quality reputation of the imported product. (Mr. A. Lee, counsel for respondent, conference transcript, pp. 61-62 and 74-75.) Respondent’s counsel states that given their market power, major home-improvement and home-hardware chains impose their purchasing criteria of factors other than price such as product mix, product quality, reliability of supply, production capacity, a central supply source, and customer service. Although importers and traders offer advantages as single sources for both fence posts and fence materials, and are able to provide products in very large volumes to meet customers’ requirements, respondent asserts that petitioner lacks the size and product range to qualify as a supplier. (Mr. A. Lee, counsel for respondent, conference transcript, pp. 59-61 and 67-68; and respondent’s postconference brief, pp. 2 and 6-9.) Petitioner, however, disagrees with respondent, stating that while it estimates the current U.S. market at \*\*\* million posts, it is capable of supplying \*\*\* million posts per year using its existing equipment. Petitioner’s postconference brief, pp. 9-11. However, this would require more shifts and using same equipment currently not being used. \*\*\*.

<sup>61</sup> See, e.g., conference transcript, p. 15, 34-35, and 38-41 (testimony of Mr. Speece, Vice President of Production, Steel City and Mr. Hendricks, Vice President, Steel City).

bend, whereas petitioner's U-shaped metal posts are softer and prone to bending.<sup>62</sup> \*\*\* other domestic producers of metal posts weighing 1 pound or less per foot stated that their posts do not compete with petitioner's U-shaped metal posts.<sup>63</sup>

Petitioner states that customers perceive that its U-shaped post weighing 1 pound or less per foot is different and not interchangeable with tee posts, farm posts, and sign posts, and therefore the customers will not substitute one for the other.<sup>64</sup> For example, according to petitioner, farmers will not use U-shaped metal posts weighing 1 pound or less per foot because they have less strength and bend easily, as well as being much more expensive. Likewise, petitioner states that residential users typically do not use tee posts, even though they are cheaper, because they are too heavy and there is no convenient way to attach the wire; these customers are willing to pay more for the convenience of the "user-friendly" U-shaped metal posts weighing 1 pound or less per foot.<sup>65</sup> Moreover, U-shaped metal posts weighing 1 pound or less per foot are light enough to be driven into the ground with an ordinary hammer, whereas heavier tee posts, farm posts, and sign posts require pounding with a post driver to effectively set them into the ground.<sup>66</sup>

Although the consumer usually will not be confronted with a choice between petitioner's U-shaped metal posts and the many types of metal tee posts, farm posts, and sign posts, because there is only a limited selection of these other posts at the home improvement, hardware, and department stores that carry the U-shaped metal posts weighing 1 pound or less per foot, in those instances where they are simultaneously present in the store (e.g., the 6-foot metal tee post weighing 1.25 pound per foot standing alongside a variety of both light-duty and heavy-duty U-shaped metal posts weighing 1 pound or less per foot), petitioner states that the customer perceives the posts as being different in physical appearance and uses.<sup>67</sup>

### **Channels of Distribution**

According to petitioner, markets and channels of distribution are the same for both U.S.-made and imported U-shaped metal posts weighing 1 pound or less per foot.<sup>68</sup> Steel City markets its fence posts directly nationwide and states that U-shaped metal posts weighing 1 pound or less per foot are also sold nationwide by related and unrelated importers and traders.<sup>69</sup> Major customers include home-hardware, home-improvement, and department stores.

Although virtually all metal posts, whether U-shaped or T-shaped or angle-shaped and regardless of weight per foot, are sold to distributors instead of end users, petitioner states that U-shaped metal posts weighing 1 pound or less per foot are sold through different channels of distribution to different customers than are tee posts, which petitioner believes to be all over 1 pound per foot. Although acknowledging that some home-improvement or home-hardware retailers stock both tee posts and U-shaped posts, petitioner contends that they usually only stock a single size of tee post (usually, if not always, over 1 pound per foot) compared to many sizes and lengths of U-shaped posts weighing 1 pound

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<sup>62</sup> Petitioner's postconference brief, pp. 2-3.

<sup>63</sup> No response was received from \*\*\*. \*\*\*, telephone interviews with staff, June 6, 2002.

<sup>64</sup> Petitioner points out that there are differences in physical appearance between its U-shaped metal post weighing 1 pound or less and metal tee posts, sign posts, or farm posts that are readily apparent to the consumer.

<sup>65</sup> Mr. S. Speece, Vice President of Production, Steel City, conference transcript, pp. 15-16.

<sup>66</sup> \*\*\*, Steel City, communications with staff, May 22, 2002.

<sup>67</sup> Mr. S. Speece, Vice President of Production, Steel City, conference transcript, pp. 15-17.

<sup>68</sup> Petition, p. 9.

<sup>69</sup> Petition, p. 8.

or less per foot. According to petitioner, many farm and ranch supply outlets stock only tee posts because they sell mostly to farmers and ranchers. In contrast, hardware, home-improvement, and department stores usually stock only U-shaped posts weighing 1 pound or less per foot because their customers are homeowners rather than farmers and ranchers.<sup>70</sup>

A comparison of the customers listed by producers and importers in their questionnaire responses reveals that, whereas importers of U-shaped posts weighing 1 pound or less per foot reported some of the same customers as the petitioner (which is the only domestic producer of U-shaped posts weighing 1 pound or less per foot),<sup>71</sup> there was \*\*\* overlap in the customers of subject U-shaped posts weighing 1 pound or less per foot cited by the petitioner or the importers and the customers of the other producers of subject (tee and angle) posts weighing 1 pound or less per foot.<sup>72</sup>

### Price

According to petitioner, there is no similarity in price between its U-shaped posts weighing 1 pound or less per foot and other shapes of posts. Petitioner states that tee posts are much cheaper, even though they are sturdier, because they are produced from scrap steel.<sup>73</sup> According to Commission questionnaires, Steel City's commercial U.S. shipments of domestic U-shaped metal posts weighing 1 pound or less per foot had unit values ranging from \$\*\*\* to \$\*\*\* per pound during the period investigated—considerably higher than the unit values of \$\*\*\* to \$\*\*\* per pound for domestic metal tee and angle-shaped posts weighing 1 pound or less per foot. Because all metal posts weighing 1 pound or less per foot are so heavily weighted by the large volumes and low unit values of the tee posts, all metal posts weighing 1 pound or less per foot (i.e., the subject product) had commercial U.S. shipments with

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<sup>70</sup> Mr. S. Speece, Vice President of Production, Steel City, written submission, staff conference, May 22, 2002, pp. 5-6. Staff examined fence posts at both a local Home Depot and a local Lowe's in Alexandria, VA, and found that, although there were several sizes of both the light-duty and heavy-duty U-shaped metal posts, the only tee post stocked by either store visited was 6 feet long and weighed 1.25 pounds per foot. Neither store stocked any domestic product. Staff also visited a farm store and a hardware store in more rural Culpeper, VA, and found no U-shaped metal fence posts whatsoever. The farm store stocked/catalogued metal studded tee posts weighing 1.25 pounds per foot in 5-, 5.5-, 6-, 6.5-, 7-, 8- and 10-foot lengths (each sold with five clips) as well as several different types of 4-foot fence posts—a fiberglass tee post, a fiberglass rod, a molded ultraviolet light-resistant “step-in” polyolefin post with eight wire holders, and a steel post with a solid round cross section and a 4-inch anchor plate. The hardware store stocked only 1 metal post—a studded metal tee post weighing 1.25 pounds per foot (the post was out of stock and staff neglected to note the length from the bin sticker).

<sup>71</sup> \*\*\*, \*\*\*, and \*\*\* were mentioned by both petitioner and importers of U-shaped posts weighing 1 pound or less per foot.

<sup>72</sup> On the other hand, \*\*\*, \*\*\*, \*\*\*, \*\*\*, and \*\*\* were all cited as customers by two or three of the reporting producers of subject (tee or angle) posts weighing 1 pound or less per foot. \*\*\* and \*\*\* did not provide listings of their customers.

<sup>73</sup> For example, prices at a major home-improvement retailer are \$1.85 for a 6-foot metal tee post compared to \$4.13 for a 6-foot heavy-duty U-shaped metal post and \$3.22 for a 6-foot light-duty U-shaped metal post. Mr. S. Speece, Vice President of Production, Steel City, conference transcript, p. 17. All tee posts with which petitioner is familiar are not only sturdier but also are heavier than its U-shaped metal posts. Staff experienced similar prices in its visit to a local home-improvement retailer in Alexandria, VA. The prices staff experienced were \$1.85 for a 6-foot Chinese metal tee post, \$3.56 for a 6-foot heavy-duty U-shaped metal Chinese post, and \$2.42 discontinued price (down from \$3.22) for a 6-foot U-shaped light-duty metal Chinese post. Using the 0.45 pound per foot weight for light-duty and 0.9 pound per foot for heavy-duty given in Commerce's scope, the per-pound price of the metal tee post would have been \$0.25 compared with \$0.66 per pound for the heavy-duty U-shaped metal post and \$0.90 (down from \$1.19) per pound for the light-duty U-shaped metal post.

unit values that ranged from \$\*\*\* to \$\*\*\* per pound during the reporting period, only slightly higher than the \$\*\*\* to \$\*\*\* per-pound unit values for metal posts over 1 pound per foot.



## **PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET**

### **CHANNELS OF DISTRIBUTION**

In the U.S. market, domestic and imported metal posts weighing 1 pound or less per foot are sold primarily to distributors. Available data for 2001 indicate that \*\*\* percent of sales by U.S. producers (\*\*\* percent of petitioner's sales of its U-shaped lawn and garden fence posts), as well as \*\*\* percent of sales by U.S. importers of the Chinese product, were made to distributors.

U-shaped lawn and garden steel fence posts are sold to end users primarily by home centers such as Home Depot and Lowe's, independent cooperative stores such as Ace Hardware, and smaller "mom and pop" hardware and gardening stores.<sup>1</sup> While both U-shaped posts and tee posts may be sold in these stores, the petitioner asserts that fewer sizes of tee posts are generally available as compared to the U-shaped lawn and garden steel fence post selections. Petitioner states that farm supply outlets carry a wide selection of tee posts and generally do not carry the U-shaped lawn and garden steel fence posts.<sup>2 3</sup>

### **SUPPLY AND DEMAND CONSIDERATIONS**

#### **U.S. Supply**

Based on available information, U.S. producers have the ability to respond to changes in demand with relatively large changes in the quantity of shipments of U.S.-produced metal posts weighing 1 pound or less per foot to the U.S. market. The main factors contributing to this degree of responsiveness are general increases in end-of-period inventories, as well as recent increases in excess capacity. These factors are detailed next.

#### **Industry Capacity**

Data reported by U.S. producers of metal posts weighing 1 pound or less per foot indicate that there is excess capacity with which to expand production in the event of price changes. Domestic capacity utilization decreased from \*\*\* percent in 1999 to \*\*\* percent in 2000, then increased to \*\*\* percent in 2001. Interim data reveal that capacity utilization fell from \*\*\* percent in the first quarter of 2001 to \*\*\* percent in the first quarter of 2002.<sup>4</sup>

#### **Inventory Levels**

U.S. producers' inventories of metal posts weighing 1 pound or less per foot, as a ratio to total shipments, increased unevenly from \*\*\* percent in 1999 to \*\*\* percent in 2001, with interim data revealing a decline from \*\*\* percent from the first quarter of 2001 to \*\*\* percent in the first quarter of

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<sup>1</sup> Respondent MAT's postconference brief, p. 4.

<sup>2</sup> Conference transcript, pp. 15-16.

<sup>3</sup> Petitioner mistakenly asserted that there were no tee posts weighing less than 1 pound per foot. In reality, most domestic production of subject product is tee posts weighing less than 1 pound per foot. Therefore, petitioner's comments on "lawn and garden fence posts" are presumed to refer only to the U-shaped product weighing 1 pound or less per foot.

<sup>4</sup> With respect to only U-shaped metal posts weighing 1 pound or less per foot, petitioner operated at \*\*\* to \*\*\* percent of capacity during the period examined.

2002. These data indicate that U.S. producers have some ability to use inventories as a means of increasing shipments to the U.S. market.<sup>5</sup>

## **Export Markets**

While exports represented \*\*\* percent of total shipments of metal posts weighing 1 pound or less per foot during the period examined, they increased irregularly from \*\*\* percent in 1999 to \*\*\* percent in 2001, after declining to \*\*\* percent in 2000. Interim data reveal that exports declined from \*\*\* percent in the first quarter of 2001 to \*\*\* percent in the first quarter of 2002. These numbers suggest that U.S. producers have a limited ability to divert shipments to or from alternate markets in response to changes in the price of such posts in the U.S. market.<sup>6</sup>

## **U.S. Demand**

Based on available information, the overall demand for metal posts weighing 1 pound or less per foot is likely to exhibit small to moderate changes in response to changes in price. The main factor contributing to the estimated degree of price sensitivity is the lack of substitute products reported by the majority of responding firms. However, several firms mentioned products which may be substitutes for such posts.

## **Demand Characteristics**

Both U.S. producers and importers had mixed responses regarding demand for metal posts weighing 1 pound or less per foot in the United States since January 1, 1999. Two of three responding U.S. producers (both producers of tee posts) reported that demand has been stable during this time frame, while the petitioner reported that demand increased \*\*\* percent for its U-shaped post due to the growth of retailers such as Home Depot and Lowe's.<sup>7</sup> Among responding importers, which all imported U-shaped metal posts weighing 1 pound or less per foot, one firm reported that demand has increased, while the other two firms reported that demand has been flat during this time frame. Both U.S. producers and importers stated that demand for such posts is seasonal, with most sales occurring in the spring. However, U.S. producers and importers reported that prices for these posts remain constant throughout the year.<sup>8</sup>

Available information indicates that U.S. consumption of metal posts weighing 1 pound or less per foot decreased unevenly from \*\*\* pounds in 1999 to \*\*\* pounds in 2001. U.S. consumption, however, increased during the first three months of 2002 from \*\*\* pounds in interim 2001 to \*\*\* pounds in interim 2002.

Respondent MAT asserts that the growing market power of home centers such as Home Depot and Lowe's is an important factor in this investigation. Home centers demand large volumes to supply

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<sup>5</sup> With respect to only U-shaped metal posts weighing 1 pound or less per foot, petitioner's inventories as a ratio to total shipments ranged from \*\*\* to \*\*\* percent during the period examined.

<sup>6</sup> Questionnaire responses reveal that principal export markets for U.S.-produced metal posts weighing 1 pound or less per foot are \*\*\*. There are \*\*\* exports of U-shaped metal posts weighing 1 pound or less per foot.

<sup>7</sup> Conference transcript, pp. 27-28.

<sup>8</sup> Petitioner stated that near-term U.S. demand is expected to rise as a result of anticipated increases in housing starts (conference transcript, p. 36).

their national chains, and “seek suppliers who can provide the broadest range of products to maximize economic efficiencies.” Thus, smaller-volume suppliers or suppliers with limited product ranges are deemed unqualified suppliers by the home centers.<sup>9</sup>

### **Substitute Products**

Questionnaire responses from three U.S. producers and five importers reveal that the majority of responding firms (five out of eight) believe there are no substitutes for their posts. However, one importer mentioned wood posts, one U.S. producer of tee posts mentioned wood, plastic, tubing, and other steel shapes as possible substitutes, and one importer mentioned tee posts as a possible substitute for U-shaped posts.<sup>10</sup>

## **SUBSTITUTABILITY ISSUES**

The degree of substitution between domestic and imported posts depends upon such factors as relative prices, quality, and conditions of sale. Based on available data at the preliminary phase of this investigation, staff believes that there is a high degree of substitution between domestic U-shaped lawn and garden steel fence posts and subject imports from China.<sup>11</sup>

### **Comparison of Domestic Product, Subject Imports, and Nonsubject Imports**

All four responding U.S. producers and all four responding importers believe that U.S. and Chinese metal posts are used interchangeably. In addition, three of four U.S. producers and all three responding importers believe that U.S. and nonsubject imported metal posts are used interchangeably, as well as subject and nonsubject metal posts.<sup>12</sup>

Among U.S. producers, \*\*\* was the only firm that responded in the negative regarding product interchangeability for U.S./nonsubject and subject/nonsubject comparisons. According to \*\*\*, U-shaped nonsubject metal posts weighing 1 pound or less per foot do not exist. Nonsubject (over 1 pound per foot) imported metal tee posts and sign posts are typically used in farm and industrial settings, while U-shaped metal posts are typically used in household settings.

While petitioner claims that price is the only factor in home centers’ purchasing decisions, respondent MAT asserts that factors other than price are also important when home centers select suppliers. According to MAT, product mix, production capacity, and quality also play important roles in home centers’ purchasing decisions.<sup>13</sup>

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<sup>9</sup> Respondent MAT’s postconference brief, pp. 15-17.

<sup>10</sup> At the conference, respondent MAT stated that petitioner’s lack of discussion of posts made of wood, plastic, metal tubing, or other material with regard to the subject merchandise definition is a potential shortcoming of the petition (conference transcript, pp. 47-48).

<sup>11</sup> The record indicates that all subject imports appear to be the U-shaped metal posts. At this preliminary phase of the investigation, there appears to be limited substitution between the U-shaped metal posts weighing 1 pound or less per foot and the metal tee posts weighing 1 pound or less per foot. For example, petitioner is unaware of the existence of U.S. production of metal tee posts weighing 1 pound or less per foot, and petitioner’s top customers \*\*\* with those of U.S. producers of metal tee posts weighing 1 pound or less per foot. Reporting individual metal tee post producers have some similar customers.

<sup>12</sup> Given that, among U.S. producers, only the petitioner produces U-shaped metal posts weighing 1 pound or less per foot, staff assumes that the other responding U.S. producers are referring to metal tee or angle posts weighing 1 pound or less per foot when answering questions on interchangeability.

<sup>13</sup> Conference transcript, pp. 58-61.

At the conference, respondent MAT stated that some purchasers view the Chinese product as a higher quality product due to the use of rivets to fasten the metal plate to the fence post as opposed to the U.S.-produced method which involves stamping or crimping the metal plates on to the post. Petitioner responded to this assertion by stating that its quality had never been questioned, and that it has repeatedly been told that price was the primary determinant in home centers' purchasing decisions.<sup>14</sup> Petitioner further asserted that U.S. consumers could not detect quality differences between the domestic and imported product since they have very similar appearances.<sup>15</sup>

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<sup>14</sup> Conference transcript, pp. 61 and 78.

<sup>15</sup> Conference transcript, pp. 78-80.

### PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of five firms accounting for all known domestic production of products covered by the scope, including U.S. U-shaped metal posts weighing 1 pound or less per foot.

The petition stated that petitioner, Steel City, was the only known producer of lawn and garden fence posts in the United States. However, staff polled 14 other firms that were believed to be possible producers of metal posts weighing 1 pound or less per foot. Additionally, since petitioner produced and advertised "farm and sign posts" over 1 pound per foot,<sup>1</sup> Commission questionnaires requested information on metal posts over 1 pound per foot. Table III-1 presents plant locations and shares of reported 2001 U.S. production (by weight) for each of the metal post producers that responded to the Commission's questionnaire.

**Table III-1  
Metal posts: U.S. producers, their position on the petition, plant locations, ownership, and percent of production, 2001**

Firm	Position on petition	Plant location	Related companies	Share of reported production	
				1 pound or under/foot	Over 1 pound/foot
Cascade Steel	Support <sup>1</sup>	McMinnville, OR	Schnitzer Steel Industries, Inc.	***	***
Franklin Industries	***	Franklin, PA	***	***	***
Jersey Shorel	***	Jersey Shore, PA	None	***	***
SMI/Southern Post	Support <sup>1</sup>	Magnolia, AR	Commercial Metals, Corp.	***	***
Steel City	Support <sup>1</sup>	Youngstown, OH	None	***	***
W. Silver	Support <sup>1</sup>	Vinton, TX	None	***	***

<sup>1</sup> Permission was given in the questionnaire to disclose the firm's position with respect to the petition.

Source: Compiled from data submitted in response to Commission questionnaires.

It should be noted that petitioner was the only firm reporting U-shaped metal posts 1 pound or less per foot.<sup>2</sup> The other firms produced tee posts, angle posts, and grape stakes weighing 1 pound or less

<sup>1</sup> See petition, exh. 1. See also conference transcript, pp. 38-40.

<sup>2</sup> Although Steel City produced U-shaped steel posts over 1 pound per linear foot, it reportedly \*\*\*. Conference transcript, pp. 38-39 and petitioner's producer's questionnaire response. Petitioner does not make tee posts  
(continued...)

per foot.<sup>3</sup> The following are the companies that responded to the Commission's questionnaire: Cascade Steel,<sup>4</sup> Franklin Industries,<sup>5</sup> Jersey Shore,<sup>6</sup> SMI/Southern Post,<sup>7</sup> Steel City,<sup>8</sup> and W. Silver.

Table III-2 presents U.S. production capacity, production, capacity utilization, shipments, end-of-period inventories, and employment-related indicators for metal posts weighing 1 pound or less per foot

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<sup>2</sup> (...continued)  
(conference transcript, p. 40).

<sup>3</sup> Products produced over 1 pound per foot include tee posts, angle posts, and U-shaped posts.

<sup>4</sup> Cascade Steel's minimill in McMinnville, OR, manufactures rebar, merchant bar, wire rod, coiled rebar, fence posts, special sections, and grape stakes. In addition, Cascade Steel maintains mill depots in El Monte, CA. <http://www.awpa.org/find/find.cfm?company1=Cascade%20Steel%20Rolling%20Mills%2C%20Inc%2E>. Cascade Steel hot-rolls studded tee posts weighing from 0.95 to 1.33 pounds per foot and bars of various shapes from newly cast billet steel. Mr. Michael Carr, Controller, Cascade Steel, telephone interview with USITC staff, June 6, 2002.

<sup>5</sup> Franklin Industries is a rail steel re-rolling mill located in Franklin, PA since 1901. Current sales are approximately \$\*\*\* and \*\*\* tons, with employment of \*\*\*. Primary products are studded tee fence posts weighing 1.25 and 1.33 pounds per foot, painted and galvanized; U-channel highway sign posts weighing 1.12 to 4.0 pounds per foot, also painted and galvanized; and a limited range of merchant products, including light angles, rounds, hexagons, and squares. It reported no production of posts under 1 pound per foot. Phone conversation with \*\*\* on May 28, 2002.

<sup>6</sup> Jersey Shore is a producer of high-strength rail steel products and steel fence posts, one of many products manufactured from this steel. The company was founded by John A. Schultz in 1938 and saw a first-year production of 15,000 tons of product. In 1984, Jersey Shore reached an all-time production high of 100,000 tons of steel angle. Today, Jersey Shore is owned and operated by Jack and Peter Schultz, the third generation of Schultzes to run the family business. Today the updated mill has an annual capacity of 170,000 tons. Jersey Shore hot-rolls equal-leg angles for fence posts, grape-vine posts, orchard posts, sign posts, garage-door supports, shelving braces, and road-barricade legs. <http://www.jssteel.com>.

<sup>7</sup> SMI/Southern is a group of steel companies made up of a steel minimill, SMI Steel Arkansas, and four steel fabrication plants, Southern Post. Together this group offers a full line of hot-rolled steel products, U-channel sign posts (over 1 pound per foot U-shaped sign posts in lengths from 6 to 14 feet), and studded "T" fence posts, as well as several fencing accessories. <http://www.smi-southernpost.com>.

<sup>8</sup> Steel City is a family-owned business founded in 1939 by Mr. Murray Fibus in Youngstown, OH. Today his son, Ken, continues as the President and CEO. Although the company originally produced wine coolers and beverage dispensers for the bar and restaurant business, in 1946 it erected an 8,000 square foot manufacturing facility at its current site and began producing products using metal fabrication and finishing. Newspaper tubes were added to the production line in 1952 and in 1959 the company began producing lawn and garden fence posts, rural mailboxes, and miscellaneous hardware products.

Steel City's current hardware products include rural mailboxes and mailbox posts, house-mounted mailboxes, lawn and garden fence posts, lightweight vinyl-coated fencing, work bench and sawhorse legs, tool holders, and decorative wall-mount brackets. Steel City's current newspaper products include newspaper delivery tubes, newspaper posts, plastic vending machines, imported rubber bands and plastic bags, and newspaper in-store displays.

Steel City also has an ownership interest in Dinesol Plastics Inc., a custom injection molder, and has a subsidiary and affiliate, Dinesol Doorlites, Ltd., a manufacturer of doorlites.

during 1999-2001, January-March 2001, and January-March 2002.<sup>9 10</sup> Exports reported were to Canada and Mexico.

**Table III-2**  
**Metal posts weighing 1 pound or less per foot: U.S. production capacity, production, capacity utilization, shipments, end-of-period inventories, and employment-related indicators, 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*

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<sup>9</sup> Ratios are calculated using data of firms providing both numerator and denominator information. \*\*\* did not provide capacity information and \*\*\* did not provide employment information. \*\*\* production (in 1,000 pounds) was \*\*\* in 1999; \*\*\* in 2000; \*\*\* in 2001; \*\*\* in January-March 2001; and \*\*\* in January-March 2002. \*\*\* production (in 1,000 pounds) was \*\*\* in 1999, \*\*\* in 2000, \*\*\* in 2001, \*\*\* in January-March 2001, and \*\*\* in January-March 2002. \*\*\* production (in 1,000 pounds) was \*\*\* in 1999; \*\*\* in 2000; \*\*\* in 2001; \*\*\* in January-March 2001; and \*\*\* in January-March 2002.

<sup>10</sup> Capacity utilization, productivity, and unit labor costs are computed from firms providing both numerator and denominator information.



## PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

### U.S. IMPORTERS

Importers of subject metal posts weighing 1 pound or less per foot are located throughout the United States. The Commission sent questionnaires to 43 firms that were either identified as possible importers by the petition and a review of U.S. Customs Service data, or were included in the firms identified as possible producers. The Commission received usable data on imports of lawn and garden steel fence posts from 6 companies;<sup>1</sup> 4 firms reported that they did not import lawn and garden steel fence posts, 29 firms did not respond, and 4 firms were “not in business.”

The \*\*\* importer of lawn and garden steel fence posts in the United States is Midwest Air Technologies (MAT).<sup>2</sup> Table IV-1 presents information on the importing firms that responded to the Commission’s importers’ questionnaire.

**Table IV-1**

**Subject U-shaped metal posts: Selected importers and their parent companies**

\* \* \* \* \*

### U.S. IMPORTS AND CONSUMPTION

Data in this section regarding the quantity and value of U.S. imports of metal posts weighing 1 pound or less per foot (which were all reported to be U-shaped posts) are based on questionnaire data<sup>3</sup> (table IV-2). Negligibility is not an issue in this investigation inasmuch as the only imports of subject product into the United States during the 12 month period preceding the filing of the petition, May 2001-April 2002, are from China, according to questionnaire responses. Table IV-3 presents data on U.S. producers’ U.S. shipments, U.S. imports, by sources, and total U.S. consumption during 1999-2001 and interim 2001 and 2002.

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<sup>1</sup> All importers reported that the subject posts (all under 1 pound per foot) that they imported were U-shaped posts. MAT also reported imports of non-subject tee posts over 1 pound per foot. See conference transcript pp. 71-72 (Mr. Lee).

<sup>2</sup> MAT was established in the mid 1980s and originally was involved in importing and selling air compressors and other automotive products. In addition to automotive products, MAT also has been involved in importing and selling a full line of hardware and lawn and garden products. During the period examined, MAT imported \*\*\* percent by volume and value of total reported subject imports, as well as \*\*\* percent by volume and value of metal fence posts weighing over 1 pound per foot.

<sup>3</sup> Official statistics for HTS statistical reporting number 7326.90.8535 indicate that imports in 2001 were 40.5 million pounds, valued at \$10.0 million (39.9 million pounds, valued at \$9.5 million, from China and 0.7 million pounds, valued at \$0.5 million, from all other countries). However, these figures are for all iron and steel fence posts, regardless of weight, that are studded with corrugations, knobs, studs, notches or similar protrusions, with or without anchor plates. Questionnaire responses presented in this report reflect imports (all from China) amounting to \*\*\* pounds, valued at \$\*\*\* in 2001.

**Table IV-2**

**Metal posts weighing 1 pound or less per foot: U.S. imports, by sources, 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*

**Table IV-3**

**Metal posts weighing 1 pound or less per foot: U.S. producers' U.S. shipments, U.S. shipments of imports, by sources, U.S. consumption, and market shares, 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*

## **PART V: PRICING AND RELATED INFORMATION**

### **FACTORS AFFECTING PRICES**

#### **Raw Material Costs**

The main raw material used in the production of metal posts weighing 1 pound or less per foot is steel. Raw material costs accounted for \*\*\* percent of the total 2001 cost of goods sold for U.S. production of such posts, compared with \*\*\* and \*\*\* percent in 1999 and 2000, respectively.<sup>1</sup>

#### **U.S. Inland Transportation Costs and Geographic Markets**

Transportation costs of subject posts for delivery within the United States vary from firm to firm but tend to account for a small to moderate percentage of the total cost of the product. Among U.S. producers, these costs accounted for an average of 7.4 percent of their posts. Among importers, these costs accounted for an average of 7.3 percent.

Three of the four responding U.S. producers reported regional geographic market areas encompassing the midwest, south, and Pacific northwest. \*\*\* reported having a national market. Four of the six importers that provided usable responses to this question reported regional market areas consisting of the northeast, east coast, and south, while the remaining two importers reported national market areas.

Producers and importers were also requested to provide estimates of the percentages of their shipments that were made within specified distance ranges. For the four U.S. producers that provided usable responses to this question, 17 percent occurred within 100 miles, 49.3 percent occurred within 101 to 1000 miles, and 33.7 percent occurred at distances over 1,000 miles. For the five importers that provided usable responses to this question, an average of 22.0 percent of shipments occurred within 100 miles, 51.0 percent occurred within 101 to 1,000 miles, and 27.0 percent occurred at distances over 1,000 miles.

#### **Exchange Rates**

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese yuan remained essentially unchanged during the period examined. The Chinese yuan has been pegged to the U.S. dollar since January 1, 1994, and thus nominal rates have remained virtually unchanged relative to the U.S. dollar since that time. Real values cannot be calculated due to the unavailability of the relevant Chinese producer price information.

### **PRICING AND PRODUCTION PRACTICES**

Available information from questionnaires reveals that sales of metal posts weighing 1 pound or less per pound in the United States are typically spot sales. However, \*\*\* and two of six importers reported that the majority of their sales were on a contract basis. According to these firms, contracts

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<sup>1</sup> With regard to only U-shaped metal posts weighing 1 pound or less per foot, the raw material costs accounted for \*\*\* to \*\*\* percent of the total cost of goods sold during the period examined.

generally last from six months to one year, involve only fixed prices, and generally have no minimum quantity requirements.<sup>2</sup>

As mentioned previously, subject posts experience seasonal demand, with sales at the retail level typically occurring from March through June. According to the petitioner, most of its shipments occur during these four months. Commitments from customers generally occur in September through November of the previous year,<sup>3</sup> and production takes place during the winter months.<sup>4</sup>

Two of three U.S. producers and one of six importers reported the existence of volume-based price discounts. U.S. producers reported that prices are typically quoted on an f.o.b. basis and payment is required within 30 days, while the majority of importers reported that prices are typically quoted on a delivered basis with payment due in 30 to 60 days. According to petitioner, Buy American provisions are irrelevant for the subject product.

## PRICE DATA

The Commission requested that U.S. producers and importers provide quarterly data for the total sales quantity and value of four U-shaped lawn and garden steel fence post products.<sup>5</sup> Data were requested for the period January 1999 through March 2002. The products for which pricing data were requested are as follows:

**Product 1. – Light-duty lawn and garden fence posts, 14 gauge thick, 1-3/4 inches wide by 4 feet tall**

**Product 2. – Light-duty lawn and garden fence posts, 14 gauge thick, 1-3/4 inches wide by 5 feet tall**

**Product 3. – Heavy-duty lawn and garden fence posts, 13 gauge thick, 3 inches wide by 5 feet tall**

**Product 4. – Heavy-duty lawn and garden fence posts, 13 gauge thick, 3 inches wide by 6 feet tall**

One U.S. producer and three importers provided usable pricing data for sales of the requested products in the U.S. market, although not all firms reported pricing data for all products for all quarters.<sup>6</sup> Selling price data reported by producer Steel City and U.S. importers accounted for \*\*\* percent of the January 1999-March 2002 value (and \*\*\* percent of the quantity) of all U.S. producers' commercial U.S.

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<sup>2</sup> Among U.S. producers, \*\*\* reported that 90.0 percent of its sales were on a contract basis. Among importers, \*\*\* and \*\*\* reported that contract sales accounted for 90.0 and 100.0 percent of total sales, respectively.

<sup>3</sup> Steel City stated that in the fall, it meets with potential buyers to present its product and price list. Next, potential buyers review the information provided by different suppliers and make a purchase decision (conference transcript, p. 32).

<sup>4</sup> Conference transcript, pp. 26-27.

<sup>5</sup> The pricing products were suggested by petitioner, which was unaware that metal posts weighing 1 pound or less per foot were produced or imported. Therefore, no pricing products were requested on subject metal posts in other than U-shapes.

<sup>6</sup> The firms which reported price data are U.S. producer Steel City, and importers \*\*\*. According to all importing firms, imports of fence posts weighing 1 pound or less per foot are U-shaped. \*\*\* stated that its imports of metal posts weighing over 1 pound per foot are all tee posts. See Parts I and III of this report for more information on reporting firms' specific products.

shipments of metal posts weighing 1 pound or less per foot, as well as \*\*\* percent of the value (and \*\*\* percent of the quantity) of U.S. importers' January 1999-March 2002 U.S. commercial shipments of such posts from China.<sup>7</sup>

The petitioner alleges that very low, stable prices for subject imports from China have resulted in lost sales volume and an inability to raise prices. In contrast, respondent MAT asserts that a "simple product like fence posts...is not going to change from year to year. Accordingly, stable prices...should be the norm. They...reflect stable supply conditions that correspond to stable demand conditions."<sup>8</sup>

In addition, respondent MAT asserts that the mere existence of underselling is insufficient to establish adverse price effects. Subject imports sold primarily to home centers such as The Home Depot and Lowe's are sold in much larger volumes with consequent smaller unit values, as compared to sales to smaller "mom and pop" hardware stores.<sup>9</sup>

Data on selling prices and quantities of products 1 through 4 are presented in tables V-1 through V-4 and figures V-1 through V-4. As shown in table V-1 and figure V-1, price comparisons for product 1 between the United States and China were possible in a total of 13 quarters. In 3 quarters, the Chinese product was priced above the U.S. product, with margins ranging from \*\*\* to \*\*\* percent and averaging 1.1 percent. In the other 10 quarters, the Chinese product was priced below the U.S. product, with margins ranging from \*\*\* to \*\*\* percent and averaging 7.0 percent.

As shown in table V-2 and figure V-2, price comparisons for product 2 between the United States and China were possible in a total of 13 quarters. In all quarters, the Chinese product was priced below the U.S. product, with margins ranging from \*\*\* to \*\*\* percent and averaging 13.7 percent.

**Table V-1**  
**Lawn and garden steel fence posts: Weighted-average f.o.b. prices and quantities for product 1, and margins of underselling/(overselling), as reported by U.S. producers and importers, by quarters, January 1999-March 2002**

\* \* \* \* \*

**Table V-2**  
**Lawn and garden steel fence posts: Weighted-average f.o.b. prices and quantities for product 2, and margins of underselling/(overselling), as reported by U.S. producers and importers, by quarters, January 1999-March 2002**

\* \* \* \* \*

**Table V-3**  
**Lawn and garden steel fence posts: Weighted-average f.o.b. prices and quantities for product 3, and margins of underselling/(overselling), as reported by U.S. producers and importers, by quarters, January 1999-March 2002**

\* \* \* \* \*

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<sup>7</sup> Steel City's pricing products accounted for \*\*\* percent of the value (and \*\*\* percent of the quantity) of its commercial U.S. shipments of U-shaped metal posts weighing 1 pound or less per foot during the period examined. As previously stated, the record indicates that only U-shaped metal posts weighing 1 pound or less per foot were imported during the period examined.

<sup>8</sup> Conference transcript, pp. 53-54.

<sup>9</sup> Ibid.

**Table V-4**

**Lawn and garden steel fence posts: Weighted-average f.o.b. prices and quantities for product 4, and margins of underselling/(overselling), as reported by U.S. producers and importers, by quarters, January 1999-March 2002**

\* \* \* \* \*

**Figure V-1**

**Lawn and garden steel fence posts: Weighted-average f.o.b. prices for product 1, as reported by U.S. producers and importers, by quarters, January 1999-March 2002**

\* \* \* \* \*

**Figure V-2**

**Lawn and garden steel fence posts: Weighted-average f.o.b. prices for product 2, as reported by U.S. producers and importers, by quarters, January 1999-March 2002**

\* \* \* \* \*

**Figure V-3**

**Lawn and garden steel fence posts: Weighted-average f.o.b. prices for product 3, as reported by U.S. producers and importers, by quarters, January 1999-March 2002**

\* \* \* \* \*

**Figure V-4**

**Lawn and garden steel fence posts: Weighted-average f.o.b. prices for product 4, as reported by U.S. producers and importers, by quarters, January 1999-March 2002**

\* \* \* \* \*

As shown in table V-3 and figure V-3, price comparisons for product 3 between the United States and China were possible in a total of 13 quarters. In all quarters, the Chinese product was priced above the U.S. product, with margins ranging from \*\*\* to \*\*\* percent and averaging 27.9 percent.

As shown in table V-4 and figure V-4, price comparisons for product 4 between the United States and China were possible in a total of 13 quarters. In 12 quarters, the Chinese product was priced above the U.S. product, with margins ranging from \*\*\* to \*\*\* percent and averaging 8.7 percent. In the remaining quarter, the Chinese product was priced below the U.S. product, with a margin of \*\*\* percent.

**LOST SALES AND LOST REVENUES**

Three U.S. producers provided information on allegations of lost sales and lost revenue due to imports of metal posts from China. However, only the lost sales allegations (\*\*\*) relate to subject imports from China. All lost revenue allegations were supplied by non-petitioners \*\*\* and \*\*\*, and in both cases the alleged lost revenue is due to imports of metal tee posts from China weighing over 1 pound per foot. Of the three specific lost sales allegations, one was denied by a purchaser, and in the other two instances it was impossible to obtain adequate information.<sup>10</sup> The three reported lost sales allegations involved \$\*\*\* and \*\*\* pounds of U-shaped metal posts weighing 1 pound or less per foot.

<sup>10</sup> \*\*\*.

The subject lost sales and nonsubject lost revenue allegations are reported in tables V-5 and V-6, respectively. \*\*\*<sup>11</sup> \*\*\*.<sup>12</sup>

**Table V-5**  
**Lawn and garden steel fence posts: Lost sales allegations**

\* \* \* \* \*

**Table V-6**  
**Tee posts, including grape stakes: Nonsubject lost revenue allegations**

\* \* \* \* \*

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<sup>11</sup> Staff interview with \*\*\* of \*\*\*, May 30, 2002. Staff attempted to contact \*\*\* after this conversation to obtain more detailed information regarding \*\*\* prior business with \*\*\*, but staff's phone calls were never returned. \*\*\* denies purchasing and reselling any Chinese product (e-mail response from \*\*\* of \*\*\*, June 12, 2002).

<sup>12</sup> Staff interview with \*\*\* of \*\*\*, June 5, 2002.



## PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

### BACKGROUND

Three producers<sup>1</sup> provided usable financial data on their operations producing metal posts weighing 1 pound or less per foot. Except for Steel City, these other firms primarily produce their products from used railroad rails by hot-rolling or extruding, and the metal posts of these firms tend to be in the form of tees in the heavier weight category (0.85 to 0.95 pound per foot). Steel City produces its metal U-posts by roll forming, stamping, and piercing steel sheet or strip in two weight categories.<sup>2</sup> According to personnel at Steel City, the hot-rolling process is less expensive and uses a less expensive input (scrap steel rail) compared with its production process. Reportedly, metal posts weighing 1 pound or less per foot account for only a small part of these total production and sales of the other companies who also produce angle, concrete reinforcing bar, tee and U-posts weighing greater than 1 pound per foot, and other types of fencing products. Steel City also produces mail boxes, mail box accessories, brackets, and other formed steel sheet products for the do-it-yourself homeowner.<sup>3</sup>

### OPERATIONS ON METAL POSTS WEIGHING ONE POUND OR LESS PER FOOT

Income and loss data for U.S. producers' operations on metal posts weighing 1 pound or less per foot are presented in table VI-1. The quantity of total sales decreased each year between 1999 and 2001, but increased between January-March 2001 and the same period in 2002. Total sales values declined between each of the periods investigated, as did unit sales values.

Table VI-1

**Results of operations of U.S. producers of metal posts weighing 1 pound or less per foot, fiscal years 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*

The cost of goods sold (COGS) and unit COGS also decreased between each period investigated in response to the decline in quantity sold and to improvements in manufacturing efficiency.<sup>4</sup> The industry's operating income and net income decreased between each of the three years (with \*\*\* of the decrease occurring between 1999 and 2000), but increased between the two interim periods. Cash flow changed in a manner similar to that of net income. The ratio of operating income to net sales fell by about \*\*\* between 1999 and 2000 and by another \*\*\* between 2000 and 2001, but increased by \*\*\*

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<sup>1</sup> These producers and their fiscal years are Cascade Steel (\*\*\*) ; SMI/Southern Post (\*\*\*) ; and Steel City (\*\*\*) , although Steel City reported on a calendar year basis. Other companies, \*\*\*, provided limited data in the trade section of the Commission's questionnaire but stated that these data were based on estimates but that reasonable estimates of sales and related costs could not be developed from their financial records. For example, \*\*\* initial response represented the entirety of its sales of rebar, grape stakes, and angle; subsequently, this company amended its questionnaire response to provide estimated data for the trade section but stated that no financial data for its fence products or for the subject fence posts were available. \*\*\* stated that the subject products \*\*\*. Differences between data reported in the trade and financial sections of the Commission's producers' questionnaire mainly are attributable to timing differences and difference in coverage.

<sup>2</sup> Telephone conversation with Steel City personnel on May 22, 2002.

<sup>3</sup> Steel City brochure, petition, exh. 1.

<sup>4</sup> Conference transcript, pp. 19-20 (Mr. Hendricks).

between January-March 2001 and the same period in 2002. The ratio of net income to net sales followed a similar pattern.

Salient financial data are shown in table VI-2 on a firm-by-firm basis.

**Table VI-2**

**Salient financial data of U.S. producers of metal posts weighing 1 pound or less per foot, by firms, fiscal years 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*

A variance analysis assists in the assessment of the causes of changes in profitability and identifies the relationships between price, cost, and volume. Variance analysis is most useful for products that do not have substantial changes in product mix over the period, and is most sensitive at the plant or firm level, rather than at the aggregated industry level. Because of these factors a variance analysis aggregated for the three firms that provided financial data is not provided.

**CAPITAL EXPENDITURES, RESEARCH AND DEVELOPMENT EXPENSES,  
AND INVESTMENT IN PRODUCTIVE FACILITIES**

The responding firms' data on capital expenditures, research and development expenses, and the value of their property, plant, and equipment used in the production of metal posts weighing 1 pound or less per foot are shown in table VI-3.

**Table VI-3**

**Value of assets and capital expenditures of U.S. producers of metal posts weighing 1 pound or less per foot, fiscal years 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*

**CAPITAL AND INVESTMENT**

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of metal posts weighing 1 pound or less per foot from China on their firms' growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Responses of those U.S. producers that provided usable financial data are shown in appendix D.

## PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

### THE INDUSTRY IN CHINA

Table VII-1 presents data for the Chinese producer that responded to the Commission's questionnaire.<sup>1</sup> This firm accounted for between \*\*\* and \*\*\* percent of reported U.S. imports from China during 1999-2001. As reported in their questionnaire response, exports by Hangzhou Hongyuan Sportsware Co., Ltd. were valued at \$\*\*\* in 1999, \$\*\*\* in 2000, \$\*\*\* in 2001, \$\*\*\* in interim 2001, and \$\*\*\*<sup>2</sup> in interim 2002. Unit values were \$\*\*\*, \$\*\*\*, \$\*\*\*, \$\*\*\*, and \$\*\*\* per pound during the same periods.

**Table VII-1**

**Metal posts 1 pound or less per foot: Chinese production capacity, production, shipments, and inventories, 1999-2001, January-March 2001, January-March 2002, and projected 2002-03**

\* \* \* \* \*

### U.S. INVENTORIES OF IMPORTED PRODUCT

As shown in table VII-2, importers' end-of-period inventories of subject imports from China decreased during 1999-2001 and between the interim periods.

**Table VII-2**

**Metal posts weighing 1 pound or less per foot: U.S. importers' end-of-period inventories of imports, by sources, 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*

---

<sup>1</sup> Of the five firms contacted, China North Industries Corp., China Tuhsu Zhejiang Tea Import & Export Corp., Liaoning Metals and Minerals Co., Ltd., Tianjin Light Import & Export Co., Ltd., and Hangzhou Hongyuan Sportsware Co., Ltd., only Hangzhou Hongyuan Sportsware Co., Ltd. responded by filling out the Commission's questionnaire. It estimated that it accounted for \*\*\* percent of total production in China of subject fence posts and accounted for \*\*\* percent of the total exports to the United States. It also reported that it had \*\*\* to add, expand, curtail, or shut down production capacity and/or production of subject fence posts in China. Additionally, it is \*\*\* to any U.S. firm producing or planning to produce these fence posts. \*\*\*, which is reported to be \*\*\* of Hangzhou Hongyuan's subject fence posts in the United States, stated that all of its imports of subject posts weighing 1 pound or less per foot are U-shaped posts. No information was given concerning any additional products made by this firm. No information was provided in response to the Commission's telegram and there was no information available concerning the other four firms.

<sup>2</sup> The interim 2002 value of \$\*\*\* and the corresponding unit value of \$\*\*\* were confirmed by \*\*\*.

### **U.S. IMPORTERS' CURRENT ORDERS**

Four firms reported imports of \*\*\* pounds of subject U-shaped lawn and garden metal fence posts from China between April and July 2002.

### **ANTIDUMPING DUTY ORDERS IN THIRD-COUNTRY MARKETS**

There is no indication that subject fence posts from China have been the subject of any other import relief investigations in any other countries.

**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



**INTERNATIONAL TRADE  
COMMISSION**

[Investigation No. 731-TA-1010  
(Preliminary)]

**Lawn and Garden Steel Fence Posts  
From China****Determinations**

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of U-shaped or hat-shaped lawn and garden fence posts made of steel and/or any other metal, weighing one pound or less per foot, provided for in subheading 7326.90.85 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

On the basis of the record developed in the subject investigation, the Commission also determines,<sup>3</sup> pursuant to section 733(a) of the Act, that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from China of other fence posts made of steel and/or other metal including tee, farm, and sign posts weighing one pound or less per foot, provided for in subheading 7326.90.85 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at LTFV.

**Commencement of Final Phase  
Investigation**

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in

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

<sup>2</sup> Vice Chairman Hillman and Commissioner Miller dissenting.

<sup>3</sup> Commissioner Bragg dissenting.

that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

#### **Background**

On May 1, 2002, a petition was filed with the Commission and Commerce by Steel City Corporation, Youngstown, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of lawn and garden steel fence posts from China. Accordingly, effective May 1, 2002, the Commission instituted antidumping duty investigation No. 731-TA-1010 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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 May 8 (67 FR 30963, May 8, 2002). The conference was held in Washington, DC, on May 22, 2002, 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 June 17, 2002. The views of the Commission are contained in USITC Publication 3521 (June 2002), entitled *Lawn and Garden Steel Fence Post from China: Investigation No. 731-TA-1010 (Preliminary)*.

By order of the Commission.

Issued: June 18, 2002.

**Marilyn R. Abbott,**  
*Secretary.*

[FR Doc. 02-15862 Filed 6-21-02; 8:45 am]

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**INTERNATIONAL TRADE  
COMMISSION**

**[Investigation No. 731-TA-1010  
(Preliminary)]**

**Lawn and Garden Steel Fence Posts  
From China**

**AGENCY:** International Trade  
Commission.

**ACTION:** Institution of antidumping  
investigation and scheduling of a  
preliminary phase investigation.

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**SUMMARY:** The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-1010 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that 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 from China of lawn and garden steel fence posts, provided for in subheading 7326.90.85 or 7308.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by June 17, 2002. The Commission's views are due at Commerce within five business days thereafter, or by June 24, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** May 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Fred Ruggles (202-205-3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDISON-LINE) at <http://dockets.usitc.gov/eol/public>.

**SUPPLEMENTARY INFORMATION:**

**Background**

This investigation is being instituted in response to a petition filed on May 1, 2002, by Steel City Corporation Youngstown, OH.

**Participation in the Investigation and Public Service List**

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the *Federal Register*. Industrial users and (if the merchandise under

investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

**Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven 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 BPI under the APO.

**Conference**

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 22, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202-205-3187) not later than May 20, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

**Written Submissions**

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 28, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the

Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 3, 2002.

By order of the Commission.

**Marilyn R. Abbott,**  
*Secretary.*

[FR Doc. 02-11480 Filed 5-7-02; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-570-877]

**Notice of Initiation of Antidumping Duty Investigation: Lawn and Garden Steel Fence Posts From the People's Republic of China**

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

ACTION: Initiation of an antidumping duty investigation.

EFFECTIVE DATE: May 29, 2002.

FOR FURTHER INFORMATION CONTACT: David Salkeld at (202) 482-1168; AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**Initiation of Investigation***The Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, ("the Act"), by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are references to the provisions codified at 19 CFR Part 351 (2001).

*The Petition*

On May 1, 2002, the Department received a petition filed in proper form by Steel City Corporation ("the petitioner"). On May 9, 2002, we sent the petitioner a letter with questions regarding the petition. The Department received information supplementing the petition on May 14, 2002 and May 21, 2002.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of lawn and garden steel fence posts ("steel fence posts") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party, as defined in section 771(9)(C) of the Act and has

demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department to initiate. (See the *Determination of Industry Support for the Petition* section below.)

*Scope of Investigation*

The scope of the investigation includes all lawn and garden steel fence posts, in whatever form, shape, or size, that are produced in the PRC. The fence posts included within the scope of this investigation weigh up to 1 pound per foot and are made of steel and/or any other metal. Imports of these products are classified under the following categories: fence posts, studded with corrugations, knobs, studs, notches or similar protrusions with or without anchor posts. These posts are normally "U" shaped or "hat" shaped or any other similar shape excluding round or square tubing or pipes.

These posts are normally made in two different classes, light and heavy duty. Light duty lawn and garden posts are normally made of 14 gauge steel (0.068 inches-0.082 inches thick), 1.75 inches wide, in 3, 4, 5, or 6 foot lengths. These posts normally weigh approximately 0.45 pounds per foot and are packaged in mini-bundles of 10 posts and master bundles of 400 posts. Heavy duty lawn and garden fence posts are normally made of 13 gauge steel (0.082 inches-0.095 inches thick), 3 inches wide, in 5, 6, 7, and 8 foot lengths. Heavy duty posts normally weigh approximately 0.90 pounds per foot and are packaged in mini-bundles of 5 and master bundles of 200. Both light duty and heavy duty posts are included within the scope of the investigation.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheading: 7326.90.85.35. Fence posts classified under subheading 7308.90 are also included within the scope of the investigation if the fence posts are made of steel and/or metal.

Specifically excluded from the scope are "tee" posts, farm posts, and sign posts, provided that the posts weigh over 1 pound per foot.<sup>1</sup> Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("Customs") purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner

<sup>1</sup> Tee posts are made by rolling red hot steel into a "T" shape. These posts do not have tabs or holes to help secure fencing to them and have primarily farm and industrial uses.

to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

#### *Determination of Industry Support for the Petition*

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.<sup>2</sup>

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation,"

*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation.

The petition covers lawn and garden steel fence posts as defined in the *Scope of Investigation* section, above, a single class or kind of merchandise. The Department has no basis on the record to find the petitioner's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition. However, the Department will take into account any comments submitted by parties in connection with this issue during the course of the proceeding, and revisit the issue, if appropriate. In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied on the petition. The petition contained the most recent production and shipment data (by volume) of petitioner available, covering the period February 1, 2001 to January 31, 2002, which is petitioner's fiscal year. See *Initiation Checklist*.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

We examined the accuracy of information contained in the petition, in accordance with section 732(c)(1) of the Act, by gathering information through Department research. For example, we procured a list of potential domestic producers of steel fence posts from the International Trade Commission and contacted those companies to check petitioner's claim that it was the sole producer of subject merchandise in the United States. We found no information that called into question the accuracy of information contained in the petition.

Information contained in the petition and its supplements demonstrate that the domestic producers or workers who support the petition account for over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the

requirements of section 732(c)(4)(A)(i) are met. See *Initiation Checklist* at Attachment I. Furthermore, because the Department received no domestic opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. See *Initiation Checklist*. Thus, the requirement of section 732(c)(4)(A)(ii) is met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

#### *Period of Investigation*

The anticipated period of investigation is October 1, 2001, through March 31, 2002.

#### *Export Price and Normal Value*

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to home market and U.S. price are detailed in the *Initiation Checklist*.

The Department has analyzed the information in the petition and considers the country-wide import statistics for the anticipated POI and pricing information used to calculate the estimated margin to be sufficient for purposes of initiation. Based on the information submitted in the petition, adjusted where appropriate, we are initiating this investigation, as discussed below and in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we will re-examine the information and may revise the margin calculation, if appropriate.

#### **Export Price**

The petitioner based export prices on actual prices of the product offered by a U.S. importer and/or distributor. The petition demonstrates that these prices are on a packed and delivered basis. Petitioner calculated a net price by deducting from the price movement expenses and a U.S. distributor markup. Movement expenses include costs for duties and fees, unloading and handling fees, foreign brokerage and handling, foreign inland freight, repacking costs, U.S. inland freight and ocean freight. To derive the movement expenses, petitioner used the lowest of numerous

<sup>2</sup> See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 Fr 32376, 32380-81 (July 16, 1991).

price quotes from several freight companies for the costs to deliver a 40-foot container of fence posts from Youngstown, Ohio to China on March 20, 2002. See *Initiation Checklist*.

#### Normal Value

The petitioner asserted that the PRC is a nonmarket economy country ("NME") within the meaning of section 771(18) of the Act. In previous investigations, the Department has determined that the PRC is an NME. See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 22183 (May 31, 2001); *Steel Wire Rope from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 66 FR 12759 (February 28, 2001). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product appropriately is based on the producer's factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act.

In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters. See, e.g., *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994).

For the normal value calculation, the petitioner based the factors of production, as defined by section 773(c)(3) of the Act, on the quantities of inputs it used to produce steel fence posts during calendar year ("CY") 2001. The petitioner used the actual usage rates of a U.S. production facility in accordance with 19 CFR 351.202(b)(7)(B) because information on actual usage rates of representative Chinese steel fence posts producers is not reasonably available to the petitioner. The petitioner used its own data because it claimed it is the only steel fence posts manufacturer in the United States.

The petitioner asserted that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic

development comparable to the PRC in terms of per capita gross national product. Based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioner valued factors of production, where possible, on reasonably available, public surrogate country data. Specifically, the factor cost for steel was based on the public version of an Indian price quote from a market research report attached to the September 28, 2001, *Petition for the Imposition of Antidumping Duties: Certain Cold-Rolled Carbon Steel Flat Products from India*. See the *Initiation Checklist*.

Unit energy costs were obtained for India from public data from the *Energy Information Administration, National Energy Information Center, Electricity Prices for Industry, 1994-1999* for electricity and natural gas as this was the best reasonably available public data the petitioner could find. The cost of paint was based on petitioner's own costs because the petitioner was unable to find publically available Indian data for this factor of production. Labor was valued using the regression-based wage rate for China provided by the Department, in accordance with 19 CFR 351.408(c)(3).

The factory overhead rate, selling, general & administrative expenses ("SG&A") rate, and profit rate, were based on the average respective rates derived from a sample of 1,914 public limited companies in India that were reported in the June 2001 *Reserve Bank of India Bulletin*. The petitioner included packing costs based on its own costs in its normal value calculation as best information available.

Based on the information provided by the petitioner, we believe that the petitioner's factors of production methodology represents information reasonably available to the petitioner and is appropriate for purposes of initiating this investigation.

The estimated dumping margins, based on a comparison between export price and normal value, range from 51 to 89 percent. See *Initiation Checklist*.

#### Fair Value Comparisons

The Department has examined the adequacy and accuracy of the information the petitioner used in its calculations of export prices and normal value and has found that it represents information reasonably available to the petitioner supporting the allegation of dumping. Based on the data provided by the petitioner, there is reason to believe

that imports of lawn and garden steel fence posts from the PRC are being, or are likely to be, sold at less than fair value.

#### Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value. The petitioner contends that the industry's injured condition is evident in the decline of U.S. producers' output, sales, capacity, profits, productivity, and capacity utilization, as well as negative effects on cash flow, inventories, employment, wages, and growth. We have examined the accuracy and adequacy of the evidence provided in the petition and have determined that the allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, and lost sales, and pricing information, and that the petition contains information reasonably available to the petitioner (see *Initiation Checklist* at Attachment II).

#### Initiation of Antidumping Investigation

Based upon our examination of the petition on lawn and garden steel fence posts from the PRC and the petitioner's responses to our supplemental questionnaire clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. See *Initiation Checklist*. Therefore, we are initiating an antidumping duty investigation to determine whether imports of lawn and garden steel fence posts from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is postponed, we will make our preliminary determination no later than 140 days after the date of this initiation. See "Case Calendar" section of the *Initiation Checklist*.

#### Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

#### International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

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*Preliminary Determination by the ITC*

The ITC will determine, no later than June 17, 2002, whether there is a reasonable indication that imports of steel fence posts from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: May 21, 2002.

**Faryar Shirzad,**  
*Assistant Secretary for Import  
Administration.*

[FR Doc. 02-13392 Filed 5-28-02; 8:45 am]

BILLING CODE 3510-DS-P

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**APPENDIX B**  
**CONFERENCE WITNESSES**



**CALENDAR OF THE PUBLIC CONFERENCE**

Those listed below appeared as witnesses at the United States International Trade Commission's conference held in connection with the following investigation:

**LAWN AND GARDEN STEEL FENCE POSTS FROM CHINA**  
**Investigation No. 731-TA-1010 (Preliminary)**  
**May 22, 2002 - 9:30 am**

The conference was held in Courtroom A of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

**IN SUPPORT OF THE IMPOSITION OF ANTIDUMPING DUTIES:**

Thompson Coburn--Counsel  
Washington, DC  
on behalf of--

Steel City Corporation  
Robert Hendricks, Vice President  
Stephen Speece, Vice President of Production

Marcy B. Stras )--OF COUNSEL

**IN OPPOSITION TO THE IMPOSITION OF ANTIDUMPING DUTIES:**

White & Case--Counsel  
Washington, DC  
on behalf of--

Midwest Air Technologies

Adams Lee )--OF COUNSEL



**APPENDIX C**  
**SUMMARY DATA**



**Table C-1**

**Metal posts weighing 1 pound or less per foot: Summary data concerning the U.S. market, 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*

**Table C-2**

**Metal posts weighing over 1 pound per foot: Summary data concerning the U.S. market, 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*

**Table C-3**

**All metal posts: Summary data concerning the U.S. market, 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*

**Table C-4**

**U-shaped metal posts weighing 1 pound or less per foot: Summary data concerning the U.S. market, 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*

**Table C-5**

**Metal posts (other than U-shaped) weighing 1 pound or less per foot: Summary data concerning the U.S. market, 1999-2001, January-March 2001, and January-March 2002**

\* \* \* \* \*



**APPENDIX D**

**EFFECTS OF IMPORTS ON PRODUCERS'  
EXISTING DEVELOPMENT AND PRODUCTION  
EFFORTS, GROWTH, INVESTMENT, AND  
ABILITY TO RAISE CAPITAL**



Responses of U.S. producers of lawn and garden fence posts to the following question: Since January 1, 1999, has your firm experienced any actual negative effects on its return on investment or its growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of imports of lawn and garden fence posts from China?

\* \* \* \* \*

Responses of U.S. producers of lawn and garden fence posts to the following question: Does your firm anticipate any negative impact of imports of lawn and garden fence posts from China?

\* \* \* \* \*