

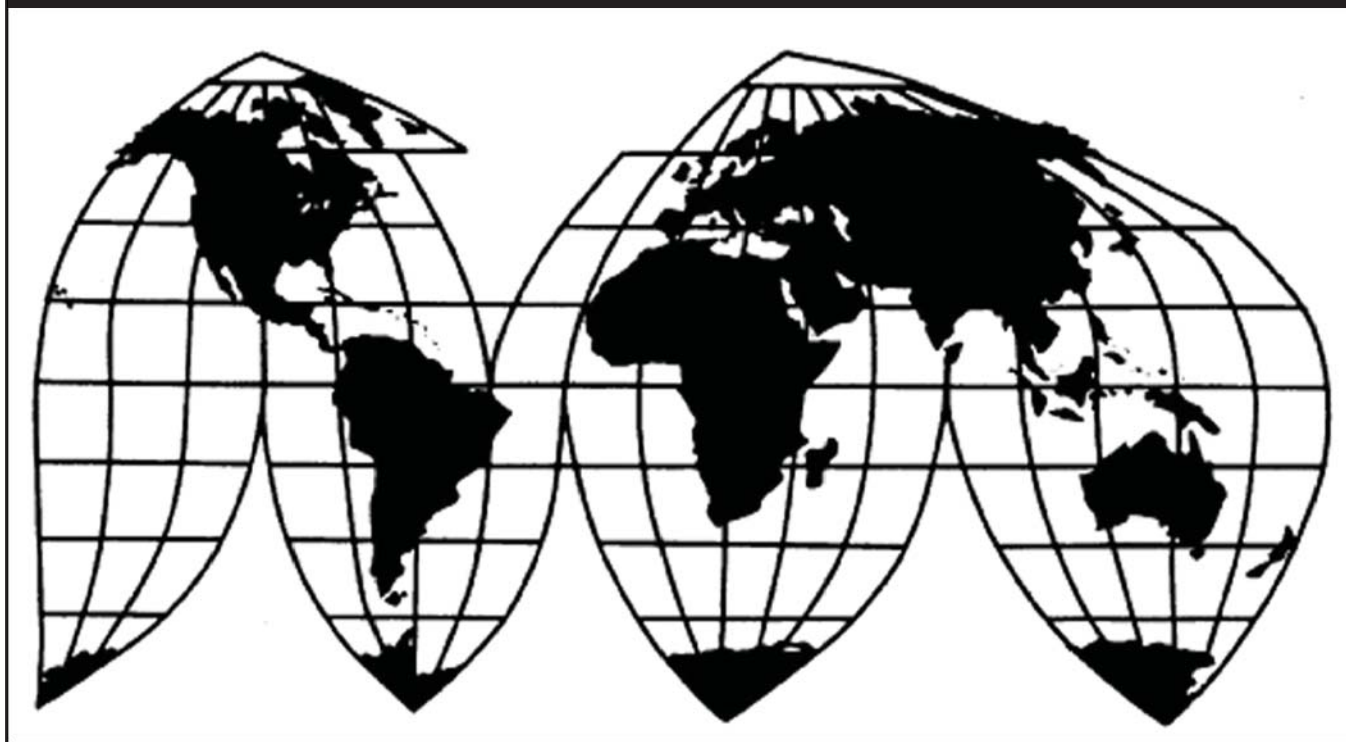
Certain Standard Steel Fasteners from China and Taiwan

Investigation Nos. 701-TA-472 and 731-TA-1171-1172 (Preliminary) (Remand)

Publication 4297

December 2011

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Note.—Information that would reveal confidential operations of individual concerns may not be published and has been replaced with asterisks in this report.

VIEWS OF THE COMMISSION ON REMAND

In November 2009, the Commission unanimously found that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of certain standard steel fasteners (“CSSF”) from China and Taiwan that were allegedly sold in the United States at less than fair value and imports of subject merchandise from China that were allegedly subsidized by the Government of China.¹

Nucor Fastener Division (“Nucor”), a U.S. producer of the domestic like product CSSF and the petitioner in the underlying investigations, sought judicial review of the Commission’s negative preliminary determinations. The U.S. Court of International Trade (“CIT” or “Court”), per Judge Wallach, affirmed certain aspects of these determinations but remanded this matter to the Commission for further consideration of two issues.² In remand proceedings instituted effective September 14, 2011, we did not re-open the record for the submission of new factual information. We did, however, allow interested parties that were parties to the appeal to submit comments pertaining solely to the two remanded issues, provided that the comments contained no new factual information.³ On October 7, 2011, Nucor submitted Remand Comments, and several respondents submitted Joint Remand Comments.⁴

In these Remand Views, we adopt all of the findings in our Original Views, including those concerning the legal standards, the data collected in these investigations, the definition of the domestic like product, the definition of the domestic industry, cumulation, conditions of competition, volume, price effects, impact, and whether there is a reasonable indication of threat of material injury, except to the extent that these findings are further supplemented or explained herein. Based on the record and after considering the parties’ remand comments and the Court’s opinion remanding this matter, we again unanimously 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 subject CSSF imports from China and Taiwan.

I. Overview of Analysis

In its Original Views, the Commission found the cumulated volume of subject imports from China and Taiwan to be significant in absolute terms, when considered in isolation, and it found pervasive

¹ These Remand Views refer to the confidential version of the Commission’s Original Views, identified as confidential administrative record list item 228 (“CL228”), and the confidential versions of the Commission’s Report Memo. INV-GG-106 (Nov. 2, 2009) (CL224) and Supplemental Report, Memo. INV-GG-108 (Nov. 5, 2009) (CL227). The public versions of the Original Views and Report are found in Certain Standard Steel Fasteners from China and Taiwan, Invs. Nos. 701-TA-472 & 731-TA-1171 to 1172 (Prelim.), USITC Pub. 4109 (Nov. 2009). The Commission’s Original Views reflected the opinion of Chairman Deanna Tanner Okun, Vice Chairman Irving A. Williamson, and Commissioners Charlotte R. Lane, Daniel R. Pearson, Shara L. Aranoff, and Dean A. Pinkert.

² Nucor Fastener v. United States, 791 F. Supp. 2d 1269 (Ct. Int’l Trade 2011). We refer herein to the confidential version of the opinion in Ct. No. 09-531, Confidential Slip Op. 11-104 at 2, 31 (Ct. Int’l Trade Aug. 11, 2011), subject to the redaction of business proprietary information in the public version issued on September 19, 2011.

³ 76 Fed. Reg. 58536, 58536-37 (Sept. 21, 2011) (limiting any remand comments to 15 double-spaced single-sided pages, inclusive of appendices) (issued in accordance with the Court’s September 12, 2011, Scheduling Order).

⁴ The respondents submitting Joint Remand Comments are Porteous Fastener Co.; Heads & Threads International LLC; Soule, Blake, & Wechsler, Inc.; Indent Metals, LLC; XL Screw; Bossard North America; the Hillman Group; Fastenal Co.; and Fasteners and Automotive Products (collectively “Respondents”).

underselling by cumulated subject imports.⁵ Nevertheless, the Commission found that there was a general lack of correlation between the large and relatively steady volume of low-priced subject imports and changes in the domestic industry's condition and prices.⁶ Specifically, between 2006 and 2008, as demand declined somewhat, subject imports did not take significant market share from the domestic industry; instead, the domestic industry, subject imports, and imports from non-subject countries maintained relatively stable volumes and shares of the U.S. market.⁷ Moreover, the record did not show significant price depression or suppression by subject imports.⁸ Rather, despite widespread underselling by subject imports, domestic prices generally remained at or above their initial-period prices, including prices for the two products that accounted for the highest volume of the domestic industry's sales.⁹ Moreover, the domestic industry's cost of goods sold ("COGS") as a share of net sales – the ratio the Commission typically examines to analyze price suppression – was relatively low and stable between 2006 and 2008.¹⁰ Indeed, the domestic industry's already substantial operating profits increased steadily from \$12.6 million in 2006 to \$21.7 million in 2008, and its operating income margin increased steadily from 8.0 percent in 2006 to 11.3 percent in 2008.¹¹ The domestic industry's production, shipments, and sales increased overall between 2006 and 2008.¹² As the Commission found, the improved profitability and solid performance for other domestic industry factors between 2006 and 2008 occurred despite slight demand declines, significant subject import market share, and significant underselling by cumulated subject imports.¹³

By interim 2009, demand was considerably lower (225.0 million pounds) than in interim 2008 (343.5 million pounds), which is consistent with recession-driven downturns in the principal sectors using CSSF.¹⁴ In interim 2009, subject imports were lower in absolute volume, and the Commission found that subject imports' higher market share in interim 2009 than in interim 2008 came almost entirely at the expense of non-subject imports rather than the domestic industry, whose market share was only slightly lower in interim 2009 (23.3 percent) than in interim 2008 (24.5 percent).¹⁵ Although the domestic industry's COGS-to-net-sales ratio was higher in interim 2009 (81.2 percent) than in interim 2008 (74.7 percent), the Commission observed that this increase occurred when prices declined in response to the economic recession.¹⁶ It found that subject import underselling was no more prevalent in interim

⁵ Original Views (CL228) at 38, 40. The Commission cumulated imports from China and Taiwan when analyzing whether there was a reasonable indication of material injury by reason of subject imports. *Id.* at 25-28.

⁶ Original Views (CL228) at 36-45. The Commission's period of investigation for these investigations ("investigation period" or "POI") consisted of full-year 2006, 2007, and 2008 as well as the first six months of 2008 ("interim 2008") and the first six months of 2009 ("interim 2009"). *Id.* at 6 n.16.

⁷ Between 2006 and 2008, demand declined somewhat (from 661.3 million pounds in 2006 to 642.4 million pounds in 2007 and 641.6 million pounds in 2008), but the domestic industry, subject imports, and non-subject imports all maintained relatively stable volumes and U.S. market shares during the 2006-2008 period (e.g., 24.2 percent, 51.8 percent, and 23.9 percent, respectively in 2008). Original Views at 36-38.

⁸ Original Views (CL228) at 38-41.

⁹ Original Views (CL228) at 40-41.

¹⁰ Despite fluctuations in raw material costs, especially for steel, and widespread underselling, the industry's COGS-to-net-sales ratio remained between 75.8 and 76.1 percent. Original Views (CL228) at 40-41.

¹¹ Original Views (CL228) at 42-45.

¹² Original Views (CL228) at 42-45.

¹³ Original Views (CL228) at 36-45.

¹⁴ Original Views (CL228) at 36-38.

¹⁵ Original Views (CL228) at 38.

¹⁶ Original Views (CL228) at 41.

2009 than earlier in the period.¹⁷ In interim 2009, due to the recession and a sharp decline in demand, the domestic industry had lower sales and profitability but still earned \$3.8 million in operating income and posted a positive 5.8 percent operating margin.¹⁸ Consequently, the Commission found that the record as a whole contained clear and convincing evidence of no reasonable indication of material injury by reason of cumulated subject imports of CSSF from China and Taiwan, and the Commission found no likelihood that contrary evidence would arise in any final investigations.¹⁹

In considering whether there was a reasonable indication of a threat of material injury, the Commission did not find a likelihood of substantially increased imports of subject CSSF from China and Taiwan in the imminent future.²⁰ Subject producers had excess capacity, were export-oriented, and undersold the domestic like product in the U.S. market, but the record data indicated that subject imports had maintained an essentially steady presence in the United States.²¹ Indeed, although authorities in other countries had investigated fasteners from China and/or Taiwan, the Commission found that those investigations and the resulting remedies against imports from those countries had not changed the otherwise steady pattern of subject imports into the United States.²² It also found that the behavior of the industries in China and Taiwan was unlikely to change significantly in the imminent future.²³ Taking into account its finding of no likely significant increase in cumulated subject imports in the imminent future, the fact that subject import pricing did not stimulate demand for significant additional subject imports during the investigation period, and the absence of record data suggesting that any underselling would stimulate demand for subject imports imminently, the Commission concluded that subject imports would not enter the U.S. market at prices that were likely to significantly depress or suppress domestic prices in the imminent future.²⁴ The Commission acknowledged that, in light of current economic conditions, the industry was unlikely to perform as well in the near term.²⁵ Nonetheless, because the industry had performed solidly during the investigation period, the Commission did not find it to be vulnerable.²⁶ Moreover, the Commission did not find that any declines in the industry's performance during the investigation period were attributable to subject imports to any significant degree.²⁷ Based on these findings and absent an imminent likelihood of a significant increase in import volume or significant adverse price effects from subject imports, the Commission found that cumulated subject imports would not likely have a significant adverse impact on the domestic industry in the imminent future.²⁸ Accordingly, the Commission found that the record as a whole contained clear and convincing evidence of no reasonable indication of a threat of material injury by reason of cumulated subject imports from

¹⁷ Original Views (CL228) at 41 (citing Report (CL224) at Tables V-1 to V-4).

¹⁸ Original Views (CL228) at 42-45.

¹⁹ Original Views (CL228) at 9, 36-45.

²⁰ Confidential Views (CL228) at 47. The Commission exercised its discretion to cumulate allegedly dumped and subsidized CSSF imports from China with allegedly dumped imports from Taiwan for its threat analysis. *Id.* at 46.

²¹ Confidential Views (CL228) at 47-48.

²² Confidential Views (CL228) at 49.

²³ Confidential Views (CL228) at 48-49.

²⁴ Confidential Views (CL228) at 49.

²⁵ Confidential Views (CL228) at 50.

²⁶ Confidential Views (CL228) at 50.

²⁷ Confidential Views (CL228) at 50.

²⁸ Confidential Views (CL228) at 50.

China and Taiwan, and the Commission found no likelihood that contrary evidence would arise in any final investigations.²⁹

The Court remanded this matter to the Commission for further consideration of two issues: (1) whether the Commission unreasonably relied, without qualification, on the data submitted by ***, which reported itself to be a U.S. producer of the domestic like product, and (2) whether the Commission unreasonably treated its import data as “comprehensive.”³⁰ In its Opinion, the Court discussed each of these issues at length and asked a series of questions that we address in depth in the following passages. As we will explain below, however, neither of these remanded issues played more than a nominal role in our overall analysis and determinations.

II. First Remanded Issue: The Inclusion of * in the Domestic Industry**

A. Background

In the “scope of investigation” sections of its September 23, 2009, petitions regarding imports of certain standard steel fasteners from China and Taiwan, Nucor initially proposed a broad “scope of investigation” encompassing a wide variety of fasteners. Nonetheless, a few pages later in its petitions, Nucor suggested a narrower formulation that would exclude certain types of fasteners, including certain types of fasteners used by aerospace and automotive original equipment manufacturers (“OEMs”).³¹ In its October 22, 2009, notice of initiation, the U.S. Department of Commerce (“Commerce”) eventually defined the scope as “certain standard nuts, standard bolts, and standard cap screws, of steel other than stainless steel.”³² Among other things, Commerce expressly excluded from the scope certain fasteners produced for OEM part numbers for certain aircraft and automotive uses, but it also clarified that, unless “explicitly excluded from the scope of the investigations, bolts, cap screws, and nuts meeting the description of subject merchandise are covered.”³³

On September 29, 2009, the Commission transmitted questionnaires to domestic producers, importers, and foreign producers/exporters of fasteners. In those questionnaires, it defined the product under investigation as certain standard steel fasteners (“CSSF”), consistent with the narrower petition language.³⁴ The Commission sought detailed data on CSSF, but also sought some segregated data on other fastener types, including fasteners for certain aerospace and automotive end uses, in case Commerce adopted the broader petition language.³⁵ The narrower petition language used as the basis for collecting CSSF data in the Commission’s questionnaires differed somewhat from the (also narrow) eventual

²⁹ Confidential Views (CL228) at 9, 46-50.

³⁰ Confidential Slip Op. 11-104 at 2, 10, 12-20, 20-23, 31.

³¹ Compare, e.g., Petitions (CL1), Vol. I at 3-4 with, e.g., id. at n.1, 6-7.

³² See, e.g., 74 Fed. Reg. 54537, 54542 (Oct. 22, 2009) cited in Confidential Views (CL228) at 10-11.

³³ Specifically, it excluded “bolts, cap screws, and nuts produced for an {OEM} part number specific to any ‘automobile’ as defined in 49 U.S.C. § 32901(a)(3), any ‘work truck’ as defined in 49 U.S.C. § 32901(a)(19), or any ‘medium-duty passenger vehicle’ as defined in 40 C.F.R. § 86.1803-01 (2009). Also excluded from the scope of the investigations are bolts, cap screws, and nuts produced for an OEM part number specific to any ‘aircraft’ as defined in 14 C.F.R. § 1.1 (2009).” 74 Fed. Reg. 54537, 54542 (Oct. 22, 2009); Confidential Views (CL228) at 11.

³⁴ Questionnaire Instruction Booklet, PL8 (EDIS document 411238 at document id 525308 at 5).

³⁵ See, e.g., PL8 (EDIS document 411238 at document id 525308 at 5) at Question II-11 (asking U.S. producer questionnaire recipients to report the value of their firm’s U.S. shipments during the specified periods of “fasteners less than 6 mm in diameter”; “CSSF”; “modified standard fasteners”; “specialty/patented fasteners,” including more specifically “automotive,” “aerospace,” and “other”; and “Other.”)

language of the scope in Commerce's October 22, 2009, notice initiating the investigations.³⁶ In a November 5, 2009, supplemental report, the Commission staff examined these differences closely and explained why the reported data were consistent with the definition of the product under investigation as officially defined by Commerce.³⁷

In its Original Views, the Commission adopted Nucor's proposal and defined a single domestic like product that was coextensive with the scope, *i.e.*, CSSF.³⁸ Consistent with this finding, the Commission defined the domestic industry as all U.S. producers of CSSF. Thus, to assess the domestic industry's condition, the Commission relied on data compiled from usable questionnaire responses of nine U.S. firms that reported producing CSSF during the investigation period, including the leading domestic producers (*i.e.*, Nucor, which accounted for *** percent of U.S. production in 2008 and ***).³⁹ During the CIT litigation, Nucor disputed the domestic industry data in two respects: (1) Nucor disagreed with the Commission's inclusion of four firms in the industry that estimated certain of their production costs, and (2) Nucor argued that one of these firms (***) did not produce the domestic like product, CSSF, and should not be included in the domestic industry. Nucor did not raise the first issue during the administrative proceedings and raised the second issue only as a footnote to its postconference brief.⁴⁰ Nucor later claimed that it also sent an electronic mail message ("e-mail") to the Commission pertaining to ***.⁴¹

Before the Court, Nucor argued that the Commission impermissibly relied on domestic industry data that included four firms (***) that estimated certain costs using a methodology that the Commission's staff deemed to be "seldom reasonable."⁴² Although the Commission's Original Views did not expressly address this issue, the Court found that the Commission's reliance on domestic industry data that included estimated data for these four firms was reasonable.⁴³ The Court found that the Commission's Report showed that data for the industry as a whole closely tracked the data for the other

³⁶ Compare, *e.g.*, the Commission's Questionnaire Instruction Booklet (PL8, EDIS document 411238 at document id 525308 at 5) (definition of CSSF) *with, e.g.*, 74 Fed. Reg. 54537, 54542 (Oct. 22, 2009) (Commerce's notice of initiation defining scope of investigations). The definition of CSSF used in the Commission's questionnaires differed somewhat from Commerce's initiation notice scope language, but the Commission and Nucor agreed that any differences were effectively semantic rather than substantive. Confidential Views (CL228) at 8; Revised and Corrected Version of Transcript of October 14, 2009, Staff ("Revised Conference Tr.") (PL76) at 57 (Gordon).

³⁷ Confidential Views (CL228) at 4-9 (relying on Commission's staff assessment); Report (CL224) at I-3 to I-4, III-1 to III-2, IV-1 to IV-5, VI-1, VII-1 to VII-5; Supplemental Report (CL227) at 1-4.

³⁸ Confidential Views (CL228) at 9-24.

³⁹ Confidential Views (CL228) at 4-5, 24; Report (CL224) at I-4.

⁴⁰ Before the Commission, Nucor simply asserted its belief that *** was not a producer of CSSF. See Nucor's October 19, 2009 Postconference Brief, as amended by October 20, 2009 bracketing changes (CL52, CL177 at 1 n.3) ("... These figures and others cited in this brief do not include data provided by ***. Although ***, U.S. Producers' Questionnaire Response of ***, (***) at Questions II-3 and V-12. Indeed, ***.") Although Nucor asserted that *** web-site home page would show that *** is not a CSSF producer, Nucor based this claim on extra-record evidence. Nucor referred to a web link to the firm's home page, but did not submit a copy of the corresponding page.

⁴¹ We address the alleged e-mail in section IV *infra*.

⁴² Report (CL224) Table VI-1 at n.1.

⁴³ Although Nucor claimed in its CIT reply brief that the Commission "did not cite to this table and did not discuss this table," Revised Confidential Version of Nucor's CIT Reply Brief ("Nucor's CIT Reply Brief") at 7, the Commission in fact repeatedly cited the table in the report containing the footnote that discussed the issue. See, *e.g.*, Confidential Views (CL228) at nn.206, 207, 211, 212, 214, and 215 (all referring to Confidential Report (CL224) at Table VI-1).

five firms that did not estimate their data.⁴⁴ Because the Report showed that the four firms that estimated their costs did not significantly affect the domestic industry’s overall performance even when considered collectively, the Court concluded that the methodology used by the four firms to estimate their reported costs “while flawed, {was} not fatal to ITC’s determinations.” On this basis, the Court was able to “discern, however tenuously, ITC’s analytical path” and upheld the agency on this issue.⁴⁵

Nonetheless, even though *** was one of the four firms that estimated certain of its cost data and individually accounted for an even smaller share (*** percent of domestic operations in 2008) than the four firms estimating some of their costs (that collectively accounted for *** percent of domestic operations in 2008),⁴⁶ the Court concluded that it could not affirm the inclusion of *** in the domestic industry. Contending that information reported by *** showed that the firm did not produce the domestic like product, CSSF, Nucor had argued that the firm should not have been included in the domestic industry. The Court reviewed the reported information and concluded that *** appeared to be “confused” about the scope of the investigations. The Court stated that “nothing in the record show{ed} that ITC considered the discrepancies in {*** questionnaire} data in relation to the scope of the investigations.”⁴⁷ The Court remanded the determinations because the “ITC identifies, and the Court discerns, no rational basis for unqualified reliance on {***} questionnaire response.”⁴⁸

In its Remand Comments, Nucor continues to argue that *** is not a producer of CSSF for the reasons identified in the Court’s opinion and argued by Nucor before the Court.⁴⁹ Nucor argues that the original Commission investigative team’s “failure either to independently recognize the flaws in *** data or to follow-up {sic} on those flaws after having been alerted to them by counsel demonstrates the inadequacy of the original investigation.”⁵⁰ In their Joint Remand Comments, respondents argue that record evidence supports the Commission’s finding that *** produces the domestic like product. In any event, respondents argue, the Commission could also satisfy the Court’s remand instructions by explaining that it would have reached the same conclusion regardless of whether *** were included in the domestic industry. Even if *** were not included in the domestic industry, respondents argue, the Commission still would have found that the domestic industry maintained substantial and increasing profits between 2006 and 2008 despite slightly declining demand conditions, significant subject import market share, and significant underselling; even in interim 2009, the Commission would still find that the

⁴⁴ Confidential Slip Op. 11-104 at 27. The four firms that estimated their data accounted for *** percent of reported U.S. CSSF production in 2008. *** of the remaining five firms comprising the nine-firm domestic industry, Nucor and ***, jointly accounted for such a large portion of domestic production (*** percent of U.S. CSSF production in 2008, respectively) that their data, rather than the data of the four firms estimating their costs, drove trends in the domestic industry’s performance. See, e.g., Report (CL224) at Table III-1, Table VI-1, Table VI-1 at n.1.

⁴⁵ Confidential Slip Op. 11-104 at 27-28.

⁴⁶ See, e.g., Report (CL224) at Table III-1, Table VI-1 at n.1.

⁴⁷ Confidential Slip Op. 11-104 at 21, 23.

⁴⁸ Confidential Slip Op. 11-104 at 20 (capitalization removed). As the Court stated: “nothing in the record show{ed} that ITC considered the discrepancies in these data in relation to the scope of the investigations. ... In other words, although ITC ‘is authorized to weigh evidence and resolve conflicts in the data,’ ... there is no indication that it did either in this circumstance. This apparent omission, which contrasts with the Staff Report’s careful analysis of reporting methodology, see infra Part IV.E. {(i.e., the portion of the Court’s opinion discussing use of estimated data submitted by four domestic producers)}, prevents the court from identifying a rational basis for the unqualified inclusion of {***} in ITC’s analysis” Confidential Slip Op. 11-104 at 23 (emphasis added).

⁴⁹ Nucor’s Remand Comments at 13-15.

⁵⁰ Nucor’s Remand Comments at 15.

domestic industry posted positive operating income, even when faced with a severe and sharp decline in demand.⁵¹

B. Analysis and Conclusion regarding the * Issue**

In these remand proceedings, we have reviewed the data pertaining to *** status as a domestic CSSF producer, the Court's remand instructions, and the parties' comments on remand. For the reasons discussed herein, we again determine that the record supports including *** in the domestic industry as a U.S. producer of CSSF. Moreover, because *** accounts for such a small portion of domestic CSSF operations, whether we include *** in the domestic industry does not meaningfully affect the data, the data trends, or our causation analysis. Thus, we find no basis to proceed to final investigations on this issue.⁵²

1. The Record Supports Finding * to be a U.S. Producer of CSSF**

We find that *** should be included in the domestic industry as a U.S. producer of CSSF, because the firm certified in its questionnaire response that it is a producer of the domestic like product CSSF, the statute defines the domestic industry as “the producers as a whole 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,”⁵³ and we are entitled to rely on a firm's certified statements about its own internal operations, as discussed below.

Before the CIT, Nucor argued that the Commission “failed to investigate” whether *** produced CSSF, and in its Remand Comments Nucor refers to the arguments it made before the Court.⁵⁴ In its initial CIT brief, Nucor referred only to the initial October 9, 2009, questionnaire response filed by *** (***) as evidence of the Commission's “failure” to investigate,⁵⁵ and in its CIT reply brief, Nucor again focused its arguments regarding an alleged “failure” to investigate primarily on *** initial questionnaire response (***)⁵⁶. Much of the Court's opinion remanding this matter to the Commission also discusses pages from *** initial questionnaire response (***)⁵⁷. After that response was submitted, however, the Commission contacted *** with concerns about it. As shown in ***, on October 21, 2009, *** amended several pages of its questionnaire response after corresponding with the Commission's staff. It was the amended data the Commission used in its Report.⁵⁸

Although the Court concluded that *** appeared to be confused about the scope of the investigations, we conclude that the record shows that *** was aware of the products that the Commission considered CSSF. In its amended questionnaire response, *** reported data separately for

⁵¹ See, e.g., Respondents' Remand Comments at 4-6.

⁵² In preliminary investigations, 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.” American Lamb Co., 785 F.2d 994, 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁵³ 19 U.S.C. § 1677(4)(A).

⁵⁴ See, e.g., Nucor's May 14, 2010, Revised Confidential Initial CIT Brief (“Nucor's CIT Brief”) at 15; Nucor's Remand Comments at 13-15.

⁵⁵ See, e.g., Nucor's CIT Brief at 12-15 (referring to *** but not ***).

⁵⁶ See, e.g., Nucor's CIT Reply Brief at 1-5 (largely referring to *** for examples of why Nucor contended *** was not a U.S. producer of CSSF).

⁵⁷ Confidential Slip Op. 11-104 at 20-23.

⁵⁸ See, e.g., Report (CL224) at Table VI-1.

the products that were defined as CSSF in the Commission's questionnaire, for ***.⁵⁹ Because the Commission typically presumes firms are knowledgeable about their own operations,⁶⁰ we rely on *** certified statements about the nature of its own production operations.⁶¹ Especially here where *** officials candidly admitted, when they were working with the Commission's staff to prepare their amended questionnaire response,⁶² that they had not read the instructions at the time they filed the initial questionnaire response (***), we find that the *** officials eventually reviewed the instructions in the course of submitting amended data.

Moreover, record evidence disproves the assertion that *** manufactures only products outside the scope of these investigations and not CSSF, as suggested in Nucor's arguments before the Court and in the corresponding portion of the Court's opinion that Nucor supports in its Remand Comments.⁶³ For example, Nucor argues that *** produces only ***, which Nucor claims are products outside the scope and not CSSF.⁶⁴ Similarly, in its opinion, the Court faulted *** for reporting *** of its U.S. shipments of CSSF products as *** fasteners.⁶⁵ According to the Court, this shows that *** "appears to have classified

⁵⁹ *** at Question II-11.

⁶⁰ In fact, Nucor's counsel stated that it should have been obvious to market participants at the beginning of the investigations what types of fastener products were being investigated. Confidential Views (CL228) at 8 (citing Revised Conference Transcript (PL76) at 57).

⁶¹ Connecticut Steel Corp. v. United States, 30 CIT 1658, 1667-68, 462 F. Supp. 2d 1322, 1330-31 (2006).

⁶² *** October 21, 2009, Amended Questionnaire Answers (***).

⁶³ See, e.g., Nucor's Remand Comments at 13-15; Nucor's CIT Brief at 9, 12-15, 31-32; Nucor's CIT Reply Brief at 1-5; Confidential Slip Op. 11-104 at 21-23.

⁶⁴ Nucor's CIT Brief at 13-14; see also, e.g., Confidential Slip Op. 11-104 at 22 (citing *** Initial Questionnaire (***)) at Response to Question V-12 (identifying the principal direct downstream products associated with its sales of CSSF as ***); Nucor's CIT Reply Brief at 1-5; Nucor's Remand Comments at 13-15.

⁶⁵ See, e.g., Confidential Slip Op. 11-104 at 21 citing *** Revised Questionnaire (***)) at Response to Question II-11 (wherein *** reported U.S. shipments of ***. For example, in 2006, *** reported U.S. shipments ***); see also Confidential Slip Op. 11-104 at 21-22 (citing

continue...

the same fasteners as both standard and nonstandard, placing them simultaneously within and beyond the scope of the investigations.”⁶⁶

In our view, however, the scope language does not provide that *** are excluded from the investigations. First, Commerce’s scope for these investigations does not reference, let alone explicitly exclude, fasteners for ***.⁶⁷ Thus, it is not correct that *** statement that it produces fasteners used for *** purposes establishes that it is not a producer of CSSF. Second, although it is true that *certain* fasteners for *** end uses are excluded, the scope excludes only those that are “****.”⁶⁸ Indeed, the suggestion that *** are excluded from the scope conflicts with scope language warning that, unless “explicitly excluded from the scope of the investigations, bolts, cap screws, and nuts meeting the description of subject merchandise are covered by the investigations.”⁶⁹ Thus, we also find that not all fasteners *** are excluded from the scope, and we find that *** statement that it produces fasteners used for *** purposes does not establish that it is not a producer of CSSF. In fact, we find that *** knew that certain types of fasteners were not considered CSSF by the Commission, because *** reported data for CSSF, as defined by the Commission, separately from data for other fasteners, such as ***.⁷⁰ After speaking with the Commission’s staff, as part of the amended answers *** submitted, the firm reported revised allocations between its U.S. shipments of CSSF and shipments of non-CSSF products.⁷¹

In another argument referenced in the Court’s opinion, Nucor asserted before the Court that *** questionnaire response demonstrates that *** produces only *** fasteners. Because the scope excludes *** products, Nucor argued that the Commission should not have included *** in the domestic industry.⁷² Nucor’s argument centers on *** answer to Question V-3 of the U.S. producers’ questionnaire. When asked about how “changes in the prices of raw materials affected ... selling prices and quantities of its U.S.-produced CSSF” and to identify “the principal raw materials ... involved,” *** limited its reported raw materials to *** and ***. ***, however, answered this question in its October 9, 2009, initial questionnaire response (*** at Question V-13).

Nucor’s argument ignores the reasons why the answers *** gave in its initial questionnaire response (***) are unreliable: they reflected answers from two company officials who had not yet read the questionnaire instructions and who had not coordinated with one another. As *** explained, two different company officials (*** and ***) prepared *** initial questionnaire response, and they had not read the instructions.⁷³ After noting that these officials previously had apparently not read the instructions or coordinated with one another, however, *** submitted revised answers to several questions. The Commission’s staff did not ask *** to review and revise its answers to all questions, just the answers to certain questions seeking numerical data.⁷⁴ It is not unusual for the Commission to ask a questionnaire respondent to revise some rather than all of its answers, especially in the latter stages of an investigation,

⁶⁵ ...continue

*** Initial Questionnaire (***), Response to Question II-13a(e) (in which *** compares less-than-6-mm-in-diameter fasteners with CSSF fasteners and notes that it manufactures ***).

⁶⁶ Confidential Slip Op. 11-104 at 20-22.

⁶⁷ 74 Fed. Reg. at 54546-47.

⁶⁸ 74 Fed. Reg. at 54547.

⁶⁹ 74 Fed. Reg. at 54547.

⁷⁰ *** Revised Questionnaire (***) at Answer to Question II-11.

⁷¹ *** Revised Questionnaire (***) at Answer to Question II-11.

⁷² Confidential Slip Op. at 11-104 at 22 (citing Nucor’s CIT Brief at 13).

⁷³ *** Revised Questionnaire response (***); ***.

⁷⁴ *** Revised Questionnaire response (***).

when time is of the essence,⁷⁵ and when the firm's operations are relatively small,⁷⁶ both of which were the case here. In its October 21, 2009, submission, *** was not asked to and did not revise its answer to Question V-3. Consequently, those items from the firm's initial October 9, 2009, questionnaire response, including its answer to Question V-3, that were not revised likely continued to reflect that the two company officials providing the answers had not at that point read the instructions.⁷⁷

In any event, we find that the fact that the firm reported in its initial questionnaire two raw materials that are typically *** does not mean that *** produced no CSSF, given that *** reported in its amended questionnaire response that CSSF accounted for a portion of its U.S. shipments.⁷⁸ Moreover, the information reported by *** that we rely upon in our analysis consists of the revised numerical data contained in *** October 21, 2009, amended questionnaire response, and not the answers to other questions in the firm's initial October 9, 2009, questionnaire response.⁷⁹

Finally, the Commission is authorized to weigh evidence and resolve conflicts in the data, whether in preliminary or final investigations.⁸⁰ Although Nucor may read the scope language *** and may point to answers that *** provided in its initial questionnaire that were not the subject of its revisions, we find, for the reasons discussed above, that the record as a whole warrants relying on *** certified statements that it produced at least some CSSF. Consequently, we include *** in the domestic industry as a U.S. producer of CSSF.

⁷⁵ *** submitted its revised questionnaire response on October 21, 2009, after having submitted its initial questionnaire response by the deadline of October 9, 2009. In order to meet the statutory deadline to conduct its preliminary investigation within 45 days after the September 23, 2009, filing of the petitions in these investigations, the Commission transmitted U.S. producer, importer, and foreign producer questionnaires on September 29, 2009, asking for responses within 10 days (by October 9, 2009). The Commission's staff held a conference on October 14, 2009, and the parties submitted postconference briefs on October 19, 2009. The Commission issued a Report on November 2, 2009, and a Supplemental Report on November 5, 2009, voted on November 6, 2009, issued its determinations on November 9, 2009, and issued its Views on November 17, 2009. See 19 U.S.C. §§ 1671b(a)(1) to (2), 1671b(f), 1673b(a)(1) to (2), 1673b(f) (giving the Commission 45 days in which to conduct preliminary investigations, directing the Commission to make its determinations "based on the information available to it at the time of the determination," and giving the Commission 5 business days from the date of its determinations in which to transmit its Views to Commerce that explain "the facts and conclusions on which its determination is based").

⁷⁶ *** only accounted for *** percent of reported CSSF production in the United States in 2008. See, e.g., Report (CL224) at Table III-1.

⁷⁷ For example, as the Court pointed out, despite reporting manufacturing both CSSF and non-CSSF products using the same equipment and machinery and using the same production-and-related workers, *** reported in its initial questionnaire response that CSSF accounted for 100 percent of the products so produced. Confidential Slip Op. 11-104 at 21 (referring to *** Initial Questionnaire (***) at Response to Questions II-3 and II-5). Likewise, when asked whether it had produced specialty/patented fasteners, *** reported ***, notwithstanding its separate reporting of ***. Confidential Slip Op. 11-104 at 22 (referring to *** Initial Questionnaire (***) at Response to Questions 11-13c and II-11).

⁷⁸ *** Revised Questionnaire (***) at Table II-11. Indeed, despite the fact that ***, the overall costs reported by *** in its amended questionnaire ***. See, e.g., Report at Table VI-2 (firm-specific unit values for COGS).

⁷⁹ See, e.g., Report (CL224) at Table VI-1.

⁸⁰ Co-Steel Raritan, Inc. v. United States, 357 F.3d 1294, 1311, 1314-17 (Fed. Cir. 2004); American Lamb, 785 F.2d at 999-1004; Ranchers-Cattlemen Action Legal Foundation v. United States, 23 CIT 861, 878, 74 F. Supp. 2d 1353, 1368 (1999); Sensient Techs. Corp. v. United States, 28 CIT 1513, 1522 (2004); Nippon Steel Corp. v. United States, 458 F.3d 1345, 1356 (Fed. Cir. 2006), reh'g en banc denied (Oct. 26, 2006).

2. No Need to Proceed to Final Investigations on the *** Issue

In its Remand Comments, Nucor argues that including *** in the domestic industry “meaningfully altered the picture of the U.S. industry.” According to Nucor, *** accounted for less than *** percent of the domestic industry’s interim 2009 sales (by value), but accounted for *** percent of the industry’s operating income, and *** operating income margins of over *** percent in 2007 and 2008 and *** percent in interim 2009 were *** of Nucor’s, which accounted for *** of U.S. CSSF production.⁸¹

We would make the same negative determinations in these investigations regardless of whether we included *** in the domestic industry. As the Court itself acknowledged, “{a}lthough the market share and operating margin data provided in the Staff Report’s analysis of reporting methodology suggest that ITC might have reached the same negative preliminary injury determinations had the agency excluded, qualified, or questioned all of {***} data, see infra Part IV.E., that is a question for ITC rather than for the court, see supra Part III.”⁸²

We have considered the record data both with and without *** in the domestic industry, as shown in the tables appended to these Remand Views as Appendix A, which we incorporate herein and adopt in their entirety.⁸³ Contrary to Nucor’s suggestion, because of the small size of *** relative to ***,⁸⁴ excluding *** from the domestic industry simply has no meaningful effect on the data or trends in the data, as shown, for example, by a comparison of the domestic industry’s production, shipments, operating income, and operating margins (operating income or loss as a share of net sales), with and without *** data.⁸⁵ Nor does the inclusion or exclusion of this firm have any meaningful effect on our causation

⁸¹ Nucor’s Remand Comments at 14.

⁸² Confidential Slip Op. 11-104 at 23 n.30 (emphasis added).

⁸³ Appendix A contains two tables, Table C-1, which is a summary of the data in which *** is included in the domestic industry and that is identical to Table C-1 in the Commission’s Report (CL224), and Table C-1(a), which is a summary of the data in which *** is not included in the domestic industry.

⁸⁴ See, e.g., Report (CL224) at Table III-1.

⁸⁵ For example, including ***, the domestic industry’s production declined from 162.3 million pounds in 2006 to 157.1 million pounds in 2007, increased to 170.3 million pounds in 2008, and was lower in interim 2009 (45.9 million pounds) than in interim 2008 (90.8 million pounds). See Appendix A at Table C-1. Without ***, the domestic industry’s production declined from *** pounds in 2006 to *** pounds in 2007, increased to *** pounds in 2008, and was lower in interim 2009 (***) than in interim 2008 (***) pounds). See Appendix A at Table C-1(a).

Including ***, the domestic industry’s U.S. shipments declined from 155.3 million pounds in 2006 to 150.1 million pounds in 2007, increased to 155.6 million pounds in 2008, and were lower in interim 2009 (52.3 million pounds) than in interim 2008 (84.2 million pounds). See Appendix A at Table C-1. Without ***, the domestic industry’s U.S. shipments declined from *** pounds in 2006 to *** pounds in 2007, increased to *** pounds in 2008, and were lower in interim 2009 (***) than in interim 2008 (***) pounds). See Appendix A at Table C-1(a).

Including ***, the domestic industry’s net sales values declined from \$158.2 million in 2006 to \$156.7 million in 2007, increased to \$192.5 million in 2008, and were lower in interim 2009 (\$65.2 million) than in interim 2008 (\$93.7 million). See Appendix A at Table C-1. Without ***, the domestic industry’s net sales values declined from \$*** in 2006 to \$*** in 2007, increased to \$*** in 2008, and were lower in interim 2009 (\$***) than in interim 2008 (\$***). See Appendix A at Table C-1(a).

Including ***, the domestic industry’s operating income increased from \$12.6 million in 2006 to \$17.1 million in 2007 and \$21.7 million in 2008, and was lower in interim 2009 (\$3.8 million) than in interim 2008 (\$11.4 million). See Appendix A at Table C-1. Without ***, the domestic industry’s operating income increased from \$*** in 2006 to \$*** in 2007 and \$*** in 2008, and was lower in interim 2009 (\$***) than in interim 2008

continue...

analysis.⁸⁶ As our reviewing courts have recognized, the Commission needs to proceed to a final investigation only if the *record as a whole* suggests a likelihood that contrary evidence indicating a different outcome would be obtained in a final investigation, not if *additional* information might be obtained in the final investigation.⁸⁷ Because we find that the inclusion or exclusion of *** has no meaningful effect on the domestic industry data or data trends, and therefore on the causation analysis, we find no indication on the record in these investigations that any additional information regarding *** that we might obtain in any final investigations would cause us to reach affirmative determinations. We find no reason to proceed to final investigations to further explore this issue.

III. Second Remanded Issue: Use of Importer Questionnaire Data

A. Background

In its Original Views, the Commission relied on data reported in importer questionnaire responses regarding imports from both subject and non-subject countries. Although Nucor claimed before the Court that the Commission did not adequately explain its reliance on these data,⁸⁸ the Commission provided a detailed rationale in its Original Views.⁸⁹ As explained in the Original Views, the Commission deemed the importer questionnaire data to be reliable after, *inter alia*, (1) comparing the importer questionnaire data to Customs' import data; (2) comparing the importer questionnaire data to other record data concerning the relative size and number of importers in the industry; and (3) comparing the importer

⁸⁵ ...continue

(S***). See Appendix A at Table C-1(a).

Including ***, the domestic industry's operating margins increased from 8.0 percent in 2006 to 10.9 percent in 2007 and 11.3 percent in 2008 and were 5.8 percent in interim 2009 and 12.2 percent in interim 2008. See Appendix A at Table C-1. Without ***, the domestic industry's operating margins increased from *** percent in 2006 to *** percent in 2007 and *** percent in 2008 and were *** percent in interim 2009 and *** percent in interim 2008. See Appendix A at Table C-1(a).

⁸⁶ Even if *** is not included in the domestic industry, U.S. market shares are relatively stable for the domestic industry between 2006 and 2008 (about *** percent), subject imports (about *** percent), and non-subject imports (about *** percent). See Appendix A at Table C-1(a). In addition, *** did not report any pricing data. See *** and ***. Thus, if it is not included in the domestic industry, there would be no effect on the Commission's findings regarding underselling or the lack of significant price depression. There would be no evidence of significant price suppression, given the domestic industry's low and generally stable ratios of COGS to net sales between 2006 and 2008. Without ***, the domestic industry's COGS-to-net-sales ratio was *** percent in 2006, *** percent in 2007, and *** percent in 2008. See Appendix A at Table C-1(a). As shown in the preceding footnote, even if *** is not included, the domestic industry's production, shipments, and sales all increased overall between 2006 and 2008, as did the domestic industry's substantial profits and operating income margins. See Appendix A at Table C-1(a). Likewise, even if *** is not included in the domestic industry, the volume of subject imports was lower in interim 2009 than in interim 2008, and their higher market share came primarily at the expense of non-subject imports rather than the domestic industry. See Appendix A at Table C-1(a). Other interim data trends observed in our Original Views with respect to the domestic industry as a whole also still apply even when *** is not included in the domestic industry. See Appendix A at Table C-1(a).

⁸⁷ Co-Steel, 357 F.3d at 1311, 1314-17; American Lamb, 785 F.2d at 999-1004 (the Commission needs more than the 'barest clues or signs' of material injury or the 'possibility' of a different outcome to justify further inquiry in final investigation). As the Federal Circuit stated, the "statute calls for a reasonable indication of injury, not a reasonable indication of need for further inquiry." American Lamb, 785 F.2d at 1001.

⁸⁸ Nucor's CIT Brief at 5, 10, 11-12, 25-30, 38-39; Nucor's CIT Reply Brief at 12-14.

⁸⁹ Confidential Views (CL228) at 4-9; Supplemental Report (CL227) at 1-4.

questionnaire data to foreign producer questionnaire data.⁹⁰ In remanding to the Commission, the Court rejected the Commission’s characterization of the importer questionnaire data as “comprehensive.”⁹¹ Finding that the Commission’s reasoning was not articulated in the Commission’s Views or Report in adequate detail or finding that its reasoning was “illogical,” the Court remanded the matter for additional explanation of the process used to collect the importer questionnaire data and for additional explanation why the Commission relied on these data.⁹²

In its Remand Comments, Nucor asserts that the importer questionnaire data “clearly represent only a fraction of CSSF imports during the investigation period” and that the “inadequacy of the import data compels an affirmative determination.”⁹³ In their Joint Remand Comments, respondents argue that the Court is “merely looking for an acknowledgment by the Commission that there are questions regarding the ‘comprehensiveness’ of the import data.” Respondents contend that the Commission can satisfy the Court by merely acknowledging that, although the import data may not be “comprehensive,” it collected sufficient import data to reach negative determinations, and there is no need to proceed to final investigations on this issue.⁹⁴

B. Analysis and Conclusion regarding the Import Data Issue

In these remand proceedings, we have reviewed the data regarding imports of CSSF from subject and non-subject countries, the Court’s remand instructions, and the comments of the parties on remand. Unquestionably, the importer questionnaire data collected in these investigations are not “comprehensive,” as the Court defines that term.⁹⁵ Nevertheless, we explain below why we decided to rely on data from importer questionnaire responses regarding imports from subject and non-subject countries rather than Customs’ import data, including the process used to collect the importer questionnaire data in these investigations and the methodologies used to evaluate the data obtained. We also explain why the record supports our reliance on these importer questionnaire data in our analysis of whether there is a reasonable indication of material injury or threat of material injury to a domestic industry by reason of cumulated subject imports from China and Taiwan. Finally, we explain why we find no reason to proceed to final investigations on this issue.

⁹⁰ Confidential Views (CL228) at 4-9.

⁹¹ Confidential Slip Op. 11-104 at 2, 10, 12-20.

⁹² See, e.g., Slip Op. 11-104 at 10 (“ITC improperly treats its import data as “comprehensive”), 14 (“the contention that supports {why the data were representative} is entirely post hoc; Defendant cites no record evidence of any such comparison”), 15 (“if Defendant means ‘significant known importers’ rather than ‘significant known imports,’ its construction might support a conclusion that reported CSSF imports account for the majority of actual (i.e., known plus unknown) CSSF imports. This, however, is not ITC’s stated conclusion.”), 16 n.18 (“neither ITC nor any party has pointed to record evidence comparing the volumes of all imports recorded under these customs subheadings to the volumes of CSSF imports reported in the questionnaire responses.”), 17 n.20 (“The Staff Report does not explain how ITC selected particular foreign producers.”) (emphasis in original).

⁹³ See, e.g., Nucor’s Remand Comments at 1-3, 6-13 (capitalization removed).

⁹⁴ See, e.g., Respondents’ Remand Comments at 1-4.

⁹⁵ Based on language from the Supreme Court’s opinion in City of Milwaukee v. Illinois, 451 U.S. 304, 318 (1981), and in Webster’s Third New International Dictionary (2002), the Court found that the term “comprehensive” means “all-encompassing,” “covering a matter under consideration completely or nearly completely,” or “accounting for or comprehending all or virtually all pertinent considerations.” Confidential Slip Op. 11-104 at 12 n.12.

1. The Record Supports Using Questionnaire Data on Imports into the United States of CSSF from Subject and Non-Subject Countries

a. Reasons to Use Importer Questionnaire Data Over Customs Import Data

As the Federal Circuit has recognized, the Commission has broad discretion to make reasonable methodological choices.⁹⁶ In the Original Views and in these Remand Views, we decided to use data from importer questionnaire responses to quantify imports into the United States of CSSF from subject and non-subject countries. The CIT has routinely upheld the Commission's use of importer questionnaire data⁹⁷ and has repeatedly recognized that, in preliminary and even in final investigations, the Commission need not obtain complete questionnaire data.⁹⁸ In preliminary investigations, the Commission is required to make a decision based on the information available at the time of its determination.⁹⁹

Despite Nucor's unsupported assertion before the Court that the Commission "traditionally relies on Customs import data in order to assess subject volumes,"¹⁰⁰ the Commission actually relies on the most reliable data, whether from questionnaires or official import data, to perform its analysis.¹⁰¹ For the reasons discussed herein, we find that the record supports using importer questionnaire responses as the most reliable record data on imports from subject and non-subject countries.

Before the Commission, Nucor itself counseled against relying on Customs' import data in these investigations, because they did not accurately reflect subject import volumes. Nucor instead urged the Commission to use importer questionnaire responses, as noted in the Commission's Original Views.¹⁰² In the petitions, Nucor reported that the merchandise intended to be covered by the investigations might be classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under any one of six statistical reporting numbers: 7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085.¹⁰³ As Nucor also explained, "{f}or the most part, subheading 7318.15.2030 covers structural bolts with nuts having a diameter of 6 mm or more. Moreover, of the six HTSUS subheadings, this category likely covers the fewest non-subject merchandise. The remaining HTSUS subheadings are broad basket categories that also cover products outside of the scope of this investigation."¹⁰⁴ Nucor then

⁹⁶ U.S. Steel Group v. United States, 96 F.3d 1352, 1357-58, 1361-62 (Fed. Cir. 1996).

⁹⁷ Committee for Fair Coke Trade v. United States, 28 CIT 1140, 1163 (2004); Sensient, 28 CIT at 1520-22.

⁹⁸ Fair Coke, 28 CIT at 1163, quoting U.S. Steel, 18 CIT at 1203, 873 F. Supp. at 688, aff'd, 96 F.3d 1352 (Fed. Cir. 1996); American Bearing Mfrs. Ass'n v. United States, 28 CIT 1698, 1724-25 n.22, 350 F. Supp. 2d 1100, 1124 n.22 (2004); Torrington Co. v. United States, 16 CIT 220, 223, 790 F. Supp. 1161, 1167 (1992), aff'd, 991 F.2d 809 (Fed. Cir. 1993).

⁹⁹ 19 U.S.C. §§ 1671b(a) and 1673b(a); Co-Steel, 357 F.3d 1312-17.

¹⁰⁰ Nucor's CIT Brief at 25.

¹⁰¹ See, e.g., Commission's CIT Br. at 29 (citing Narrow Woven Ribbons of Woven Selvedge from China and Taiwan, Invs. 701-TA-467, 731-TA-1164-65 (Prelim.), USITC Pub. 4099 at 22-24 (Aug. 2009) (importer questionnaires); Welded Stainless Steel Pressure Pipe from China, Invs. 701-TA-454 and 731-TA-1144 (Final), USITC Pub. 4064 at 11 n.59 (Mar. 2009) (using other record data to modify Customs data)).

¹⁰² Confidential Views (CL228) at 5.

¹⁰³ See, e.g., Petitions (CL1), Vol. I at 9.

¹⁰⁴ Petitions (CL1), Vol. I at 9 (emphasis added); see also, e.g., id. at 15-16 (noting that of the six HTSUS statistical reporting numbers where the subject merchandise imports are classified, "{a} majority of these HTSUS subheadings, however, are broad basket categories that include additional products outside the scope of this investigation."), 16 (noting that the official import data "may have limitations in terms of demonstrating the overall trends in subject import volumes and values over the period of investigation"), 17 (noting that "the majority of

continue...

went on to describe some of the products outside the scope of the investigations that were likely imported under the basket statistical reporting numbers.¹⁰⁵ Recognizing that basing any analysis on these broad categories “may distort actual volume trends and market share information,”¹⁰⁶ Nucor argued that “the shipment data gathered through the Commission’s questionnaire response may more accurately reflect the trends in subject imports over the period, and consequently will be crucial to the Commission’s analysis.”¹⁰⁷

We agree with Nucor that official import statistics do not accurately reflect imports of CSSF from subject and non-subject countries. As we explained in our Original Views, “five of the six HTSUS reporting numbers (7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085) correspond to ‘basket’ categories containing large amounts of fasteners not subject to these investigations. Moreover, using only the sixth reporting number (7318.15.2030) would underestimate the volume of subject imports.”¹⁰⁸ In its opinion remanding this matter to the Commission, the Court did not disapprove of the Commission’s consequent reliance on importer questionnaire data instead of official import statistics. For these Remand Views, we have again decided for the above-stated reasons to use importer questionnaire data rather than official import statistics in these Remand Views. After having reviewed the nature and scope of the importer questionnaire data obtained in these investigations, we disagree for the reasons identified below with Nucor’s argument that we must proceed to final investigations to obtain additional importer questionnaire data.

b. The Process Used to Collect Importer Questionnaire Data

In the Court’s opinion and in Nucor’s Remand Comments, the Court and Nucor raised a number of questions concerning the process used to collect importer questionnaire data in these investigations.¹⁰⁹ In these investigations and consistent with our practice, the Commission obtained, from its “Interactive

¹⁰⁴ ...continue
relevant HTSUS categories are very broad basket categories”).

¹⁰⁵ Nucor noted that statistical reporting number 7318.15.2055 “also covers other kinds of round-headed fasteners that are outside the scope of this investigation”; reporting number 7318.15.2065 “also covers non-subject steel hexagonal headed bolts with nuts”; reporting number 7318.15.8085 “also covers non-subject hexagonal-headed screws without nuts”; reporting number 7318.15.8085 “may also include square-headed fasteners without nuts, which are outside the scope of these Petitions”; and reporting number 7318.16.0085 “also covers a large number of many other different types of steel nuts that are not subject to this investigation.” Petitions, Vol. I at 9.

¹⁰⁶ See, e.g., Petitions (CL1), Vol. I at 17.

¹⁰⁷ See, e.g., Petitions (CL1), Vol. I at 16.

¹⁰⁸ Confidential Views (CL228) at 5 (citing Petitions, Vol. I at 9-10, 15-17).

¹⁰⁹ See, e.g., Nucor’s Remand Comments at 1-3, 6-13; Confidential Slip Op. 11-104 at 14 (“Defendant cites no record evidence of any such comparison” showing that the Commission had received data from the majority of significant known imports of fasteners from China and Taiwan during the POI and thus had good coverage for importers who were the likely importers of subject CSSF), 15 n.16 (“Although CSSF imports could conceivably constitute a ‘large majority’ of the imports under subheadings that nonetheless ‘contain { } large amounts of {non-CSSF} fasteners,’ ITC provides no such explanation.”), 15 & n.17 (“Defendant points to no record evidence demonstrating or even discussing an overlap between the large importers that responded to the questionnaire and the large importers that were allegedly referenced at that conference.”), 15-16 (“neither ITC nor Defendant explains why the alleged presence of ‘a limited number of large importers’ means that the aggregate imports of the numerous nonresponding importers are necessarily small.”), 16 n.18 (“neither ITC nor any party has pointed to record evidence comparing the volumes of all imports recorded under these customs subheadings to the volumes of CSSF imports reported in the questionnaire responses.”), 17 n.20 (“The Staff Report does not explain how ITC selected particular foreign producers.”)

Tariff and Trade DataWeb,”¹¹⁰ Commerce’s official statistics on imports under the six statistical reporting numbers identified by Nucor in its petitions for the investigation period (the full years of 2006, 2007, and 2008, as well as the first six months of 2008 and 2009). As Nucor recognizes, these official import statistics overstate the level of CSSF imports into the United States, because official import statistics, even for the one mostly “clean” statistical reporting number, correspond to a much broader universe of fastener products than the narrower CSSF products at issue in these investigations.

As summarized in Table 1, a summary of Customs import data showed the following landed, duty-paid values (in \$1,000) of imports:

Table 1
Summary of Customs Data on U.S. Imports of All Types of Fasteners

	2006	2007	2008	Jan-June '08	Jan-June '09
HTSUS 7318.15.2030 (CL202)					
China	5,072	8,090	7,917	3,505	3,519
Taiwan	8,670	9,866	12,133	5,074	6,050
Non-subject	25,034	36,719	49,177	24,755	12,255
Total	38,776	54,675	69,227	33,334	21,824
HTSUS 7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085 (combined) (CL202)					
China	215,875	227,162	324,784	125,379	103,399
Taiwan	409,586	401,424	436,949	201,883	128,260
Subject	625,461	628,586	761,733	327,262	231,659
Non-subject	775,667	750,398	821,508	418,363	209,019
Total	1,401,128	1,378,984	1,583,241	745,625	440,678

In addition to the official import statistics, as is also consistent with our practice, the Commission obtained specific import entry information from the Customs Net Import File (“CNIF”) concerning U.S. imports from subject and non-subject countries for the six HTSUS statistical reporting numbers identified in the petitions.¹¹¹ Although the CNIF data also corresponded to a much greater universe of fasteners than the narrower CSSF product under investigation, the CNIF data provided a starting point for the Commission’s further data collection efforts. CNIF data include a wealth of transactional information about imports of various types of fasteners, including, *inter alia*, the name and address of the foreign firm identified as the manufacturer of the merchandise; the name and address of the firm identified as the importer of the merchandise; and the volume (in kilograms) and landed, duty-paid value of the merchandise at issue.

By issuing importer (and foreign producer) questionnaires to firms that accounted for a sizable portion of imports (or exports) of all types of fasteners to the United States, the Commission intended to reach importers (and foreign producers) that would account for a sizable portion of the more specific CSSF product imported into, as well as exported to, the United States. The Commission regularly uses such a methodology in cases involving products that may be imported into the United States under one or

¹¹⁰ See <http://dataweb.usitc.gov/>.

¹¹¹ Customs Net Import File, CL202.

more “basket” categories.¹¹² In such circumstances, the goal is to obtain adequate questionnaire data to assess the volume of imports of the subject product where CNIF data corresponding to the basket category would overstate imports of the narrower subject product.¹¹³ Despite the fact that the Commission never obtains “perfect” data on imports, foreign producers, or the domestic industry in any investigation or review, the Commission nevertheless routinely relies on the questionnaire data to make its injury determinations, because the statute requires decisions to be made within a prescribed time period based on the information available at the time.¹¹⁴

Using information from the CNIF, staff identified three groups of importers in order to create a questionnaire distribution list. The first group (“group A”) was comprised of those firms representing in 2008 or in January-June 2009 greater than one percent of total imports of fasteners from China or Taiwan under statistical reporting number 7318.15.2030, which Nucor identified as the only HTS statistical reporting number corresponding mostly to subject CSSF. The second group (“group B”) was comprised of those firms representing in 2008 or in January-June 2009 greater than one percent of total imports of various types of fasteners from China or Taiwan under the combined HTS statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085), which covered both subject CSSF and non-CSSF fasteners. In order to create a group for importers from non-subject countries (“group C”), staff utilized CNIF data to identify those firms that imported in 2008 or in January-June 2009, greater than one percent of total imports of various types of fasteners from non-subject countries under the combined HTS statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085). After accounting for duplicates (firms that appeared in more than one of these three groups), the Commission transmitted importer questionnaires to 78 firms.¹¹⁵

¹¹² See, e.g., Woven Electric Blankets from China, Inv. No. 731-TA-1163 (Final), USITC Pub. 4177 at I-3, IV-1 to IV-2 (Aug. 2010); Narrow Woven Ribbons, Invs. Nos. 701-TA-467, 731-TA-1164 to 1165 (Prelim.), USITC Pub. 4099 at 22-24, IV-1 (Aug. 2009); Small-Diameter Graphite Electrodes from China, Inv. No. 731-TA-1143 (Final), USITC Pub. 4062 at 28, I-3, IV-1 (Feb. 2009). Moreover, the Commission’s reviewing courts have routinely upheld the Commission’s use of importer questionnaire data. Fair Coke, 28 CIT at 1163; Sensient, 28 CIT at 1520-22. This is consistent with the Federal Circuit’s recognition that the Commission has broad discretion to make reasonable methodological choices. U.S. Steel, 96 F.3d at 1361-62.

¹¹³ Where the Commission follows its usual methodology in a particular proceeding, the Commission’s reviewing courts defer to the Commission’s selection of the appropriate methodology so long as its methodology is reasonable. U.S. Steel, 96 F.3d 1352 at 1362 (in reviewing a challenge to a Commissioner’s causation methodology, deferring to the Commission’s expertise in selecting among methodologies, so long as the methodology selected was reasonable) (“The invitation to employ such diversity in methodologies is inherent in the statutes themselves, given the variety of the considerations to be undertaken and the lack of any Congressionally mandated procedure or methodology for assessment of the statutory tests. This court has no independent authority to tell the Commission how to do its job. We can only direct the Commission to follow the dictates of its statutory mandate.”)

¹¹⁴ 19 U.S.C. §§ 1671b(a)(1) to (2), 1671b(f), 1673b(a)(1) to (2), 1673b(f) (giving the Commission 45 days in which to conduct preliminary investigations, directing the Commission to make its preliminary determinations “based on the information available to it at the time of the determination,” and giving the Commission 5 days from the date of its determinations in which to transmit its opinion to Commerce that explains “the facts and conclusions on which its determination is based”).

¹¹⁵ Report (CL224) at IV-1. In its Remand Comments, Nucor asserts that the mailing list identifies only ***, rather than 78 firms, that received importer questionnaires. See, e.g., Nucor’s Remand Comments at 7. These lists actually identify *** but do not include four firms that received importer questionnaires through their counsel of record – ***. See, e.g., CL161 at document id 428496 (initial importer questionnaire mailing list), CL231 at document id 534586 (annotated importer questionnaire mailing list) (collectively transmitting importer questionnaires to 74 firms: ***). The Commission also sent importer questionnaires to all firms that received U.S. producer questionnaires (***). Report (CL224) at IV-1; CL231 at document id 534585 (annotated U.S. producer

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In its Remand Comments, Nucor argues that the Commission's use of this methodology did not select questionnaire recipients in a consistent manner. Nucor's claims are unavailing. For example, Nucor asks why the Commission did not transmit importer questionnaires to firms such as ***, arguing that those firms would appear to be "significant importers on the basis of the import statistics."¹¹⁶ According to CNIF data, however, none of those firms accounted for greater than one percent of total imports into the United States for any of the categories described above, which was the criterion used by the Commission to make these selections.¹¹⁷

Similarly, in its Remand Comments, Nucor contends that it is not clear why the Commission transmitted questionnaires to certain firms that accounted for "far lesser import volumes" of fasteners from China and Taiwan, such as *** and ***, or to certain firms that Nucor asserts did not import any fasteners under the relevant statistical reporting numbers from either China or Taiwan, such as ***.¹¹⁸ Some of these firms did not import greater than one percent of fasteners from China or Taiwan under the relevant statistical reporting numbers, but they were included on the questionnaire distribution list because they accounted for more than one percent of total imports of fasteners from non-subject countries in 2008 or interim 2009 (i.e., ***). Additionally, the Commission transmitted an importer's questionnaire to *** because this firm accounted for greater than one percent of fasteners imported from China under the relevant statistical reporting numbers according to CNIF data. Again, the Commission's selection of these questionnaire recipients was consistent with its chosen methodology.

Indeed, although Nucor asserts in its Remand Comments that the Commission used "no principled or statistically valid methodology" to select which firms would receive importer questionnaires,¹¹⁹ the Commission employed a more demanding standard than Nucor did. In compiling a list of possible importers of CSSF for inclusion in the petitions, Nucor apparently selected those firms accounting for greater than two percent of imports.¹²⁰ The Commission's methodology, however, included firms accounting for greater than one percent of the imports from the relevant HTSUS statistical reporting categories.

In its Remand Comments, Nucor also notes that the Commission did not use, as the basis for deciding which firms would receive importer questionnaires, the list of "several hundred importers of subject merchandise" that Nucor identified in the petitions.¹²¹ At the time it filed the petitions in these investigations, Nucor Fastener did not have access to CNIF data on fastener imports.¹²² Instead, Nucor

¹¹⁵ ...continue
distribution list).

¹¹⁶ Nucor's Remand Comments at 7.

¹¹⁷ CNIF File (CL202). Furthermore, contrary to Nucor's argument (Nucor's Remand Comments at 7), the Commission did transmit a questionnaire to ***, a firm that CNIF data indicated produced fasteners in *** and imported into the United States fasteners from ***. CL161 at document id 528497.

¹¹⁸ Nucor's Remand Comments at 7-8. Nucor also asked why the Commission transmitted a questionnaire to ***. Id. The Commission transmitted questionnaires to a few firms whose names Commission staff identified during the course of the investigation. Compare, e.g., CL161 at document id 528496 (initial questionnaire distribution list) with, e.g., CL213 at document id 534586 (annotated importer questionnaire distribution list that includes entries for ***).

¹¹⁹ Nucor's Remand Comments at 7, 12.

¹²⁰ See, e.g., Petitions, Vol. I at 14.

¹²¹ Nucor's Remand Comments at 6.

¹²² Nucor's counsel gained access to the more detailed confidential CNIF data when the Commission released the data under the administrative protective order, as it regularly does in antidumping and countervailing duty investigations. Given this fact and the description of the methodology used by the Commission to collect import data that was provided in the Commission's report, supplemental report, and the Original Views, there is no basis for
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had access only to the total volume (in kilograms) and value of imports from each country by HTSUS statistical reporting number available to the public on the Commission's website from the Interactive Tariff and Trade DataWeb.¹²³ Thus, when identifying possible importers and foreign producers of CSSF in the petitions, Nucor based its lists on *** and on open source research.¹²⁴ Although we recognize that CNIF data sometimes reflect reporting errors, we find that these data were a more reliable starting point for the importer questionnaire distribution lists than the ***, which is why we based our importer questionnaire distribution list on CNIF data rather than the *** included in the petitions.¹²⁵

In its Original Views, the Commission rejected Nucor's request to evaluate the volume of imports in these investigations on the basis of value rather than quantity.¹²⁶ Given that the Commission analyzed volume data on the basis of quantity in its Original Views, Nucor criticizes the Commission's compilation of the importer questionnaire distribution list using CNIF data sorted by landed, duty-paid value as "unexplained" and "completely arbitrary." Nucor also questions why the CNIF data were sorted by "landed, duty-paid value," which is inclusive of freight and customs duties, because, according to Nucor, "one importer might be considered 'larger' than another simply because it paid more freight costs or duties than another importer with goods of the same customs value."¹²⁷ First, contrary to Nucor's suggestion, we reviewed the data and confirmed that sorting the CNIF data using kilograms or customs value instead of landed, duty-paid value would not have affected the list of firms receiving importer questionnaires.¹²⁸ Second, the Commission routinely sorts CNIF data by landed, duty-paid values, because this is the value at which U.S. imports from subject countries enter the United States and at which they presumably compete against imports from non-subject countries and the domestic like product.

¹²² ...continue

Nucor to suggest that it would have preferred to receive the hundreds of pages of CNIF data in a different format. See, e.g., Nucor's Remand Comments at 8 ("Hundreds of pages of raw import data are on the record, but there are no worksheets showing the calculations by which the Staff might have determined which companies accounted for more than one percent of imports under the relevant tariff provisions.") (internal footnote omitted).

¹²³ See, e.g., Petitions (CL1), Vol. I at 15.

¹²⁴ See, e.g., Petitions (CL1), Vol. I at 14, 15, 17.

¹²⁵ Our reluctance to rely on *** in these investigations is similar to our approach in other cases as well. See, e.g., Drill Pipe and Drill Collars from China, Invs. Nos. 701-TA-474 and 731-TA-1176 (Final), USITC Pub. 4213 at 22-23 (Feb. 2011); Chlorinated Isocyanurates from China and Spain, Invs. Nos. 731-TA-1082 and 1083, USITC Pub. 4184 at 9 (Sept. 2010).

¹²⁶ Confidential Views (CL228) at 36 n.171; Commission's CIT Br. at 28 n.24; Confidential Slip Op. 11-104 at 13 n.13.

¹²⁷ Nucor's Remand Comments at 13 n.57. In its Remand Comments, Nucor also asserts that firms submitting importer questionnaire responses such as *** and *** "managed to 'lose' approximately *** in imports," because the value of their reported imports of all types of fasteners in their questionnaires in response to Question II-7 of the importer questionnaire is lower than what the CNIF data indicate that these firms imported under the combined six HTSUS statistical reporting numbers. Nucor, however, is contrasting importer questionnaire data reported per the questionnaire instructions on a landed duty-paid value basis with CNIF data that Nucor measures on a customs value basis. See, e.g., Nucor's Remand Comments at 11-12.

¹²⁸ Indeed, the top ten firms importing fasteners from Taiwan under the six combined statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085) are identical, regardless of whether the CNIF data are sorted by landed, duty paid value, kilograms, or customs value. Likewise, the top ten firms importing fasteners from China under the six combined statistical reporting numbers are identical if the CNIF data are sorted by landed, duty-paid value and customs value, and eight of these ten firms are also in the top ten firms when the CNIF data are sorted by kilograms. The other two are also large importers when sorted by kilograms, and those importers of greater than one percent of fasteners from China based on sorting by kilograms already received importer questionnaires based on the Commission's sorting of the CNIF data by landed, duty-paid value. CNIF file (CL202).

Consequently, for the reasons described above, we find that the methodology used to distribute the importer questionnaires in these investigations was consistent with the methodology used in other investigations and withstands the scrutiny of these remand proceedings.

c. The Methodologies Used to Evaluate the Data Obtained

We next evaluated the nature and the scope of the importer questionnaire data obtained in these investigations using a variety of methodologies, including by comparing the importer questionnaire responses to CNIF data, comparing the importer questionnaire responses to other record data, comparing the importer questionnaire responses to the foreign producer questionnaire responses, and assessing the integrity of the reported data in light of the fact that the eventual scope language in Commerce’s notice of initiation differed somewhat from the definition used in the Commission’s questionnaires.

Importer Questionnaires Received Relative to CNIF Data: Having sent importer questionnaires to firms that CNIF data indicated accounted for a substantial portion of U.S. imports of various types of fasteners, we compared the importer questionnaire responses against CNIF data and the list of questionnaires sent. None of the HTS statistical reporting numbers under which CSSF might have been imported into the United States were “clean,” given that all of these categories included imports of non-CSSF fasteners. In such circumstances, it is extremely difficult, if not impossible, to identify with precision the coverage of imports provided by importer questionnaires, although a comparison of importer questionnaires received to CNIF data is one of several possible ways to assess the extent of import coverage. In that vein, in Appendix B, which we incorporate herein, we compared (for 2008) the importer questionnaires received to CNIF data to assess how many and which importers submitted responses and what value of imports of total fasteners each responding and non-responding importer accounted for according to CNIF data.

In its Remand Comments, Nucor identifies certain firms that did not submit importer questionnaire responses, even though they were included on the Commission’s questionnaire distribution list as large importers of all types of fasteners.¹²⁹ As shown in Appendix B, the Commission did not receive perfect coverage, because it did not receive importer questionnaire responses from all firms identified in the CNIF data as importers of various types of fasteners during the relevant period. Nor was it possible to do so, given that the Commission did not transmit importer questionnaires to every firm that imported fasteners from a subject or non-subject country under one of the six possible statistical reporting numbers identified by Nucor in the petitions, because there were thousands of such firms. Indeed, the apparent thrust of Nucor’s Remand Comments regarding the *** and import data issues is that the Commission should have contacted each firm to which it transmitted a questionnaire, should have engaged in extensive follow-up with each firm regardless of the size of the firm or the volume or value of its U.S. sales or imports, and should have discussed, in the Commission’s report and/or Original Views, each response.¹³⁰ As a practical matter, however, the Commission has a limited time frame in preliminary

¹²⁹ Nucor’s Remand Comments at 9-10 & n.47 (noting, *inter alia*, the absence of questionnaire responses from *** and *** and from firms that submitted letters complaining about the investigations but did not submit questionnaire responses, such as ***). Curiously, Nucor questions why *** even received a questionnaire on page 8 of its comments and then two pages later criticizes the Commission’s data because no questionnaire was received from ***. Nucor’s Remand Comments at 8, 10.

¹³⁰ See, e.g., Nucor’s Remand Comments at 1 (characterizing the investigation as “inadequate”), 3-4 (arguing that the Commission failed “to recognize the flaws in” a questionnaire response or “to follow up” with an individual firm), 9 (“the notes on the mailing list do not indicate any follow-up contact by Staff or any attempt to ensure that the questionnaire was received, much less answered.”), 9 (“no sign that the Staff made any further efforts at following up”), 10 (noting that the Report “does not acknowledge these gaps or otherwise appear to have been

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investigations in which to perform its investigation, given that the Commission has to make its decision within 45 days after a petition is filed based on “the information available to it” at that point and explain its decision in written views within five business days.¹³¹ As the Federal Circuit has stated, the purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations.¹³² As the CIT also has explained, it “has long been established that in applying the statutory standard for making a preliminary determination ..., the Commission may weigh all evidence before it and resolve conflicts in the evidence.”¹³³ Indeed, the Commission need not address all party arguments, unless they pertain to an important aspect of the investigation.¹³⁴ Thus, it is difficult to reconcile Nucor’s arguments with these legal authorities, particularly given the statutory time constraints of preliminary investigations and the fact that the Commission received domestic producer, importer, and/or foreign producer questionnaires from about 100 firms in these investigations.

Nevertheless, based on our review of the record, we find that our staff did transmit importer questionnaires to firms that accounted for a substantial portion of imports under the relevant statistical reporting numbers, and numerous firms responded to the Commission’s inquiries, either by certifying that they did not import CSSF or by reporting information about their imports of CSSF,¹³⁵ as discussed in more detail in Appendix B. Specifically, the Commission obtained importer questionnaire data that included five of the top seven importers of fasteners from China and five of the top seven importers of fasteners from Taiwan. Using 2008 to illustrate, those firms that submitted questionnaire responses collectively reported \$104.4 million in imports of CSSF from China, \$156.9 million in imports of CSSF from Taiwan, and \$179.8 million in imports of CSSF from non-subject countries,¹³⁶ whereas according to CNIF data on the six combined HTS statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085), those firms collectively accounted for \$133.9 million in imports of various types of fasteners from China, \$166.8 million in imports of various types of fasteners from Taiwan, and \$217.9 million in imports of various types of fasteners from non-subject countries. As discussed below, given the role that master distributors play in this industry, the fact that we obtained importer questionnaire data from these large importers is meaningful.

¹³⁰ ...continue

written to inform the Commissioners of the inadequate information.”).

¹³¹ See, e.g., 19 U.S.C. §§ 1671b(a)(1) to (2), 1671b(f), 1673b(a)(1) to (2).

¹³² American Lamb, 785 F.2d at 1004.

¹³³ R-Calf, 23 CIT at 878, 74 F. Supp. 2d at 1368 citing American Lamb, 785 F.2d at 1002-04.

¹³⁴ Timken United States Co. v. United States, 421 F.3d 1350, 1354-57 (Fed. Cir. 2005) (relying on the Supreme Court’s holding in Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983), that courts will “uphold a decision of less than ideal clarity if the agency’s path may be reasonably discerned.”).

¹³⁵ Overall, the Commission received 22 responses from firms that certified they had not imported subject CSSF fasteners, some of which received importer and U.S. producer questionnaires. According to CNIF data, five of these firms imported fasteners from China under statistical reporting number 7318.15.2030, one imported fasteners from Taiwan under statistical reporting number 7318.15.2030, one imported fasteners from China and Taiwan under statistical reporting number 7318.15.2030, one was identified as an importer of fasteners from China in the CNIF data for all six statistical reporting numbers combined, one was identified as an importer of fasteners from Taiwan in the CNIF data for all six statistical reporting numbers combined, and three were identified as importers of fasteners from non-subject countries.

¹³⁶ See, e.g., Report (CL224) at Table IV-2.

Moreover, we find that the importer questionnaire data we obtained are consistent with Customs' import data,¹³⁷ as shown in the following Table 2 that contrasts import data, by value, from Customs' import data for the six combined HTS statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085) with data reported in importer questionnaires for cumulated imports from China and Taiwan.¹³⁸ Importer questionnaire data follow the same trends as official import data, even though official import data overstate imports of CSSF.¹³⁹ As shown in Table 2, whether using official import data or importer questionnaire data, the absolute volume of cumulated subject imports increased between 2006 and 2007 and between 2007 and 2008 and was lower in interim 2009 than in interim 2008.¹⁴⁰ Indeed, the magnitudes of period-to-period changes are similar regardless of import data source.¹⁴¹ Likewise, in terms of their share of apparent U.S. consumption, whether using Customs import data or importer questionnaire data, cumulated subject imports increased their market share between 2006 and 2007 and between 2007 and 2008, and their

¹³⁷ Indeed, Nucor relied on importer questionnaire data to make its arguments in its postconference brief before the Commission. Nucor's Postconference Brief at 36-38. As stated in Nucor's postconference brief regarding the importer questionnaire data, "the data collected by the Commission confirms the information provided in the petition with respect to trends in imports of structural bolts." Nucor's Postconference Br. at 38 n.139.

¹³⁸ Before the Court, Nucor questioned the relevance of comparing cumulated data for China and Taiwan. See, e.g., Confidential Slip Op. 11-104 at 16-17 (citing Nucor's CIT Brief at 29). Although we considered the data by specific source (i.e., China or Taiwan), we also considered cumulated import data from China and Taiwan, which is unexceptionable for two reasons. First, in our analysis of whether there was a reasonable indication of material injury and our analysis of whether there was a threat of material injury to a domestic industry, we cumulated imports from China and Taiwan. Second, Nucor itself argued in these investigations that the CSSF industries in China and Taiwan were closely related and identified examples of cross-ownership among the firms. See, e.g., Revised Conference Transcript at 8 (Price) ("we will provide evidence of cross-ownership in our briefs demonstrating Taiwanese producers control certain producers in China, and there is evidence that demonstrates that the Taiwanese also own significant distribution interests in the United States."), 35 (Pickard) ("you don't have two distinct industries. We now have evidence that there's cross-ownership."), 138-39 (Levinson and Lee) (testifying that Chun Yu operates plants in Taiwan and China), 200-01 (Pickard); Petitioners' Postconference Brief at Exh. 1 at 8-9 & n.29.

¹³⁹ Apparent U.S. consumption in Table 2 includes the value of U.S. shipments reported by the domestic industry, inclusive of ***. As discussed in Section II of these Remand Views, the inclusion or exclusion of *** from the domestic industry has no meaningful effect on the data or data trends.

¹⁴⁰ According to Customs import data, cumulated subject imports increased from \$625.5 million in 2006 to \$628.6 million in 2007 and \$761.7 million in 2008, and were lower in interim 2009 (\$231.7 million) than in interim 2008 (\$327.3 million). See Table 2. Likewise, according to importer questionnaire data, cumulated subject imports increased from \$248.6 million in 2006 to \$257.8 million in 2007 and \$302.9 million in 2008, and were lower in interim 2009 (\$119.8 million) than in interim 2008 (\$155.2 million). See Table 2. Indeed, on a country-specific basis, both Customs import data and importer questionnaire data show that the absolute value of subject imports from both China and Taiwan increased overall between 2006 and 2008, with most of the increase for each subject source occurring between 2007 and 2008; the absolute values of subject imports from China and Taiwan were each lower in interim 2009 than in interim 2008 regardless of whether the source of the data is Customs import data or importer questionnaire data. (Derived from Table 1 and Appendix A at Table C-1).

¹⁴¹ According to Customs import data, the absolute volume of cumulated subject imports increased by 0.5 percent between 2006 and 2007 and by 21.2 percent between 2007 and 2008, for an overall increase of 21.8 percent between 2006 and 2008. They were 29.2 percent lower in interim 2009 than in interim 2008. See Table 2. Likewise, according to importer questionnaire data, the absolute volume of cumulated subject imports increased by 3.7 percent between 2006 and 2007 and by 17.5 percent between 2007 and 2008, for an overall increase of 21.8 percent between 2006 and 2008. They were 22.8 percent lower in interim 2009 than in interim 2008. See Table 2.

Table 2
Comparison of Value Data (\$1,000) Depending on Source of Import Data

	2006	2007	2008	Jan.-June 2008	Jan.-June 2009	2006- 2008	2006- 2007	2007- 2008	int. '08- '09
Imports from subject and non-subject sources are based on CL202 for all 6 HTSUS statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085); domestic industry data are from Table C-1 of staff report and include data for ***.									
Subject	625,461	628,586	761,733	327,262	231,659	21.8	0.5	21.2	-29.2
Non-subject	775,667	750,398	821,508	418,363	209,019	5.9	-3.3	9.5	-50.0
Domestic industry	152,151	150,266	182,715	88,837	61,713	20.1	-1.2	21.6	-30.5
App. US consumption	1,553,279	1,529,280	1,765,956	834,462	502,391	13.7	-1.5	15.5	-39.8
Subject	40.3	41.1	43.1	39.2	46.1	2.9	0.8	2.0	6.9
Non-subject	49.9	49.1	46.5	50.1	41.6	-3.4	-0.9	-2.6	-8.5
Domestic industry	9.8	9.8	10.3	10.6	12.3	0.6	0.0	0.5	1.6
Imports from subject and non-subject sources are based on importer questionnaire data; domestic industry data are from Table C-1 of staff report and include data for ***.									
Subject	248,627	257,767	302,886	155,208	119,833	21.8	3.7	17.5	-22.8
Non-subject	189,592	178,246	188,162	104,057	59,305	-0.8	-6.0	5.6	-43.0
Domestic industry	152,151	150,266	182,715	88,837	61,713	20.1	-1.2	21.6	-30.5
App. US consumption	590,370	586,279	673,763	348,102	240,851	14.1	-0.7	14.9	-30.8
Subject	42.1	44.0	45.0	44.6	49.8	2.8	1.9	1.0	5.2
Non-subject	32.1	30.4	27.9	29.9	24.6	-4.2	-1.7	-2.5	-5.3
Domestic industry	25.8	25.6	27.1	25.5	25.6	1.3	-0.1	1.5	0.1

market share was higher in interim 2009 than in interim 2008.¹⁴² The percentage point changes in U.S. market share from period to period are also relatively similar regardless of import data source.¹⁴³

¹⁴² According to Customs import data, cumulated subject imports increased their share of apparent U.S. consumption from 40.3 percent in 2006 to 41.1 percent in 2007 and 43.1 percent in 2008, and their market share in interim 2009 (46.1 percent) was higher than in interim 2008 (39.2 percent). See Table 2. Likewise, according to importer questionnaire data, cumulated subject imports increased their share of the U.S. market from 42.1 percent in 2006 to 44.0 percent in 2007 and 45.0 percent in 2008, and their market share in interim 2009 (49.8 percent) was higher than in interim 2008 (44.6 percent). See Table 2.

¹⁴³ According to Customs import data, cumulated subject imports increased their market share by 0.8 percentage points between 2006 and 2007 and by 2.0 percentage points between 2007 and 2008, for an overall increase of 2.9 percentage points. They were 6.9 percentage points lower in interim 2009 than in interim 2008. See Table 2. Likewise, according to importer questionnaire data, cumulated subject imports increased their market share by 1.9 percentage points between 2006 and 2007 and by 1.0 percentage points between 2007 and 2008, for an overall increase of 2.8 percentage points. They were 5.2 percentage points lower in interim 2009 than in interim 2008. See Table 2.

Consequently, we find that these comparisons demonstrate that we conducted as thorough an investigation as possible under the circumstances and that the record contained adequate and reliable information on which to base our determinations.

Comparison of Importer Questionnaire Data to Other Record Evidence: As a further check on the reliability of importer questionnaire responses, we compared the importer questionnaire data to other record evidence. For example, the importer questionnaire data suggested that a relatively discrete number of importers accounted for a large portion of imports of CSSF from China and Taiwan into the United States. The largest responding importers accounted for *** percent of reported imports from China in 2008,¹⁴⁴ and the largest responding importers accounted for *** percent of reported imports from Taiwan in 2008.¹⁴⁵

Other record evidence also suggested that this industry involved a limited number of large importers/purchasers, along with a number of other firms that imported or purchased substantially smaller amounts.¹⁴⁶ As the Commission found in its Original Views, CSSF are sold to master distributors and distributors and are then resold to end users.¹⁴⁷ More specifically, petitioners argued in the petitions that, like CSSF produced domestically, “the vast majority of the subject fasteners are sold through the same channel of distribution{,} master distributors.”¹⁴⁸ The record indicated that there are a limited number of

¹⁴⁴ These importers are ***. Report (CL224) at IV-1 at Table IV-1.

¹⁴⁵ These importers are ***. Report (CL224) at IV-1 at Table IV-1.

¹⁴⁶ During oral argument, the Court questioned whether transcript pages cited in the Commission’s Original Views supported this finding. As the Commission’s counsel explained, incorrect pages were identified in the Original Views. Although the Commission submitted the appropriate transcript pages to the Court, the Court found that, absent additional explanation, it was not clear how these pages supported the Commission’s finding. Confidential Slip Op. 11-104 at n.17. Consequently, for our finding in these Remand Views, we provide additional context regarding the channels of distribution and in particular the role of the master distributors in this industry.

¹⁴⁷ Confidential Views (CL228) at 34.

¹⁴⁸ Petitions, Vol. I at 11; see also *id.* at 12 (“subject merchandise are principally sold to master distributors and end-users”), 21 (“a majority of both standard subject fasteners and domestic like product sales are made to master distributors”), 27 (“petitioner primarily sells through master distributors”); Revised Conference Transcript (PL76) at 8 (Price) (“the major distributors have typically sold both domestic and imported merchandise”), 15 (Miller) (“they are usually sold through distributors who can then offer them to any number of customers for any number of uses.”), 16 (Miller) (“standard products, on the other hand, are typically sold to distributors, including master distributors”), 22 (McCoy) (“We are seeing subject product from China and Taiwan in the U.S. for roughly \$1,000 a ton, delivered to distributors’ docks”), 26 (Aman) (“the distributors I’ve worked for over the years have purchased fasteners manufactured in the United States, China, and Taiwan”), 65 (Witucki) (“we sell to the very same distributors as what the Chinese and the Taiwanese producers sell to or through”), 65-66 (Witucki) (noting that Nucor sells to master distributors and that “there tends to be fewer master distributors in the marketplace just due to the nature. You might want to relate them to a big box hardware store, and you think of a Lowes or a Home Depot.”), 103-04 (Witucki) (responding to a question about an importer/distributor’s claim that Nucor sells its fasteners only through 12 selected distributors instead of allowing the more than 13 thousand domestic fastener distributors to purchase directly from it) (“We do not sell through 12 distributors. We sell through hundreds of distributors. We do rely on master distributors to make our product available to some of the smaller consumers or small distributors in the marketplace.”), 199 (Pickard) (“they’ve conceded that there’s overlapping channels of distribution. As a matter of fact, the largest master distributor in the United States testified that he buys both domestic and foreign structural bolts, the subject merchandise”); October 2, 2009, e-mail to economist from Nucor’s counsel contained in CL218; September 21 to September 23, 2009, e-mails between Nucor’s counsel and economist contained in CL10.

master distributors in the United States and a much larger number of distributors.¹⁴⁹ Witnesses testified that master distributors in the United States include Porteous, Heads & Threads, XL Screw, and Fastenal.¹⁵⁰ According to the conference transcript, Porteous is the largest privately held importer/master distributor of fasteners in the United States¹⁵¹ and the Hillman Group is a large distributor of fasteners in the United States.¹⁵² During the staff conference, witnesses from Porteous, the Hillman Group, Bossard North America, Indent Metals, and Chun Yu Works testified that their firms had imported subject merchandise.¹⁵³

Of the firms identified during the staff conference as master distributors, *** submitted U.S. importer questionnaire responses with usable data.¹⁵⁴ Of the firms testifying that they imported subject merchandise, *** submitted importer questionnaire responses with usable data.¹⁵⁵ Consequently, we find that other record evidence shows both that the importer questionnaire data are consistent with conditions in the U.S. CSSF market and that the importer questionnaire data obtained in these investigations include data for major master distributors/importers of CSSF from China and Taiwan.

Comparison of Importer and Foreign Producer/Exporter Questionnaire Data: In the petitions, Nucor included the names and addresses of the entities that it believed, based on the producers/exporters identified in *** and “extensive additional open source research,” produced and exported subject merchandise, a list that totaled over 900 companies.¹⁵⁶ As Nucor conceded, “[g]iven the nature of the ***, however, it is not possible for Petitioner to accurately identify whether each producer/exporter accounts for more than two percent of the total subject exports to the United States.”¹⁵⁷

In fact, our examination of the CNIF data indicates that a considerably smaller number of foreign producers accounted for a substantial portion of fasteners of all types imported into the United States. Using information from the CNIF, staff compiled two sets of groups in order to create a questionnaire distribution list for foreign producers/exporters.¹⁵⁸ After accounting for duplicates, staff transmitted questionnaires to 23 firms in Taiwan and 34 firms in China that met the criteria, as discussed in Appendix B.

We tested the reliability of the importer questionnaire data by comparing the total volume of merchandise imported into the United States from the subject countries as reported in importer questionnaire responses with the total volume of subject merchandise exported from the subject countries

¹⁴⁹ Revised Conference Tr. (PL76) at 65-66 (Witucki), 103-04 (Witucki), 176-77 (Porteous).

¹⁵⁰ Revised Conference Transcript (PL76) at 113-14 (Porteous), 176-77 (Porteous).

¹⁵¹ Revised Conference Transcript (PL76) at 113-14 (Porteous).

¹⁵² Revised Conference Transcript (PL76) at 130-36 (Hillman), 177 (Hillman).

¹⁵³ Revised Conference Transcript (PL76) at 113-14 (Porteous), 133-34 (Hillman), 175, 199.

¹⁵⁴ Report (CL224) at Table IV-1 (***). Consistent with staff conference testimony, ***.

¹⁵⁵ Report (CL224) at Table IV-1; questionnaire responses of ***.

¹⁵⁶ Petitions (CL1), Vol. I at 14, Exh. I-4.

¹⁵⁷ See, e.g., Petitions (CL1), Vol. I at 14.

¹⁵⁸ The first group (“group A”) was comprised of those firms identified as producers/exporters in China or Taiwan of fasteners that accounted for greater than one percent of total imports into the United States from China or greater than one percent of total imports into the United States from Taiwan, in 2008 or in January-June 2009, under statistical reporting number 7318.15.2030, which Nucor identified as the only HTS statistical reporting number corresponding mostly to subject CSSF. The second group (“group B”) was comprised of those firms identified as manufacturers/exporters in China or Taiwan of fasteners that accounted for greater than one percent of total imports into the United States from China or Taiwan, in 2008 or in January-June 2009, under the combined HTS statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085), which corresponded to both subject CSSF and non-CSSF fasteners.

as reported in the foreign producer questionnaire responses. As we noted in our Original Views,¹⁵⁹ the data reported in importer questionnaire responses for imports of CSSF from China (158.5 million pounds in 2008) were more inclusive than U.S. exports of CSSF from China reported in foreign producer questionnaire responses (***) pounds in 2008). The converse is true with respect to Taiwan, with a somewhat lower volume reported imported into the United States from Taiwan in 2008 (202.4 million pounds) than reported exported from Taiwan to the United States in 2008 (***) pounds).¹⁶⁰ Subject imports from Taiwan consistently held a larger share of the U.S. market by quantity than subject imports from China, even though subject imports from China increased their overall U.S. market presence, whether using Customs import data or importer questionnaire data.¹⁶¹

Examination of Integrity of Data Reported: We also examined the reported data to ensure they conformed with the product under investigation. As discussed above, the scope language in the petitions that became the primary basis for the Commission’s data collection efforts in the questionnaires differed somewhat from the broader language suggested elsewhere in the petitions and from the scope language eventually included in Commerce’s notice initiating the investigations of CSSF imports from China and Taiwan. As discussed in the Report, Supplemental Report, and our Original Views, Commission staff reviewed the reported data to ensure that they corresponded to the CSSF products under investigation. We agree with the staff’s conclusion that the importer questionnaire data are reliable in that respect.¹⁶² Nucor did not argue otherwise before the Court or in its Remand Comments.¹⁶³

d. Conclusion

Notwithstanding that the importer questionnaire data are necessarily not complete and there are some discrepancies in these data, we conclude that importer questionnaire data are sufficiently adequate. Having reviewed the party arguments on this issue and considered the Court’s instructions on remand, we have decided for the reasons discussed above to rely on importer questionnaire data regarding U.S. imports of CSSF from subject and non-subject countries for purposes of our analysis in these remand proceedings.

2. No Need to Proceed to Final Investigations on the Import Data Issue

In their Joint Remand Comments, respondents argue that the Commission’s negative preliminary determinations turned primarily on data reported by the domestic industry. Thus, regardless of whether the domestic industry includes ***, the Commission can satisfy the Court with respect to the import data issue by acknowledging that, although the import data may not be “comprehensive,” the Commission collected sufficient import data to reach negative determinations, and there is no need to proceed to final

¹⁵⁹ See, e.g., Confidential Views (CL228) at 7 n.25.

¹⁶⁰ Compare, e.g., Report (CL224) at Table IV-2 (imports) with, e.g., Report (CL224) at Table VII-1 and Table VII-2 (exports). In terms of value, in 2008 importer questionnaire data show \$104.4 million in U.S. imports from China and \$156.9 million in U.S. imports from Taiwan, but foreign producers/exporters were not asked to report the value of their exports. Id.

¹⁶¹ See, e.g., Table 1; Report (CL224) at Table IV-2; Confidential Views (CL228) at 7 n.24.

¹⁶² Confidential Views (CL228) at 4-9; Report (CL224) at I-3 to I-4, III-1 to III-2, IV-1 to IV-5, VI-1, VII-1 to VII-5; Supplemental Report (CL227) at 1-4.

¹⁶³ In contrast, Nucor did argue that the Commission erred by including in the domestic industry a firm (***) that it believed was not a producer of CSSF, as discussed supra in section II of these Remand Views.

investigations on this issue.¹⁶⁴ Nucor, however, argues that the importer questionnaire data coverage was “extremely spotty,” suggesting there were “*additional* import volumes and pricing data not available to the Commission” (emphasis added).¹⁶⁵ Thus, Nucor argues, “import penetration and underselling are greater than the Commission recognized.”¹⁶⁶

In preliminary determinations, however, the standard is not whether there are “additional” data that could be collected in any final investigations. Instead, as our reviewing courts have recognized, the Commission needs to proceed to a final investigation only if the *record as a whole* indicates a likelihood that *contrary* evidence indicating a different outcome would be obtained in a final investigation, not if *additional* information might be obtained in the final investigation.¹⁶⁷

In our Original Views, we found that, regardless of which data sets we examined, we arrived at the same conclusion.¹⁶⁸ Taking into consideration the importer questionnaire data coverage and the fact that the data coverage of the subject producers in China and Taiwan was not complete, we nevertheless found no reasonable indication that additional data would lead to a different conclusion.¹⁶⁹ In these remand proceedings, after reviewing the importer questionnaire data and other record evidence, the Court’s remand instructions, and the parties’ comments on remand, we reach the same conclusion as we did in our Original Views, regardless of which data sets we examine.

As discussed above, the importer questionnaire data that the Commission relied upon show trends that are similar to those in Customs import data.¹⁷⁰ Nucor itself admits that official import statistics greatly overstate import volumes.¹⁷¹ Nevertheless, even if we had relied on the data set showing the largest quantity of cumulated subject imports – Customs import data – this would not have affected our decision to reach negative determinations in these investigations. Although the magnitude of the subject and non-subject import volumes and market shares would be greater, our causation analysis would be the same.¹⁷²

Consistent with the findings in our Original Views,¹⁷³ regardless of whether we use importer questionnaire data or Customs import data and regardless of whether we include *** in the domestic industry, the data on the record show excess capacity in China and Taiwan and export orientation, yet large but essentially steady subject import market share, steady domestic industry market share, no significant price depression or suppression, and a profitable domestic industry, despite significant

¹⁶⁴ See, e.g., Respondents’ Remand Comments at 1-4.

¹⁶⁵ Nucor’s Remand Comments at 3.

¹⁶⁶ Nucor’s Remand Comments at 5, 12-13.

¹⁶⁷ Co-Steel, 357 F.3d at 1311, 1314-17; American Lamb, 785 F.2d at 999-1004 (the Commission needs more than the “barest clues or signs” of material injury or the “possibility” of a different outcome to justify further inquiry in final investigation). As the Federal Circuit stated, the “statute calls for a reasonable indication of injury, not a reasonable indication of need for further inquiry.” American Lamb, 785 F.2d at 1001.

¹⁶⁸ See, e.g., Confidential Views (CL228) at 7 n.25.

¹⁶⁹ See, e.g., Confidential Views (CL228) at 48 n.223.

¹⁷⁰ See Table 2 *supra*.

¹⁷¹ Confidential Views (CL228) at 5; Petitions (CL1), Vol. I at 9 (emphasis added); see also, e.g., *id.* at 15 (noting that of the six HTSUS statistical reporting numbers where the subject merchandise imports are classified, “{a} majority of these HTSUS subheadings, however, are broad basket categories that include additional products outside the scope of this investigation.”), 16 (the official import statistics data “may have limitations in terms of demonstrating the overall trends in subject import volumes and values over the period of investigation”), 17 (noting “the majority of relevant HTSUS categories are very broad basket categories”).

¹⁷² See Table 2 *supra*.

¹⁷³ See, e.g., Confidential Views (CL228) at 36-45.

underselling.¹⁷⁴ In other words, we find no need to proceed to final investigations to seek higher coverage, because higher coverage levels for importer or foreign producer questionnaires would not detract from the domestic industry's own data showing relatively steady domestic industry U.S. shipments, no evidence of significant price depression or suppression from what we already acknowledge is a significant volume of cumulated subject imports, and relatively profitable domestic industry performance.¹⁷⁵ Absent a reasonable indication of material injury or threat thereof to the domestic industry, we find no basis to proceed to final investigations to collect potentially more complete questionnaire data from importers or foreign producers. Nucor has not pointed to any evidence showing that the Commission is likely to obtain evidence supporting a contrary result in any final investigations, nor do we find any other basis to proceed to final investigations.

IV. Letter from Nucor's Counsel Attempting to Submit E-mail

An additional issue has arisen during the course of these remand proceedings. In an October 7, 2011 letter (herein "Action Request letter"), Nucor asked that the Commission accept into the administrative record of the preliminary investigations an e-mail that Nucor argues was "erroneously not included in the certified administrative record filed" with the Court. As exhibits to the Action Request letter, Nucor included a copy of the e-mail it claims it sent to the Commission (Exhibit 1), a "screen shot" of the "Sent Items" folder in the e-mail account of Daniel Pickard, counsel for Nucor, (Exhibit 2), and an affidavit from Thomas Bozzell, currently employed as the Information Services Manager at Wiley Rein LLP, confirming "{b}ased on the information that {he has} reviewed and {his} own professional experience, {his} belief that the email from Wiley Rein LLP was successfully sent from {Wiley Rein's} system to the International Trade Commission on October 21, 2009." (Exhibit 3).

Although Nucor did not identify any rule as the legal basis for submitting its Action Request letter, the Commission treated the letter as a request for action under 19 C.F.R. § 201.12. On Wednesday, October 12, 2011, the Commission decided by a negative clearance e-mail to accept this Action Request letter into the record of the remand proceedings. The Commission subsequently decided to deny Nucor's request and to strike Exhibits 1 to 3 of the Action Request letter and those portions of the Action Request letter and Nucor's Remand Comments (also filed on October 7) in which Nucor discusses these exhibits.

A. Background

In its brief and reply brief filed at the CIT, Nucor argued that the Commission's certified administrative record filed with the Court did not contain an e-mail that Mr. Pickard allegedly sent to the Commission's investigator and copied to the supervisory investigator. In its brief and at oral argument, the Commission responded that it had no record that the e-mail in question had been received.¹⁷⁶ In its

¹⁷⁴ See, e.g., Report (CL224) at Table VII-3 (showing that the combined subject industries did not operate at full capacity utilization during the investigation period, did not project operating at full capacity in 2009 or 2010, and were export-oriented); Table 2 (showing large but essentially stable market share for cumulated subject imports and the domestic industry regardless of whether using Customs import data or importer questionnaire data); Report (CL224) at Tables V-1 to V-4 (despite widespread underselling by subject imports, showing that domestic prices were generally at or above their initial-period prices, including prices for the two products that accounted for the highest volume of the domestic industry's sales); Appendix A at Tables C-1 and C-1(a) (both showing low COGS-to-net-sales ratios for the domestic industry, regardless of whether *** is included in the domestic industry and both showing a profitable domestic industry, regardless of whether *** is included in the domestic industry).

¹⁷⁵ See, e.g., Table 2, Appendix A at Table C-1 and Table C-1(a).

¹⁷⁶ Nucor's CIT Brief at 13-14 & n.6, 15; Nucor's CIT Reply Brief at 5 & n.7; Commission's Brief at n.16. In the appendix to its CIT brief, Nucor provided a copy of the alleged e-mail that Mr. Pickard had forwarded to an

continue...

opinion remanding this matter to the Commission, the Court did not direct the Commission to include the document in its record. On October 7, 2011, the deadline in these remand proceedings for submitting party comments on the remanded issues, Nucor submitted two documents: (1) 15-page double-spaced Remand Comments in which Nucor, *inter alia*, makes some of the same arguments contained in the alleged e-mail and (2) the Action Request letter.

B. Analysis and Conclusion

Contemporaneously with these remand determinations, the Commission is issuing a letter to Nucor's counsel denying the request to include the alleged e-mail in the record of the investigations. The Commission has also decided to strike Exhibits 1 to 3 of the Action Request letter as well as those portions of the Action Request letter and the Remand Comments in which Nucor discusses these exhibits. The Commission is rejecting Nucor's request for three reasons.

First, the alleged e-mail and other exhibits to the Action Request letter and Nucor's related arguments contained in both the Action Request letter¹⁷⁷ and the Remand Comments¹⁷⁸ constitute new factual information, in contravention of the requirements for remand comments announced in the Commission's Federal Register notice for these remand proceedings.¹⁷⁹ Second, the exhibits to, and the related arguments contained in, the Action Request letter constitute additional comments that cause Nucor to exceed the 15-page double-spaced page limits established in the Federal Register notice, given the length of Nucor's separately filed October 7, 2011, Remand Comments (15 double-spaced pages).¹⁸⁰ Third, there is no indication that the exhibits to and related arguments contained in the Action Request letter actually were, or should have been, part of the Commission's record in the underlying investigations.

The Commission has conducted an internal investigation and has found no record of having received the alleged e-mail. Specifically, after learning of the allegedly missing e-mail first mentioned in Nucor's initial CIT brief and appendix, the Commission's attorney, Mary Jane Alves, asked the investigator and supervisory investigator if they had received any e-mail from Mr. Pickard on the date and general time frame indicated on the document submitted to the Court. Neither had any record of any such e-mail, even after conducting a manual search of their e-mail folders for the case, as well as their deleted items, junk e-mail, and spam folders. Ms. Alves then contacted Chris de la Rosa, an Information Technology Specialist in the Commission's Office of Information Technology Services in the Office of the Chief Information Officer. Mr. de la Rosa explained that the Commission's servers do not back up

¹⁷⁶ ...continue

associate at Wiley Rein, which she then printed. In the appendix to its reply brief, Nucor provided a copy of the alleged e-mail printed directly from Mr. Pickard's computer along with a screen shot of Mr. Pickard's sent e-mail file. The latter two documents were included as Exhibits 1 and 2 to Nucor's Action Request Letter.

¹⁷⁷ For example, on page 2 & footnote 5 of the Action Request letter, Nucor argues that there may be other communications that were not included in the Commission's record; on pages 3-4 of the Action Request letter, Nucor describes the factual information that it would like to include on the record and refers to other new factual information such as the screen shot and affidavit. See also public version of same.

¹⁷⁸ For example, on page 1 of its Remand Comments, Nucor argues based on paragraph 2 of the alleged e-mail that "The Staff were advised that potentially knowingly false testimony was offered at the Staff Conference but this issue does not appear to have been investigated" and based on paragraph 1 that "electronic communications regarding these matters were not added to the Commission's administrative record." See also Nucor's Remand Comments (including Revised Bracketing and Public Version of Comments in appropriate circumstances) at 4 at lines 4-6.

¹⁷⁹ See 76 Fed. Reg. 58536, 58536-37 (Sept. 21, 2011).

¹⁸⁰ See 76 Fed. Reg. 58536, 58536-37 (Sept. 21, 2011).

e-mail data for more than 120 days that is not already stored in an employee's account. He explained how to create a vault search of the employees' e-mail and archives to locate any copy of the e-mail in case the e-mail was located in a different folder. Ms. Alves then asked the investigator and supervisory investigator to perform such a search on their entire e-mail account. Again, neither had any record of the alleged e-mail. Ms. Alves separately showed the investigator and supervisory investigator the document that Nucor's counsel had submitted to the Court. Neither had any recollection of ever having seen the alleged e-mail. Indeed, each stated that he was certain he would have recalled the e-mail given the tone and content of the second paragraph of the document. The Commission has absolutely no reason to doubt their veracity.¹⁸¹ Indeed, Nucor does not (and cannot) definitively demonstrate that the Commission received the e-mail, despite its counsel's claims to have sent the e-mail to the Commission.¹⁸²

Furthermore, even if it had received the e-mail, the Commission would have rejected the document as improperly submitted. Contrary to Nucor's arguments otherwise,¹⁸³ the e-mail was not presented "in a manner and form generally accepted by the agency," nor did it merely contain "data relevant to the clarification and/or rebuttal of post-conference brief and hearing statements." Specifically, the information contained in the alleged e-mail did not respond to a request by staff or by any Commissioner. For example, to the extent that Nucor sought to correct an erroneous citation in footnote 3 of its postconference brief (as Nucor sought to do in paragraph 1 of the alleged e-mail),¹⁸⁴ Nucor should have done so by filing a written request with the Secretary's Office seeking leave to correct a citation error in its brief, not by submitting an e-mail to Commission staff.¹⁸⁵ 19 C.F.R. §§ 207.3, 201.14(b)(2).

Finally, we note that in its Action Request letter at 2 and footnote 5, Nucor states that "at least one communication between {its} counsel and ITC Staff was not included in the certified record list filed with the Court on February 12, 2010 or the amended record list filed on October 12, 2010," and it reports that its counsel "are aware of other email communications with Commission staff that were not included in the record." Nucor, however, did not make any such additional allegations before the Court.

¹⁸¹ Both of these individuals and several other members of the original investigative team, of their own initiative and for reasons entirely unrelated to these investigations, have left the Commission in the intervening time or taken non-investigative positions within the agency. At the time of the original investigations, the investigative team included the agency's most senior supervisory investigator, a senior economist (both of whom retired after decades of work on Commission investigations), the chief financial auditor (who is now the Director of the Commission's Office of Finance after decades of work on international trade investigations), and a seasoned investigator and attorney (who, after years of international trade work, have accepted new positions and responsibilities outside the agency).

¹⁸² As a technical matter, neither the "screen shot" of Mr. Pickard's "sent" e-mail folder nor the affidavit from Mr. Bozzell, the current Information Services Manager at Wiley Rein, included as Exhibits 2 and 3 to Nucor's Action Request letter, establishes that the alleged e-mail was sent by Nucor's counsel, let alone received by the Commission. Moreover, if Nucor were correct in asserting that the Commission received Mr. Pickard's e-mail, that would be tantamount to claiming that two experienced Commission employees, acting either independently or in concert and for no apparent reason, deleted an e-mail they certainly knew was a part of the investigative record. Nucor offers no plausible support for making such an accusation.

¹⁸³ Nucor's Action Request letter at 4.

¹⁸⁴ Indeed, even had the Commission permitted Nucor to amend footnote 3 of its postconference brief, that would not have solved Nucor's underlying problem. In that footnote, Nucor referred to the home page of the web site for a firm (***) and argued that a link to the home page would demonstrate that *** was not a U.S. producer of CSSF but instead a U.S. manufacturer of products that were not under investigation. In the first paragraph of the alleged e-mail, Nucor explains that it intended to refer to a different page of *** web site in support of its argument. Nucor did not attempt to submit either of the referenced web pages at any time, so the record would not have contained anything more than Nucor's citations to two different pages of the firm's web site.

¹⁸⁵ Indeed, the Commission need not consider in its determinations or include in the record any material that is not filed with the Secretary. 19 C.F.R. § 207.4(a).

In conclusion, the October 7, 2011, Action Request letter contains new factual information in contravention of the requirements for remand comments announced in the Commission's Federal Register notice for the remand proceedings.¹⁸⁶ Moreover, the exhibits and related argument constitute additional comments that cause Nucor to exceed the 15-page double-spaced page limits established for party comments in that notice, given that Nucor separately submitted 15 pages of "Remand Comments" on October 7, 2011.¹⁸⁷ Finally, although Commission staff diligently investigated the claim that the alleged e-mail contained in Exhibit 1 of the October 7, 2011, Action Request letter was sent to two Commission employees, the Commission has found no evidence that the message was ever received by either of these employees and thus has no basis to conclude that it actually was, or should have been, made part of the Commission's record in the referenced preliminary investigations. Consequently, the Commission has determined to deny the request.

CONCLUSION

For the foregoing reasons, we conclude that there is no reasonable indication that the domestic CSSF industry is materially injured or threatened with material injury by reason of imports of CSSF from China and Taiwan that are allegedly sold in the United States at less than fair value and imports of subject merchandise from China that are allegedly subsidized by the Government of China.

¹⁸⁶ See 76 Fed. Reg. 58536, 58536-37 (Sept. 21, 2011).

¹⁸⁷ When denying a request to supplement the record with new information, the Commission's ordinary practice is to include the request letter in the record but to return or destroy the separately provided new information. Because the Action Request letter integrated the request and new information, the Commission decided to strike from the administrative record those aspects of the Action Request letter containing new information, namely Exhibits 1 to 3, as well as the arguments discussing that new factual information on pages 2-4 and footnote 5. The Commission also hereby strikes from the record those aspects of Nucor's Remand Comments that concern this new factual information.

APPENDIX A

Table C-1
Fasteners: Summary data concerning the U.S. market, 2006-08, January-June 2008, and January-June 2009

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	2006	2007	2008	January-June 2008	January-June 2009	2006-08	2006-07	2007-08	Jan.-June 2008-09
U.S. consumption quantity:									
Amount	661,322	642,355	641,611	343,472	225,030	-3.0	-2.9	-0.1	-34.5
Producers' share (1)	23.5	23.4	24.2	24.5	23.3	0.8	-0.1	0.9	-1.3
Importers' share (1):									
China	24.3	23.6	23.5	23.0	26.5	-0.8	-0.7	-0.1	3.6
Taiwan	27.0	29.3	28.3	28.8	30.2	1.3	2.3	-1.0	1.5
Subtotal	51.3	53.0	51.8	51.7	56.8	0.5	1.6	-1.1	5.0
Other sources	25.2	23.7	23.9	23.8	20.0	-1.3	-1.5	0.3	-3.8
Total imports	76.5	76.6	75.8	75.5	76.7	-0.8	0.1	-0.9	1.3
U.S. consumption value:									
Amount	590,370	586,279	673,763	348,102	240,851	14.1	-0.7	14.9	-30.8
Producers' share (1)	25.8	25.6	27.1	25.5	25.6	1.3	-0.1	1.5	0.1
Importers' share (1):									
China	18.3	17.6	18.6	17.8	20.1	0.3	-0.7	1.1	2.3
Taiwan	23.8	26.4	26.3	26.8	29.7	2.5	2.6	-0.1	2.9
Subtotal	42.1	44.0	45.0	44.6	49.8	2.8	1.9	1.0	5.2
Other sources	32.1	30.4	27.9	29.9	24.6	-4.2	-1.7	-2.5	-5.3
Total imports	74.2	74.4	72.9	74.5	74.4	-1.3	0.1	-1.5	-0.1
U.S. shipments of imports from:									
China:									
Quantity	160,690	151,861	150,823	78,853	59,692	-6.1	-5.5	-0.7	-24.3
Value	108,100	103,072	125,608	62,053	48,385	16.2	-4.7	21.9	-22.0
Unit value	\$0.67	\$0.68	\$0.83	\$0.79	\$0.81	23.8	0.9	22.7	3.0
Ending inventory quantity	88,977	87,158	88,886	79,870	84,897	-0.1	-2.0	2.0	6.3
Taiwan:									
Quantity	178,733	188,355	181,632	98,763	68,031	1.6	5.4	-3.6	-31.1
Value	140,527	154,695	177,278	93,155	71,448	26.2	10.1	14.6	-23.3
Unit value	\$0.79	\$0.82	\$0.98	\$0.94	\$1.05	24.1	4.5	18.8	11.3
Ending inventory quantity	91,836	90,138	104,071	86,097	96,303	13.3	-1.8	15.5	11.9
Subtotal:									
Quantity	339,423	340,217	332,454	177,617	127,723	-2.1	0.2	-2.3	-28.1
Value	248,627	257,767	302,886	155,208	119,833	21.8	3.7	17.5	-22.8
Unit value	\$0.73	\$0.76	\$0.91	\$0.87	\$0.94	24.4	3.4	20.2	7.4
Ending inventory quantity	180,813	177,296	192,957	165,967	181,201	6.7	-1.9	8.8	9.2
All other sources:									
Quantity	166,598	152,027	153,579	81,683	44,976	-7.8	-8.7	1.0	-44.9
Value	189,592	178,246	188,162	104,057	59,305	-0.8	-6.0	5.6	-43.0
Unit value	\$1.14	\$1.17	\$1.23	\$1.27	\$1.32	7.7	3.0	4.5	3.5
Ending inventory quantity	45,571	38,899	50,254	50,142	45,368	10.3	-14.6	29.2	-9.5
All sources:									
Quantity	506,020	492,244	486,033	259,300	172,699	-3.9	-2.7	-1.3	-33.4
Value	438,219	436,013	491,048	259,265	179,138	12.1	-0.5	12.6	-30.9
Unit value	\$0.87	\$0.89	\$1.01	\$1.00	\$1.04	16.7	2.3	14.1	3.7
Ending inventory quantity	226,384	216,194	243,210	216,109	226,568	7.4	-4.5	12.5	4.8
U.S. producers:									
Average capacity quantity	316,191	317,840	335,425	163,351	175,519	6.1	0.5	5.5	7.4
Production quantity	162,349	157,128	170,275	90,841	45,923	4.9	-3.2	8.4	-49.4
Capacity utilization (1)	51.3	49.4	50.8	55.6	26.2	-0.6	-1.9	1.3	-29.4
U.S. shipments:									
Quantity	155,302	150,112	155,578	84,172	52,331	0.2	-3.3	3.6	-37.8
Value	152,151	150,266	182,715	88,837	61,713	20.1	-1.2	21.6	-30.5
Unit value	\$0.98	\$1.00	\$1.17	\$1.06	\$1.18	19.9	2.2	17.3	11.7
Export shipments:									
Quantity	5,577	4,805	7,506	3,818	2,330	34.6	-13.8	56.2	-39.0
Value	5,512	5,119	9,011	4,174	2,801	63.5	-7.1	76.0	-32.9
Unit value	\$0.99	\$1.07	\$1.20	\$1.09	\$1.20	21.5	7.8	12.7	10.0
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	458	461	468	472	446	2.2	0.7	1.5	-5.5
Hours worked (1,000s)	879	890	942	483	384	7.2	1.2	5.9	-20.4
Wages paid (\$1,000s)	20,949	22,505	23,381	12,170	10,604	11.6	7.4	3.9	-12.9
Hourly wages	\$23.84	\$25.29	\$24.82	\$25.21	\$27.60	4.1	6.1	-1.9	9.5
Productivity (pounds per hour)	184.7	176.6	180.8	188.2	119.5	-2.1	-4.4	2.4	-36.5
Unit labor costs	\$0.13	\$0.14	\$0.14	\$0.13	\$0.23	6.4	11.0	-4.1	72.4
Net sales:									
Quantity	163,203	157,167	166,014	89,199	55,597	1.7	-3.7	5.6	-37.7
Value	158,202	156,725	192,510	93,688	65,237	21.7	-0.9	22.8	-30.4
Unit value	\$0.97	\$1.00	\$1.16	\$1.05	\$1.17	19.6	2.9	16.3	11.7
Cost of goods sold (COGS)	119,972	119,063	146,469	69,988	52,957	22.1	-0.8	23.0	-24.3
Gross profit or (loss)	38,230	37,662	46,042	23,700	12,279	20.4	-1.5	22.2	-48.2
SG&A expenses	25,813	20,517	24,305	12,307	8,478	-5.1	-19.9	18.5	-31.1
Operating income or (loss)	12,617	17,145	21,736	11,393	3,801	72.3	35.9	26.8	-66.6
Capital expenditures	2,692	3,227	6,412	***	***	138.2	19.9	98.7	***
Unit COGS	\$0.74	\$0.76	\$0.88	\$0.78	\$0.95	20.0	3.1	16.5	21.4
Unit SG&A expenses	\$0.16	\$0.13	\$0.15	\$0.14	\$0.15	-6.7	-16.8	12.1	10.5
Unit operating income or (loss)	\$0.08	\$0.11	\$0.13	\$0.13	\$0.07	69.4	41.1	20.0	-46.5
COGS/sales (1)	75.8	76.0	76.1	74.7	81.2	0.2	0.1	0.1	6.5
Operating income or (loss)/sales (1)	8.0	10.9	11.3	12.2	5.8	3.3	3.0	0.4	-6.3

(1) "Reported data" are in percent and "period changes" are in percentage points.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

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

Table C-1(a)

Fasteners: Summary data concerning the U.S. market (excluding **), 2006-08, January-June 2008, and January-June 2009

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	2006	2007	2008	January-June		2006-08	2006-07	2007-08	Jan.-June 2008-09
				2008	2009				
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. shipments of imports from:									
China:									
Quantity	160,690	151,861	150,823	78,853	59,692	-6.1	-5.5	-0.7	-24.3
Value	108,100	103,072	125,608	62,053	48,385	16.2	-4.7	21.9	-22.0
Unit value	\$0.67	\$0.68	\$0.83	\$0.79	\$0.81	23.8	0.9	22.7	3.0
Ending inventory quantity	88,977	87,158	88,886	79,870	84,897	-0.1	-2.0	2.0	6.3
Taiwan:									
Quantity	178,733	188,355	181,632	98,763	68,031	1.6	5.4	-3.6	-31.1
Value	140,527	154,695	177,278	93,155	71,448	26.2	10.1	14.6	-23.3
Unit value	\$0.79	\$0.82	\$0.98	\$0.94	\$1.05	24.1	4.5	18.8	11.3
Ending inventory quantity	91,836	90,138	104,071	86,097	96,303	13.3	-1.8	15.5	11.9
Subtotal:									
Quantity	339,423	340,217	332,454	177,617	127,723	-2.1	0.2	-2.3	-28.1
Value	248,627	257,767	302,886	155,208	119,833	21.8	3.7	17.5	-22.8
Unit value	\$0.73	\$0.76	\$0.91	\$0.87	\$0.94	24.4	3.4	20.2	7.4
Ending inventory quantity	180,813	177,296	192,957	165,967	181,201	6.7	-1.9	8.8	9.2
All other sources:									
Quantity	166,598	152,027	153,579	81,683	44,976	-7.8	-8.7	1.0	-44.9
Value	189,592	178,246	188,162	104,057	59,305	-0.8	-6.0	5.6	-43.0
Unit value	\$1.14	\$1.17	\$1.23	\$1.27	\$1.32	7.7	3.0	4.5	3.5
Ending inventory quantity	45,571	38,899	50,254	50,142	45,368	10.3	-14.6	29.2	-9.5
All sources:									
Quantity	506,020	492,244	486,033	259,300	172,699	-3.9	-2.7	-1.3	-33.4
Value	438,219	436,013	491,048	259,265	179,138	12.1	-0.5	12.6	-30.9
Unit value	\$0.87	\$0.89	\$1.01	\$1.00	\$1.04	16.7	2.3	14.1	3.7
Ending inventory quantity	226,384	216,194	243,210	216,109	226,568	7.4	-4.5	12.5	4.8
U.S. producers':									
Average capacity quantity	***	***	***	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***	***	***	***
Capacity utilization (1)	***	***	***	***	***	***	***	***	***
U.S. shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	***	***	***	***	***	***	***	***	***
Hours worked (1,000s)	***	***	***	***	***	***	***	***	***
Wages paid (\$1,000s)	***	***	***	***	***	***	***	***	***
Hourly wages	***	***	***	***	***	***	***	***	***
Productivity (pounds per hour)	***	***	***	***	***	***	***	***	***
Unit labor costs	***	***	***	***	***	***	***	***	***
Net sales:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	***	***	***	***	***	***	***	***	***
Unit SG&A expenses	***	***	***	***	***	***	***	***	***
Unit operating income or (loss)	***	***	***	***	***	***	***	***	***
COGS/sales (1)	***	***	***	***	***	***	***	***	***
Operating income or (loss)/ sales (1)	***	***	***	***	***	***	***	***	***

(1) "Reported data" are in percent and "period changes" are in percentage points.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

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

APPENDIX B

This Appendix identifies the firms to which the Commission transmitted questionnaires, how many and which firms submitted responses, and what value of imports of total fasteners each responding and non-responding firm accounted for according to CNIF data (CL202), using data for 2008 to illustrate.

Group A Coverage for Imports from China: Based on CNIF data, 64 firms had imported fasteners from China under statistical reporting number 7318.15.2030, for a total value of \$7.9 million in 2008. Of these 64 firms, 23 firms imported at least \$79,170 in fasteners under this statistical reporting number in 2008 (greater than one percent of total imports from China in that year). These 23 firms collectively accounted for 86.7 percent of total imports from China under statistical reporting number 7318.15.2030 in 2008 (collectively \$6.9 million, by value), while 41 firms accounted for the remaining 13.3 percent of imports from China under that statistical reporting number in 2008. The Commission sent importer questionnaires to the 23 firms that accounted for 86.7 percent of total imports from China under that statistical reporting number in 2008. Of these 23 firms, the Commission received importer questionnaire responses from 14 firms that collectively corresponded to \$1.6 million of imports from China under statistical reporting number 7318.15.2030 according to CNIF data for 2008. Seven of the firms submitted usable data on their imports of CSSF; two firms reported importing CSSF but submitted data too late to be usable (***)¹ and five firms certified that they did not import CSSF. Of the top ten firms identified by CNIF data as importers of fasteners from China under statistical reporting number 7318.15.2030 in 2008, two provided usable data on their CSSF imports, two provided unusable data, three reported they had not imported CSSF, and three did not respond to the questionnaire.

Group A Coverage for Imports from Taiwan: Based on CNIF data, 35 firms had imported fasteners from Taiwan under statistical reporting number 7318.15.2030, for a total value of \$12.1 million. Of these, 10 firms imported greater than one percent of total imports from Taiwan, accounting for 96.1 percent of total imports from Taiwan in 2008 (\$11.6 million, by value), while 25 firms accounted for the remaining 3.9 percent. The Commission sent importer questionnaires to the ten firms that accounted for 96.1 percent of total imports from Taiwan in 2008. Of these ten firms, the Commission received usable data from six firms, including four of the top five importers of fasteners identified by CNIF data. It also received unusable data from one firm (***) and a “No” response from another firm (***) certifying that the firm did not import CSSF. Two firms (***) did not respond to the questionnaire. The eight firms that submitted questionnaire responses collectively corresponded to \$9.0 million in imports of fasteners from Taiwan in 2008, according to CNIF data.

Group B Coverage for Imports from China: Based on CNIF data, in 2008, 1,066 firms had imported fasteners from China under one or more of the HTS statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085) for a total value of \$324.8 million. Of these, 21 firms imported greater than one percent of total imports from China in 2008, collectively accounting for 58.4 percent of total imports from China (\$189.6 million, by value), under the HTS statistical reporting numbers combined, which included both subject CSSF and non-CSSF fasteners, while 1,045 firms collectively accounted for the remaining 41.6 percent. The Commission sent importer questionnaires to the 21 firms that collectively accounted for 58.4 percent of total imports from China in 2008 under the HTS statistical reporting numbers combined. Of these 21 firms, the Commission received importer questionnaire responses from 13 firms that collectively corresponded to \$133.9 million in imports of fasteners from China in 2008, according to CNIF data on imports under the HTS statistical reporting numbers combined. Twelve firms submitted usable data on their imports of CSSF, including six of the top ten importers of fasteners from China in 2008, according to CNIF data on imports under the HTS statistical reporting numbers combined. One firm (***) certified that it had not imported any CSSF from China.

¹ See, e.g., Report (CL224) at IV-2 n.2.

Group B Coverage for Imports from Taiwan: Based on CNIF data, in 2008, 976 firms had imported fasteners from Taiwan under one or more of the HTS statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085) for a total value of \$437.0 million. Of these, 18 firms imported greater than one percent of total imports from Taiwan in 2008, collectively accounting for 54.0 percent total imports from Taiwan (\$236.0 million, by value), under the HTS statistical reporting numbers combined, which includes both subject CSSF and non-CSSF fasteners, while 958 firms collectively accounted for the remaining 46.0 percent. The Commission sent importer questionnaires to the 18 firms that collectively accounted for 54.0 percent of total imports from Taiwan in 2008 under the HTS statistical reporting numbers combined. Of these 18 firms, the Commission received usable data from 11 firms, including seven of the top ten importers according to CNIF data. The 11 firms submitting importer questionnaire responses collectively accounted for \$166.8 million of imports from Taiwan in 2008 under the HTS statistical reporting numbers combined.

Coverage for Imports from Non-subject Countries: Based on CNIF data, in 2008, 2,323 firms imported fasteners from non-subject countries under one or more of the HTS statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085) for a total value of \$821.5 million. Of these, 19 firms imported greater than one percent of total imports from non-subject countries, collectively accounting for 49.7 percent of total imports from non-subject countries in 2008 (\$408.4 million by value), under the HTS statistical reporting numbers combined, which included both subject CSSF and non-CSSF fasteners, while 2,304 firms accounted for the remaining 50.3 percent. Of these 19 firms to which the Commission transmitted importer questionnaires, the Commission received usable data from seven firms, including the top two importers according to CNIF data. It also received unusable data from two firms (***), and two firms (**) reported that they had not imported CSSF. The Commission did not receive responses from the remaining eight firms. The 11 firms submitting importer questionnaire responses collectively accounted for \$218.3 million of imports from non-subject countries in 2008 under the HTS statistical reporting numbers combined.

*Coverage of foreign producers/exporters in China:*² The Commission sent foreign producer/exporter questionnaires to 34 firms that may have produced CSSF in China or exported CSSF from China.³ Of these 34 firms, ten provided questionnaire responses containing usable data, two certified that they had not produced or exported CSSF since January 1, 2006, and 22 did not provide responses.⁴ Of the 12 firms that either provided usable data or certified that they had not produced or exported CSSF, only one of these firms had been sent a questionnaire by Commission staff using CNIF data. By way of comparison to the CNIF data, none of the firms that received questionnaires by virtue of CNIF data concerning statistical reporting number 7318.15.2030 submitted foreign producer/exporter questionnaires. Of the firms submitting questionnaires that received their questionnaires based on staff's review of CNIF data, the fasteners manufactured by *** corresponded to *** percent of fasteners imported under the combined HTS statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085). Of the producers/exporters in China submitting questionnaire responses, the largest responding firm in terms of production from China was ***, which estimated that it accounted for *** percent of production of CSSF in China and *** percent of

² Overall, the Commission received 13 responses to the foreign producer/exporter questionnaire from firms that certified they had not exported subject CSSF to the United States since 2006. None of these 13 firms were on the Commission's questionnaire distribution list.

³ See, e.g., Report (CL224) at VII-1.

⁴ See, e.g., Report (CL224) at VII-1.

2008 exports of CSSF from China to the United States.⁵ Although respondents identified some of the largest exporters of CSSF in their postconference brief, *** was not included in their list. The Commission did not receive questionnaire responses from any of the firms listed in the Respondent's postconference brief as the largest foreign producers/exporters from China.

Coverage of foreign producers/exporters in Taiwan: The Commission sent foreign producer/exporter questionnaires to 23 firms in Taiwan that it believed to be possible producers or exporters of CSSF, as discussed above.⁶ Thirty-eight firms in Taiwan submitted foreign producer/exporter questionnaire responses containing usable information, and 11 firms in Taiwan certified that they had not produced or exported CSSF since January 1, 2006.⁷ By way of comparison, according to CNIF data, imports manufactured by the 38 firms that submitted foreign producer/exporter questionnaire responses corresponded to 72.0 percent of fasteners imported under statistical reporting number 7318.15.2030 in 2008 and 46.7 percent of fasteners imported under the combined HTS statistical reporting numbers (7318.15.2030, 7318.15.2055, 7318.15.2065, 7318.15.8065, 7318.15.8085, and 7318.16.0085). The Commission did not receive responses from all of the firms in Taiwan to which it sent questionnaires. However, more questionnaires were received than sent because, according to the Commission staff's belief, the Taiwan industry association circulated the Commission's questionnaire among its members to increase participation in these investigations.⁸ *** was the largest responding foreign producer in Taiwan. All other firms in Taiwan responding to the Commission's foreign producer/exporter questionnaire were substantially smaller (based on reported production) than ***. In its questionnaire response, *** estimated that it accounted for *** percent of 2008 total production of CSSF in Taiwan and *** percent of 2008 exports of CSSF from Taiwan to the United States. In their post-conference brief, Respondents identified *** in a list of six firms believed to be the largest exporters of subject CSSF in Taiwan. The Commission also received questionnaire responses from the remaining five firms in Taiwan identified by Respondents.⁹ Firms from Taiwan that submitted usable questionnaire data collectively reported production capacity of *** pounds in 2008 whereas the Taiwan International Fastener Institute estimated total CSSF production capacity in Taiwan to be *** pounds in 2008.¹⁰

⁵ It is standard practice for the Commission to ask foreign producer/exporter questionnaire recipients to estimate the portion of the subject industry in that country and the portion of the exports of subject merchandise from that country to the United States for which they account. Although it may be difficult for an individual firm to provide a precise estimate, the answer to this question provides the Commission with another tool to gauge whether the firm represents a relatively large or relatively small portion of the subject industry's production and exports of subject merchandise to the United States.

⁶ See, e.g., Report (CL224) at VII-3.

⁷ See, e.g., Report (CL224) at VII-3.

⁸ See, e.g., Report (CL224) at VII-3.

⁹ The Commission also received a response from ***, which was also identified by the Respondents as a large exporter from Taiwan; the company's website, however, noted that the firm produced "vehicle fasteners." The Commission's staff repeatedly attempted to contact the firm to confirm the nature of the company's fastener operations, but was unable to obtain any further information. Thus, the Commission excluded *** from the foreign producer data set. See, e.g., Report (CL224) at VII-3 at n.2.

¹⁰ Compare, e.g., Report (CL224) at Table VII-2 with, e.g., Report (CL224) at VII-3.