

UNITED STATES INTERNATIONAL TRADE COMMISSION

**CERTAIN STEEL WIRE GARMENT HANGERS FROM CHINA**

Investigation No. TA-421-2.1

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3575, February 2003)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

## Investigation No. TA-421-2

### CERTAIN STEEL WIRE GARMENT HANGERS FROM CHINA

#### DETERMINATION

On the basis of information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 421(b)(1) of the Trade Act of 1974,<sup>1</sup> that certain steel wire garment hangers<sup>2</sup> from the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products.

#### RECOMMENDATIONS ON PROPOSED REMEDIES

**Chairman Deanna Tanner Okun, Vice Chairman Jennifer A. Hillman, and Commissioner Marcia E. Miller** propose that the President impose a duty, in addition to the current rate of duty, for a three-year period, on imports of the subject steel wire garment hangers from China as follows: 25 percent ad valorem in the first year, 20 percent ad valorem in the second year, and 15 percent ad valorem in the third year of relief. They further recommend that, if applications are filed, the President direct the U.S. Department of Commerce and the U.S. Department of Labor to provide expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject imports.

**Commissioner Lynn M. Bragg** proposes that the President impose a duty, in addition to the current rate of duty, for a two-year period, on imports of the subject steel wire garment hangers from China as follows: 20 percent ad valorem in the first year, and 15 percent ad valorem in the second year of relief.

**Commissioner Stephen Koplan** proposes that the President impose a duty of 30 percent ad valorem, in addition to the current rate of duty, for a three-year period, on imports of the subject steel wire garment hangers from China. He further recommends that, if applications are filed, the President

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<sup>1</sup> 19 U.S.C. § 2451(b)(1).

<sup>2</sup> For purposes of this investigation, certain steel wire garment hangers consist of garment hangers, fabricated from steel wire in gauges from 9 to 17, inclusive (3.77 to 1.37 millimeters, inclusive), whether or not galvanized or painted, whether or not coated with latex or epoxy or other similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles, tubes, or struts. After fabrication, such hangers are in lengths from 7 to 20 inches, inclusive (177.8 to 508 millimeters, inclusive), and the hanger's length or bottom bar is composed of steel wire and/or saddles, tubes or struts. The product may also be identified by its commercial designation, referring to the shape and/or style of the hanger or the garment for which it is intended, including but not limited to Shirt, Suit, Strut, and Caped hangers. Specifically excluded are wooden, plastic, aluminum, and other garment hangers that are covered under separate subheadings of the *HTS*. The products subject to this investigation are classified in subheading 7326.20.00 of the *HTS* and reported under statistical reporting number 7326.20.0020. Although the *HTS* subheading is provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

direct the U.S. Department of Commerce and the U.S. Department of Labor to provide expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject imports.

The Commissioners each find that the respective actions that they propose are necessary to remedy the market disruption found to exist.

## **BACKGROUND**

Following receipt of a petition filed on November 27, 2002 on behalf of CHC Industries, Inc.; M&B Metal Products Co., Inc.; and United Wire Hanger Corp., the Commission instituted investigation No. TA-421-2, *Certain Steel Wire Garment Hangers From China*, under section 421 of the Trade Act of 1974 to determine whether certain steel wire garment hangers from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's website ([www.usitc.gov](http://www.usitc.gov)) and by publishing the notice in the *Federal Register* of December 6, 2002 (67 FR 72700). The hearing was held on January 9, 2003 in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

## IEWS OF THE COMMISSION ON MARKET DISRUPTION

### I. INTRODUCTION

#### 1. Determination

Pursuant to section 421(b)(1) of the Trade Act of 1974 (19 U.S.C. § 2451(b)(1)) and on the basis of the information in this investigation, the Commission determines that certain steel wire garment (CSWG) hangers from the People's Republic of China (China) are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of CSWG hangers.<sup>3</sup>

#### 2. Background and scope of investigation

The Commission instituted this investigation effective November 27, 2002, following receipt of a petition filed by three domestic producers of CSWG hangers.<sup>4</sup> The petition alleged that CSWG hangers from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

The imported CSWG hangers from China that are the subject of this investigation consist of:

hangers fabricated from steel wire in gauges from 9 to 17, inclusive, whether or not galvanized or painted, whether or not coated with latex or epoxy or other similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles, tubes or struts. Specifically excluded are wooden, plastic, aluminum and other garment hangers that are covered under separate subheadings of the Harmonized Tariff Schedule of the United States (HTS).<sup>5</sup>

CSWG hangers are designed to drape and transport clothing and other textiles.<sup>6</sup> They are produced in the United States primarily for use by the dry cleaning, uniform rental (industrial laundry), and textile industries.<sup>7</sup> CSWG hangers are manufactured in numerous styles, shapes, and gauges; the gauge of wire used depends on the weight of the garment for which the hanger is intended.<sup>8</sup> General categories of CSWG hangers used by dry cleaners include the basic shirt hanger (made from light gauge wire and generally painted white), caped hangers (which are covered by a paper cape that adds stability to the hanger), strut hangers (which include a paper tube along the bottom of the hanger that is often

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<sup>3</sup>The Commission reached a unanimous affirmative determination.

<sup>4</sup>CHC Industries, Inc., M&B Metal Products Co., Inc., and United Wire Hanger Corp. \*\*\* Laidlaw Corp. (Laidlaw) expressed opposition to the petition.

<sup>5</sup>Confidential Staff Report (CR) at I-1, n. 2; Public Report (PR) at I-1, n. 2.

<sup>6</sup>CR at I-2; PR at I-2.

<sup>7</sup>CR at I-2-3; PR at I-2-3.

<sup>8</sup>CR at I-3; PR at I-2.

coated with a nonslip material to keep the garment from sliding off), and suit hangers (made from a wire gauge that can support a suit).<sup>9</sup> Hangers sold to industrial/ uniform rental companies are similar to those sold to dry cleaners, and generally can be used interchangeably.<sup>10</sup> CSWG hangers generally are viewed as a disposable product for temporary storage of garments.<sup>11</sup>

### 3. Statutory framework<sup>12</sup>

The determination that the Commission must make is set out in section 421(b)(1)<sup>13</sup> of the Trade Act, which states in part that the Commission, upon the filing of a petition or receipt of a request or resolution, shall promptly conduct an investigation –

to determine whether products of the People’s Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

This standard is satisfied if the following conditions are met –

- (1) there is market disruption or the threat of market disruption to domestic producers of the like or directly competitive products; and
- (2) imports from China are in such increased quantities or under such conditions as to cause or threaten to cause such market disruption.

The term “market disruption” is defined in section 421(c)(1)<sup>14</sup> to exist –

whenever imports of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

Thus, in order to determine that market disruption exists, the Commission must find that each of three conditions is satisfied –

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<sup>9</sup> CR at I-3-4; PR at I-3.

<sup>10</sup> CR at I-5; PR at I-4.

<sup>11</sup> CR at I-11; PR at I-8.

<sup>12</sup> In reaching her affirmative determination in this investigation, Commissioner Bragg employed the same analytical framework that she developed in the Commission’s first investigation conducted pursuant to section 421. *See* Dissenting Views of Commissioner Lynn M. Bragg, *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 45-48. Commissioner Bragg does not join section I.3 of these Views.

<sup>13</sup> 19 U.S.C. § 2451(b)(1). Section 421 was added to the Trade Act of 1974 in 2000 by the U.S.-China Relations Act of 2000, P.L. 106-286 (2000).

<sup>14</sup> 19 U.S.C. § 2451(c)(1).

- (1) imports of the subject product from China are increasing rapidly, either absolutely or relatively;
- (2) the domestic industry is materially injured, or threatened with material injury; and
- (3) such rapidly increasing imports are a significant cause of the material injury or the threat of material injury.

Section 421(c)(2) further states that the term “significant cause” refers “to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.”<sup>15</sup>

Section 421(d)<sup>16</sup> provides that the Commission, in determining whether market disruption exists, “shall consider objective factors, including –

- (1) the volume of imports of the product which is the subject of the investigation;
- (2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and
- (3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.”

Section 421(d) further provides that the presence or absence of any of these three factors “is not necessarily dispositive of whether market disruption exists.”

## **II. WHETHER MARKET DISRUPTION EXISTS**

### **1. Domestic industry**

Section 421(c) defines the domestic industry in terms of the producers of “like or directly competitive” products. In making determinations under section 421(c), the Commission follows a two-step practice of first determining what constitutes the product like or directly competitive with the imports subject to the investigation, and then identifying who produces it (the domestic industry).<sup>17 18</sup>

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<sup>15</sup> 19 U.S.C. § 2451(c)(2).

<sup>16</sup> 19 U.S.C. § 2451(d).

<sup>17</sup> See *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 5. In *Pedestal Actuators*, the Commission noted that it follows this practice in making determinations under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252), which also defines the domestic industry in terms of the producers of “like or directly competitive” products. In the absence of instruction to the contrary in either section 421 or its legislative history, the Commission found it appropriate to follow this practice in section 421 investigations.

<sup>18</sup> Commissioner Bragg does not join the preceding footnote and does not join section II.1.a. of these Views. In defining the domestic like product in a 421 investigation, Commissioner Bragg is guided by the traditional criteria evaluated by the Commission in antidumping and countervailing duty investigations, *i.e.* (1) physical

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**a. Like or directly competitive domestic article**

*(i) The statutory framework and Commission practice*

When assessing what constitutes the like or directly competitive product, the Commission applies the definition of "like or directly competitive" in the legislative history of what is now section 202 of the Trade Act<sup>19</sup> and considers such factors as (1) the physical properties of the article, (2) its customs treatment, (3) its manufacturing process (i.e., where and how it is made), (4) its uses, and (5) the marketing channels through which the product is sold.<sup>20</sup> If the Commission finds that there is domestic production of a like product, it has not found it necessary to look further and determine whether there are also domestic producers of directly competitive products.<sup>21</sup> The Commission considers the decision regarding like or directly competitive product to be a factual determination.<sup>22</sup> Once the Commission has identified the like or directly competitive domestic goods, it then determines whether there are clear dividing lines between the domestic goods, and thus whether there are one or several domestic products like (or directly competitive with) the imported goods.<sup>23</sup>

*(ii) Arguments of the parties*

The parties in this investigation are in agreement that there is one like domestic product consisting of the various types of CSWG hangers that is like the imported steel wire garment hangers

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<sup>18</sup> (...continued)

characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; and (5) common manufacturing facilities, production processes, and production employees. *See* Dissenting Views of Commissioner Lynn M. Bragg, *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 46-47 & n.12. Commissioner Bragg concurs that there is a single domestic like product comprised of certain steel wire garment hangers, coterminous with the description of subject imports contained in the Commission's Notice of Investigation.

<sup>19</sup> *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 5-6, referencing the definition in the legislative history of what is now section 202 of the Trade Act of 1974 in H.R. Rep. No. 571, 93rd Cong., 1st Sess. 45 (1973); S. Rep. No. 1298, 93rd Cong., 2d Sess., at 121-122 (1974).

<sup>20</sup> *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 6. *See also, e.g., Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 (Dec. 2000) at I-5-6; *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 (Dec. 1999) at I-10; *Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 (March 1998) at I-9.

<sup>21</sup> *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 6. *See also, e.g., Lamb Meat*, Inv. No. TA-201-68, USITC Pub. 3176 (April 1999) at I-10; and *Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 (March 1998) at I-9.

<sup>22</sup> *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 6. The Commission found it appropriate to apply the factors it traditionally has applied in safeguard investigations under section 202 of the Trade Act. *Id.* at 8.

<sup>23</sup> *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 6. *See also, e.g.,* the Commission's like product findings in *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 (December 1999) at I-11; and *Certain Steel Wire Rod*, Inv. No. TA-201-69, USITC Pub. 3207 (July 1999) at I-9-10, 35.

described in the Notice of Investigation.<sup>24</sup> Petitioners argued against a broadening of the like product definition (such as to include other types of hangers such as wood, plastic, and aluminum), while respondents argued against sub-dividing the like goods (to consider particular “sub-types” such as shirt, strut, suit, caped as separate like products).<sup>25</sup>

(iii) *Analysis*

Applying the factors the Commission traditionally applies (i.e., physical properties, customs treatment, production processes and facilities, uses, and marketing channels), we find that the domestically produced CSWG hangers are like the imported CSWG hangers described in the Notice of Investigation. We further find that the various types and styles of domestic CSWG hangers are part of a continuum, with no clear dividing line between the types and styles of hangers in the continuum, and that there is one domestic product “like” the imported CSWG hangers.

We begin our like or directly competitive product analysis with the imported product or products described in our Notice of Investigation. That notice describes the imported product as follows:

Certain steel wire garment hangers, fabricated from steel wire in gauges from 9 to 17, inclusive (3.77 to 1.37 millimeters, inclusive), whether or not galvanized or painted, whether or not coated with latex or epoxy or other similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles, tubes or struts. After fabrication, such hangers are in lengths from 7 to 20 inches, inclusive (177.8 to 508 millimeters, inclusive), and the hanger’s length or bottom bar is composed of steel wire and/or saddles, tubes or struts. This product may also be identified by its commercial designation, referring to the shape and/or style of the hanger or the garment for which it is intended, including but not limited to Shirt, Suit, Strut and Caped hangers. Specifically excluded are wooden, plastic, aluminum and other garment hangers that are covered under separate subheadings of the Harmonized Tariff Schedule of the United States (HTS). The products subject to this investigation are classified in subheading 7326.20.00 of the HTS and reported under statistical reporting number 7326.20.00.20.

*Physical properties.* We find that domestic CSWG hangers have the same physical properties as the imported CSWG hangers from China. The domestic CSWG hangers are virtually indistinguishable in appearance and directly interchangeable with the imported Chinese hangers. Both are made from drawn steel wire of varying gauges and coated with a paint finish; and both are often fitted with paper accessories, such as capes or struts, depending upon the end use.<sup>26</sup> Some of the imported Chinese hangers are painted by the powder-coating method, which reportedly provides a smoother, more durable finish, and the capes on imported Chinese hangers use heavier paper and may be hand-fitted, which

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<sup>24</sup> The Notice of Investigation was published in the *Federal Register* of Dec. 6, 2002 (67 F.R. 72700). Petitioners’ Prehearing Brief at 8-12; Petitioners’ Posthearing Brief at Appendix 2, G-1-6; Chinese Respondents’ Posthearing Brief at 5-6; Laidlaw Posthearing Brief at 11.

<sup>25</sup> *Id.*

<sup>26</sup> Petitioners’ Posthearing Brief at Appendix 2, G-3.

allegedly results in a sturdier hanger and better fit.<sup>27</sup> However, the U.S. producers and a majority of importers surveyed by the Commission found the domestic and imported hangers to be interchangeable,<sup>28</sup> and two purchasers stated that they co-mingled the imported and domestic hangers in their warehouses.<sup>29</sup>

*Production processes.* The domestic hangers are made by substantially the same manufacturing process as the imported hangers. Both are made from drawn steel wire of varying gauges, which is formed into hangers and then coated with a paint finish. The principal difference is in the painting process, with a portion of the Chinese product painted through a powder coating process, while the domestic hangers are dipped.<sup>30</sup> In addition, the Chinese capped hangers involve more hand labor, with the capes typically installed by hand, while the capes on domestic hangers are installed by machine.<sup>31</sup>

*Uses.* The imported and domestic CSWG hangers generally are used in the same applications,<sup>32</sup> primarily as a disposable product for short-term hanging or draping of garments and other textile products.<sup>33</sup> CSWG hangers have two primary end use markets: dry cleaning (accounting for more than two thirds of all hangers sold in the United States) and industrial/uniform rental.<sup>34</sup> U.S. producers and a majority of importers reported that U.S. and Chinese CSWG hangers are used interchangeably,<sup>35</sup> although U.S. hangers are available in a wider range of gauges and shapes.<sup>36</sup>

*Marketing channels.* The domestic and imported CSWG hangers are sold through the same marketing channels, primarily to distributors.<sup>37</sup> Distributors typically maintain several different sources and may co-mingle the various boxes of the same type of hangers they purchase from different sources.<sup>38</sup>

*Customs treatment.* The record shows that the various types of CSWG hangers are provided for under the same HTS statistical reporting number.<sup>39</sup>

We find that there is a clear dividing line between CSWG hangers and other types of hangers, such as wooden, plastic, and aluminum hangers. Such other hangers have different physical properties in terms of appearance and materials from which they are made (including a different shape and lack of a steel hook), are produced by different firms in different plants and on different equipment, have a somewhat different use (are designed to be reusable and also for longer-term hanging of garments), are

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<sup>27</sup> CR at I-7-8; PR at I-6.

<sup>28</sup> CR at I-61; PR at I-38-39.

<sup>29</sup> CR at I-64, n. 144; PR at I-42, n. 144.

<sup>30</sup> CR at I-9, n. 30, I-48; PR at I-6, n. 30, I-31.

<sup>31</sup> CR at I-8, I-48; PR at I-6, I-31.

<sup>32</sup> CR at I-62; PR at I-39.

<sup>33</sup> CR at I-2-8, I-11; PR at I-2-4, I-8.

<sup>34</sup> CR at I-57; PR at I-36.

<sup>35</sup> CR at I-61; PR at I-38-39.

<sup>36</sup> CR at I-60; PR at I-38.

<sup>37</sup> CR at I-20-21; PR at I-13.

<sup>38</sup> CR at I-21, I-64, n. 144; PR at I-13, I-42, n. 144.

<sup>39</sup> CR at I-10; PR at I-7.

sold to different users (e.g., retailers as opposed to dry cleaners), have a much higher cost, and are provided for under different HTS subheadings.<sup>40</sup>

We find that the various types and styles of CSWG hangers are part of a continuum of hanger products and are one like product. The various types and styles of domestic CSWG hangers all have the same physical attributes in terms of appearance and materials (although there are some differences in paper accessories), are largely made by the same firms, in the same plants, and on the same equipment using the same production processes, are used for the same end uses and by the same end users, and are sold through the same marketing channels.

In conclusion, we find that the domestic like product is CSWG hangers.

#### **b. The domestic industry**

Neither section 421 nor its legislative history defines the term “domestic industry.” However, the term is defined in other statutory authorities, and wording in the legislative history of section 421 suggests that the Commission should look to the definition in section 202 of the Trade Act.<sup>41 42</sup> Section 202(c)(6)(A)(i) of the Trade Act defines the term “domestic industry” to mean –

with respect to an article, the domestic producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article.<sup>43</sup>

In *Pedestal Actuators* and in recent investigations under section 202 of the Trade Act of 1974, if the Commission found domestic production of a like product, it found the domestic industry to consist of the domestic firms and workers producing that product.<sup>44</sup> We find that practice instructive here.

In the current case, the Commission identified eight domestic producers of steel wire garment hangers and obtained financial and other data from six of them.<sup>45</sup> We find the domestic operations of these eight firms to comprise the domestic industry.<sup>46</sup>

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<sup>40</sup> CR at I-60; PR at I-38; Petitioners’ Posthearing Brief, Appendix 2 at G-2-6.

<sup>41</sup> The House Report states that the section 421 safeguard would provide relief to domestic industries when imports cause or threaten to cause market disruption “to the domestic producers as a whole of like or directly competitive products.” H.R. Rep. No. 106-632, 106<sup>th</sup> Cong., 2d Sess. (2000) at 16.

<sup>42</sup> Commissioner Bragg does not join the preceding sentence. Commissioner Bragg concurs in defining the domestic industry as the domestic producers as a whole of the 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. See Dissenting Views of Commissioner Lynn M. Bragg, *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 47.

<sup>43</sup> 19 U.S.C. § 2252(c)(6)(A)(i).

<sup>44</sup> *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 11. See also, e.g., *Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 (December 2000) at I-8.

<sup>45</sup> The other two domestic producers are believed to account for relatively small shares of U.S. production. CR at I-12, n. 44; PR at I-9, n. 44.

<sup>46</sup> Several of the domestic producers are also importers of steel wire garment hangers from China. None of the parties asserted that domestic producers that also import should be excluded from the definition of domestic

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In view of the above, we find that the domestic industry consists of the domestic steel wire garment hanger operations of the domestic producers of CSWG hangers.<sup>47</sup>

## 2. Rapidly increasing imports<sup>48</sup>

**Statutory framework.** The first of the three statutory criteria for finding whether market disruption exists concerns whether imports of the subject product from China “are increasing rapidly, either absolutely or relatively.” Thus, under the statute the increase must be occurring “rapidly,” in either absolute or relative terms. The statute suggests that the rapid increase should be recent or continuing, as opposed to in the distant past. Section 421 does not otherwise define “rapidly increasing” or the timing or circumstances of the increase.

**Arguments of the parties.** The parties disagree with respect to whether hangers imported by domestic producers should be counted as imports, and whether imports are increasing rapidly. Petitioners argue that the Commission’s questionnaire responses show that imports from China have increased rapidly in both absolute and relative terms.<sup>49</sup> Petitioners also dispute respondents’ claim that there is a legal basis for the Commission to differentiate between imports by U.S. producers and other imports in determining whether imports are increasing rapidly.<sup>50</sup>

Respondent domestic producer Laidlaw asserts that the Commission should count domestic producers’ imports “as part of the domestic industry” and conclude that imports are not increasing rapidly.<sup>51</sup> Laidlaw argues that when domestic producer imports are subtracted from the import data, the

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<sup>46</sup> (...continued)

industry, and we are unaware of any basis in the statute for doing so. Unlike Title VII of the Tariff Act of 1930 (19 U.S.C. § 1677(4)(B)), section 421 does not contain a “related parties” provision. Therefore, there is no statutory basis to exclude the data from any particular company based on the fact that it may or may not have been insulated from the effect of import competition due to its own imports. Under Title VII, this provision allows for the exclusion of certain domestic producers from the domestic industry for the purposes of an injury determination. The rationale for the related parties provision is that domestic producers who are related parties may be shielded from any injury that might be caused by the subject imports. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 12 (Ct. Int’l Trade 2001), *aff’d*, Slip Op. 01-1421 (Fed. Cir. April 22, 2002).

<sup>47</sup> Commissioner Bragg concurs in this definition of the domestic industry.

<sup>48</sup> Commissioner Bragg evaluated the record with respect to rapidly increasing imports in the context of her analysis of the significance of subject imports in causing material injury to the domestic industry. *Cf.* Dissenting Views of Commissioner Lynn M. Bragg, *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 51. Commissioner Bragg concurs in the analysis and findings contained in section II.2 of these Views.

<sup>49</sup> Petitioners’ Posthearing Brief at 4-5. Petitioners initially argued, employing their own methodology, that the early Commission questionnaire responses significantly understated the actual level of imports. However, petitioners subsequently reassessed their methodology and indicated that the final Commission import data based on questionnaire responses were “very similar” to their own. Petitioners’ Final Comments at 1 and at 1, n. 2.

<sup>50</sup> Petitioners’ Posthearing Brief at Appendix I, at 5.

<sup>51</sup> Laidlaw cites in support the Commission’s 1978 determination in investigation No. TA-406-1, *Work Gloves from China*, under section 406 of the Trade Act of 1974. Laidlaw states that the Commission in that case “treated the imports for domestic producers differently from other imports.” Laidlaw Posthearing Brief at Attachment 1, at 1. Laidlaw asserts that Congress, by not including a requirement similar to that in sections 202 and 406 of the

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resulting data show that import penetration increased “only slightly” during the investigation period, not rapidly.<sup>52</sup> Laidlaw states that it \*\*\*.<sup>53</sup> The Chinese respondents assert that overall imports from China account for only a small share of the U.S. market, that imports of Chinese hangers have increased “gradually, not rapidly;” that a \*\*\* percent, of the new imports in the most recent period have been U.S. producer imports, and that the combined U.S. market share of domestic producer and producer-controlled imports is \*\*\* percent by volume and \*\*\* percent by value.

**Analysis.** We find that the best available import data are those compiled from Commission questionnaire responses. These data are based on actual imports reported in responses to the Commission’s questionnaires, represent a consistent series, and are likely to include imports not counted by Customs under the new statistical reporting number introduced at the start of 2002.<sup>54</sup>

The statute provides no authority for the Commission to adjust import data to exclude imports by domestic producers, and we are unaware of any Commission precedent for doing so, including under sections 201 and 406 of the Trade Act. Rather, section 421(c) of the Trade Act defines market disruption to exist whenever “imports” of products from China are increasing rapidly so as to be a significant cause of material injury or threat to the domestic industry. Under U.S. law, the term “imports” generally refers to imports entering the Customs Territory of the United States.<sup>55</sup> The Chinese goods enter the Customs Territory of the United States. Therefore, they are “imports” under the statute regardless of whether the importer of record is a distributor or a domestic producer of similar goods. We conclude that the more appropriate place for the Commission to consider the circumstances of producer imports, including whether they are injurious, is in the causation part of our analysis.<sup>56</sup>

**Finding.** The facts in this case show that imports of CSWG hangers from China are increasing rapidly, in absolute terms as well as relative to domestic production and consumption. In absolute terms,

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<sup>51</sup> (...continued)

Trade Act that the Commission “treat as part of such domestic industry only its domestic production,” freed the Commission to consider all of a domestic producers’ shipments, including its import shipments, as part of its production. Laidlaw Posthearing Brief at 11-13.

<sup>52</sup> Laidlaw Posthearing Brief at 15.

<sup>53</sup> Laidlaw Posthearing Brief at 15-16.

<sup>54</sup> The questionnaire data may slightly underreport the total volume of imports given that the Commission did not receive complete questionnaires from all importers or all foreign producers, but the data do represent the substantial majority of known imports.

<sup>55</sup> See 19 U.S.C. §§ 1401(h), 1484; and General Notes 1 and 2 of the HTS.

<sup>56</sup> Laidlaw’s suggestion that the Commission in *Work Gloves* adjusted the import numbers to exclude producer imports does not comport with the Commission’s findings in that case. The Commission did not adjust the numbers, or even refer to producer imports in the sections of their views in which they addressed the issue of whether imports were increasing rapidly. In *Work Gloves* the Commission made a negative determination by a vote of 4-2, based on a finding that the causation criterion was not satisfied. Three of the Commissioners who made a negative determination, in the *causation* section of their joint views, referenced producer imports in the context of finding that producers likely would import such work gloves from another country if the Chinese product were no longer available. They noted that China accounted for only 20 percent of total imports, whereas Hong Kong accounted for 40 percent. *Certain Gloves from the People’s Republic of China*, Inv. No. TA-406-1, USITC Pub. 867 (March 1978) at 5-8. In this case, the vast majority of imports of CSWG hangers is from China.

CSWG imports from China increased in each year of the period examined, from 28.8 million units in 1997, to 85.0 million units in 1998, 130.7 million units in 1999, 217.9 million units in 2000, and 288.7 million units in 2001. Imports were 197.3 million units in January-September 2001 (interim 2001), and more than doubled to 405.7 million units in January-September 2002 (interim 2002).<sup>57</sup>

The ratio of imports of CSWG hangers from China to domestic production of CSWG hangers similarly increased in each year, from 0.7 percent in 1997, to 2.2 percent in 1998, 3.3 percent in 1999, 5.6 percent in 2000, and 8.4 percent in 2001. The ratio was 7.1 percent in interim 2001 and 15.5 percent in interim 2002.<sup>58</sup> The ratio of imports of CSWG hangers from China to apparent U.S. consumption of CSWG hangers similarly increased each year, from 0.7 percent in 1997, to 1.9 percent in 1998, 3.0 percent in 1999, 5.1 percent in 2000, and 7.0 percent in 2001. The ratio was 6.5 percent in interim 2001 and 12.9 percent in interim 2002.<sup>59</sup>

In sum, shipments of imports from China increased by more than 800 percent from 1997 to 2001. These shipments more than doubled between interim 2001 and interim 2002 to capture more than 12 percent of the U.S. market. On the basis of this information, we find that imports of CSWG hangers from China are increasing rapidly, and that the first statutory criterion is satisfied.

### 3. The domestic industry is materially injured<sup>60</sup>

**Statutory framework.** The second criterion concerns whether the domestic industry is materially injured or threatened with material injury. The criterion is satisfied if we find either material injury or the threat of material injury.

Neither section 421 nor its legislative history defines the terms “material injury” or “threat,” identifies economic factors to be considered, or cross-references any definitions, factors, or Commission practice under other statutory authorities to which the Commission might look for instruction. However, the term “material injury” appears in both section 406 of the Trade Act of 1974<sup>61</sup> and Title VII of the Tariff Act of 1930. Title VII of the Tariff Act defines “material injury” to mean “harm which is not inconsequential, immaterial, or unimportant.”<sup>62</sup> Section 406 does not define “material injury,” but its legislative history contrasts the term with “serious” injury used in section 201 –

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<sup>57</sup> CR and PR at Table 7.

<sup>58</sup> CR at I-27; PR at I-19.

<sup>59</sup> CR and PR at Table 21.

<sup>60</sup> Commissioner Bragg evaluated the record with respect to whether the domestic industry is materially injured in the context of her analysis of whether subject imports are a significant cause of material injury to the domestic industry. *Cf.* Dissenting Views of Commissioner Lynn M. Bragg, *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 50-52. Based upon her analytical framework, Commissioner Bragg concurs in finding that the domestic industry is materially injured. Commissioner Bragg joins the factual analysis contained in section II.3 of these Views.

<sup>61</sup> Section 406 of the Trade Act of 1974 (19 U.S.C. § 2436) provides a remedy in the case of market disruption from Communist countries. China previously has been regarded as a Communist country. The legislative history of section 421 states that section 406 will no longer apply to imports from China.

<sup>62</sup> Section 771(7)(A); 19 U.S.C. § 1677(7)(A).

the market disruption test is intended to be more easily met than the serious injury tests in section 201. . . . the term ‘material injury’ in section 406 is intended to represent a lesser degree of injury than the term ‘serious injury’ standard employed in section 201.<sup>63</sup>

In the absence of express direction in section 421, the Commission has found that “material injury” in section 421 represents a lesser degree of injury than “serious” injury under section 202 of the Trade Act.<sup>64</sup> The Commission also has found it appropriate to consider all relevant economic factors that have a bearing on the state of the industry, including the three broad factors in section 202(c)(1)(A) relating to idling of productive facilities, inability of firms to operate at a reasonable level of profitability, and unemployment or underemployment. It also has considered other relevant economic factors, such as production, sales, inventories, capacity and capacity utilization, market share, employment, wages, productivity, profits, capital expenditures, and research and development expenditures.<sup>65</sup> We do not view any single factor as necessarily dispositive, and consider all relevant factors within the context of the relevant business cycle and conditions of competition that are distinctive to the affected industry.

**Finding.** For the reasons set forth below, we find that the domestic industry is materially injured.

– *Overview of the domestic industry*

As indicated above, the domestic industry consists of the domestic producers of CSWG hangers. The Commission gathered financial and other relevant data from six firms, although \*\*\*.<sup>66</sup> Domestically produced CSWG hangers are sold mainly to domestic dry cleaning establishments, and also to industrial/uniform rental users.<sup>67</sup> The demand for hangers depends on professional dress trends and the health of the overall economy.<sup>68</sup> Apparent U.S. consumption of CSWG hangers rose initially during the period examined, by 1.1 percent between 1997 and 1998 and by 3.3 percent between 1998 and 1999, and then fell by 2.4 percent in 2000 and by 8.6 percent in 2001; apparent U.S. consumption was 1.0 percent higher in interim 2002 than in interim 2001.<sup>69</sup>

– *Analysis of factors*

For the most part, the indicators relating to the condition of the domestic industry remained steady during the period 1997 to 2000, and then sharply deteriorated in 2001. Most of the indicators

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<sup>63</sup> Trade Act of 1974, Senate Report No. 93-1298, 93<sup>rd</sup> Cong., 2<sup>nd</sup> Sess., at 212, *reprinted in* 1974 U.S.C.A.A.N. 7186, 7343-44.

<sup>64</sup> *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 13; *see also* Views of Chairman Okun at 34.

<sup>65</sup> *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 13; *see also* Views of Chairman Okun at 34.

<sup>66</sup> CR at I-29; PR at I-20.

<sup>67</sup> CR and PR at Table 1; CR at I-57 and n. 121; PR at I-36 and n. 121.

<sup>68</sup> CR at I-59; PR at I-37-38.

<sup>69</sup> CR and PR at Table C-1.

were sharply lower in interim 2002 as compared to interim 2001. The sharpest decline was in financial performance, but domestic capacity utilization, production, net sales, market share, employment, and wages also fell, particularly toward the end of the period examined.

Domestic capacity rose slightly each year from 4.68 billion units in 1997 to 4.76 billion units in 2000 and then declined slightly to 4.73 billion units in 2001; nine-month capacity was 3.74 billion units in interim 2001 and a lower 3.39 billion units in interim 2002. The capacity utilization rate fluctuated within a narrow range between 1997 and 2000, from 83.2 percent in 1997, falling to 82.9 percent in 1998, rising to 83.9 percent in 1999 and then falling to 81.4 percent in 2000. However, capacity utilization then fell sharply to 72.2 percent in 2001. The rate was 74.3 percent in interim 2001, and then rose to 77.1 percent in interim 2002.<sup>70</sup> The sharp decline in capacity utilization in 2001 and interim 2002 reflected the closure of \*\*\* and a number of consolidations in the industry, including the opening of Laidlaw's new plant in Metropolis, IL, and \*\*\*.<sup>71</sup> The plant closure, declines in both 2001 and interim 2002 capacity, and decline in capacity utilization in 2001 are indicative of an idling of domestic production facilities.

Domestic production and net sales fluctuated within a narrow range between 1997 and 2000, and then fell sharply in 2001, and both were lower in interim 2002 than in interim 2001.<sup>72</sup> U.S. producers' inventories showed no discernible trend, alternately rising and falling during the period examined. Inventories were about 10 percent lower in interim 2002 than in interim 2001.<sup>73</sup> U.S. producers' share of the U.S. market fell each year during the period examined, with the largest decline occurring at the end of the period. U.S. producers' market share fell from 99.3 percent in 1997 to 98.1 percent in 1998, 96.9 percent in 1999, 94.8 percent in 2000, and 92.8 percent in 2001. U.S. producers' share was 93.4 percent in interim 2001 and 86.4 percent in interim 2002.<sup>74</sup>

Employment remained virtually unchanged between 1997 and 2000, ranging from a low of 1,345 production and related workers (PRWs) in 1997 and a high of 1,366 PRWs in 1998. The number of PRWs then fell sharply in 2001 to 1,210. In interim 2001, the number was 1,365 PRWs and fell to 1,235 PRWs in interim 2002.<sup>75</sup> Hours worked followed the same trend, remaining steady between 1997 and 2000, and then falling in 2001; hours worked were lower in interim 2002 than in interim 2001.<sup>76</sup> Wages paid to PRWs rose each year through 2000, and then fell in 2001; wages paid were lower in interim 2002

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<sup>70</sup> CR and PR at Table 9. This increase in interim 2002 capacity utilization is entirely attributable to the 9.4 percent decline in capacity that occurred between interim 2001 and 2002; but for this decline in capacity, the capacity utilization rate in interim 2002 would have been below the interim 2001 level, at 69.9 percent. *Id.*

<sup>71</sup> CR at I-14, n. 47, 48; PR at I-9, n. 47, 48. In addition, CHC has indicated that, as part of its integration of Midwest Hanger Co. in August 2002, it will close a plant in Kansas City, MO and upgrade and expand a facility in Cameron, MO. *Id.* at I-14, n. 47; PR at I-9, n. 47.

<sup>72</sup> Domestic production was 3.89 billion units in both 1997 and 1998, and then rose to 3.98 billion units in 1999, and fell to 3.88 billion units in 2000. It then fell sharply to 3.42 billion units in 2001. Production was 2.78 billion units in interim 2001, and then fell to 2.61 billion units in interim 2002. CR and PR at Table 9. U.S. producers' net sales were 3.90 billion units in 1997, rose to 3.94 billion units in 1998 and 3.98 billion units in 1999, and then fell to 3.84 billion units in 2000. Producers' net sales fell sharply to 3.61 billion units in 2001. Net sales were 2.74 billion units in interim 2001, and 2.56 billion units in interim 2002. CR and PR at Table 12.

<sup>73</sup> CR and PR at Table 12.

<sup>74</sup> CR and PR at Table 21.

<sup>75</sup> CR and PR at Table 11.

<sup>76</sup> CR and PR at Table 11.

than in interim 2001.<sup>77</sup> Productivity also remained steady between 1997 and 2000, ranging from a low of 1,258 units per hour in 2000 to a high of 1,280 units per hour in 1999, and then fell to 1,190 units per hour in 2001; productivity was 1,128 units per hour in interim 2001, and then rose to 1,225 units per hour in interim 2002.<sup>78</sup>

Operating income reported by U.S. producers on their CSWG hanger operations during the period examined shows that the industry was reasonably profitable during 1997-2000, but that its financial condition deteriorated sharply in 2001 and the industry operated at a loss; the industry also operated at a loss for interim 2002 as compared to a profit for interim 2001. Operating income rose from \$4.8 million in 1997 to \$5.8 million in 1998, and then fell to \$4.9 million in 1999, \$3.6 million in 2000, and a loss of \$2.3 million in 2001; operating income was a positive \$741,000 in interim 2001, and fell to a loss of \$2.8 million in interim 2002.<sup>79</sup> \*\*\*.<sup>80</sup> Industry capital expenditures and R&D expenses fluctuated during the period examined and did not show a clear trend.<sup>81</sup>

In view of the above declines in production, net sales, capacity utilization, market share, financial performance, employment, and wages, we find that the domestic industry is materially injured.

#### 4. Rapidly increasing imports from China are a significant cause of material injury<sup>82</sup>

**Statutory framework.** The third criterion concerns whether the rapidly increasing imports from China are a “significant cause” of material injury to the domestic industry.

The term “significant cause” is defined in section 421(c)(2) to mean “a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.”<sup>83</sup> Section 406 uses the same causation test and definition.<sup>84</sup> The legislative history of section 406 describes the causation test as follows –

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<sup>77</sup> CR and PR at Table 11.

<sup>78</sup> CR and PR at Table 11.

<sup>79</sup> CR and PR at Table 12.

<sup>80</sup> CR and PR at Table 12.

<sup>81</sup> Capital expenditures were \$5.6 million in 1997, rose to \$9.0 million in 1998, fell to \$4.7 million in 1999 and \$3.1 million in 2000, and then rose to \$5.3 million in 2001. Capital expenditures were \$2.4 million in interim 2001, and rose to \$4.3 million in interim 2002. R&D expenses remained relatively constant between 1997 and 1999, rising from \*\*\* to \*\*\*, and then \*\*\* in 2000 before declining to \*\*\* in 2001. R&D expenses in interim 2001 were \*\*\* and then rose to \*\*\* in interim 2002. CR and PR at Table 15.

<sup>82</sup> In reaching her affirmative determination in this investigation, Commissioner Bragg employed the same analytical framework that she developed in the Commission’s first investigation conducted pursuant to section 421. *See* Dissenting Views of Commissioner Lynn M. Bragg, *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 45-48. Based upon her analytical framework, Commissioner Bragg concurs in finding that rapidly increasing imports from China are a significant cause of material injury to the domestic industry. Commissioner Bragg joins the factual analysis contained in section II.4 of these Views. For a discussion of the relevant conditions of competition, Commissioner Bragg refers to her separate views. *See* Separate Views of Commissioner Lynn M. Bragg Regarding Remedy.

<sup>83</sup> 19 U.S.C. § 2451(c)(2).

<sup>84</sup> Section 406(e)(2)(B)(ii), 19 U.S.C. § 2436(e)(2)(B)(ii).

Under this standard, the imports subject to investigation need not be the leading or most important cause of injury or more important (or even equal to) any other cause, so long as a direct and significant causal link exists. Thus, if the ITC finds that there are several causes of the material injury, it should seek to determine whether the imports subject to investigation are a significant contributing cause of the injury or are such a subordinate, subsidiary or unimportant cause as to eliminate a direct and significant causal relationship. . . .<sup>85</sup>

Section 421(d) includes a list of three factors that the Commission is required to consider in determining whether market disruption exists and that relate to the Commission's causation analysis –

- (1) the volume of imports of the product which is the subject of the investigation;
- (2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and
- (3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.<sup>86</sup>

The presence or absence of any of these factors is not necessarily dispositive of whether market disruption exists. The three factors are similar to a list of factors in section 406(e)(2)(C) of the Trade Act<sup>87</sup> and parallel the criteria in Title VII of the Tariff Act that the Commission must consider in determining whether a domestic industry is injured by reason of dumped imports.<sup>88</sup>

**Arguments of the parties.** Petitioners assert that increased imports of CSWG hangers from China are a significant cause of material injury to the domestic industry, and claim that there is a direct causal link between the rapid increase in imports and the decline in domestic prices and deterioration in the condition of the domestic industry. They assert that imports from China “are the most important cause by far” of the material injury to the domestic industry, and that “no other factor – not the overall state of the economy or changing consumer patterns, or alleged differences in quality – has even remotely impacted on the financial performance of the domestic industry as has the flood of low-priced Chinese imports.”<sup>89</sup>

Respondent Laidlaw asserts that the volume of imports is not increasing rapidly and does not otherwise indicate causation. Laidlaw asserts that imports have had a limited overall effect on prices in the United States, and imports have had a negligible overall effect on the domestic industry. It asserts that imports by non-producers from China are limited to discrete product types and geographical areas, and have grown only modestly; that Commission pricing data covered only a few of petitioners’

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<sup>85</sup> Omnibus Trade and Competitiveness Act of 1988, House Conf. Report No. 100-576, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess., reprinted in 1988 U.S.C.A.A.N. 1547, 1724.

<sup>86</sup> 19 U.S.C. § 2451(d).

<sup>87</sup> 19 U.S.C. § 2451(e)(2)(C). The fourth factor in section 406 list is omitted.

<sup>88</sup> Section 771(7)(B)(i) of the Tariff Act of 1930, 19 U.S.C. § 1677(7)(B)(i). However, the three factors do not include any of the more specific factors that the Commission must consider in order to assess causation under title VII.

<sup>89</sup> Petitioners’ Posthearing Brief at 16-17.

products, and Commission data suggest that price declines were the result of factors other than import competition; and that lost sales and revenues reported were a very small portion of total sales and revenues, and likely confined to coastal regions.<sup>90</sup>

The Chinese respondents similarly argue that the causation test is not met. They also argue that most of the increase in imports since late 2001 is attributable to U.S. producers, while “non-captive” imports remained relatively steady.<sup>91</sup> They also assert that U.S. producer imports do not undersell the domestic product, but rather are commingled with domestically produced hangers and all are sold at the same price.<sup>92</sup> They assert that the Commission should treat U.S. producer imports as a “separate cause” of injury; they claim that the Commission has a long history of doing so.<sup>93</sup> The Chinese respondents assert that factors other than imports from China are the only significant cause of the current condition of the domestic industry, and cite a decline in demand for hangers, and increased costs.<sup>94</sup>

**Finding.** We find that imports of CSWG hangers from China are increasing rapidly so as to be a significant cause of material injury to the domestic CSWG hangers industry.

– *Conditions of competition*

As indicated above, CSWG hangers are sold primarily to dry cleaner establishments and to the industrial/ rental market for use in hanging garments. There are no comparably priced substitutes.<sup>95</sup> CSWG hangers are a small part of the overall cost of dry cleaning,<sup>96</sup> and many customers regard them as a disposable product.<sup>97</sup> Distributors regard CSWG hangers as a commodity product, and may commingle boxes of similar types of hangers regardless of source. Price and quality are important factors for most purchasers.<sup>98</sup>

Demand for CSWG hangers depends on both professional dress trends and the health of the overall economy.<sup>99</sup> Although there is evidence of some shift in demand among hanger types, with an increase in demand for shirt and strut hangers, and a decrease in demand for suit and dress hangers,<sup>100</sup> domestic producers indicate that overall demand for CSWG hangers has been relatively steady since 1997.

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<sup>90</sup>Laidlaw Posthearing Brief at 24-31.

<sup>91</sup> Chinese Respondents’ Posthearing Brief at 19-20.

<sup>92</sup> Chinese Respondents’ Posthearing Brief at 20-21.

<sup>93</sup> Chinese Respondents’ Posthearing Brief at 27-28.

<sup>94</sup> Chinese Respondents’ Posthearing Brief at 32.

<sup>95</sup> CR at I-60; PR at I-37.

<sup>96</sup> CR at I-59; PR at I-37.

<sup>97</sup> CR at I-11; PR at I-8.

<sup>98</sup> CR and PR at Table 22.

<sup>99</sup> CR at I-59; PR at I-37.

<sup>100</sup> CR at I-59; PR at I-37.

However, they note a recent slowdown, particularly since mid-2000, due to a slowing national economy.<sup>101</sup> Data compiled by the Commission generally confirm those observations. They indicate that

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<sup>101</sup> CR at I-59; PR at I-38. At the hearing, several market participants agreed that the sluggish economy had had an impact on demand for hangers, but disagreed over whether the trend toward casual dress was a factor in reduced demand. *Compare* tr. at 38, 93-96, 123-24 (testimony of distributor representatives that poor economy affected sales somewhat, but that casual dress affected the mix but not the overall volume of hangers sold), *with* tr. at 160 (testimony of representative of domestic producer Laidlaw, and letter from distributor, expressing the view that the industry was harmed by economic conditions and increased casual dress at the office), Chinese Respondents' Final Comments, Exh. 2

U.S. apparent consumption of CSWG hangers increased during the early years of the period examined and peaked in 1999, and then declined in 2000 and 2001 by 2.4 percent and 8.6 percent respectively; they show that consumption was slightly higher, by 1.0 percent, in interim 2002 than in interim 2001.<sup>102</sup>

Reported domestic CSWG hanger capacity exceeded U.S. apparent consumption throughout the period examined.<sup>103</sup> China was the primary source of U.S. imports of CSWG hangers throughout the period examined, accounting for more than 95 percent of U.S. imports in each year of the period examined, and in both interim 2001 and interim 2002. \*\*\* accounted for most of the rest.<sup>104</sup>

Several domestic producers of CSWG hangers also import hangers or purchase and re-sell imported hangers, primarily from China, but Laidlaw is \*\*\* among those firms. Laidlaw has negotiated an exclusive “distribution agreement” with Shanghai Wells in Shanghai, China, granting it the “\*\*\*.”<sup>105</sup> Laidlaw accounted for \*\*\* of the increase in imports from China between interim 2001 and interim 2002.<sup>106</sup>

– *Analysis*

In performing our analysis, first we considered information relevant to the three statutory factors that relate to our causation analysis – the volume of imports, the effect of imports on prices, and the effect of imports on the domestic industry. As the data cited earlier show, imports of CSWG hangers from China increased in each year of the period examined, with most of the absolute increase occurring at the end of the period. Imports, which were 28.8 million units in 1997 and had risen to 130.7 million units by 1999, nearly doubled to 217.9 million units in 2000 and surged further to 288.7 million units in 2001. Imports during the first nine months of 2002, at 405.7 million units, were more than double the amount reported for the same period of 2001 (197.3 million units), and had, with three months to go, already exceeded by 40.5 percent the amount reported for all of 2001.<sup>107</sup>

Imports of CSWG hangers from China have captured a rapidly increasing share of the U.S. market. As a share of U.S. apparent consumption, shipments of imports from China increased in each year of the period examined, from less than 1.0 percent in 1997 to 7.0 percent in 2001. In interim 2002, the share of consumption was 12.9 percent as compared with 6.5 percent in interim 2001.<sup>108</sup> This increase in market share came almost entirely at the expense of U.S. producers, as U.S. imports from other sources were less than 1.0 percent of U.S. apparent consumption throughout the period

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<sup>102</sup> CR and PR at Table C-1.

<sup>103</sup> CR and PR at Tables 9 and C-1.

<sup>104</sup> CR and PR at Table 7.

<sup>105</sup> CR at I-14-15; PR at I-11. *See also* Laidlaw’s Final Comments, Attachment 4. Laidlaw also has an \*\*\*. *Id.*

<sup>106</sup> CR and PR at Table 8.

<sup>107</sup> CR and PR at Table 7.

<sup>108</sup> CR and PR at Table 21.

examined.<sup>109</sup> Thus, not only did imports from China increase rapidly from year to year in percentage terms, but the volume of the annual increase grew by large and increasing amounts, and the low-priced subject imports became a significant presence in the U.S. market.

The surge in low-priced imports from China coincided with a sharp decline in domestic prices. The Commission requested and obtained quarterly pricing data on six CSWG hanger products from U.S. producers and importers for January -March 1997 to July-September 2002.<sup>110</sup> The data show significant declines – in the range of 20 percent to 35 percent – in U.S. producer prices for five of the six products during the period examined, with this decline beginning in 1999 and continuing virtually unabated through the third quarter of 2002. Prices for five of the six domestically produced products were at or near their lowest level of the period examined in the third quarter (July-September) of 2002, the most recent quarter for which the Commission received data. The one exception was the sixth product category, 16-inch strut hangers, in which Chinese hangers have the lowest market penetration.<sup>111</sup> The data show that imports from China undersold the domestic product in every quarterly period for which data were reported for each of the six products. Margins of underselling in many quarters exceeded 30 percent and in some instances exceeded 50 percent.

Domestic and Chinese CSWG hangers are largely substitutable and price is an important purchase factor.<sup>112</sup> Distributors confirmed numerous instances in which domestic hanger producers were forced to reduce prices in direct competition with lower-priced imports from China.<sup>113</sup> Accordingly, we find that the rising volume of imports, sold at prices well below domestic prices for comparable products, depressed domestic prices of CSWG hangers to a significant degree.

Respondents assert that the underselling by imports from China is exaggerated by regional differences in the price of hangers. Specifically, respondents assert that prices in Southern California for both domestic and imported hangers are lower than prices elsewhere in the United States; according to respondents, a comparison of overall imported and domestic prices nationwide would naturally show higher underselling because a much higher percentage of Chinese hangers, as compared to domestic hangers, are sold in the low-priced Southern California market.<sup>114</sup>

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<sup>109</sup> CR and PR at Table 21.

<sup>110</sup> The six products included a standard shirt hanger, four types of caped hangers, and one type of strut hanger. These hangers accounted for 35.8 percent of domestically produced commercial CSWG hanger shipments in 2001 and 94.3 percent imports of CSWG hangers from China in 2001. CR at I-69-70; PR at I-45.

<sup>111</sup> CR and PR at Tables 25-30. The first imports of 16-inch strut hangers from China were not reported until the second quarter of 1998, and did not exceed \*\*\* percent of reported domestic sales of such hangers until the third quarter of 2000, and \*\*\* percent of domestic sales until the \*\*\* quarter of 2001. Nevertheless, the same pattern as appeared earlier for the five other products have appeared for 16-inch strut hangers in the most recent data. The price of domestically produced shipments of 16-inch strut hangers is declining (it has fallen in \*\*\* of the last \*\*\* quarters and was \*\*\* percent lower in the \*\*\* quarter of 2002 than in the \*\*\* quarter of 2001), compared to a \*\*\* percent decline in the price of Chinese 16-inch strut hanger imports during the same period. For data, *see* CR and PR at Table 30.

<sup>112</sup> CR at I-64 at Tables 22-24; PR at I-40 at Tables 22-24.

<sup>113</sup> CR at I-87-92; PR at I-48. \*\*\*. These lost revenues accounted for an estimated 2.6 percent of subject import volume during interim 2002. CR and PR at Table 32 and Table C-1.

<sup>114</sup> Chinese Respondents' Posthearing Brief at 39-40.

We find that the information on regional price differences is mixed.<sup>115</sup> To the extent the information may indicate that prices in Southern California are lower than elsewhere, the differences are small and do not account for the large gap – on the order of 10 percent to 50 percent – between prices for Chinese and domestic hangers shown by the Commission pricing data. Moreover, other record information confirms that Chinese hangers consistently are priced below the prices for domestic hangers.<sup>116 117</sup> In addition, while the port of entry of most subject imports is Los Angeles, their presence is felt on a nearly nationwide basis.<sup>118</sup>

The rapidly increasing imports have had a significant adverse effect on the domestic industry. The surge in imports mirrors the decline in market share held by domestic producers and the decline in economic indicators relating to the health of the industry. The surge in imports occurred in combination with continued low and decreasing prices for the Chinese product and a consistent pattern of underpricing by the Chinese hangers, which in turn depressed prices of domestically produced hangers and caused economic indicators relating to the health of the domestic industry to decline. The loss in domestic market share caused by imports is reflected directly in the reduced production, shipments, sales, and employment of the domestic industry. Similarly, the price depression caused by imports reduced the industry's revenues, particularly in interim 2002, resulting in operating losses for \*\*\* of six domestic producers.

We considered the arguments of Laidlaw and the Chinese producers that imports from China were not injurious because a substantial percentage of the recent increase in imports were by domestic producers themselves. Respondents assert that these producer imports are priced the same as the domestic product and thus could not have negatively affected domestic prices.

Producer imports (including subject purchases) accounted for at least one-half of the increase in imports from China between interim 2001 and interim 2002. However, at their peak these imports

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<sup>115</sup> Compare Laidlaw Prehearing Brief, Attachment 6 (\*\*\*), with Petitioners Posthearing Brief, App. 2, Exh. C-4 (\*\*\*). Customs data on average unit value of imports from China in 2002 entering in Los Angeles or New York show lower values in Los Angeles in some months and comparable values in others. Compiled (as of Jan. 23, 2003) from official statistics, U.S. Department of Commerce, average unit values, steel wire hanger imports during 2002 entered in Los Angeles and New York.

<sup>116</sup> See, e.g., CR and PR at Table 24 (22 of 29 purchasers indicate that prices of Chinese hangers are lower than domestic prices); CR at I-89-92; PR at I-48 (purchasers confirmed numerous lost sales and revenues allegations with respect to Chinese hangers). Laidlaw acknowledged that it \*\*\*. Laidlaw Prehearing Brief at 11-13.

<sup>117</sup> We are not persuaded by Laidlaw's argument that aggressive pricing by the domestic producer \*\*\*, rather than by imports from China, is responsible for any low pricing environment in Southern California. Laidlaw Prehearing Brief at 10. \*\*\* is a \*\*\* small producer: its production accounted for under \*\*\* percent of domestic production in 2001, and \*\*\*. CR and PR at Tables 2, 9. By contrast, imports from China were in an amount equivalent to 8.4 percent of domestic production in 2001, and 15.5 percent in interim 2002. CR at I-27; PR at I-19.

<sup>118</sup> See, e.g., CR at I-84; PR at I-48 (confirmed allegations of lost sales and revenues include instances in \*\*\*); Petitioners Posthearing Brief at App. 2, p. B-3 (major customers of companies importing from China include distributors in Missouri, Colorado, and Oklahoma); id. at App. 2, Exh. B-1(b) (nearly 90 percent of dry cleaning establishments are in regions bordering on an ocean, the Gulf of Mexico, or the Great Lakes, and thus can be reached without excessive inland transport).

represented no more than about one third of total imports from China in any given year.<sup>119</sup> Thus, respondents' arguments are inapplicable to a significant majority of the imports.

We have considered the circumstances of the producer imports in our causation analysis, including whether the producer imports complement or compete with domestic production, and whether they meet a shortage in domestic supply. First, there is no evidence that the Chinese hangers imported by domestic producers differ in any significant way either from Chinese hangers imported by non-producers or domestically produced hangers. In fact, the \*\*\* domestic producers (other than Laidlaw) that imported all cited competition from low-priced imports as their reason for importing.<sup>120</sup> Second, there is no evidence of a domestic supply shortage. As noted above, demand declined in 2000 and 2001, domestic capacity utilization has declined on an annual basis, and there is more than sufficient domestic production capacity to meet current domestic demand. Accordingly, like any other imports, the producer imports at issue in this case represent sales that could otherwise have been made via domestic production; thus these imports have the same negative effects on domestic production, shipments, and employment indicators as other imports.

Petitioners argue that imports by domestic producers undersell domestic prices, but to a lesser degree than other imports do.<sup>121</sup> Respondent Laidlaw submitted invoices showing instances of identical prices charged for its imports and its sales of domestic product, but submitted other data that indicate \*\*\*.<sup>122</sup> Also, other producers priced subject imports both above and below their domestic equivalents.<sup>123</sup> In any event, similar prices for domestic producers' sales of domestic production and imports would not mean that imports had no price effect in a market where prices are declining. The interjection of increasing amounts of low-cost imports into a producer's product mix would allow the company to lower its costs (and prices) through cost averaging.<sup>124</sup> Nevertheless, this still would have the effect of lowering domestic prices.

In sum, while producer imports may have had a price effect somewhat less than other imports, they had a volume effect comparable to other imports. Overall, we find that producer imports, together with the other imports, are a significant cause of market disruption.<sup>125</sup>

We considered other possible causes of injury, including the decline in demand for CSWG hangers in 2000 and 2001, changes in production costs, product quality, and domestic competition. We find none of these other possible causes of injury to have contributed to the deterioration in the condition of the domestic industry in a sufficiently significant way as to preclude a finding that the rapidly

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<sup>119</sup> CR and PR at Table 7. \*\*\* of the increase in domestic producer imports is attributable to one domestic producer, Laidlaw, which accounted for about \*\*\* percent of such imports in interim 2002. Although a majority of the remaining domestic producers also reported imports and/or purchases of the subject hangers in interim 2002, their quantities were \*\*\* than those reported by Laidlaw. CR and PR at Table 3.

<sup>120</sup> CR and PR at Table 3; and importer questionnaire response of \*\*\*.

<sup>121</sup> Petitioners Posthearing Brief at App. 1, Exh. I.

<sup>122</sup> Laidlaw Prehearing Brief at Att. 8; Laidlaw Posthearing Brief at Att. 4; Commission staff table "Percentage Margins of Underselling by Laidlaw of Imports of Laidlaw Domestic Production."

<sup>123</sup> Questionnaire responses of \*\*\*; Chinese Respondents' Posthearing Brief, Exh. 4, Table 18.

<sup>124</sup> Prices of Laidlaw, United, and M&B \*\*\*. Laidlaw Prehearing Brief at Attachment 4; CR and PR at Table 3.

<sup>125</sup> Chairman Okun provides additional views because Laidlaw hindered her ability to evaluate one of the central issues in this investigation: the reason why a domestic producer began to import significant quantities of subject merchandise and whether those imports negatively affected the domestic industry. *See* Additional Views of Chairman Deanna Tanner Okun.

increasing imports are a significant cause of the material injury. Hence, we have concluded that the rapidly increasing imports are a significant cause of the material injury.

We considered the decline in demand for CSWG hangers in 2000 and 2001 allegedly due to the softening of the economy and the continued trend toward more casual dress.<sup>126</sup> In light of reduced demand, we would have expected the increase in imports from China to have leveled off and possibly declined to reflect reduced demand. Instead, shipments of imports continued to rise and did so rapidly. While U.S. apparent consumption fell by 2.4 percent in 2000 from the 1999 level, shipments of imports from China increased by 69.5 percent, and similarly, in 2001, when consumption fell by a further 8.6 percent, shipments of imports increased by another 24.9 percent. Consumption in interim 2002 was 1.0 percent above the level of interim 2001, but imports from China were virtually double the interim 2001 level.<sup>127</sup>

We would expect a decline in demand to have some adverse effect on prices; it did contribute to the price decline as well as to the reduced domestic production, shipments, sales, and employment. However, the magnitude of the price declines far exceeded the impact of the decline in consumption. Since the first quarter of 1999, prices for the five domestically produced products in the Commission's price series for which import penetration was high fell by a (non-weighted) average of 25.8 percent,<sup>128</sup> compared to an 10.8 percent decline in consumption between 1999 and 2001, followed by a 1.0 percent rise in consumption between interim 2001 and interim 2002. Had prices for the five products facing the most intense import competition fallen by 10 percent or even 15 percent instead of the actual sharp decline, the industry still would have been profitable.<sup>129</sup>

Moreover, the decline in demand does not explain why prices fell for the five products for which import penetration was high, but were relatively stable for the sixth domestically produced product in the pricing series, 16-inch strut hangers, for which import penetration was low for most of the period. Nor does the demand decline explain why prices for hangers facing import competition fell, but prices for other dry cleaning supplies were stable or increasing.<sup>130</sup> As hangers are sold primarily to dry cleaners, one would expect more similar trends if demand were the key factor affecting prices.<sup>131</sup>

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<sup>126</sup> We viewed this decline in demand to be more related to the softening of the economy than the continuation of the trend toward casual dress. The trend toward casual dress was underway during the entire period examined, including in 1998 and 1999 when demand for CSWG hangers was expanding.

<sup>127</sup> CR and PR at Table 6.

<sup>128</sup> CR and PR at Tables 25-29.

<sup>129</sup> Commission staff estimated that industry operating profits in interim 2002 would have been \$\*\*\* and \$\*\*\* under a 10 percent or 15 percent price reduction, respectively. The staff calculation is based on price and company financial data in the report. This analysis also disproves respondents' claim that imports from China affected too small a share of overall domestic hanger production to have had a significant negative impact on the domestic industry as a whole. See Chinese Respondents Posthearing Brief at 47-48; Laidlaw Posthearing Brief at 29-30.

<sup>130</sup> Testimony at hearing, tr. at 38, 45-46; Petitioners' Posthearing Brief at App. 2, Exh. D-5(a).

<sup>131</sup> We have examined the econometric analysis of Gary Shilling submitted by respondent Laidlaw. See Laidlaw Prehearing Brief, Attachment 9, Laidlaw Final Comments, Attachment 1. Shilling's model purports to show that the effect of Chinese prices on U.S. prices is moderate to insignificant once demand and supply factors have been taken into account. Shilling's model does not adequately take into account effects of rising Chinese import volumes sold at lower prices. Moreover, it is not clear that the product-aggregated Chinese hanger prices used by Shilling are appropriate, as they do not show the same general trend as the Commission's pricing data show when examined on a product-by-product basis. Compare Laidlaw Prehearing Brief, Attachment 9, Chart 13 with CR and PR at Tables 25-30. See also tr. at 53-54 (petitioners' economist offered several criticisms of the Shilling model).

We examined whether rising costs, such as for raw materials,<sup>132</sup> might explain the decline in the financial health of the industry, or whether falling costs might explain the fall in prices. However, the cost of goods sold per hanger (unit COGS) was relatively stable during the period investigated. After falling between 1998 and 1999 to its lowest level of the period, the industry's unit COGS increased by 3.0 percent between 1999 and 2000, and by 4.2 percent between 2000 and 2001. Although these increases did have a negative impact on industry profits, they are relatively modest and do not mean that imports are not a significant cause of material injury to the domestic industry. As indicated above, the industry would have been profitable were it not for the steep price declines caused by imports from China. Moreover, the limited ability of cost changes to explain the industry's declining performance is shown by the fact that, although unit COGS dropped by 3.3 percent between interim 2001 and interim 2002, the industry recorded its worst operating loss of the period reviewed in interim 2002.<sup>133</sup> Thus, the change in cost of goods sold was modest and gradual, and does not explain either the sharp decline in the condition of the industry or the equally sharp decline in prices of the domestically produced hangers.

We considered the issue of product quality, including representations concerning superior paint quality and cape fit for the Chinese product as compared to the domestically produced hangers. The information in the record, including the pricing data, anecdotal answers, and lost sales/revenues information, was mixed. In any event, better quality products typically can command a higher price. On balance, the record appears to show that purchasers generally are not willing to pay more for Chinese hangers.<sup>134</sup> A slight majority of purchasers rated U.S. and Chinese hangers comparable in quality; of those indicating a quality difference, most preferred the quality of Chinese hangers.<sup>135</sup> While some importers reported that hangers from China painted by the powder-coated method are a superior product, distributors appearing with petitioners at the Commission's hearing testified that their customers do not specifically request powder-coated hangers, and that powder-coated hangers do not command a price premium.<sup>136</sup> As noted above, two distributors testified that they co-mingle domestic and imported hangers of the same type. Moreover, only a relatively small number of the Chinese hangers for which data were available were powder-coated during the period reviewed.<sup>137</sup> Thus, any quality advantage enjoyed by Chinese hangers would make the fact that Chinese hangers were uniformly and substantially priced below domestic hangers even more significant in explaining the domestic industry's falling sales and prices. We find that to the extent there are quality differences, such differences do not preclude a

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<sup>132</sup> Laidlaw, for example, alleged that higher wire rod prices in 2002 as compared to early 2001 increased hanger units costs by \*\*\* percent, and stated that \*\*\*. CR at I-39, n. 96; PR at I-27, n. 96.

<sup>133</sup> The cost of raw materials, which makes up about half of the total cost of goods sold, trended downward during the period examined, while the cost of direct labor and other factory costs trended upward and offset the decline in raw materials cost. CR and PR at Table 12.

<sup>134</sup> CR at I-60-62, I-64; PR at I-38-39, I-40-41.

<sup>135</sup> CR and PR at Table 24.

<sup>136</sup> CR at I-7; PR at I-5-6.

<sup>137</sup> \*\*\*. CR at I-7-8; PR at I-6. Shanghai Wells was the \*\*\*. CR and PR at Table 18. The powder-coating method found in at least some Chinese factories currently is not used in the United States due to environmental concerns. Information also indicates that it would be more costly than the dip method used by domestic producers. CR at I-9, n. 30; PR at I-6, n. 30.

finding that the rapidly increasing imports are a significant cause of material injury to the domestic industry.

We also considered the issue of domestic competition, and in particular the argument advanced by Laidlaw that the domestic producer Nagel drove down prices when it emerged from bankruptcy in 2001. However, Nagel is the \*\*\* of the six reporting producers, and its production and sales are too small, both relative to other larger domestic producers and subject imports, to have had a significant impact on prices. Moreover, no purchasers mentioned Nagel as a company leading prices in the market.

In view of the above, we find that rapidly increasing imports are a significant cause of material injury to the domestic industry and that market disruption exists.

### **III. CONCLUSION**

As explained above, we find that market disruption exists in that rapidly increasing imports from China are a significant cause of material injury to the domestic industry producing CSWG hangers. We find, as noted above, that the subject CSWG hanger imports from China are “in such increased quantities” as to cause market disruption to domestic producers.<sup>138</sup> The greatest increase in volume of such imports coincided with the downturn in indicators of the domestic industry’s condition during 2001 and the first nine months of 2002. Moreover, the increase in imports from China and the decline in production and sales for the domestic industry show a significant displacement of the domestically produced CSWG hangers by Chinese hangers. Imports from China depressed domestic prices, leading to industry financial losses in 2001 and interim 2002.

We therefore make an affirmative determination that certain steel wire garment hangers from China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of CSWG hangers.

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<sup>138</sup> For purposes of this determination we consider the “domestic producers” to be the domestic industry as defined earlier in these views. CR and PR at Table 30.

## IEWS OF THE COMMISSION ON REMEDY

### Remedy Proposal

For the reasons set forth below, we propose the following action to remedy the market disruption we find to exist –

We propose that the President impose an additional duty, for a three-year period, on imports of the subject steel wire garment hangers from China as follows: 25 percent *ad valorem* in the first year, 20 percent *ad valorem* in the second year, and 15 percent *ad valorem* in the third year.<sup>1</sup>

We find that this action is the relief that will remedy the market disruption we have found to exist.

We also propose that the President direct the U.S. Department of Commerce and U.S. Department of Labor to provide expedited consideration of petitions for trade adjustment assistance filed by domestic firms or workers producing certain steel wire garment hangers (CSWG).

### Statutory Framework

Section 421(f) of the Trade Act of 1974 (19 U.S.C. § 2451(f)) provides that the Commission, upon making an affirmative determination, “shall propose the amount of increase in, or imposition of, any duty or other import restrictions necessary to prevent or remedy the market disruption.” It provides that only those Commissioners who agreed in the affirmative determination are eligible to vote on remedy. Neither the statute nor its legislative history provides any further guidance or instruction on remedy.

Section 421(f) thus authorizes the Commission to propose as a remedy any import restriction. The Commission’s proposed remedy could take the form of increased duties, a tariff-rate quota, a quantitative restriction, or other import restriction.<sup>2</sup>

Section 421(g)(2)(D)<sup>3</sup> requires that the Commission’s report to the President and the U.S. Trade Representative include a description of–

- (i) the short- and long-term effects that implementation of the action recommended . . . is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and
- (ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers, and the communities where

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<sup>1</sup> Chairman Okun, Vice Chairman Hillman, and Commissioner Miller. Commissioner Koplan proposes that the President impose an additional duty of 30 percent *ad valorem*, for a three-year period, on imports of the subject steel wire garment hangers from China. *See* Separate and Additional Views of Commissioner Koplan on Remedy.

<sup>2</sup> 19 U.S.C. § 2481.

<sup>3</sup> 19 U.S.C. § 2451(g)(2)(D).

production facilities of such industry are located, and on other domestic industries.

### **Conditions of Competition**

In evaluating the various remedy options, we considered the conditions of competition in the domestic market and likely developments affecting such conditions during the next several years. CSWG hangers are sold into two primary markets: dry-cleaning (the larger of the two) and uniform rental market (primarily served by U.S. production). Imported CSWG hangers are highly substitutable and compete in the dry-cleaning segment of the market where a network of many distributors sell to dry-cleaning establishments. There may be a slight quality gradation, with some purchasers indicating a preference for Chinese hangers over U.S. hangers, and a preference for both Chinese and U.S. hangers over Mexican hangers. However, there is no indication that purchasers generally are willing to pay more for hangers from one source than from another.

### **Demand Conditions**

Demand for CSWG hangers comes primarily from many small dry cleaning establishments nationwide, whose demand depends on both professional dress trends and the health of the overall economy. CSWG hangers are a small part of the overall cost of dry cleaning, and there are no comparably priced substitutes for CSWG hangers. As a small part of the overall cost of dry cleaning, CSWG hanger demand is not likely to change significantly in response to changes in price.

Apparent consumption of CSWG hangers rose from 4.2 billion units in 1997 to 4.4 billion units in 1999, then decreased to 3.9 billion units in 2001. Consumption was roughly similar for the first nine months of 2002 as compared to the first nine months of 2001. Parties differed as to whether demand had been significantly affected by the declining economy and casual dress trends (respondents) or whether these demand factors had mitigating or even positive implications for CSWG hanger demand (petitioners). As the casual dress trend has been a factor since before 2001, and as the U.S. consumption data shows no significant drop before then, it seems likely that economy-wide factors are more important for overall CSWG hanger demand than casual dress trends.

### **Domestic Supply Conditions**

Domestic producers showed significant unused capacity from January 1997 through September 2002, and inventories remained a small percentage of total shipments during 1997-2001. Domestic producers reported that there are no production substitutes for CSWG hangers, and they export a minute percentage of their total production. Thus, low inventories, a lack of export markets, and no production substitutes constrain U.S. producers' supply response; however, U.S. producers have moderate ability to respond to changes in price with increased production because of the availability of some unused capacity.

### **Import Supply Conditions**

Imports of Chinese CSWG hangers grew significantly during January 1997-September 2002. China is the largest source of imported CSWG hangers in the U.S. market. Chinese producers who responded to Commission questionnaires reported capacity utilization levels roughly comparable to U.S.

producers, with low inventories and few exports to countries other than the United States.<sup>4</sup> While Chinese respondents state that there is a growing Chinese home market for their CSWG hangers, home market shipments reported to the Commission are currently only a \*\*\* small part of Chinese producers' shipments. Although home market shipments are projected to rise, we expect that such shipments would continue to remain a relatively small part of overall Chinese shipments. Our ability to make projections with respect to future Chinese production is somewhat limited by the data and information before us.<sup>5</sup> However, the recent large rise in U.S. imports of Chinese CSWG hangers, which has accelerated in terms of volume during the most recent period and shows no sign of abating, would indicate that Chinese CSWG hanger producers have the ability to continue to increase shipments of CSWG hangers to the United States.

The primary source of non-subject imports is \*\*\*, although its volumes are only a \*\*\* fraction of Chinese import volumes. Other foreign sources include Honduras, Canada, and Taiwan, but these sources all account for very small import quantities.

### **Proposed Relief**

As indicated above, the statute authorizes the Commission to “propose the amount of increase in, or imposition of, any duty or other import restrictions necessary to prevent or remedy the market disruption.” We find that imposition of an additional tariff on imports of the subject steel wire hangers from China, in the amount and for the duration proposed, is necessary to remedy the market disruption we find to exist.<sup>6</sup>

In determining what remedy to propose, we took into account the submissions of the parties. Petitioners ask that the Commission propose a tariff in the form of a specific rate of duty in the amount of 1.85 cents per hanger, for a five-year period. Petitioners state that this tariff would be approximately equivalent to 50 percent of the imported price of Chinese hangers in 1999; they chose 1999 as the base year because it was the last year in which the domestic industry experienced a “reasonable” level of profit. They assert that the value of an *ad valorem* tariff could be “dramatically reduced” if foreign producers or exporters lower their prices. Petitioners state that they did not recommend a quota because a quota would provide importers “with extra incentive to circumvent Customs accounting” and encourage them to rush to fill the quota, further disrupting the market. They recommended a five-year remedy so that the industry could complete and implement a number of measures to help it compete more effectively.<sup>7</sup> Petitioners contest Chinese respondents' argument that manufacturing operations could easily be moved to a non-subject country to avoid a remedy on Chinese imports.<sup>8</sup>

Respondents oppose a remedy and assert that none is needed. Laidlaw states that if the Commission decides to propose a remedy, the most appropriate remedy would be a tariff rate quota, with

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<sup>4</sup>CR and PR at Table 19.

<sup>5</sup>For example, the data in Table C-1 show U.S. imports of Chinese hangers to exceed reported Chinese capacity to produce such hangers; and data indicating that Chinese capacity will rise significantly in 2003 are not corroborated by information that indicates the firms or plants in which the increases will occur. CR at I-51, n. 116; PR at I-33, n. 116.

<sup>6</sup>Commissioner Koplán does not agree that the tariff recommended by Chairman Okun, Vice Chairman Hillman, and Commissioner Miller will be sufficient to remedy the market disruption that exists.

<sup>7</sup>Petitioners' Final Comments on Remedy at 1-4.

<sup>8</sup>Id. at 6.

the in-quota amount dutiable at the existing rate of duty and based on calendar year 2002 imports. Laidlaw states that this would address petitioners' concern about the prospect of increasing imports, including into segments of the uniform rental market in which imports have not competed. It also would avoid "undue prejudice" to Laidlaw, which "represents a substantial portion" of U.S. production and "uses imports proactively in certain product areas to improve profit margins."<sup>9</sup> Laidlaw asserts that a tariff remedy in the form of a specific tariff is at odds with modern trade practice and the Commission's own precedent,<sup>10</sup> and that the level proposed by petitioners exceeds the amount necessary to offset any market disruption and would preclude Laidlaw from importing any hangers from China.<sup>11</sup>

Chinese respondents make similar arguments, asserting that the remedy petitioners propose "is flatly illegal" because it would drive Chinese imports below their \*\*\* percent share of the market before the alleged disruption occurred, and therefore cannot qualify as "necessary" to remedy the disruption. They state that if the Commission wishes to recommend a remedy, it should be in the form either of trade adjustment assistance or a recommendation to the Secretary of Commerce to self-initiate an antidumping investigation. They assert that any remedy in the form of a tariff or quota will simply cause Chinese imports to be displaced by imports from other sources.<sup>12</sup>

The Commission is authorized to propose any of a number of possible remedies, including a simple tariff increase, a tariff-rate quota, and a quantitative restriction. In general, a simple *ad valorem* tariff is preferred over other remedy options because it tends to be less trade distorting. We believe that a simple tariff increase will provide an appropriate remedy in this investigation.

We considered the specific tariff remedy proposed by petitioners, but did not find a remedy in this form to be appropriate in this case. Such a remedy would have the effect of imposing a relatively higher tariff (in terms of *ad valorem* equivalent) on lower priced CSWG hangers, such as shirt hangers, than on other types of subject hangers. Neither import volumes nor underselling margins are greatest with respect to low priced hangers such that our remedy should target lower priced hangers to a greater degree than other types of hangers. In addition, we are concerned that a specific tariff might distort existing trade patterns by encouraging importers to shift toward higher priced types of hangers where the *ad valorem* equivalent tariff would be lower.<sup>13 14</sup>

In proposing tariff levels of 25, 20, and 15 percent *ad valorem*, we sought to address the market disruption caused by rapidly increasing imports from China. We believe that the tariffs we recommend will significantly improve the industry's sales and pricing environment, and return the industry to modest profitability.<sup>15</sup> We have not sought to return the industry to a level of performance experienced earlier in

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<sup>9</sup>Laidlaw's Final Comments on Remedy at 2-3.

<sup>10</sup>Id. at 5-6.

<sup>11</sup>Id. at 5.

<sup>12</sup>Chinese Respondents' Final Comments on Remedy at 2-6.

<sup>13</sup>Commissioner Koplán does not join in the remainder of the views of the Commission. See Separate and Additional Views of Commissioner Koplán on Remedy.

<sup>14</sup>We also considered Laidlaw's proposal that we recommend a tariff-rate quota. Laidlaw recommended that the action be for a two-year period and that the in-quota amount be set at the level of Chinese hanger imports in 2002; the in-quota imports would be subject to the current rate of duty and the above-quota imports would be subject to a higher, unspecified rate of duty. We do not find that leaving unaffected the injurious 2002 level of imports from China would remedy the market disruption.

<sup>15</sup>The predicted effects of a given tariff can vary significantly depending on which assumptions regarding  
(continued...)

the investigation period, because less favorable recent demand conditions make such a goal unrealistic. Rather we have sought to address the harm attributable to the imports from China. At the same time, the remedy should have no more than a minimal impact on downstream users of steel wire garment hangers (mainly dry cleaners) as this product makes up only a small percentage of their overall costs. Also, we do not view the time-limited tariffs we are recommending as likely to cause importers to shift from Chinese sources to other foreign sources for hangers, as less than 1 percent of current hanger imports are from other sources.

We recognize that domestic producer Laidlaw does not support relief in part because it has chosen a business model that includes the importation of some of its product line from China. While our recommended tariff should provide assistance to the entire domestic industry by strengthening prices and increasing shipments, it is not so high as to preclude imports from China. We do expect at least some shift from imports to domestic producers, as Laidlaw indicates it will likely do if a remedy is imposed.<sup>16</sup>

In addition, we believe that the tariff increase should take into account the fact that the remedy is temporary in nature. Although not required by section 421, we propose to reduce the degree of protection over the three-year period, to encourage the domestic industry to take the necessary steps to adjust to import competition once the relief terminates. Thus, we recommend that the tariff be reduced by 5 percent *ad valorem* in the second and third years of relief.

We propose that the additional tariff remain in effect for a three year period, which should provide sufficient time to remedy the market disruption and allow producers to implement the adjustment measures they have identified.<sup>17</sup> We note that domestic producers already have plans to restructure and consolidate, and they indicated throughout the proceeding that these plans could be accomplished in a short period of time.<sup>18</sup> Our proposed three-year remedy should allow the companies to obtain lending based on these plans.

## Short and Long-Term Effects

### Short- and Long-Term Effects of the Recommended Remedy

We believe that the additional tariff proposed will address the market disruption found to exist in the domestic CSWG hanger industry and does not exceed the amount necessary to remedy the injury to domestic producers. The remedy is likely to restore domestic sales and profitability to reasonable levels given that the CSWG hanger industry has gone through other changes (besides an influx of Chinese CSWG hangers) in the last three years.

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<sup>15</sup> (...continued)

market characteristics are employed. Our assessment is based on the mid-point of the range of various possible scenarios.

<sup>16</sup>Hearing tr. at 253.

<sup>17</sup>CR and PR at Table 17. As indicated above, the Chinese respondents state that the Commission, if it wishes to recommend a remedy, should recommend that U.S. Department of Commerce self-initiate an antidumping investigation. We note that section 202(c)(5) of the Trade Act requires the Commission to notify the appropriate agency whenever in the course of its investigation the Commission has “reason to believe that the increased imports are attributable in part” to circumstances that come within the purview of certain trade remedy laws, including the antidumping law. Section 421 does not include a similar provision or cross-reference the provision in section 202.

<sup>18</sup>CR and PR at Table 17; and Petitioners’ Posthearing Brief at App. 2, Exh. E-1.

Based on available data, it is likely that Chinese imports will be reduced between \*\*\* percent and \*\*\* percent.<sup>19</sup> While there will be some negative effect for U.S. purchasers, especially any distributors of primarily Chinese CSWG hangers, CSWG hangers are a small part of the ultimate end users' costs,<sup>20</sup> and distributors of U.S. hangers should experience increased prices on their sales of U.S. CSWG hangers. This remedy also should provide a modest protection or benefit to domestic industries that supply raw materials to the hanger industry, particularly the wire rod producers, as a result of the expected increase in domestic hanger production. Finally, while allegations were made that Chinese producers will move their plants and equipment to other countries if a remedy is imposed, we find no basis to conclude that a temporary remedy will be sufficient to induce producers in China to move facilities to another country.

It is not possible to predict market effects with precision following the initial year of relief. In general, we would expect that as prices increase, the domestic industry will be able to respond better to new market demands and to increase production as necessary. In addition, we would expect the domestic industry to be able to increase its ability to compete with imported hangers as it modernizes and consolidates its production facilities. Under this tariff-based remedy, imports would continue to supply a share of the U.S. market and would continue to be an important competitive force in the U.S. market. In addition, if demand rises to 2000 levels again with an economic recovery, U.S. producers may be able to approach or return to their previous levels of profitability.

### **Short and Long-Term Effects of Not Taking the Recommended Action**

In the absence of appropriate relief, we are convinced that the recent operating losses experienced by the domestic industry will continue and likely worsen. Chinese CSWG hangers have significantly increased their share of the domestic market even at a time of lower demand for CSWG hangers. Purchasers have reported continuing attempts by Chinese CSWG hanger sellers to penetrate new markets with lower priced CSWG hangers,<sup>21</sup> and at least three "significant" distributors of U.S. CSWG hangers went out of business in 2002.<sup>22</sup> Contrary to respondents' arguments, there currently is no large Chinese home market for CSWG hangers, and even the increased Chinese home market demand projected by respondents would be insufficient to absorb the increased production that would result from the projected increase in capacity.<sup>23</sup> Thus, there is every reason to believe that imports of Chinese CSWG hangers will increase further. The domestic industry would be unable to implement proposed investments and improvements. Coming at the same time as a continued decline in demand, this would mean mounting losses and eventual plant closures for the domestic industry, without time to re-train workers and undertake other adjustment efforts. The absence of appropriate relief will likely have a small benefit to dry cleaners, but hangers are a small part of their operating cost, and so it is doubtful that any benefit would outweigh the long-term benefit to the U.S. industry of three years of relief.

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<sup>19</sup> EC-AA-007, at Table 1.

<sup>20</sup> CR at I-59; PR at I-37, and Commission staff remedy memorandum at I-2. The average selling price of imported 18-inch white shirt hangers in interim 2002 was 2.18 cents per hanger. A remedy of 25 percent *ad valorem* applied to this price would marginally increase the cost of each hanger, but this increase would be very small even in the context of a relatively low priced dry cleaning item such as a shirt.

<sup>21</sup> See, e.g., CR at I-60, n. 132; PR at I-38, n. 132.

<sup>22</sup> CR at I-63, n. 137; PR at I-40, n. 137.

<sup>23</sup> CR and PR at Table 19.

In particular, the continuing surge in import volumes of Chinese hangers will continue to depress and suppress or undersell domestic prices and further diminish market share. Thus, without appropriate relief, the hanger industry remains vulnerable to continued price underselling and revenue losses. If operating losses continue, the domestic industry will not be able to consolidate and restructure, thereby leaving it less viable and less able to compete with imports. Over the longer term, a significant portion of the industry would be forced to shut down. This assessment is based on the recent surge in imports of Chinese hangers, a surge which has captured significant market share from U.S. production during a period of declining demand. Such closings and partial closings will lead to increased layoffs of workers in the industry, resulting in a negative impact on the local communities in which the production facilities are located.



**SEPARATE VIEWS OF COMMISSIONER LYNN M. BRAGG  
REGARDING REMEDY**

*Certain Steel Wire Garment Hangers from China  
Inv. No. TA-421-2*

Pursuant to section 421(b)(1) of the Trade Act of 1974 (“Trade Act”),<sup>1</sup> and based upon the record in this investigation, I have determined that certain steel wire garment (“CSWG”) hangers from the People’s Republic of China (“China”) are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of CSWG hangers.<sup>2</sup> Pursuant to section 421(f) of the Trade Act,<sup>3</sup> I provide below my recommendation and analysis with respect to the increase in duty that I believe is necessary to remedy the market disruption that I have found to exist.

**Overview**

This is the second investigation conducted by the Commission pursuant to section 421 and, much like the first,<sup>4</sup> the focus is on a small number of market participants and their individual business decisions taken in response to the availability of merchandise produced in China for export to the United States. In contrast to the first investigation, however, this case presents an unexpected scenario in that about half of the recent rapid increase in subject import volume is attributable to the domestic industry itself.<sup>5</sup> Notwithstanding this fact, I have found that rapidly increasing imports of lower-priced CSWG hangers from China are a significant cause of material injury to the domestic industry as a whole. Importantly, in gauging the corresponding remedy, I note that the recent surge in subject imports has served to disrupt an ongoing process of consolidation and rationalization of resources by the domestic industry. Although I find that a remedy is warranted in this case, based upon the specific adjustment efforts of the domestic industry and the conditions of competition within this industry, as set forth more fully below, I conclude that an increase in duty of limited magnitude and duration is sufficient to remedy the market disruption that I have identified.

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<sup>1</sup> 19 U.S.C. § 2451(b)(1).

<sup>2</sup> See Views of the Commission on Market Disruption.

<sup>3</sup> 19 U.S.C. § 2451(f) (Recommendations of Commission on proposed remedies).

<sup>4</sup> Pedestal Actuators from China, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002). I note that in Pedestal Actuators, I determined that subject imports were not being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic industry. See *Dissenting Views of Commissioner Lynn M. Bragg*, USITC Pub. 3557 at 45-54.

<sup>5</sup> The total volume of subject imports increased by 208.4 million units between interim (*i.e.* January through September) 2001 and interim 2002. See CR at Table C-1; PR at Table C-1. In particular, U.S. producers increased their volume of purchases of subject imports by \*\*\* units between interim 2001 and interim 2002. Calculated from CR/PR at Table 3.

## Remedy Recommendation

I propose that the President impose a duty, in addition to the current rate of duty, for a two-year period, on imports of the subject steel wire garment hangers from China, as follows: 20 percent *ad valorem* in the first year of the relief period, and 15 percent *ad valorem* in the second year of the relief period. I find that such action is necessary to remedy the market disruption that I have found to exist.

## Conditions of Competition

*Demand.* CSWG hangers are used to hang garments, and are sold primarily to dry cleaner establishments and purchasers in the industrial/uniform rental market; sales to the dry cleaning segment of the market are made primarily via distributors, though the major dry-cleaning chains may purchase directly from a U.S. producer.<sup>6</sup> To date, the industrial/uniform rental market has been served \*\*\* by domestic producers, apparently due to the high service requirements demanded by that segment of the market.<sup>7</sup>

Since the early 1990s, there has been a shift toward casual business attire that has resulted in a shift in the types of CSWG hangers demanded by dry cleaners for their customers; this trend does not appear to have had an appreciable impact on overall demand during the period of investigation (“POI”), which extends from 1997 through September 2002.<sup>8</sup> Total apparent U.S. consumption fluctuated in a narrow range from 1999 through 2000, before declining by 8.6 percent between 2000 and 2001; between interim (*i.e.* January through September) 2001 and interim 2002, total apparent U.S. consumption increased by 1.0 percent.<sup>9</sup>

CSWG hangers, whether domestic or imported, are viewed as a commodity product and distributors may commingle boxes of similar types of hangers regardless of source.<sup>10</sup> CSWG hangers are often painted. At least a portion of the subject imports from China are painted via a powder-coating process, whereas U.S. producers utilize an electric-coating paint process; the type of paint process employed does not appear to impact the demand for product from a particular source.<sup>11</sup>

*Supply.* The primary U.S. producers of CSWG hangers include the three Petitioners (*i.e.* CHC, M&B, and United Wire), as well as Laidlaw and Nagel; a sixth U.S. producer (*i.e.* Midwest), was acquired by CHC in August 2002.<sup>12</sup> CHC will close one of two Midwest plants and expand and upgrade the other. CHC also closed one of its plants located in California in November 2001, as well as another plant in Ohio in \*\*\*. As a result of these consolidation efforts, CHC has reduced the annual production capacity of the domestic industry by over one billion hangers.<sup>13</sup> Still, the domestic industry appears

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<sup>6</sup> See CR at I-2 to I-5 and I-20 to I-21; PR at I-13.

<sup>7</sup> CR at I-6 to I-7; PR at I-4 to I-5.

<sup>8</sup> See, *e.g.*, Hearing Tr. at 38 (Goldenberg); at 96 (Hericks); *see also* CR/PR at Table C-1.

<sup>9</sup> CR/PR at Table C-1.

<sup>10</sup> See, *e.g.*, Hearing Tr. at 88 (Mindich); 100 (Goldenberg); 112 (Hericks).

<sup>11</sup> See Hearing Tr. at 88 (Mindich).

<sup>12</sup> CR at I-12 to I-14; PR at I-9 to I-10. There are also a few firms that produce relatively small volumes of CSWG hangers for local markets. CR at I-12 & n.44; PR at I-9 & n.44.

<sup>13</sup> Hearing Tr. at 29-30 (Roby).

characterized by chronic overcapacity, with total capacity exceeding U.S. demand throughout the POI.<sup>14</sup> Historically, regardless of source, imports of CSWG hangers have had a minimal presence in the U.S. market; more recently, however, the domestic industry experienced a progressive decline in U.S. market share, from 99.3 percent in 1997 to 86.4 percent in interim 2002.<sup>15</sup>

CHC is the largest domestic producer, accounting for \*\*\* of U.S. production in 2001, and both CHC and Laidlaw indicate that they sell throughout the United States; in contrast, M&B and United Wire serve the eastern half of the United States while Nagel serves \*\*\*.<sup>16</sup> Although subject imports entered into the U.S. market primarily through the ports of Los Angeles and New York City during interim 2002, subject merchandise competes with the domestic like product throughout the U.S. market.<sup>17</sup>

In addition to their U.S. production operations, M&B opened a production facility in Mexico in \*\*\*, and Laidlaw owns a production facility in Canada. In 2001, Laidlaw also negotiated an exclusive supply agreement with Shanghai Wells Hanger Company, which was intended in part to improve Laidlaw's margins on sales of CSWG hangers via access to lower-cost imports from China.<sup>18</sup> Laidlaw alone accounted for almost \*\*\* percent of the 208.4 million unit increase in subject import volume between interim 2001 and interim 2002.<sup>19</sup> Other U.S. producers that imported or purchased subject merchandise during interim 2002 include \*\*\*, whose increased purchases of subject imports accounted for \*\*\* percent of the increase in subject import volume between interim periods; \*\*\*, which accounted for \*\*\* percent of the increase in subject import volume between interim periods; \*\*\*, whose purchases of subject imports accounted for \*\*\* percent of the increase in subject import volume between interim periods; and \*\*\*, which accounted for \*\*\* percent of the increase in subject import volume between interim periods.<sup>20</sup>

With respect to \*\*\*, \*\*\*, in absolute volume, however, nonsubject imports maintained only a minor presence in the U.S. market over the POI.<sup>21</sup> Apart from M&B's facility, there appears to be little production capacity for CSWG hangers in Mexico.<sup>22</sup>

*Market Competition.* CSWG hangers contribute only minimally to the overall cost of dry cleaning services.<sup>23</sup> Nevertheless, competition for sales to the dry cleaning segment of the CSWG hanger market is driven mainly by price; confronted with significant and rapidly increasing volumes of perfectly substitutable lower-priced imports, U.S. producers were forced to choose between accepting price concessions or sacrificing sales volumes.<sup>24</sup> Significant price-based competition from subject imports appears concentrated in six products (referred to as Products 1 through 6 in the Commission's Report);

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<sup>14</sup> CR/PR at Table C-1.

<sup>15</sup> See CR/PR at Table C-1.

<sup>16</sup> CR at I-12 & I-14; PR at I-9.

<sup>17</sup> See Official Import Statistics (2002), U.S. Department of Commerce; see also Hearing Tr. at 68-69 (Roby).

<sup>18</sup> Hearing Tr. at 161 (Livermore).

<sup>19</sup> Calculated from CR/PR at Table 8.

<sup>20</sup> Calculated from CR/PR at Table 3 & Table 8.

<sup>21</sup> See CR/PR at Table 3 & Table C-1. The share of the U.S. market held by nonsubject imports during the POI peaked at a mere 0.7 percent during interim 2002. CR/PR at Table C-1.

<sup>22</sup> See Hearing Tr. at 150 (Malashevich).

<sup>23</sup> See, e.g., Hearing Tr. at 111 (Mindich); Petitioners' Posthearing Brief, Appendix 2 at E-2 (response to questions from Commissioner Bragg).

<sup>24</sup> See, e.g., Hearing Tr. at 97-98 (Roby); 148-149 (Mindich, Goldenberg, Hericks).

these six products accounted for \*\*\* percent of U.S. shipments by the domestic industry in 2001, as well as \*\*\* percent of the volume of subject imports that year.<sup>25</sup> During interim 2002, these six products accounted for \*\*\* percent of U.S. shipments by the domestic industry, and \*\*\* percent of volume of subject imports during that period.<sup>26</sup> Notably, U.S. shipments of the first five of these products by the domestic industry experienced price declines ranging from \*\*\* percent to \*\*\* percent over the period 1999 through 2001, while shipments of the sixth product experienced a price increase of \*\*\* percent.<sup>27</sup> Importantly, subject imports uniformly undersold the domestic like product throughout the POI and by substantial margins; in particular, from January 1999 through September 2002, the margins of underselling for these six products almost always fell in a range of between \*\*\* percent and \*\*\* percent.<sup>28</sup> Given the significant degree of underselling by subject imports and the price-based nature of competition for sales of CSWG hangers, a commodity product regardless of source, it is evident that the purchase of subject merchandise afforded a competitive advantage to distributors who sourced Chinese imports, rather than the domestic like product.

## Import Relief

*Magnitude of Remedy.* The Commission's Report states that the \$3.6 million decline in operating income for the domestic industry between interim 2001 and interim 2002 is attributable to an unfavorable price variance of about \$7.0 million that outweighed a favorable variance of about \$3.5 million for net cost/expense.<sup>29</sup> I find this indicative of the need for a price-based remedy in this case, as opposed to a quantitative restriction. In addition, I note that both Petitioners and Respondents have referred to 1999 as an appropriate base year, though for different reasons.<sup>30</sup>

I also find 1999 to be an appropriate base year for formulating a remedy recommendation.<sup>31</sup> In particular, I note that the unit net sales for shipments by the domestic industry (equivalent to average unit COGS plus average unit SG&A plus average unit operating income) averaged \$39.12 in 1999.<sup>32</sup> In comparison, the weighted average unit value for subject imports of the six products for which pricing data was collected was \$32.79 during interim 2002.<sup>33</sup> An increase of 19.3 percent in the weighted average unit value for subject imports would roughly equal the \$39.12 average unit net sales for the domestic industry in 1999. I further note, however, that the unit cost of goods sold for the domestic industry during interim 2002 was \$1.25 higher than the unit cost of goods sold in 1999; adding this amount to the average unit net sales for U.S. shipments by the domestic industry in 1999 results in a figure of \$40.37. An increase of 23.1 percent in the weighted average unit value for subject imports would roughly equal \$40.37. Based upon the foregoing, I find it appropriate to recommend an initial

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<sup>25</sup> Calculated from CR/PR at Tables 25 through 30 & Table C-1.

<sup>26</sup> *Id.*

<sup>27</sup> Calculated from CR/PR Tables 25 through 30.

<sup>28</sup> See CR/PR Tables 25 through 30.

<sup>29</sup> CR at I-40; PR at I-27.

<sup>30</sup> See Hearing Tr. at 59 (Malashevich); 175 (Reilly).

<sup>31</sup> According to Petitioners, "1999 was the last year during which the domestic industry experienced a reasonable level of profit and was not otherwise being substantially injured by imports from China." Hearing Tr. at 59 (Malashevich).

<sup>32</sup> CR/PR at Table C-1.

<sup>33</sup> Calculated from CR/PR Tables 25 through 30.

additional duty of 20 percent *ad valorem*.<sup>34</sup> In addition, based upon the restructuring efforts of the domestic industry outlined below, I believe that liberalization of this additional duty is appropriate over the course of the relief period, to a level of 15 percent *ad valorem*. An increase of 15 percent in the weighted average unit value for subject imports would slightly exceed the \$37.46 average unit net sales for the domestic industry in interim 2002; this should prove sufficient for an aggressively restructuring industry that is increasingly able to compete with subject imports.

*Duration of remedy.* With respect to the appropriate duration of a remedy, I note that the Petitioners have provided specific information regarding additional restructuring efforts planned by certain U.S. producers. In addition to the recent steps taken by CHC, I note the following: \*\*\*.

Based upon my review, I believe that each of these efforts may be substantially or entirely completed within the next two years; at a minimum, in light of the price stabilization that will result from the imposition of an appropriate increase in duty on subject imports, I believe that any financing necessary to complete these efforts can be secured by the domestic industry within the next two years.

*Conclusion.* Based upon all the foregoing, I find that a two-year remedy is appropriate in this case. I propose that the remedy be comprised of a duty, in addition to the current rate of duty on subject imports from China, set at 20 percent *ad valorem* in the first year of the relief period, and 15 percent *ad valorem* in the second year of the relief period. I believe that this proposal will be effective in remedying the market disruption experienced by the domestic industry, as it will apply to substantially all imports of CSWG imports into the U.S. market.<sup>35</sup> I also believe that this remedy is of sufficient magnitude and duration to permit the domestic industry to successfully complete its intended restructuring efforts so that the industry as a whole (as opposed to individual producers) can adequately adjust to the availability of CSWG hangers from China.

Finally, I note my reservation with respect to the results of the Commission's modeling exercises in this investigation. I base this reservation upon my understanding of the dynamics of this industry developed through my review of the empirical evidence on the record regarding the commodity nature of CSWG hangers and the strength of price-based competition in the U.S. market. On balance, I believe that an increase in duty on subject imports, whether 15 percent or 20 percent *ad valorem*, will result in price effects greater than those depicted by the model results, as well as volume effects that are less than those depicted by the model results.<sup>36</sup>

### **Short-Term and Long-Term Effects**

Section 421(g)(2)(D) of the Trade Act<sup>37</sup> requires that the Commission include in its report to the President and the U.S. Trade Representative a description of:

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<sup>34</sup>The weighted average unit value of U.S. shipments by the domestic industry of the six products for which pricing data was collected was \$47.57 in 1999. *Calculated from* CR/PR Tables 25 through 30. I find that unit value to constitute an excessive reference point in this case, particularly in light of the more recent favorable net cost/expense variance for the domestic industry between interim periods referenced above.

<sup>35</sup>During interim 2002, subject imports from China accounted for 92.6 percent of total imports into the U.S. market. *Calculated from* CR/PR at Table C-1.

<sup>36</sup>*See* Memorandum EC-AA-006 (January 31, 2003) at I-6.

<sup>37</sup>19 U.S.C. § 2451(g)(2)(D).

- (i) the short- and long-term effects that implementation of the action recommended . . . is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and
- (ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers, and the communities where production facilities of such industry are located, and on other domestic industries.

***Short-Term and Long-Term Effects of the Recommended Remedy–***

I anticipate that the short-term effects of my recommended remedy will include the stabilization of price levels in the U.S. market for CSWG hangers, the return of the domestic CSWG hanger industry as a whole to a reasonable level of profit and the concomitant ability of U.S. producers to either complete their restructuring efforts or, at a minimum, to secure the financing necessary to complete such efforts. While the short-term effects also will include an increase in the cost structure of distributors of CSWG hangers and dry cleaning establishments, I believe that these increased costs can be passed on fully to purchasers of dry cleaning services and thus the impact on these downstream industries will be minimal. Finally, although consumers ultimately will pay these increased costs, I believe that the impact on consumers will be minimal because the cost of a CSWG hanger is a minuscule component of the overall cost of dry cleaning services; as a result, I also believe that these increased costs will not result in an appreciable decline in demand for CSWG hangers.

I anticipate that the long-term effects of my recommended remedy will include the consolidation and rationalization of the productive resources of the domestic CSWG hangers industry, and in particular, the realignment of domestic production capacity to better reflect demand conditions in the U.S. market. I further anticipate that these steps will enable the restructured domestic industry as a whole to better compete in the U.S. market, notwithstanding the availability of CSWG hangers from China. Other than ensuring a ready supply of domestically-produced CSWG hangers, I do not anticipate any appreciable long-term effects on other industries or on consumers.

***Short-Term and Long-Term Effects of Not Taking the Recommended Action–***

I anticipate that the short-term effects of not taking my recommended action will include increasing price volatility in the U.S. market, further deterioration in the profitability of the domestic industry, further loss of market share to subject imports and increasing inefficiency in the production efforts of U.S. producers, as well as the postponement of restructuring efforts that are necessary to allow the domestic industry to better compete and/or the inability of U.S. producers to secure the financing necessary to effectuate these restructuring efforts.

I anticipate that the long-term effects of not taking my recommended action will include an abandonment of production capacity by the domestic industry that could otherwise be utilized, coupled with reductions in employment levels that could otherwise have been averted or diminished and a concomitant adverse impact on the communities where these workers are located. In sum, absent my recommended relief, I believe there is reason to question the long-term viability of much of the domestic industry.

## SEPARATE AND ADDITIONAL VIEWS OF COMMISSIONER STEPHEN KOPLAN ON REMEDY

While I join with the Commission in proposing a tariff as the appropriate import restriction to remedy the market disruption we have found to exist, I do not agree with their tariff levels or with the appropriateness of any liberalization of the tariff levels over the period. Rather, I recommend that the President impose an additional 30 percent *ad valorem* tariff on imports of certain steel wire garment (“CSWG”) hangers and that such tariff remain in place at that level for three years. I also recommend that if petitions for trade adjustment assistance are filed by domestic firms or workers producing CSWG hangers, that the President direct the U.S. Department of Commerce and the U.S. Department of Labor to expedite consideration of such petitions.

Initially, I note that I agree with the Commission’s assessment of the statutory framework and conditions of competition in this investigation set forth in the Views of the Commission on Remedy, *supra*. I also note that the statute authorizes the Commission to “propose the amount of increase in, or imposition of, any duty or other import restrictions necessary to prevent or remedy the market disruption”, and like my colleagues, I find that an additional tariff on imports of the subject imports is necessary to remedy the market disruption the Commission found to exist.

In making my proposal, I considered such factors as domestic consumption, domestic and foreign capacity, capacity utilization, projected demand, substitutability of the imported and domestic like products, pricing and in particular material injury to the domestic industry. While I agree that the remedy proposed does not seek to address all the other factors that may be adversely affecting the domestic industry, nevertheless, my recommended remedy is intended to return the quantity of subject imports to their year 2000 level. I also find that applying my proposed remedy should result in returning the Chinese market share ratio to apparent U.S. consumption to about what it was in 2000. I note that such market share rose from 5.1 percent in 2000 to 12.9 percent in the first nine months of 2002. Accordingly, I selected the year 2000 as the base year as I found that it preceded the recent rapid increase in subject imports. Although my recommended relief is temporary in nature, I am convinced that it must remain in effect for three years at my recommended additional level of 30 percent in order to give the domestic industry an opportunity to undertake and complete the initiatives it has identified as necessary to remedy the injury caused by the market disruption.<sup>1</sup>

Finally, as noted above, additional assistance over and above the tariff remedy proposed may be available to firms and workers in the domestic industry under the trade adjustment assistance programs administered by the U.S. Departments of Labor and Commerce (*see* 19 U.S.C. sec. 2271 et seq.). Such assistance may provide additional help to firms and workers in modernizing plant and equipment, retraining workers and making other adjustments both during the period the increased tariff is in place and after it terminates. It is up to the domestic firms and their workers to decide whether to file applications for such assistance. If such applications are filed, I recommend that the President direct the Labor and Commerce Departments to provide expedited consideration to petitions filed by firms and/or workers affected by the subject imports.

I also recognize that domestic producer Laidlaw does not support relief in part because it has chosen a business model that includes the importation of some of its product line from China. While an *ad valorem* tariff at my recommended level should provide assistance to the entire domestic industry by stabilizing prices and increasing shipments, it is not so high as to preclude imports from China. As the Commission notes, we do expect at least some shift to domestic sources.

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<sup>1</sup> CR and PR at Table 17; and petitioners’ post-hearing brief at App. 2, Exh. E-1.

## Short and Long-Term Effects

### Short- and Long-Term Effects of the Recommended Remedy

I believe that the tariff I recommend will address the market disruption found to exist in the domestic CSWG hanger industry and does not exceed the amount necessary to remedy the injury to domestic producers.

The remedy is intended to restore domestic sales and profitability to reasonable levels given that the CSWG hanger industry has gone through other changes (besides an influx of Chinese CSWG hangers) in the last three years. The remedy is not designed to restore levels of profitability achieved during earlier, pre-recession years of higher demand.

Based on available estimates, I anticipate that my recommended tariff will reduce imports of CSWG hangers to the levels in 2000. I also expect this tariff will result in modest increases in domestic prices and sales volumes and somewhat larger increases in domestic producer revenue. I note that this proposed tariff will have a much larger impact on subject import prices than on the prices of the domestic like product, and it will have a significant effect on subject import volumes.<sup>2</sup> While there will be some negative effect for U.S. purchasers, especially any distributors of primarily Chinese CSWG hangers, CSWG hangers are a small part of the ultimate end users' costs,<sup>3</sup> and distributors of domestic hangers should enjoy some increased prices on their sales of domestic CSWG hangers. This remedy also should provide a modest protection or benefit to domestic industries that supply raw materials to the domestic hanger industry, particularly the wire rod producers, as a result of the expected increase in domestic hanger production. There is insufficient indication that Chinese producers will move their plants and equipment to other countries as respondents allege, as few other countries have shown any significant interest in exporting CSWG hangers to the United States.

It is not possible to predict market effects with precision following the initial year of relief. In general, I expect that as prices increase, the domestic industry will be able to respond better to new market demands and to increase production as necessary. In addition, I expect the domestic industry will be able to increase its ability to compete with imported hangers as it modernizes and consolidates its production facilities. Under this tariff-based remedy, imports would continue to supply a share of the U.S. market and would continue to be an important competitive force in the U.S. market.

### Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of appropriate relief, I am convinced that the recent operating losses experienced by the domestic industry will continue and even worsen. Chinese CSWG hangers have significantly increased

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<sup>2</sup> The COMPAS model estimates that in the first year of relief, the volume of imports would decrease by between \*\*\* and \*\*\* percent. The model also estimates that subject import prices will increase by between \*\*\* and \*\*\* percent, domestic prices will increase by \*\*\* to \*\*\* percent, domestic sales quantity will increase by \*\*\* to \*\*\* percent and the domestic industry's revenue will increase by \*\*\* to \*\*\* percent. EC-AA-007 at Table 2.

<sup>3</sup> Report at I-59, and Commission staff remedy memorandum at I-2. The average selling price of an imported 18-inch white shirt hanger in interim 2002 was \*\*\* cents per hanger. The COMPAS model estimates that a remedy of an additional 30 percent *ad valorem* tariff would likely increase the cost of each hanger by at most only \*\*\*. This is very small even in the context of a relatively low priced dry cleaning item, such as a shirt. EC-AA-007 at Table 2.

their share of the domestic market even at a time of lower demand for CSWG hangers. Purchasers have reported continuing attempts by Chinese CSWG hanger sellers to penetrate new markets

with lower priced CSWG hangers,<sup>4</sup> and at least three “significant” distributors of domestic CSWG hangers went out of business in 2002.<sup>5</sup> Contrary to respondents’ arguments, there currently is no large Chinese home market for CSWG hangers, and even the increased Chinese home market demand projected by respondents would be insufficient to absorb the increased production that might result from the projected increase in capacity in China.<sup>6</sup> Thus, there is every reason to believe that imports of Chinese CSWG hangers will increase further. The domestic industry would be unable to implement its proposed investments and improvements. Coming at the same time as a continued decline in demand, this will probably mean mounting losses and eventual plant closures for the domestic industry, without time to re-train workers and undertake other adjustment efforts. The absence of such relief as I recommend will likely have a small benefit to dry cleaners, but hangers are a small part of their operating cost, and so it is not likely that any benefit to dry cleaners would outweigh the long-term benefit to the domestic industry of three years of relief at the additional *ad valorem* tariff level of 30 percent.

In particular, the continuing rapid increase in import volumes of Chinese hangers will continue to depress and suppress or undersell domestic prices and further diminish domestic market share. Thus, without appropriate relief, the domestic hanger industry remains vulnerable to continued Chinese price underselling and resultant revenue losses. If operating losses continue, the domestic industry will not be able to consolidate and restructure, thereby leaving it more vulnerable, less viable and less able to compete with subject imports. Over the longer term, a significant portion of the domestic industry would be forced to shut down. This assessment is based on the rapid increase in imports of Chinese hangers, an increase which has captured significant market share from domestic production during a period of declining demand. Such closings and partial closings will lead to increased layoffs of workers in the domestic industry, resulting in a negative impact on the local economies near the production facilities.

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<sup>4</sup> See, e.g., CR at I-60, n. 132; PR at I-38, n. 132.

<sup>5</sup> CR at I-63, n. 137; PR at I-40, n. 137.

<sup>6</sup> CR and PR at Table 19.



## ADDITIONAL VIEWS OF CHAIRMAN DEANNA TANNER OKUN

I provide these additional views because an interested party to this proceeding hindered my ability to evaluate one of the central issues in this investigation: the reason why a domestic producer revised its business plan and began to import significant quantities of subject merchandise and whether those imports negatively affected the domestic industry. Under the statute, the Commission is charged with conducting an investigation. It does so by collecting information that may be relevant to the determination that each Commissioner must make. The importance of a complete record cannot be over emphasized as this is a record proceeding and the Commission makes its determination based solely on the record. Accordingly, the Commission's governing statute and its rules authorize the Commission to protect confidential business information in order to encourage parties to submit sensitive information in confidence. Over its history, the Commission has gone to extraordinary lengths to protect confidential business information so that it can inspire confidence in submitters as to the security of their confidential information so that they will file voluntarily the information relevant to the investigation.

Laidlaw Corporation's pre-hearing brief contained an attachment that had two documents that had been submitted with large portions of the documents' text redacted. During the course of this investigation, I requested Laidlaw, a domestic producer of steel wire garment hangers and an importer of subject product, to submit in their entirety the documents in Attachment 7 of its pre-hearing brief. I sought the unredacted versions of these documents because they may have been relevant to the Commission's determination concerning market disruption in that one of the arguments raised by Laidlaw was that its imports of subject product were not negatively affecting other producers. At the hearing, Laidlaw's counsel stated that the documents relate to correspondence between the Wells Company, acting on behalf of Shanghai Wells (a Chinese hanger producer), and Laidlaw.<sup>1</sup> Later, Laidlaw's counsel described the documents in general terms as relating \*\*\*.<sup>2</sup>

I requested these documents on three occasions.

I made my first request at the January 9, 2003 Commission hearing. Laidlaw's counsel stated that the documents were not relevant to the proceeding and raised a concern that the documents contained sensitive business information.<sup>3</sup> Laidlaw did not submit the documents in its post-hearing brief. In a January 14, 2003 filing, Laidlaw's counsel stated that Laidlaw has decided to withdraw Attachment 7 in light of the Chairman's request at the hearing that Laidlaw either "re-submit the documents in their entirety under APO or withdraw the attachment." Again, Laidlaw's counsel stated that the redacted portions of the two documents contained information that was "not directly relevant to the facts in this proceeding" and was "highly sensitive business information."<sup>4</sup>

I made my second request in a January 21, 2003 information request where I corrected the record concerning Laidlaw's counsel's characterization of my original request. At the hearing, I did not offer Laidlaw the choice of either submitting the relevant documents in their entirety or withdrawing the attachment. Rather, I instructed counsel to consult with Commission Staff in terms of how to submit sensitive business information.<sup>5</sup> Laidlaw's counsel never consulted with Staff before announcing its intention to withdraw Attachment 7. In this second request, I informed Laidlaw's counsel that as the

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<sup>1</sup>Hearing Transcript at 264 (Jan. 9, 2003).

<sup>2</sup>*Ex Parte* Communication Memorandum of Dominic L. Bianchi to the Secretary (Jan. 21, 2003).

<sup>3</sup>Hearing Transcript at 263-4.

<sup>4</sup>Letter from Tighe Patton Armstrong Teasdale, PLLC to the Secretary (Jan. 14, 2003).

<sup>5</sup>Hearing Transcript at 264.

Commission goes to great lengths to protect confidential business information, parties cannot use this as a justification not to provide such information during the investigative process. Finally, I counseled Laidlaw that if it did not submit these documents by January 22, 2003, each Commissioner would be left to decide how to take the absence of this information into account in evaluating the record.<sup>6</sup>

After receiving my second request, Laidlaw's counsel contacted my staff to discuss the information request and to determine whether there was information that Laidlaw could provide, other than the documents, that would satisfy my inquiry.<sup>7</sup> Several hours before Laidlaw filed its response, the Secretary to the Commission informed Laidlaw's counsel that the Commission's rules do not provide parties with the right to withdraw documents from the record once they have been accepted. The Secretary also informed Laidlaw's counsel that section 206.17(g) of the Commission's rules addresses treatment of sensitive business information and invited counsel to consult with the Office of the Secretary about this section.<sup>8</sup> Again, Laidlaw's counsel chose not to consult with Commission Staff.

In its January 22, 2003 filing, Laidlaw's counsel once again did not provide the documents and requested that Laidlaw be permitted to withdraw Attachment 7 of Laidlaw's pre-hearing brief from the record of this investigation because it "does not rely upon any part of the documents" and it is not "seeking or obtaining any advantage – evidentiary or otherwise – from the inconsequential inclusion of these documents." Laidlaw and its counsel apologized about misunderstanding my original request at the January 9, 2003 hearing, but they decided once again not to submit the documents in Attachment 7 without redacting any text.<sup>9</sup>

I made my third request in a January 23, 2003 information request further explaining my interest in evaluating the relevancy of the documents contained in Attachment 7. Again, I counseled Laidlaw that if it did not submit these documents by noon on Friday, January 24, 2003, each Commissioner would be left to decide how to take the absence of this information into account in evaluating the record.<sup>10</sup> By statute, the Commission had until Monday, January 27, 2003, to make its determination on market disruption.

After taking cognizance of the fact that Laidlaw refused to submit these documents, counsel to the respondent Chinese producers submitted on Monday morning, January 27, 2003, an unredacted copy of one of the two documents in Attachment 7 of Laidlaw's pre-hearing brief. As this document originated from one of the Chinese producers, Shanghai Wells, the Chinese respondent searched its files over the weekend and provided it for submission.<sup>11 12</sup>

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<sup>6</sup> Information Request of Laidlaw by Chairman Deanna Tanner Okun (Jan. 21, 2003).

<sup>7</sup> *Ex Parte* Communication Memorandum of Dominic L. Bianchi to the Secretary.

<sup>8</sup> I also note that familiarity with the Commission's rules is presumed.

<sup>9</sup> Letter from Tighe Patton Armstrong Teasdale, PLLC to the Secretary (Jan. 22, 2003).

<sup>10</sup> Information Request of Laidlaw by Chairman Deanna Tanner Okun (Jan. 23, 2003).

<sup>11</sup> Counsel for the Chinese respondents noted that neither the Chinese producer that provided the first document nor the Chinese respondents had access to the other document in Attachment 7. Letter from Paul, Hastings, Janofsky & Walker LLP to the Secretary (Jan. 27, 2003).

<sup>12</sup> I note for the record that I appreciate the efforts made by counsel to the respondent Chinese producers and Shanghai Wells to be responsive to an information request of another party, and that I do not take adverse inferences against the respondent Chinese parties with regard to the missing information.

The first document, the one Shanghai Wells submitted, consists of a proposal from Wells Mfg. (USA) Inc. to Laidlaw in March 2000.<sup>13</sup> The document reflects \*\*\*.<sup>14</sup> While Laidlaw and Wells \*\*\*, they eventually agreed to an exclusive distribution agreement for Chinese hangers in the United States.<sup>15</sup> According to Laidlaw's consolidated financial statements as of September 30, 2001 and 2000, \*\*\*.<sup>16 17 18</sup>

The second document, the one the Commission never received in a completely unredacted form, was an internal Laidlaw document. The unredacted portion of this second document refers to the \*\*\*. The only remaining unredacted portion of this document refers to \*\*\*.<sup>19</sup>

It is clear that this document pertains to Laidlaw's relationship with \*\*\*. In this context, it appears that the redacted portions may have discussed the \*\*\* in the United States.

Under the statute, the Commission is charged with conducting an investigation and Commissioners fulfill this obligation by collecting information that may be relevant to the determination that each Commissioner must make. While Laidlaw's counsel has stated that the redacted portions of the two documents contained information that was "not directly relevant to the facts in this proceeding,"<sup>20</sup> the Commission, not the parties, controls the investigative process and decides whether a document is relevant. After reviewing the first document in its entirety, I found it to be relevant to the investigation as it detailed the evolving relationship between a domestic hanger producer and importer of Chinese hangers, Laidlaw, and the \*\*\* Chinese hanger producer, Shanghai Wells. As to the second document, as detailed above, the unredacted information relates to \*\*\*. It appears that the redacted information also relates to Laidlaw's \*\*\*.<sup>21</sup> Accordingly, I believe that this information would have been relevant to my evaluation of Laidlaw's argument concerning why it was importing subject merchandise.

I provide these additional views because I thought it would be instructive to parties and counsel to understand that this was not merely a procedural argument regarding Commission rules, but rather this relates to a substantive issue that hindered my ability to evaluate the arguments of the parties.

Finally, while I could take adverse inferences against Laidlaw because of its refusal to submit those documents, I note that I reached an affirmative determination concerning market disruption based on my consideration of the entire record.

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<sup>13</sup> *Id.*, Exhibit 1.

<sup>14</sup> *Id.*, Exhibit 1, p. 3.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> Laidlaw's Final Comments, Attachment 4 (Jan. 23, 2003).

<sup>17</sup> I note that the producers' questionnaire in this investigation specifically requested copies of audited financial statements and/or internal statements that show the revenues and costs of production. Laidlaw provided neither audited financial statements nor internal cost statements with its questionnaire response. Producer Questionnaire Response of Laidlaw. It never provided audited financial statements. Such statements would have assisted Commission Staff in this investigation.

<sup>18</sup> As a separate matter, Laidlaw's aforementioned consolidated financial statements indicate that Laidlaw \*\*\* Laidlaw's Final Comments, Attachment 4. During the investigation, Laidlaw argued that regional pricing existed and attributed the lower West Coast prices not to subject imports but rather to domestic competition between East West and other producers. Laidlaw \*\*\*, which is relevant to assessing the validity of Laidlaw's argument. After discovering the existence of this \*\*\*, Staff contacted \*\*\*.

<sup>19</sup> Laidlaw's Pre-hearing Brief, Attachment 7.

<sup>20</sup> Letter from Tighe Patton Armstrong Teasdale, PLLC to the Secretary (Jan. 14, 2003).

<sup>21</sup> Laidlaw \*\*\*.