

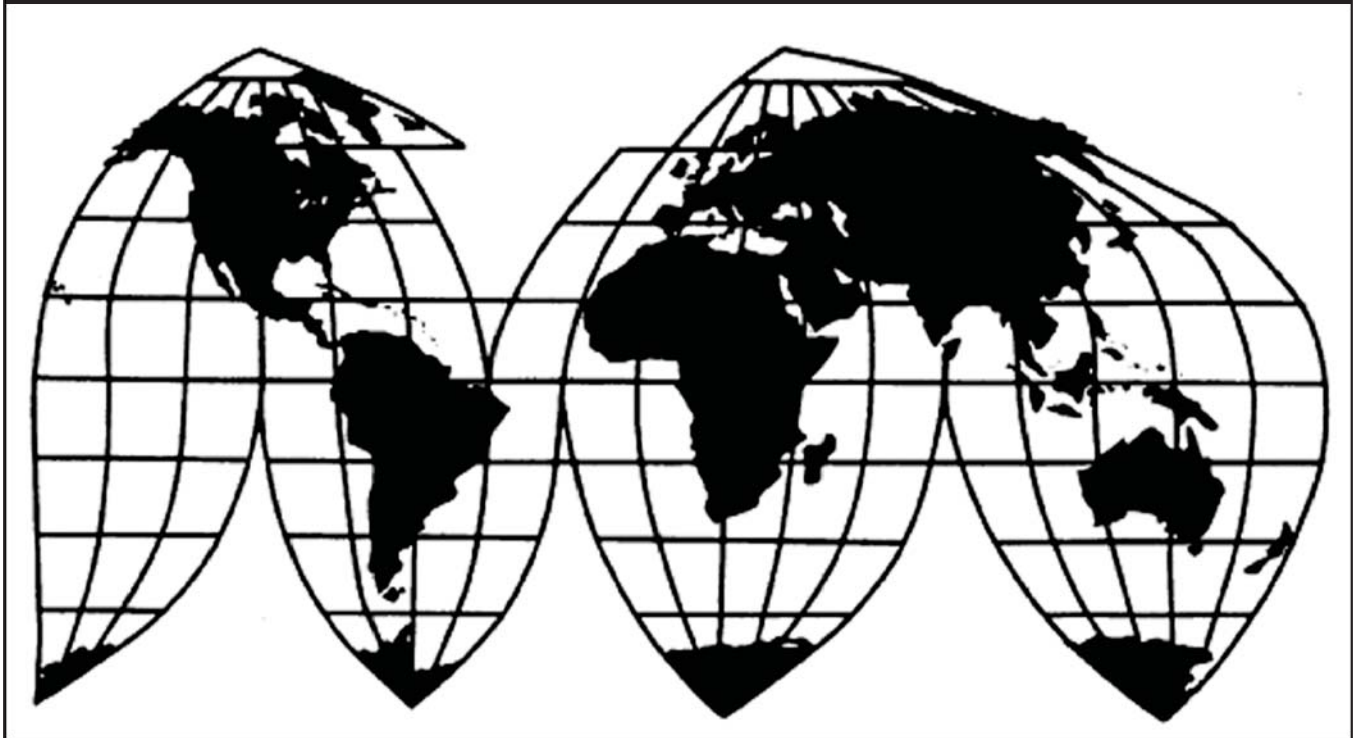
Certain Steel Nails from the United Arab Emirates

Investigation No. 731-TA-1185 (Preliminary)

Publication 4235

May 2011

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Lita David-Harris, Statistician
Douglas Corkran, Supervisory Investigator

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1185 (Preliminary)

CERTAIN STEEL NAILS FROM THE UNITED ARAB EMIRATES

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the United Arab Emirates of certain steel nails, provided for in subheadings 7317.00.55, 7317.00.65 and 7317.00.75 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).²

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

BACKGROUND

On March 31, 2011, a petition was filed with the Commission and Commerce by Mid Continent Nail Corporation, Poplar Bluff, Missouri, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain steel nails from the United Arab Emirates. Accordingly, effective March 31, 2011, the Commission instituted antidumping duty investigation No. 731-TA-1185 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 6, 2011 (76 FR 19124). The conference was held in Washington, DC, on April 21, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury.

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of this investigation, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of certain steel nails (“steel nails”) from the United Arab Emirates (“UAE”) that are allegedly sold in the United States at less than fair value (“LTFV”).¹

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.² In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no reasonable indication of material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”³

II. BACKGROUND

The antidumping petition in this investigation was filed on March 31, 2011. The petitioner, domestic producer Mid Continent Nail Corporation (“Mid Continent”), is headquartered in Poplar Bluff, Missouri.⁴ Representatives from Mid Continent appeared at the staff conference accompanied by counsel and submitted a postconference brief. The Commission sent questionnaires to 13 U.S. producers of steel nails identified in the petition as producers of nails and to six other firms identified in a prior investigation.⁵ The Commission received 10 usable questionnaire responses.⁶ These domestic producers accounted for the large majority of U.S. production of the domestic like product in 2010.⁷

¹ Chairman Okun and Commissioner Pearson find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that there is a reasonable indication that the establishment of an industry is materially retarded, by reason of subject imports of certain steel nails that are allegedly sold at less than fair value. See Dissenting Views of Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson. Chairman Okun and Commissioner Pearson join in Parts I-IV and Part V.A & B of these Views.

² 19 U.S.C. §§ 1671b(a), 1673b(a) (2000); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

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

⁴ Petition at 1; Confidential Staff Report, Mem. INV-JJ-042 at I-1 and III-1 (May 9, 2011) (“CR/PR”).

⁵ The six firms identified during a previous investigation are believed to no longer manufacture the domestic like product. ***. See Petition at 2-5; and CR/PR at III-1 and n.2.

⁶ ***. See Petition at 2-5; CR/PR at III-1 and n.1.

⁷ These 10 domestic producers accounted for more than *** percent of U.S. production of the domestic like product in 2010. CR/PR at III-1.

Representatives and counsel for a United Arab Emirates' ("UAE") producer, Dubai Wire FZE ("Dubai Wire") and U.S. importer Itochu Building Products Company, Inc., ("Itochu")⁸ (jointly, "Respondents") appeared at the staff conference and jointly submitted a postconference brief. Counsel for UAE producer Precision Fasteners LLC ("Precision Fasteners") appeared at the staff conference and submitted a postconference brief.

The Commission sent questionnaires to firms believed to be importers of subject steel nails, based on information provided in the Petition and information provided by U.S. Customs and Border Protection. Usable questionnaire responses were received from 27 companies, including 14 U.S. importers accounting for 100 percent of subject steel nail imports from the UAE during the period of investigation.⁹ In addition, the Commission received questionnaire responses from 21 importers of steel nails that accounted for nearly one-half of U.S. imports from nonsubject countries during 2010.¹⁰

The Commission sent foreign producer questionnaires to five UAE firms believed to be producing certain steel nails. Three firms¹¹ provided usable responses.¹² The exports to the United States of these firms account for all certain steel nails imported from the UAE in 2010.¹³

III. DOMESTIC LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."¹⁴ Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."¹⁵ In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation"¹⁶

⁸ Itochu reports that it imports nails from around the world which Itochu then sells to its sister company, Prime Source Building Products, Inc. ("Prime Source"). Itochu claims that Prime Source is the largest distributor of steel nails in the United States. According to Itochu, Prime Source maintains 34 distribution centers in 28 states and currently employs more than 1000 workers in the United States. Conf. Tr. at 51 (Zinman).

⁹ CR/PR at Table IV-1 contains a list of the 14 importers of record responding to the Commission's questionnaire, and the sources and shares of imports in the period 2008 to 2010.

¹⁰ CR/PR at IV-1. Nonsubject imports were reportedly from Austria, China Denmark, Korea, Liechtenstein, Malaysia, Mexico, Poland, Spain, and Taiwan. Id.

¹¹ The firms are as follows: Dubai Wire; Millennium Steel & Wire, LLC ("Millennium"); and Precision Fasteners. Two other UAE firms, Samrat Wire Industry LLC ("Samrat"), and Steel Racks Factory ("Steel Racks"), were identified by the Petitioner as producers of certain steel nails, but neither firm responded to the Commission's foreign producer questionnaire. These firms reportedly are small companies that only produce certain steel nails for the local market and not for export. Conf. Tr. at 75 (Ved).

¹² Data for these UAE respondents are presented in Table VII-3. Millennium reportedly ceased production of certain steel nails in 2009 and, according to its questionnaire response, ***. Millennium Foreign Producer Questionnaire Response at Question II-5; CR/PR at VII-1 n.3.

¹³ CR at VII-3, PR at VII-2, and CR/PR at Table VII-1.

¹⁴ 19 U.S.C. § 1677(4)(A).

¹⁵ 19 U.S.C. § 1677(4)(A).

¹⁶ 19 U.S.C. § 1677(10).

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.¹⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁸ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁹ Although the Commission must accept the determination of the U.S. Department of Commerce (“Commerce”) as to the scope of the imported merchandise that is subsidized or sold at less than fair value,²⁰ the Commission determines what domestic product is like the imported articles Commerce has identified.²¹ The Commission must base its domestic like product determination on the record in these investigations. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.²² Each like product determination made by the Commission is sui generis, and starts with the scope of the investigation.

B. Product Description

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

The merchandise covered by this investigation includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced

¹⁷ See, e.g., Cleo, Inc. V. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

¹⁸ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

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

²⁰ See, e.g., USEC, Inc. v. United States, Slip Op. 01-1421 at 9 (Fed. Cir. April 25, 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

²¹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298 n.1 (“Commerce’s {scope} finding does not control the Commission’s {like product} determination.”); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

²² See, e.g., Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int’l Trade 2000); Nippon, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int’l Trade 1988); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int’l Trade 1988).

from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hotdipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this investigation are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this investigation are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75. Excluded from the scope of this investigation are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized. Also excluded from the scope of this investigation are the following products:

- Non-collated (*i.e.*, hand-drive or bulk), two-piece steel nails having plastic or steel washers (“caps”) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500" to 8", inclusive; an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual washer or cap diameter of 0.900" to 1.10", inclusive;
- Non-collated (*i.e.*, hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 4", inclusive; an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive, and whose packaging and packaging marking are clearly and prominently labeled “Roofing” or “Roof” nails;
- Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 1.75", inclusive; an actual shank diameter of 0.116" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive, and whose packaging and packaging marking are clearly and prominently labeled “Roofing” or “Roof” nails;
- Non-collated (*i.e.*, hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75" to 3", inclusive; an actual shank diameter of 0.131" to 0.152", inclusive; and an actual head diameter of 0.450" to 0.813", inclusive, and whose packaging and packaging marking are clearly and prominently labeled “Roofing” or “Roof” nails;
- Corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;
- Thumb tacks, which are currently classified under HTSUS 7317.00.10.00;
- Fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;
- Certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and
- Fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter

raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.²³

C. Domestic Like Product Analysis

No party has requested that the Commission define the domestic like product more broadly than the scope of these investigations. Mid Continent requests that the Commission define a single domestic like product consisting of certain steel nails, coextensive with the scope, maintaining that minor variations in nail features do not justify segmenting various types of nails into separate domestic like products.²⁴ Dubai Wire agrees with the proposed definition of the domestic like product for the purposes of the Commission's preliminary phase injury determination.²⁵

Physical Characteristics and Uses. All steel nails share the same basic characteristics, consisting of a head, shaft, and point, and are produced to the same industry-wide standards.²⁶ Although most steel nails are produced from low-carbon steel, nails are also produced from stainless steel (to resist corrosion) and of hardenable medium- to high-carbon steel.²⁷ Although most nails are produced from a single piece of steel, some nails are produced from two or more pieces. Examples include a nail with a decorative head, such as an upholstery nail; a masonry anchor that comprises a zinc anchor and a steel wire nail; a nail with a large thin attached head (for nailing roofing felt, for example); and a nail with a rubber or neoprene washer assembled over its shaft (to seal the nailhole in metal or fiberglass roofing or siding).²⁸ Nails are packaged for shipment in bulk, that is, loose in a carton or other container, or collated, that is, joined with wire, paper strips, plastic strips, or glue into coils or straight strips for use in pneumatic nailing tools.²⁹

Specific uses for nails include the building of houses and other structures, both for structural framing and interior applications, decks and fences, cabinets and furniture, and crates and pallets for shipping.³⁰ Cut nails are produced from high-carbon plate rather than from wire and are rectangular rather than round. Cut nails are used primarily for joining to masonry or concrete. Although cut nails may be made for any carpentry use, the main use other than masonry is for flooring in applications where an antique appearance is required. Cut nails are packed in 50-pound cartons (also known as large-count industry standard boxes) on pallets for the construction trades, and are also packed in smaller count packages.³¹ Nails for use in pneumatic nailing tools are processed through automatic equipment to collate the nails using paper strips, plastic strips, fine steel wire, or adhesive; nails for hand-driving are packaged in bulk (loose) in cartons or in smaller count boxes for the mass merchandise retail repair and remodeling market.³²

²³ 76 Fed. Reg. 23559, 23564 (April 27, 2011).

²⁴ Mid Continent Postconference Brief at 3.

²⁵ Dubai Wire Postconference Brief at 1, n.1; Conf. Tr. at 78 (Marshak). Precision Fasteners expressed no position on Mid Continent's proposed definition of the domestic like product.

²⁶ Mid Continent Postconference Brief at 17.

²⁷ Although woodworking nails may have smaller heads and may differ in length and diameter, the differences are minor and do not delineate separate domestic like products. CR at I-12, n.42, PR at I-9, n.42.

²⁸ CR at I-12, PR at I-9.

²⁹ CR at I-12, PR at I-9.

³⁰ CR/PR at I-3 and II-1.

³¹ CR at I-14 to I-15 and n.44, PR at I-10 and n.44.

³² CR at I-14, PR at I-10; Conf. Tr. at 96-97 (Zinman).

Interchangeability. Both Mid Continent and Dubai Wire agree that certain steel nails produced to industry specifications are generally interchangeable within type, size, and finish, no matter where they are produced.³³ Although there may be some limitations on the interchangeability of certain steel nails resulting from differences in types, sizes, and finishes, as well as the compatibility of even the same type of nail with different nailing tools,³⁴ a lack of interchangeability among types of products comprising a continuum is not unexpected.³⁵

Channels of distribution. The majority of shipments by both domestic producers and importers of certain steel nails from the UAE and other sources went to distributors during the period of investigation.³⁶

Common Manufacturing Facilities, Production Processes, and Production Employees. As noted, most steel nails are produced from steel wire, while a small proportion (cut nails) are produced from steel plate. Nonintegrated nails producers use purchased steel wire as a starting raw material, whereas integrated producers utilize their own facilities to produce wire for nails, using steel wire rod as their starting material. Some integrated producers have their own steelmaking facilities and produce steel wire rod from raw materials such as scrap, pig iron, and ferroalloys.³⁷

To produce nails, wire is fed from a large coil into a nail machine that automatically straightens the wire, forms the head of the nail, and cuts the nail from the wire, simultaneously forming the point and ejecting the finished nail. Nails are made on two general types of equipment, known as a “cold-heading machines” and “rotary heading machines.” Both types of nail machines are used to produce all styles of nails and some manufacturers have both types in their facilities. These automatic machines are capable of producing a range of nail sizes and head and point styles by changing tooling and adjustment. Nails that have a helical twist, serrations, and other configurations on the shanks require an additional forming process. These nails are fed into other machines that roll, twist, stamp, or cut to required forms. These operations may also require heating of the nails before forming.³⁸

Producer and Customer Perceptions. Both Mid Continent and Dubai Wire agree that certain steel nails are a commodity product and that purchasers do not perceive the range of types of certain steel nails as distinct products.³⁹

³³ Mid Continent Postconference Brief at 14; Dubai Wire Postconference Brief at 22; Conf. Tr. at 24-25 (Skarich) and 79-80 (Zinman).

³⁴ See Conf. Tr. at 79-81 (Zinman).

³⁵ See, e.g., Carbon and Certain Alloy Steel Wire Rod from China, Germany, and Turkey, Inv. Nos. 731-TA-1099-1101 (Preliminary), USITC Pub. 3832 at 10 (January 2006) (“a lack of interchangeability among products comprising a continuum is not unexpected and not inconsistent with finding a single like product”); Outboard Engines from Japan, Inv. No. 731-TA-1069 (Preliminary), USITC Pub. 3673 at 7-8 (March 2004) (“A lack of interchangeability between products at either end of a continuum is not inconsistent with a finding of a single domestic like product when the products are all part of a continuum.”).

³⁶ CR/PR at II-1 and CR/PR at Table II-1.

³⁷ CR at I-12, PR at I-9.

³⁸ CR at I-13 to I-14, PR at I-9.

³⁹ Mid Continent Postconference Brief at 17; Dubai Wire Postconference Brief at 22; Conf. Tr. at 24 (Skarich).

Price. There is no evidence that there are significant price variations across the continuum of types of steel nails.⁴⁰

Conclusion. Certain steel nails share certain general physical characteristics and uses, are sold primarily to distributors, are produced in similar production processes, and generally are perceived to be similar products. Limitations in interchangeability among types of steel nails comprising a continuum product are not unexpected. Thus, we define a single domestic like product consisting of certain steel nails, coextensive with the scope of the investigation.

IV. DOMESTIC INDUSTRY

A. Domestic Industry

The domestic industry is defined as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴¹ In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market. Based on our finding of a single domestic like product that is co-extensive with the scope of these investigations, we find that the domestic industry includes all domestic producers of certain steel nails, coextensive with the scope of investigation.

B. Related Parties

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 19 U.S.C. § 1677(4)(B). The provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.⁴² Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each investigation.⁴³

⁴⁰ The evidence in a prior nails investigation suggested that prices for woodworking-based nails were substantially higher than those for construction-based nails. The Commission determined, however, that it was not clear from the record whether similar price variations were present across the continuum of other types of steel nails. See Certain Steel Nails from China and the United Arab Emirates, Investigation Nos. 731-TA-1114 and 1115 (Preliminary), USITC Pub. 3939 (August 2007) (“2008 Investigation (Preliminary)”) at 8.

⁴¹ 19 U.S.C. § 1677(4)(A).

⁴² 19 U.S.C. § 1677(4)(B).

⁴³ 19 U.S.C. § 1677(4)(B). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the following:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and
- (3) the position of the related producer vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

(continued...)

Three U.S. producers, *** reported that they imported the subject merchandise during the period of investigation.⁴⁴ Thus, they qualify as “related parties” under 19 U.S.C. § 1677(4)(B) and, therefore, the Commission must consider whether “appropriate circumstances” exist to exclude any of these U.S. producers from the domestic industry.

Although Mid Continent contends that “appropriate circumstances exist to exclude *** from the domestic industry, we decline to exclude any domestic producer from the domestic industry as related parties for the purposes of the preliminary phase of this investigation.

***’s imports were low in relation to its domestic production.⁴⁵ ***’s subject imports totaled *** short tons in 2008, *** short tons in 2009, and *** short tons in 2010.⁴⁶ The ratio of ***’s subject imports to its domestic production was *** percent in 2008, *** percent in 2009, and *** in 2010. Accordingly, we find that ***’s primary interest lies in domestic production rather than in importation.⁴⁷ ***’s U.S. production, as a share of the overall domestic production of the domestic like product, was *** percent in 2010.⁴⁸ *** the Petition.⁴⁹ The record does not appear to indicate that *** may be deriving a benefit from importing subject merchandise because its operating income margins ***.^{50 51} We find that appropriate circumstances do not exist for the Commission to exclude *** from the domestic industry as a related party for purposes of the preliminary phase investigation.

***’s imports of subject merchandise were also very low in relation to its domestic production. *** imported *** short tons in 2008, *** short tons in 2009, and *** short tons in 2010.⁵² The ratio of ***’s subject imports to its domestic production was *** percent in 2008, *** percent in 2009, and ***

⁴³ (...continued)

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int’l Trade 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Open-End Spun Rayon Singles Yarn from Austria, Inv. No. 731-TA-751 (Preliminary), USITC Pub. 2999 at 7 n.39 (October 1996). These latter two considerations were cited as appropriate factors as well in Allied Mineral Products, Inc. v. United States, —Fed. Supp. 2d.—, Slip Op. 04-139 (Ct. Int’l Trade November 12, 2004) at 6.

⁴⁴ CR/PR at Table III-5. Neither Dubai Wire nor Precision Fasteners expressed a position with respect to the possible exclusion of related parties from the domestic industry.

⁴⁵ See CR at III-9, PR at III-6, and CR/PR at Table III-5.

⁴⁶ CR/PR at Table III-5.

⁴⁷ Consistent with her practice in past investigations and reviews, Commissioner Aranoff does not rely on individual-company operating income margins, which reflect a domestic producer’s financial operations related to production of the domestic like product, in assessing whether a related party has benefitted from importation of subject merchandise. Rather, she determines whether to exclude a related party based principally on its ratio of subject imports to domestic production and whether its primary interests lie in domestic production or importation.

⁴⁸ CR/PR at Table III-1.

⁴⁹ *** operating income margin was *** percent in 2010 while the industry average was *** percent. CR/PR at Table III-1.

⁵⁰ CR/PR at Table VI-2.

⁵¹ For purposes of this preliminary investigation, Commissioner Pinkert does not rely upon related parties’ financial performance as a factor in determining whether there are appropriate circumstances to exclude them from the domestic industry and relies instead on other information relevant to this issue. The present record is not sufficient to link the related parties’ profitability on U.S. operations to any specific benefit they derive from importing. See Allied Mineral Products, Inc. v. United States, 28 C.I.T. 1861, 1865-1867 (2004). For any final investigation, Commissioner Pinkert invites the parties to provide any information they may have with respect to whether related parties are benefitting financially from their status as related parties.

⁵² CR/PR at Table III-5.

percent in 2010.⁵³ ***'s U.S. production, as a share of the overall domestic production of the domestic like product, was *** percent in 2010;⁵⁴ thus its interests appear to lie in domestic production. *** the Petition.⁵⁵ As noted earlier, however, ***. Given that *** did not provide any usable financial data, its exclusion in the preliminary phase is largely moot.⁵⁶ Therefore, we find that appropriate circumstances do not exist to exclude *** from the domestic industry as a related party for purposes of the preliminary phase investigation.

***'s imports of subject merchandise likewise were low relative to its domestic production.⁵⁷ *** imported *** short tons in 2008, *** short tons in 2009, and *** short tons in 2010.⁵⁸ The ratio of ***'s subject imports to its domestic production was *** percent in 2008, *** percent in 2009, and *** percent in 2010.⁵⁹ ***'s U.S. production, as a share of the overall domestic production of the domestic like product, was *** percent in 2010.⁶⁰ *** the Petition.⁶¹ We conclude that ***'s interests lie principally in domestic production rather than importation. *** may have derived some benefit from its purchases of subject imports, particularly in 2010, as its financial results were *** of the industry in that year.⁶² We find that appropriate circumstances do not exist to exclude *** from the domestic industry as a related party for purposes of the preliminary phase investigation.

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS⁶³

A. Legal Standard

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.⁶⁴ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁶⁵ The statute defines “material injury” as “harm which is not

⁵³ CR/PR at Table III-5.

⁵⁴ CR/PR at Table III-1.

⁵⁵ CR/PR at Table III-1.

⁵⁶ See CR/PR at III-1 n.3.

⁵⁷ See CR/PR at Table III-5.

⁵⁸ CR/PR at Table III-5.

⁵⁹ CR/PR at Table III-5. Mid Continent also reports that ***. Mid Continent Postconference Brief at 4.

⁶⁰ CR/PR at Table III-1.

⁶¹ CR/PR at Table III-1; *** Importer Questionnaire at II-5 to II-6; Mid Continent Postconference Brief at 4.

⁶² CR/PR at Tables VI-2 and C-1.

⁶³ Negligibility under 19 U.S.C. § 1677(24) is not an issue in this investigation. Official statistics from Commerce indicate that subject imports from the UAE, by quantity, accounted for 27.3 percent of total certain steel nail imports in March 2010 to February 2011, the most recent 12-month period preceding the filing of the petition for which data were available. CR at IV-7, PR at IV-5. Therefore, the volume of subject imports was well above the statute's three percent negligibility level.

⁶⁴ 19 U.S.C. §§ 1671b(a), 1673b(a).

⁶⁵ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... {and} explain in full its relevance to the determination.”

(continued...)

inconsequential, immaterial, or unimportant.”⁶⁶ In assessing whether there is a reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁷ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁶⁸

Although the statute requires the Commission to determine whether there is a reasonable indication that the domestic industry is materially injured or threatened with material injury “by reason of” unfairly traded imports,⁶⁹ it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.⁷⁰ In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.⁷¹

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.⁷² In performing its examination, however, the Commission need not

⁶⁵ (...continued)

19 U.S.C. § 1677(7)(B).

⁶⁶ 19 U.S.C. § 1677(7)(A).

⁶⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁸ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁹ 19 U.S.C. §§ 1671b(a), 1673b(a).

⁷⁰ Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), aff’g 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

⁷¹ The Federal Circuit, in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred “by reason of” the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

⁷² Statement of Administrative Action (“SAA”) on Uruguay Round Agreements Act (“URAA”), H.R. Rep. 103-316, Vol. I at 851-52 (1994) (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of

(continued...)

isolate the injury caused by other factors from injury caused by unfairly traded imports.⁷³ Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.⁷⁴ It is clear that the existence of injury caused by other factors does not compel a negative determination.⁷⁵

Assessment of whether material injury or threat of material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure{s} that it is not attributing injury from other sources to the subject

⁷² (...continued)

nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); accord Mittal Steel, 542 F.3d at 877.

⁷³ SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

⁷⁴ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

⁷⁵ See Nippon Steel Corp., 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

imports.”⁷⁶ ⁷⁷ Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”⁷⁸

The Federal Circuit’s decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit’s guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.⁷⁹ The additional “replacement/benefit” test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission’s interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have “evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports,’” and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.⁸⁰ Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S.

⁷⁶ Mittal Steel, 542 F.3d at 877-78; *see also id.* at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination {and has} broad discretion with respect to its choice of methodology.”) *citing United States Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

⁷⁷ Commissioner Pinkert does not join this paragraph or the following three paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal, held that the Commission is required, in certain circumstances, when considering present material injury, to undertake a particular kind of analysis of nonsubject imports, albeit without reliance upon presumptions or rigid formulas. Mittal explains as follows:

What Bratsk held is that “where commodity products are at issue and fairly traded, price-competitive, non-subject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether non-subject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F.3d at 878.

⁷⁸ Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); *see also* Mittal Steel, 542 F.3d at 879 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

⁷⁹ Mittal Steel, 542 F.3d at 875-79.

⁸⁰ Mittal Steel, 542 F.3d at 873 (*quoting from* Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission’s alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.^{81 82}

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.^{83 84}

As noted above, the Commission has nearly complete data coverage for the domestic industry. The Commission also received questionnaire responses from 14 importers that accounted for all of the subject imports, by quantity, for the period of investigation.⁸⁵ The Commission received questionnaire responses from two subject producers in the UAE that accounted for all of the subject imports in 2010.⁸⁶ When appropriate in these investigations, we have relied on the facts otherwise available, including official import statistics from Commerce and information available from published sources, as well as information submitted in these investigations.⁸⁷

For the reasons stated below, we find there is a reasonable indication that the domestic industry producing certain steel nails is materially injured by reason of subject imports from the United Arab Emirates that are allegedly sold in the United States at less than fair value.⁸⁸

⁸¹ Commissioner Lane also refers to her dissenting views in Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Inv. Nos. 731-TA-1131-1134 (Final), USITC Pub. 4040 (Oct. 2008), for further discussion of Mittal Steel.

⁸² To that end, after the Federal Circuit issued its decision in Bratsk, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission's causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of nonsubject imports.

⁸³ Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.").

⁸⁴ We provide in the discussion of impact below an analysis of other factors alleged to have caused any material injury that likely would be experienced by the domestic industry.

⁸⁵ CR/PR at Table IV-1.

⁸⁶ CR/PR at Table VII-1. Subject exports from these producers match or exceed U.S. imports from the UAE in all three years of the period of investigation.

⁸⁷ Chairman Okun notes that the statute authorizes the Commission to take adverse inferences in injury investigations, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. 19 U.S.C. § 1677e. She generally gives credence to the facts supplied by the participating parties and certified by them as true, but bases her decision on the evidence as a whole, and does not automatically accept participating parties' suggested interpretations of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." SAA at 869.

⁸⁸ Chairman Okun and Commissioner Pearson find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that there is a reasonable indication that the establishment of an industry is materially retarded, by reason of subject imports of certain steel nails that are allegedly sold at less than fair value. See Dissenting Views of Chairman Deanna Tanner Okun and Commissioner

(continued...)

B. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis in the preliminary phase of this investigation.

1. Demand Considerations

Steel nails generally are used in residential and commercial construction and industrial sectors to fasten two pieces of material, typically wood or other solid building materials, together. In the construction sector, steel nails are used in the building of houses and other structures, while in the industrial sector they are used to make furniture and cabinets, as well as crates and pallets for shipping. Nails are packaged for shipment in bulk, that is, loose in a carton or other container, or collated, that is, joined with wire, paper strips, plastic strips, or glue into coils or straight strips for use in pneumatic nailing tools.⁸⁹

Apparent U.S. consumption of steel nails decreased from 661,518 short tons in 2008 to 440,997 short tons in 2009, then increased to 526,467 short tons in 2010.⁹⁰ The construction sector is the single largest end use for steel nails. Consequently, demand for steel nails is strongly influenced by activity in the construction market.⁹¹ New housing starts in the United States are the major factor influencing the overall demand.⁹² Monthly new housing starts declined sharply during 2008 and then fluctuated within a narrow range from 2009 to 2010.⁹³ According to questionnaire responses, demand for steel nails has decreased since January 2008 due to decreases in housing construction and the weak general economy.⁹⁴

The parties agree that the construction market is the primary driver of demand for steel nails in the U.S. market.⁹⁵ Dubai Wire alleges, however, that the construction sector can be subdivided into new construction market activity, in which nails are sold through wholesalers, and the remodeling/repair/Do-It-Yourself (“DIY”) activity, in which nails are sold through mass merchandise retailers, such as Home Depot and Lowes.⁹⁶ Dubai Wire also alleges that the domestic producers do not compete for sales to the mass merchandisers primarily because they cannot meet the significant demands made by these customers, such as 100s of SKUs,⁹⁷ just-in-time delivery, private labeling, and multiple small packages.⁹⁸

⁸⁸ (...continued)

Daniel R. Pearson.

⁸⁹ CR at I-12, PR at I-9.

⁹⁰ CR at II-4, PR at II-2, and CR/PR at Table C-1.

⁹¹ CR/PR at II-1.

⁹² CR at II-4, PR at II-2.

⁹³ CR/PR at Figure II-1.

⁹⁴ CR at II-4, PR at II-2. All eight responding domestic producers and 15 of 22 responding importers reported that demand had decreased; the other seven responding importers reported that demand had fluctuated since January 2008. Id.

⁹⁵ Mid Continent Postconference Brief at 5; Dubai Wire Postconference Brief at 20.

⁹⁶ Dubai Wire Postconference Brief at 20. Reportedly, *** percent of PrimeSource’s sales are to mass merchandise retailers, with a substantial portion of the “hand drive” nails packaged in small packs (1- and 5-pound packs). CR at II-8 n.9, PR at II-6 n.9; Dubai Wire Postconference Brief at 49-50.

⁹⁷ A Stock Keeping Unit (“SKU”) “is a code number, typically used as a machine-readable bar code, assigned to a single item of inventory. As part of a system for inventory control, the SKU represents the smallest unit of a product that can be sold from inventory, purchased, or added to inventory.” Encyclopaedia Britannica (<http://www.britannica.com/eb/article-9387747>). Thus, a merchant may assign different SKUs to a product for

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Mid Continent counters that the principal U.S. market activity remains residential construction, notwithstanding the decreases in housing starts and the economic downturn,⁹⁹ and that the domestic producers sell steel nails in all channels of distribution with all the types of nails sold by the subject producers in the U.S. market.¹⁰⁰ There is some evidence in the record to support Mid Continent's assertion that the domestic producers compete for sales to remodel/repair/DIY customers.¹⁰¹ We intend to revisit the issue of demand in the various sectors of the domestic market for steel nails and the extent to which the domestic product and subject imports compete in each of these sectors in any final phase investigation.

2. Supply Considerations

There are three sources of supply in the U.S. market: domestic shipments, imports of subject merchandise from the UAE, and imports from nonsubject countries, including imports of certain steel nails from China that are subject to an antidumping duty order imposed in August 2008.¹⁰² During the period of investigation, 10 domestic producers accounted for over *** percent of U.S. production of steel nails in 2010.¹⁰³ A number of domestic producers reported both mill closures and the curtailment and consolidation of production from 2008 to 2010.¹⁰⁴

The domestic industry historically has supplied a relatively small portion of the U.S. market for steel nails, with the remainder supplied by imports.¹⁰⁵ Nonsubject imports had a larger share of the U.S. market than either the domestic industry or the subject imports over the period of investigation, but their share of the market decreased steadily over the period. At the same time, subject imports steadily gained

⁹⁷ (...continued)

inventory control purposes based on differences in packaging, model variations, or locations of the inventory.

⁹⁸ Dubai Wire Postconference Brief at 21-22. The record shows, however, that domestic producers are also capable of packaging nails in 1-and 5-pound boxes. Currently, Maze Nails, Specialty Nail, and ITW, advertise boxes of steel nails as small as 1-and 5-pounds. Pneu-Fast advertises boxes of steel nails as small as 7-pounds. CR at I-14 n.44, PR at I-10 n.44.

⁹⁹ Mid Continent alleges that demand in the remodeling/repair/DIY market, like the housing market, decreased significantly, down 23 percent from mid-2007 through 2009, as a result of the recession. Mid Continent Postconference Brief at 7-8.

¹⁰⁰ Mid Continent Postconference Brief at 38; Conf. Tr. at 25 (Skarich) (“Both the domestic producers and the UAE producers produce and sell a full spectrum of steel nails through distribution channels. We even produce and sell private label nails to some longstanding customers despite the fact that it can dilute our brand. We also sell some nails directly to end users. Distributors compete with each other to sell retailers, construction and industrial users throughout our country. Therefore, our {Mid Continent} nails and the rest of the domestic industry's nails compete in all channels of distribution with all types of nails sold by the UAE in the U.S. market.”).

¹⁰¹ ***.

¹⁰² Antidumping duties were imposed on U.S. imports of certain steel nails from China in August 2008. See Antidumping Duty Order; Certain Steel Nails from the People's Republic of China, 73 Fed. Reg. 44961 (August 1, 2008). Paslode Fasteners (Shanghai) Co., Ltd. (“Paslode”), a division of domestic producer ITW, was excluded from the order and, consequently, its imports are not subject to the antidumping duty order on certain steel nails from China. See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 Fed. Reg. 33977, 33981 (June 16, 2008), and CR/PR at Table IV-3 note.

¹⁰³ CR/PR at III-1. There were 17 domestic producers of certain steel nails at the time of the 2008 Investigation. 2008 Investigation (Preliminary) at 18.

¹⁰⁴ CR/PR at Table III-2. Examples include: ***. Id.

¹⁰⁵ CR/PR at Table IV-4.

market share and the domestic industry's market share initially increased from 2008 to 2009, and then decreased from 2009 to 2010.¹⁰⁶

3. Substitutability & Other Conditions

Steel nails are produced to certain industry specifications, including FF-N and ASTM.¹⁰⁷ While the type, size, and finish may limit the interchangeability of a specific product for a particular end use, this limitation applies whether it is a domestic product, subject import, or nonsubject import. Thus, the record supports the conclusion that steel nails are generally interchangeable within type, size, and finish, regardless of where produced. The majority of responding domestic producers and importers reported that the domestic like product, the subject imports, and nonsubject imports are frequently or always interchangeable.¹⁰⁸

The parties disagree on whether the types of nails supplied by the domestic producers compete with nails imported from the UAE. Dubai Wire alleges that the domestic producers manufacture only a limited range of products that do not compete with the wider range and variety of packaging options available from the UAE producers. Dubai Wire alleges that there are numerous categories of subject nails that the domestic industry does not produce, and that competition between domestically produced steel nails and a substantial volume of subject imports is therefore attenuated.¹⁰⁹ Mid Continent counters that the domestic industry has the capability to produce, and supply the full range of steel nails exported by Dubai Wire to the U.S. market. Mid Continent also disputes the assertion of attenuated competition between subject imports and the domestic like product and that a single producer source of supply is available in the UAE, but not from domestic producers. Mid Continent asserts that the domestic producers collectively are "fully capable" of supplying the full range of nail products "should the demand exist at a fairly-traded price range."¹¹⁰ In any final phase of this investigation, we will seek additional information regarding the degree of head-to-head competition between steel nails produced domestically and subject imports.

The majority of producers and importers reported that no substitutes exist for steel nails.¹¹¹ Although quality is the most common non-price factor listed, so long as nails meet the specifications required for the specific end use, price is generally the largest single factor affecting purchasing decisions.¹¹² Steel nails are sold mostly on a spot basis,¹¹³ and raw materials account for a substantial share of the cost of steel nails.¹¹⁴

¹⁰⁶ CR/PR at Table C-1.

¹⁰⁷ Mid Continent Postconference Brief at 14; Dubai Wire Postconference Brief at 22; Conf. Tr. at 24-25 (Skarich) and 79-80 (Zinman).

¹⁰⁸ CR at II-7, PR at II-5, and CR/PR at Table II-2.

¹⁰⁹ Dubai Wire Postconference Brief at 21-22.

¹¹⁰ Mid Continent Postconference Brief at 11.

¹¹¹ CR at II-5, PR at II-4. Several firms listed a number of possible substitutes, including screws, staples, and anchors for applications. These products, however, are not considered to be price competitive with steel nails. *Id.*

¹¹² CR at II-9, PR at II-7, and CR/PR at Table II-3.

¹¹³ CR at V-3, PR at V-2.

¹¹⁴ CR/PR at V-1. Raw material costs accounted for 65.8 percent of the cost of goods sold ("COGS") in 2008, 65.2 percent in 2009, and 58.8 percent in 2010. *Id.* The main raw material used to produce certain steel nails is carbon steel wire rod. Carbon steel wire prices increased during the first part of 2008, peaked in July and August 2008, and then fell sharply during the remainder of 2008 and the early part of 2009. Carbon steel wire rod prices increased irregularly thereafter, but remained below the peak levels reached in 2008. *See* CR/PR at Figure V-1.

C. Volume of the Subject Imports

Section 771(7)(C) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹¹⁵

The volume of subject imports is significant and increased substantially from 2008 to 2010, both in absolute terms and relative to apparent U.S. consumption. The increases were sharpest from 2009 to 2010,¹¹⁶ after imports of certain steel nails from China became subject to antidumping duties and began to reduce their presence in the U.S. market.¹¹⁷ U.S. imports of steel nails from the UAE increased by 31.6 percent from 2008 to 2009 and by 86.7 percent from 2009 to 2010. The volume of subject imports measured by quantity increased from 48,256 short tons in 2008 to 63,494 short tons in 2009, and then to 118,558 short tons in 2010, for an overall increase of 145.7 percent over the period of investigation.¹¹⁸

Subject imports made significant gains in market share over the period of investigation, increasing from 7.3 percent in 2008 to 14.4 percent in 2009, and to 22.5 percent in 2010. Domestic producers’ market share increased from 18.6 percent in 2008 to 22.0 percent in 2009, before decreasing to 17.8 percent in 2010. The volume of nonsubject imports decreased by 42.8 percent from 2008 to 2009, before increasing by 12 percent in 2010.¹¹⁹ The nonsubject imports’ share of apparent U.S. consumption, however, decreased from 74.1 percent in 2008 to 63.6 percent in 2009, and then to 59.7 percent in 2010. Thus, during 2008 to 2009, subject imports and domestic production both gained market share at the expense of nonsubject imports, whereas during 2009 to 2010 the 86.7 percent increase in subject imports resulted in a loss of market share not only for nonsubject imports but for domestic producers as well.¹²⁰ In addition, while volumes of subject imports increased and apparent U.S. consumption decreased over the period of investigation, U.S. importers’ inventories of subject imports almost *** over the period.¹²¹

In sum, the volume of subject imports increased both absolutely and relative to consumption over the period of investigation. For the foregoing reasons, we find that the volume and increase in volume of subject imports were significant.

¹¹⁵ 19 U.S.C. § 1677(7)(C)(i).

¹¹⁶ CR at IV-2, PR at IV-1 and CR/PR at Table IV-2.

¹¹⁷ Antidumping duties were imposed on imports of certain steel nails from China in August 2008. See Antidumping Duty Order, Certain Steel Nails from the People’s Republic of China, 73 Fed. Reg. 44961 (August 1, 2008). The petition in that investigation was filed in May 2007 and the Commission’s final phase period of investigation was calendar years 2005 through 2007. See Certain Steel Nails from China, Inv. No. 731-TA-1114 (Final), USITC Pub. 4022 (July 2008).

¹¹⁸ CR/PR at Table IV-3.

¹¹⁹ A large portion of these nonsubject imports were from China. China accounted for 34.8 percent and Taiwan for 13.2 percent of total U.S. imports of steel nails during 2010. CR at IV-4, PR at IV-3. Imports of nonsubject certain steel nails from China were 266,703 short tons in 2008, 137,975 short tons in 2009, and 150,730 short tons in 2010. CR/PR at Table IV-3. The imports from China entering the United States prior to August 1, 2008, were the subject an affirmative material injury determination by the Commission that year. Imports from the second largest source of certain steel nails, Taiwan, were 76,520 short tons in 2008, 61,438 short tons in 2009, and 57,166 short tons in 2010. Id.

¹²⁰ CR/PR at Table C-1.

¹²¹ CR/PR at Table VII-2. Inventories of subject nails held by U.S. importers were in *** short tons 2008, *** short tons in 2009, and *** short tons in 2010. Id.

D. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹²²

There is some divergence in views by market participants on the importance of price in purchasing decisions. As noted above, the majority of responding domestic producers and importers found that subject imports from the UAE were always or frequently interchangeable with domestically produced steel nails.¹²³ While a majority of responding domestic producers reported that non-price differences between subject imports and the domestic like product were never a factor in purchasing decisions, the majority of responding importers reported that non-price differences were always, frequently, or sometimes an important factor, with only a few responding that such differences were never a factor.¹²⁴ We conclude that price is an important factor in purchasing decisions, but it is not the only factor.¹²⁵

In this investigation, the Commission collected quarterly pricing data for six types of steel nail products.¹²⁶ Six domestic producers and 13 importers of steel nails from the UAE provided usable pricing data for the Commission's six pricing products. Pricing data reported by these firms accounted for 6.7 percent of domestic producers' shipments, by value, and 1.5 percent of shipments of subject imports, by value, during the period of investigation.¹²⁷ Subject imports undersold the domestic like product in 46 of 62 quarterly pricing comparisons with margins of underselling ranging from 1.1 percent to 83.3 percent over the period of investigation.¹²⁸ We find this underselling to be significant.

¹²² 19 U.S.C. § 1677(7)(C)(ii).

¹²³ CR/PR at Table II-2.

¹²⁴ CR/PR at Table II-3.

¹²⁵ CR at II-9-, PR at II-6, and CR/PR at Table II-3.

¹²⁶ CR at V-4, PR at V-3. No firms reported pricing data for all products for all quarters. The products for which pricing data were collected are as follows:

Product 1.– 3" by 0.131" bright smooth, plastic-strip collated nails.

Product 2.– 3" by 0.120" bright smooth, plastic-strip collated nails.

Product 3.– 2 3/8" by 0.113" bright screw and ring shank nails, plastic-strip collated.

Product 4.– 3 1/4" by 0.148" 16D smooth vinyl-coated sinkers, bulk.

Product 5.– 2" by 0.113" bright, drive screw, machine quality pallet nails, bulk.

Product 6.– 2" by 0.099" bright, drive screw, wire-welded collated in coils.

¹²⁷ CR at V-4, PR at V-3.

¹²⁸ CR at V-18, PR at V-6; and CR/PR at Table V-8.

Moreover, during this preliminary phase of the investigation, the Commission was able to confirm 26 lost sale allegations totaling \$***, and 28 lost revenue allegations totaling \$***.¹²⁹ Of the eight responding domestic producers, three reported that they either had to reduce prices or roll back announced price increases in response to the prices of subject imports.¹³⁰ Moreover, some of the purchasers indicated that they switched from domestic steel nails to subject imports based on price.¹³¹ The significant underselling by the subject imports and the evidence of lost sales leads us to conclude that the subject imports were able to maintain a significant presence in the U.S. market during the period of investigation through aggressive pricing.

We find evidence of price depressing effects of subject imports. U.S. prices for five of the six products chosen by the Commission for comparison purposes decreased during the period of investigation, ranging from 3.4 percent to 48.3 percent.¹³² In addition, eight of 11 responding purchasers reported that U.S. producers had reduced prices because of subject imports.¹³³ Given that the volume of nonsubject imports decreased substantially over the period and that demand partially recovered from 2009 to 2010, we attribute the fall in prices to subject imports in substantial part.¹³⁴

We also find that there is some evidence of price suppression.¹³⁵ The COGS-to-net sales ratio decreased from 81.3 percent to 79.1 percent from 2008 to 2009, reflecting a slight improvement in the domestic industry's financial condition as these firms gained market share from nonsubject imports following the imposition of antidumping duties on imports of certain steel nails from China in 2008. The ratio increased, however, to 81.9 percent from 2009 to 2010, an indicator of a "cost/price" squeeze for the domestic industry, despite a 19 percent increase in apparent U.S. consumption and a 14 percent decrease in raw material costs during this period, a circumstance we attribute to the 87 percent increase in the volume of subject imports.¹³⁶

For the foregoing reasons, we find evidence that subject imports probably have had adverse effects on domestic prices.

¹²⁹ See CR/PR at Table V-9. The Commission was also able to partially confirm an additional 47 lost sales totaling more than \$***. *Id.*

¹³⁰ CR at V-18, PR at V-6.

¹³¹ CR at V-39, PR at V-7.

¹³² CR/PR at Table V-7.

¹³³ CR at V-39, PR at V-7.

¹³⁴ Having found evidence of price depression, Commissioner Aranoff does not reach price suppression for purposes of this preliminary determination.

¹³⁵ Commissioner Pinkert relies on evidence of price depression -- not price suppression -- to provide support for his finding of probable adverse price effects on this preliminary record.

¹³⁶ CR/PR at Table VI-1.

E. Impact of the Subject Imports

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”¹³⁷ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹³⁸

In evaluating the performance of the domestic industry, we bear in mind two important conditions of competition. First, the volume of nonsubject imports from China, as well as the total volume of nonsubject imports, fell sharply after the imposition of an antidumping duty order on imports of certain steel nails from China in 2008. Second, demand for steel nails staged a substantial recovery in 2010 over 2009, although it remained lower than in 2008. Taken together, these two developments should have presented an opportunity for the domestic industry to register performance gains, particularly from 2009 to 2010. What the record shows is that subject imports prevented the domestic industry from realizing the gains that should have been achieved in this context.

As noted, the domestic industry’s volume-based performance indicators decreased steadily from 2008 to 2010.¹³⁹ The domestic industry’s financial results deteriorated, with operating income, unit operating income, and gross profit decreasing steadily over the period of investigation.¹⁴⁰ Other indicators of the domestic industry’s financial condition fluctuated somewhat over the period of investigation, but overall the domestic industry’s financial performance in 2010 was below what it was at the beginning of the period,¹⁴¹ when imports from China were replaced to a significant degree by increased volumes of low-priced imports from the UAE following imposition of an antidumping duty order on U.S. imports of certain steel nails from China in 2008. In this regard, we note the close

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

¹³⁸ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

¹³⁹ Domestic shipments, by quantity, were 122,834 short tons in 2008, 96,916 short tons in 2009, and 93,379 short tons in 2010. Domestic shipments, by value, decreased steadily over the period and totaled \$221.5 million in 2008, \$170.5 million in 2009, and \$151.0 million in 2010. Net sales, by quantity, was 122,495 short tons in 2008, 97,544 short tons in 2009, and 93,006 short tons in 2010. Net sales, by value, also decreased steadily over the period and totaled \$221.0 million in 2008, \$172.6 million in 2009, and \$151.0 million in 2010. End-of-period inventories were 16,397 short tons in 2008, 9,416 short tons in 2009, and 9,105 short tons in 2010. Hours worked totaled 1.6 million in 2008, and 1.2 million in 2009 and 2010. Wages paid were \$26.5 million in 2008, \$21.4 million in 2009, and \$18.6 million in 2010. Hourly wages were \$17.11 in 2008, \$17.33 in 2009, and \$15.60 in 2010. CR/PR at Table C-1.

¹⁴⁰ The domestic industry’s operating income was \$18.4 million in 2008, \$14.5 million in 2009, and \$10.6 million in 2010. Unit operating income was \$150 in 2008, \$149 in 2009, and \$114 in 2010. Gross profit was \$41.4 million in 2008, \$36.0 million in 2009, and \$27.3 million in 2010. CR/PR at Table C-1.

¹⁴¹ The domestic industry’s ratio of operating income to net sales was 8.3 percent in 2008, 8.4 percent in 2009, and 7.0 percent in 2010. Capital expenditures were \$*** in 2008, \$*** in 2009, and \$*** in 2010. CR/PR at Table C-1.

correlation between the increases in subject imports, more than 82 percent from 2009 to 2010, and the deterioration of the domestic industry's performance in 2010.¹⁴²

For the purposes of this preliminary investigation, we conclude that significant volumes of low-priced subject imports that undersold the domestic like product achieved substantial sales volumes and revenues at the expense of the domestic industry. Even as the volume of nonsubject imports from China decreased following the imposition of the antidumping duty order in August 2008, and demand recovered somewhat in 2010, the domestic industry's performance worsened from 2009 to 2010. The domestic industry was unable to benefit from improved conditions, as subject imports increased market share at the expense of the domestic industry and nonsubject imports. The domestic industry lost market share, and experienced decreases in shipments and sales revenue in 2010, while demand for steel nails improved and subject imports increased their already significant presence in the U.S. market by 86.7 percent. The domestic industry's output and revenue declines, in turn, have contributed to the domestic industry's observed decreases in employment and operating performance.

Consequently, we conclude for purposes of this preliminary phase investigation that there is a causal nexus between the subject imports and the observed declines in domestic industry performance. In light of this, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports.

We have considered whether there are other factors that may have had an adverse impact on the domestic industry during the period examined. We recognize that the depressed state of the economy generally and the construction market specifically, particularly when measured by housing starts, had a role in the domestic industry's performance. Nevertheless, as previously noted, apparent U.S. consumption improved in 2010 while the domestic industry's financial performance and other indicators deteriorated. Consequently, given the improvement in apparent U.S. consumption in 2010, the domestic industry's performance in 2010 cannot reasonably be attributed to the continued depressed state of the economy based upon the record in these preliminary phase investigations.

We recognize that nonsubject imports may have had an adverse impact on the domestic industry's performance during the period of investigation. As discussed above, at the beginning of the period examined, nonsubject imports accounted for 74.1 percent of the U.S. market, followed by domestic producers' shipments with 18.6 percent, and then subject imports at 7.3 percent.¹⁴³ By 2010, the domestic industry's market share had decreased to 17.8 percent of the U.S. market, subject imports had increased their market share to 22.5 percent, followed by nonsubject imports at 59.7 percent, which was below their market share at the beginning of the period of investigation.¹⁴⁴ Thus, although nonsubject imports lost market share over the period of investigation, primarily to subject imports, they still maintained a significant presence in the U.S. market. We intend to revisit the issue of the role of nonsubject imports in the U.S. market in any final phase investigation.¹⁴⁵

¹⁴² CR/PR at Tables IV-3 and C-1. As discussed above, a number of domestic producers have exited the industry or have ceased production of steel nails in the United States. These domestic producers have provided limited or no production and financial data for the period of investigation. Therefore, we find that the data collected by the Commission in this investigation may actually understate the impact of the subject imports on the domestic industry during the period of investigation.

¹⁴³ CR/PR Table IV-5, and CR/PR at Table C-1.

¹⁴⁴ CR/PR at Table IV-5, and CR/PR at Table C-1.

¹⁴⁵ Based on the record evidence in these investigations, Commissioner Pinkert finds that price competitive, nonsubject imports, particularly imports from China (which was the predominant nonsubject source), were a significant factor in the U.S. market for steel nails during the period under examination. CR/PR at Table IV-3. Imports from China, however, were placed under an antidumping duty order during the period of investigation. Imports from Taiwan and Korea, the second and third most significant sources of nonsubject imports in the U.S.

(continued...)

CONCLUSION

For the reasons stated above, and based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that the domestic industry producing certain steel nails is materially injured by reason of subject imports from the United Arab Emirates that are allegedly being sold in the United States at less than fair value.

¹⁴⁵ (...continued)

market, respectively, were higher priced than subject imports from the UAE in most of the available price comparisons (99 out of 122). CR/PR at Table D-1. Thus, for purposes of the analysis required under Bratsk and Mittal, Commissioner Pinkert finds that there is record evidence to suggest that, had the subject imports exited the U.S. market, any replacement of them by nonsubject imports would not have been without benefit to the domestic industry. Commissioner Pinkert invites parties to comment on the application of Bratsk and Mittal to the facts of this case in any final phase of these investigations.

DISSENTING VIEWS OF CHAIRMAN DEANNA TANNER OKUN AND COMMISSIONER DANIEL R. PEARSON

Based on the record in the preliminary phase of this investigation, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports of certain steel nails (“CSN”) from the United Arab Emirates (“UAE”) that are allegedly sold in the United States at less than fair value.

We join the Commission’s Views with respect to background, domestic like product, domestic industry, legal standards, and conditions of competition.¹ We write separately, however, with respect to clarifying certain conditions of competition and our analysis of reasonable indication of material injury and threat of material injury by reason of subject imports.

I. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM THE UAE

A. Additional Conditions of Competition

The record suggests that nails from the domestic industry and from the various import sources are generally interchangeable.² But there is less overlap in the customer bases for the domestic like product and subject imports than might be expected for a product with a reasonable degree of interchangeability.³ Sales to such big-box customers accounted for upwards of *** percent of sales of subject merchandise imported from Dubai Wire.⁵ By the end of the period examined, subject imports from the UAE were more likely to be shipped to end users than nonsubject imports or the domestic like product; this ratio for subject imports changed very significantly over the period of investigation whereas the mix between shipments to end users and distributors was relatively constant for the domestic product and nonsubject imports.⁶

The differences in customers seems to be rooted in differences in product offerings and business models. While the domestic industry as a whole appears to be capable of producing the full line of products,⁷ the record suggests that the domestic industry has not offered a full line of products during the period of investigation. Respondents have suggested that as much as *** percent of the products they sell are not available from a domestic producer.⁸ ***.⁹

¹ We join and adopt as our own sections I-V.1-V.5.

² CR at II-7 and Table II-2, PR at II-5 and Table II-2.

³ CR/PR at Table III-1.

⁴ ***, CR/PR at Table III-2.

⁵ Dubai Wire Postconference Brief at 33-34.

⁶ CR/PR at Table II-1.

⁷ It has been alleged that there are some items that the domestic industry cannot make for environmental reasons, although the record does not suggest that these specific products account for a significant share of the U.S. market. CR at V-39, PR at V-7.

⁸ Dubai Wire Postconference Brief at 23-25; Conf. Tr. at 58-66 (Zinman).

⁹ CR at V-38-V-39, PR at V-7.

B. Volume Effects of Subject Imports

Section 771(7)(C)(I) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹⁰

An antidumping duty order was imposed on imports of CSN from China in July 2008.¹¹ In the wake of that order, imports from China continued to have a significant presence in the U.S. market. In 2010, imports from China held a greater share of the U.S. market than the domestic industry or any other import source.¹² But import volume from China declined significantly and absolutely, with 2010 import volume down 43.5 percent from the 2008 level and market share down from 40.3 percent in 2008 to 28.6 percent in 2010.¹³

After the order was imposed on imports from China, the volume of subject imports from the UAE increased significantly over the period of investigation. Subject import volume was 118,558 short tons in 2010, compared to 48,256 short tons in 2008, an increase of 145.7 percent. Subject imports from the UAE accounted for 7.3 percent of apparent U.S. consumption in 2008 and 22.5 percent in 2010.¹⁴

While the period of investigation saw significant redistributions of volume and market share among imports, it brought little overall change to the domestic industry. The volume and market share of domestic shipments did change significantly from 2008 to 2009, but the record suggests that the decline in U.S. shipments was driven by the significant contraction in demand in 2009. The domestic industry’s market share in 2010, at 17.8 percent, was little changed from its 2008 market share of 18.6 percent.¹⁵

It is indisputable that the volume of subject imports increased significantly over the period of investigation, and the increase was significant both absolutely and relative to domestic production and shipments. Nevertheless, we do not find that the volume of subject imports or any increase in that volume warrants an affirmative finding in light of our findings concerning the lack of significant price effects and impact.

C. Price Effects of Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁶

¹⁰ 19 U.S.C. § 1677(7)(C)(i).

¹¹ CR at I-8, PR at I-6.

¹² CR/PR at Table C-1.

¹³ Calculated from CR/PR at Table IV-3 and Table C-1.

¹⁴ CR/PR at Table C-1. Subject imports were equivalent to 39.4 percent of U.S. production in 2008, 70.5 percent in 2009, and 127.0 percent in 2010. CR/PR at Table IV-6.

¹⁵ CR/PR at Table C-1.

¹⁶ 19 U.S.C. § 1677(7)(C)(ii).

The record suggests that CSN made to the same industry standards are generally interchangeable, regardless of source.¹⁷ Price is an important factor in sales, but producers and importers also cited *** as important considerations.¹⁸ No party indicated that there are cost-effective substitutes for CSN.¹⁹ The product is typically sold on the spot market and prices are set in a variety of methods by both domestic producers and importers.²⁰

The Commission gathered product-specific pricing data on six CSN items. The pricing data gathered counted for relatively small shares of the domestic like product (6.7 percent of the value of U.S. producers' shipments) and even smaller shares of subject imports (1.5 percent of the value of U.S. shipments of subject imports). While this is not surprising for a product with such a wide variety of types as CSN, it may affect the comparability of the pricing data.²¹ The product-specific data indicated a fair degree of underselling, with subject imports underselling the domestic like product in 46 of 62 instances.²² The domestic industry also produced a significant number of lost sales and lost revenue allegations, some of which were at least partially confirmed by purchasers.²³

While the product-specific data might suggest significant price effects by subject imports, we find the evidence of underselling to be lessened by our findings regarding the apparent lack of substantial overlap in market segments served by the domestic like product and subject imports. Nor does the record indicate significant price depression or suppression by reason of subject imports. Prices for CSN in 2010 were in some cases lower than prices in 2008, but this seems to be more closely related to the overall level of demand, which was at its peak for the period of investigation in 2008, and more importantly to raw material price trends. Raw materials consistently accounted for over half of the cost of goods sold for the domestic like product over the period of investigation.²⁴ Raw material costs spiked in 2008, fell sharply in 2009, and rose moderately in 2010.²⁵ Domestic prices generally followed this pattern, regardless of subject import volume or pricing.²⁶ The domestic industry's ratio of cost of goods sold to sales in 2010 was little changed from 2008.²⁷

For the foregoing reasons, despite predominant underselling of the domestic like product by subject imports during the period of investigation, we do not find that domestic prices were depressed to a significant degree, or that subject imports have prevented price increases, which otherwise would have occurred, to a significant degree.

¹⁷ CR at II-8, PR at II-6

¹⁸ CR at II-9, PR at II-6.

¹⁹ CR at II-5, PR at II-4.

²⁰ CR at V-2-V-3, PR at V-2.

²¹ CR at V-4, PR at V-3.

²² CR/PR at Table V-8.

²³ CR at V-18, V-37-V-40, and Tables V-9-V-10, PR at V-6, V-7, and Tables V-9-V-10.

²⁴ CR/PR at V-1. Raw material costs accounted for 65.8 percent of COGS in 2008, 65.2 percent in 2009, and 58.8 percent in 2010. Id.

²⁵ CR/PR at Figure V-1. The main raw material used to produce certain steel nails is carbon steel wire rod. Carbon steel wire rod prices increased during the first part of 2008, peaked in July and August 2008, and then fell sharply during the remainder of 2008 and early part of 2009. Carbon steel wire rod prices increased irregularly thereafter but remained below the peak levels reached in 2008. Id.

²⁶ CR/PR at Figures V-2-V-7.

²⁷ CR/PR at Table C-1. COGS to net sales fluctuated between years from 81.3 percent in 2008 to 79.1 percent in 2009 and 81.9 percent in 2010. Unit COGS declined steadily from \$1,465 in 2008 to \$1,328 in 2010, due primarily to declines in raw material costs. CR/PR at Table VI-1.

D. Impact of Subject Imports²⁸

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”²⁹ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³⁰

The period of investigation included the sharpest economic contraction seen in the U.S. market since the Great Depression. The housing sector was particularly hard hit by the recession, and housing starts fell sharply.³¹ New residential construction accounts for a significant portion of the CSN market.³² It would not be surprising if the period of investigation had shown the domestic industry suffering significant losses.

But the industry’s financial performance was strong given the situation. The industry’s operating income relative to sales was 8.3 percent in 2008, 8.4 percent in 2009, and 7.0 percent in 2010.³³ This seems particularly notable given the market’s reliance on new residential construction and the failure of other segments, such as residential repair and remodeling, to fill the void created by the decline in new residential construction. The financial data suggest an industry that, for all its apparent contractions, was able to weather a sharp reduction in demand, increases in subject imports, and still remain profitable.

The domestic industry did see some contraction over the period of investigation, primarily from 2008 to 2009 as the U.S. economy plummeted. Production and shipments declined, as did capacity utilization.³⁴ The number of production workers declined by nearly 20 percent over the period of investigation.³⁵ There was a significant amount of consolidation in the domestic industry, with 15 producers in 2007 and 11 in 2010.³⁶ But while the number of producers declined, actual production capacity increased by 14.2 percent between 2008 and 2010.³⁷

We find a general lack of correlation over the period of investigation between the increased volume of subject imports, and the performance of the domestic industry. This is even more apparent

²⁸ In its notice initiating an antidumping duty investigation on certain steel nails from the United Arab Emirates, Commerce reported estimated dumping margins ranging from 61.54 to 81.82 percent or, depending on the basis of the calculation, from 152.37 to 184.41 percent for Dubai Wire and from 150.13 to 154.26 percent for Millennium Steel & Wire. 76 Fed. Reg. 23559, 23563.

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

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

³¹ CR/PR at Figure II-1.

³² See, e.g., Mid Continent Postconference Brief at 5.

³³ CR/PR at Table C-1.

³⁴ CR/PR at Table C-1.

³⁵ CR/PR at Table C-1.

³⁶ Mid Continent Postconference Brief at 31-32.

³⁷ CR/PR at Table C-1.

given that the steel nails industry relies on the construction/housing industry and would not be expected to experience 7-8 percent operating income margins during the 2008/2009 economic downturn if it was adversely impacted by increases in unfairly traded imports. In addition to demand, we have also considered nonsubject imports, particularly from China, so as not to attribute injury from such other factors to subject imports. While maintaining a significance presence in the U.S. market, nonsubject imports declined by 35.9 percent during the period of investigation.³⁸ We therefore do not find that there is a reasonable indication that subject imports from the UAE are having an adverse impact on the domestic industry. We find that the record as a whole contains clear and convincing evidence that there is no reasonable indication of material injury by reason of subject imports of CSN and that no likelihood exists that contrary evidence would arise in any final phase investigation.

II. NO REASONABLE INDICATION OF A THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM THE UAE

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”³⁹ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued.⁴⁰ In making our determination, we consider all statutory threat factors that are relevant to these investigations.⁴¹

³⁸ CR/PR at Table C-1.

³⁹ 19 U.S.C. § 1677(7)(F)(ii).

⁴⁰ 19 U.S.C. § 1677(7)(F)(ii).

⁴¹ These factors are as follows:

- (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,
- (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
- (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
- (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,
- (V) inventories of the subject merchandise,
- (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.

(continued...)

As an initial matter, we do not find that the domestic industry is vulnerable to a threat of material injury by reason of subject imports from the UAE. As discussed above, the domestic industry was able to weather a sharp reduction in demand, increases in subject imports, and still remain profitable during the period of investigation. The record indicates that the industry will have the benefit of continued improvements in demand in the imminent future. Moreover, we do not find that further increases in subject imports, as discussed below, are likely in the imminent future.

The period of investigation saw a *** in production capacity in the UAE.⁴² But the industry has ***.⁴³ The UAE industry operated at *** capacity utilization levels throughout the period of investigation and projects similarly *** rates in the future, leaving *** capacity for additional exports.⁴⁴ The industry ***.⁴⁵ Inventories of subject imports held by U.S. importers rose over the period of investigation, but by the end of the period of investigation were low relative to the volume of both imports and shipments and were particularly low compared to the level of nonsubject imports held by importers.⁴⁶ An even lower volume of CSN was held by producers in the UAE.⁴⁷ While the UAE industry is *** export-oriented, *** of those exports already are to the U.S. market, and are projected to remain so in the imminent future.⁴⁸ Moreover, the share of shipments exported to the United States has been relatively stable over the period of investigation. Thus, the industry in the UAE does not have significant additional production that can be shifted away from other markets or customers to be directed to the U.S. market.⁴⁹

The period of investigation saw a significant expansion of subject imports from the UAE, but we have already found that the increase in subject import volume was part of a larger reshuffling of imports in the wake of the 2008 order on CSN from China, a reshuffling that left the domestic industry's market

⁴¹ (...continued)

* * *

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

19 U.S.C. § 1677(7)(F)(I). Statutory threat factor (VII) is inapplicable, as no imports of agricultural products are involved in these investigations. No argument was made that the domestic industry is currently engaging or will imminently engage in any efforts to develop a derivative or more advanced version of the domestic like product, which would implicate statutory threat factor (VIII).

⁴² CR/PR at Table VII-1.

⁴³ CR at VII-2, PR at VII-2. There are five known producers of steel nails in the UAE: Dubai Wire, which estimates that it accounts for *** percent of total UAE steel nail production and *** percent of UAE exports to the U.S. market in 2010; Precision Fasteners, which commenced commercial operations and shipments to the U.S. market in 2008; Millennium Steel & Wire, which ceased production in 2009; and ***; and two small producers – Samrat Wire and Steel Racks Factory – which did not provide responses to the Commission, but reportedly produce only for the local market and do not export. VII-1-VII-2 and nn.1-6, PR at VII-1-VII-2 and nn.1-6; Conference Tr. at 75; Dubai Wire Postconference Brief at 41-43.

⁴⁴ CR/PR at Table VII-1. The UAE industry's capacity utilization rates were *** in 2011 and 2012. *Id.*

⁴⁵ CR at VII-2, PR at VII-2.

⁴⁶ CR/PR at Table VII-2.

⁴⁷ CR/PR at Table VII-1.

⁴⁸ CR/PR at Table VII-1. Exports to the U.S. market already account for *** of the UAE industry's shipments ranging *** in 2012. *Id.*

⁴⁹ CR/PR at Table VII-1.

share largely unchanged. The relevant facts regarding the UAE do not suggest a likely substantial increase in subject imports from UAE in the imminent future. The UAE industry already is dependent on the U.S. market for virtually all of its sales, and capacity will limit additional exports to the U.S. market to levels seen during the latter part of the period of investigation. In light of the consistently high capacity utilization levels, the limited availability of excess capacity and relatively low inventory levels, we find no likelihood of a substantial increase in the volume of subject imports in the imminent future.

We have already considered whether subject imports had a significant depressing or suppressing effect on domestic prices and were not able to find such effects. Nothing in the record suggests that this will change in the imminent future, as CSN price movements are likely to be largely determined by raw material price changes, and subject imports and the domestic like product are likely to continue serving somewhat different markets. We therefore conclude that the record as a whole contains clear and convincing evidence that there is no reasonable indication of a threat of material injury by reason of subject imports of CSN from the UAE and that no likelihood exists that contrary evidence would arise in any final phase investigation.

CONCLUSION

For the foregoing reasons, we conclude that there is no reasonable indication that the domestic CSN industry is materially injured or threatened with material injury by reason of imports of CSN from the UAE that are allegedly sold in the United States at less than fair value.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by Mid Continent Nail Corporation, Poplar Bluff, MO, on March 31, 2011, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (“LTFV”) imports of certain steel nails (“steel nails”)¹ from the United Arab Emirates (“the UAE”). Information relating to the background of the investigation is provided below.²

Effective date	Action
March 31, 2011	Petition filed with Commerce and the Commission; institution of Commission investigation (76 FR 19124, April 6, 2011)
April 21, 2011	Commission’s conference ¹
April 27, 2011	Commerce’s notice of initiation (76 FR 23559)
May 16, 2011	Commission’s vote
May 16, 2011	Commission determination transmitted to Commerce
May 23, 2011	Commission views transmitted to Commerce
¹ A list of witnesses appearing at the conference is presented in app. B.	

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and . . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

¹ See the section entitled “The Subject Merchandise” in *Part I* of this report for a complete description of the merchandise subject to this investigation.

² *Federal Register* notices cited in the tabulation are presented in app. A.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

...

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

...

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to

...

(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

Organization of the Report

Part I of this report presents information on the subject merchandise, estimated dumping margins, and domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV and V* present the volume and pricing of imports of the subject merchandise, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury as well as information regarding nonsubject countries.

U.S. MARKET SUMMARY

Steel nails generally are used in residential and commercial construction to join objects together. The leading U.S. producer of steel nails is petitioner Mid Continent; other large producers include Illinois Tool Works ("ITW"), Senco Products, Inc. ("Senco"), and Stanley Fastening Systems, L.P.A. ("Stanley"). Major responding producers of subject steel nails include the UAE producers Dubai Wire FZE ("Dubai Wire") and Precision Fasteners LLC ("Precision Fasteners"). The leading U.S. importers of subject steel

nails from the UAE are ***. Leading U. S. importers of steel nails from nonsubject sources (primarily China, Korea, Mexico, Poland, and Taiwan) include ***.

Apparent U.S. consumption of steel nails totaled approximately 526,467 short tons (\$658.1 million) in 2010. Currently, 13 firms are believed to produce steel nails in the United States.³ The nine responding U.S. producers' U.S. shipments of steel nails totaled 93,613 short tons (\$151.0 million) in 2010, and accounted for 17.8 percent of apparent U.S. consumption by quantity and 23.0 percent by value. U.S. imports from the UAE totaled 118,558 short tons (\$111.8 million) in 2010 and accounted for 22.5 percent of apparent U.S. consumption by quantity and 17.0 percent by value. U.S. imports from nonsubject sources totaled 314,296 short tons (\$395.3 million) in 2010 and accounted for 59.7 percent of apparent U.S. consumption by quantity and 60.1 percent by value.

SUMMARY DATA AND DATA SOURCES

A summary of data collected in the investigation is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on questionnaire responses of nine firms that accounted for approximately *** percent of U.S. production of steel nails during 2010.⁴ U.S. imports are based on official statistics from Commerce except where noted.

PREVIOUS AND RELATED INVESTIGATIONS

On November 21, 1977, a complaint was filed by Armco Steel Corp.; Atlantic Steel Co.; Bethlehem Steel Corp.; CF & I Steel Corp.; Keystone Steel & Wire Division of Keystone Consolidated Industries, Inc.; Northwestern Steel & Wire Co.; and the Penn-Dixie Steel Corp., alleging that certain steel wire nails from Canada were being sold at LTFV.⁵ In November 1978, the Department of the Treasury ("Treasury") determined that certain steel wire nails from Canada, except those produced by Tree Island Steel Co., Ltd. and the Steel Co. of Canada, Ltd., were being, or were likely to be, sold in the United States at LTFV.⁶ In February 1979, the Commission determined that the domestic steel wire nails industry was not being, and was not likely to be, injured and was not prevented from being established, by reason of the importation of certain steel wire nails from Canada that were being, or were likely to be, sold at LTFV.⁷

On April 20, 1979, Treasury, in conjunction with its administration of a "Trigger Price Mechanism," self-initiated an investigation to determine whether certain steel wire nails from Korea were being sold at LTFV. The investigation was subsequently terminated under the Antidumping Act, but was continued under section 731 of the Tariff Act of 1930, as amended. Commerce found that certain steel wire nails from Korea were being sold at LTFV.⁸ However, the Commission determined that the domestic steel wire nails industry was not materially injured and was not threatened with material injury, and that the establishment of an industry in the United States was not materially retarded, by reason of imports of certain steel wire nails from Korea.⁹

³ Wheeling-LaBelle Nail ceased nail production in June 2010 and its entire operation closed in September 2010.

⁴ ***.

⁵ 42 FR 64942, December 29, 1977.

⁶ 43 FR 51743, November 6, 1978.

⁷ *Steel Wire Nails From Canada, Investigation No. AA1921-189*, USITC Publication 937, February 1979.

⁸ 45 FR 34941, May 23, 1980.

⁹ *Certain Steel Wire Nails From The Republic of Korea, Investigation No. 731-TA-26 (Final)*, USITC Publication 1088, August 1980.

On July 2, 1981, Commerce self-initiated antidumping investigations concerning imports of certain steel wire nails from Japan, Korea, and Yugoslavia pursuant to additional information developed under the trigger price mechanism.¹⁰ Specifically, Commerce found that subject imports from these countries were likely being sold below trigger prices and, therefore, possibly at LTFV. Although the Commission made a negative material injury determination with respect to certain steel wire nails from Korea in the previous year, the Commission found new evidence indicating that sales of Korean nails may be having an injurious effect on the domestic industry.¹¹ The investigation of imports from Japan was subsequently terminated, while the investigation of imports from Yugoslavia resulted in a negative material injury determination by the Commission.¹² After a final affirmative material injury determination by the Commission, an antidumping duty order was issued against steel wire nails from Korea.¹³ The order against Korea was revoked effective October 1, 1984, following a Voluntary Restraint Agreement¹⁴ concerning imports of nails from Korea.¹⁵

On January 19, 1982, Armco Inc.; Tree Island Steel, Inc.; Atlantic Steel Co.; Florida Wire and Nails; New York Wire Mills; and Virginia Wire and Fabric filed a petition alleging that certain steel wire nails from Korea were being subsidized.¹⁶ In September 1982, however, the countervailing duty investigation was terminated following a determination by Commerce that Korean producers and exporters of nails were not receiving benefits that constituted subsidies.¹⁷

On January 24, 1984, the United Steelworkers of America, AFL-CIO/CLC, and Bethlehem Steel Corp. filed a petition under section 201 of the Trade Act of 1974 alleging that carbon and certain alloy steel products, including steel wire nails, were being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported articles.¹⁸ Following the Commission's affirmative determinations in July 1984 for several of the products, including steel wire nails, the United States negotiated various agreements to limit the importation of steel products into the United States, such as the VRAs.¹⁹

On June 5, 1985, petitions were filed alleging that certain steel wire nails from China, Poland, and Yugoslavia were being, or were likely to be, sold in the United States at LTFV.²⁰ The petitions concerning imports from Poland and Yugoslavia were subsequently withdrawn following VRAs with Poland and Yugoslavia with respect to exports of steel wire nails to the United States. As a result,

¹⁰ 46 FR 34613-34615, July 2, 1981.

¹¹ 46 FR 34615, July 2, 1981.

¹² 46 FR 41122, August, 14, 1981; and *Certain Steel Wire Nails From Japan, The Republic of Korea, and Yugoslavia, Investigation Nos. 731-TA-45, 46, and 47 (Preliminary)*, USITC Publication 1175, August 1981.

¹³ 47 FR 35266, August 13, 1982.

¹⁴ On September 18, 1984, the President established a national policy for the steel industry that led to the creation of the Voluntary Restraint Agreements ("VRAs"). These VRAs established new measures limiting steel exports into the United States from certain steel-supplying countries. 49 FR 36813, September 20, 1984. The VRAs expired on March 31, 1992.

¹⁵ 50 FR 40045, October 1, 1985.

¹⁶ 47 FR 6458, February 8, 1982.

¹⁷ 47 FR 39549, September 8, 1982.

¹⁸ *Carbon and Alloy Steel Products, Investigation No. TA-201-51*, USITC Publication 1553, July 1984, p. 7.

¹⁹ *Carbon and Alloy Steel Products, Investigation No. TA-201-51*, USITC Publication 1553, July 1984, p. 7.

²⁰ The petitions were filed by Atlantic Steel Co.; Atlas Steel & Wire Corp.; Continental Steel Corp.; Dickson Weatherproof Nail Co.; Florida Wire & Nail Co.; Keystone Steel & Wire Co.; Northwestern Steel & Wire Co.; Virginia Wire & Fabric Co.; and Wire Products Co. 50 FR 27479, July 3, 1985.

Commerce terminated the investigations with respect to Poland and Yugoslavia.²¹ The investigation with respect to China led to a finding that the domestic steel wire nails industry was materially injured by reason of LTFV imports of certain steel wire nails from China.²²

On April 20, 1987, a petition was filed alleging that certain steel wire nails from New Zealand and Thailand were receiving bounties or grants.²³ Commerce conducted a section 303 investigation and made affirmative findings with respect to both countries and issued countervailing duty orders against steel wire nails from Thailand and New Zealand in October 1987.²⁴ On August 9, 1995, the orders were revoked by Commerce as no domestic interested party requested a review.²⁵

On March 22, 1989, a petition was filed alleging that certain steel wire nails from Malaysia were receiving bounties or grants.²⁶ Commerce, however, determined that no benefits which constitute bounties or grants were being provided to Malaysian producers or exporters.²⁷

On November 26, 1996, a petition was filed alleging that collated roofing nails imported from China, Korea, and Taiwan were being sold at LTFV.²⁸ These investigations led to a finding that the domestic collated roofing nails industry was threatened with material injury by reason of LTFV imports of collated roofing nails from China and Taiwan.²⁹ The investigation with respect to collated roofing nails from Korea was terminated by the Commission following a negative determination by Commerce.³⁰ On November 19, 1997, Commerce issued antidumping duty orders against collated roofing nails from China and Taiwan.³¹ These orders were revoked effective November 19, 2002 because no domestic interested party responded to Commerce's notice of initiation of five-year reviews.³²

On July 3, 2001, following a request from the United States Trade Representative ("USTR") and subsequently a request from the Senate Finance Committee, a section 201 investigation was initiated by the Commission to determine whether certain steel products were being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry. The Commission, however, made a negative determination with respect to carbon and alloy steel nails.³³

²¹ 51 FR 4205, February 3, 1986, and 50 FR 35281, August 30, 1985.

²² *Certain Steel Wire Nails From The People's Republic of China, Investigation No. 731-TA-266 (Final)*, USITC Publication 1842, April 1986; 51 FR 10247, March 25, 1986. An antidumping duty order was imposed on certain steel wire nails from China on May 21, 1986 (51 FR 18640), but because of changed circumstances ("petitioners' affirmative statement of no interest in continuation of the antidumping duty order"), the order was revoked on September 3, 1987, retroactive to January 1, 1986 (52 FR 33463).

²³ The petition was filed by Air Nail Co.; Atlas Steel & Wire Corp.; CF&I Steel Corp.; Davis-Walker Corp.; Dickson Weatherproof Nail Co.; Exposaic Industries, Inc.; Keystone Steel and Wire Co.; and Northwestern Steel & Wire Co. 52 FR 18590, May 18, 1987; 52 FR 18591, May 18, 1987.

²⁴ 52 FR 36987, October 2, 1987, and 52 FR 37196, October 5, 1987.

²⁵ 60 FR 40568, August 9, 1995.

²⁶ The petition was filed by members of the Nail Committee of the American Wire Producers Association. 54 FR 15534, April 18, 1989.

²⁷ 54 FR 36841, September 5, 1989.

²⁸ The petition was filed by Paslode Division of Illinois Tool Works Inc. 61 FR 67306, December 20, 1996.

²⁹ *Collated Roofing Nails From China and Taiwan, Investigation Nos. 731-TA-757 and 759 (Final)*, USITC Publication 3070, November 1997.

³⁰ 62 FR 51420, October 1, 1997, and 62 FR 53799, October 16, 1997.

³¹ 62 FR 61729, November 19, 1997, and 62 FR 61730, November 19, 1997.

³² 67 FR 70578, November 25, 2002.

³³ *Steel, Investigation No. TA-201-73*, USITC Publication 3479, December 2001.

On May 29, 2007, following receipt of a petition filed with the Commission and Commerce by Davis Wire Corp. (Irwindale, CA), Gerdau Ameristeel Corp. (Tampa, FL), Maze Nails (Peru, IL), Mid Continent Nail Corp. (Poplar Bluff, MO), and Treasure Coast Fasteners, Inc. (Fort Pierce, FL),³⁴ the Commission instituted antidumping duty investigations on steel nails from the UAE and China. The Commission determined that an industry in the United States was materially injured by reason of imports from China of steel nails, found by Commerce to be sold in the United States at less than fair value (LTFV).^{35 36 37}

NATURE AND EXTENT OF ALLEGED SALES AT LTFV

On April 27, 2011, Commerce published a notice in the *Federal Register* of the initiation of its antidumping duty investigation on steel nails from the UAE. Commerce initiated the antidumping duty investigation based on estimated dumping margins that range from 61.54 to 81.82 percent or, depending on the basis of the calculation, from 152.37 to 184.41 percent for Dubai Wire FZE (“Dubai Wire”) and from 150.13 to 154.26 percent for Millennium Steel & Wire LLC (“Millennium”).³⁸

THE SUBJECT MERCHANDISE

The imported products subject to these investigations are steel nails. A nail is “a slender, typically rod-shaped rigid piece of metal, usually in any of numerous standard lengths from a fraction of an inch to several inches and having one end pointed and the other enlarged and flattened, for hammering into or through wood, other building materials, etc., as used in building, in fastening, or in holding separate pieces together.”³⁹ Nails are produced in many different lengths, and with many different styles of heads, shanks, and points, depending upon the intended use. Nails are produced uncoated (bright) or with any of several different coatings such as zinc (to retard corrosion), cement (to provide better adherence in the wood or other material into which the nail is to be driven), and paint (for improved appearance).

³⁴ On June 22, 2007, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union was added as a co-petitioner.

³⁵ The petition alleged that an industry in the United States was materially injured or threatened with material injury by reason of LTFV imports of certain steel nails from the UAE. On June 16, 2008, Commerce found that certain steel nails from the UAE are not being, or are not likely to be, sold in the United States at LTFV, and thus certain steel nails from the UAE are no longer considered to be subject merchandise. 73 FR 33985, June 16, 2008. Accordingly, the Commission terminated its final phase of the investigation regarding the UAE. 73 Fed. Reg. 39041 (July 8, 2008).

³⁶ *Certain Steel Nails From China: Determination*, 73 FR 43474, July 25, 2008.

³⁷ Commerce is conducting a changed-circumstances review concerning the antidumping duty order on certain steel nails from China that addresses the exclusion of roofing nails. See *Certain Steel Nails from the People’s Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review* (signed April 14, 2011).

³⁸ *Certain Steel Nails From the United Arab Emirates: Initiation of Antidumping Duty Investigation*, 76 FR 23559, April 27, 2011.

³⁹ *Dictionary.com*. Unabridged (v 1.1). Random House, Inc. <http://dictionary.reference.com/browse/Nail> (accessed June 01, 2007).

Commerce's Scope

Commerce has defined the imported product subject to this investigation as:⁴⁰

The merchandise covered by this investigation includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this investigation are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this investigation are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

Excluded from the scope of this investigation are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this investigation are the following products:

- non-collated (i.e., hand-drive or bulk), two-piece steel nails having plastic or steel washers ("caps") already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500" to 8", inclusive; an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual washer or cap diameter of 0.900" to 1.10", inclusive; · ·*
- non-collated (i.e., hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 4", inclusive; an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive, and whose packaging and packaging marking are clearly and prominently labeled "Roofing" or "Roof" nails;*

⁴⁰ *Certain Steel Nails From the United Arab Emirates: Initiation of Antidumping Duty Investigation*, 76 FR 23559, April 27, 2011.

- *wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 1.75", inclusive; an actual shank diameter of 0.116" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive, and whose packaging and packaging marking are clearly and prominently labeled "Roofing" or "Roof" nails;*
- *non-collated (i.e., hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75" to 3", inclusive; an actual shank diameter of 0.131" to 0.152", inclusive; and an actual head diameter of 0.450" to 0.813", inclusive, and whose packaging and packaging marking are clearly and prominently labeled "Roofing" or "Roof" nails;*
- *corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;*
- *thumb tacks, which are currently classified under HTSUS 7317.00.10.00;*
- *fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;*
- *certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and*
- *fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.*

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Tariff Treatment

Based upon the scope set forth by Commerce, information available to the Commission indicates that the subject goods currently are classifiable in 7317.00.55, 7317.00.65, and 7317.00.75 of the Harmonized Tariff Schedule of the United States (HTS). The current general rate of duty for the subject steel nails is free.

THE PRODUCT⁴¹

Description and Applications

Although most steel nails are produced of low-carbon steel, nails are also produced of stainless steel (to resist corrosion) and of hardenable medium- to high-carbon steel.⁴² Nails are packaged for shipment in bulk, that is, loose in a carton or other container, or collated, that is, joined with wire, paper strips, plastic strips, or glue into coils or straight strips for use in pneumatic nailing tools. Although most nails are produced from a single piece of steel, some nails are produced from two or more pieces. Examples include a nail with a decorative head, such as an upholstery nail; a masonry anchor that comprises a zinc anchor and a steel wire nail; a nail with a large thin attached head (for nailing roofing felt, for example); and a nail with a rubber or neoprene washer assembled over its shaft (to seal the nail-hole in metal or fiberglass roofing or siding).

Manufacturing Processes

Most steel nails are produced from steel wire, although a small proportion of steel nails are produced from steel plate and referred to as “cut nails.” Some producers of wire nails use purchased steel wire as a starting raw material and are known as nonintegrated producers, whereas some producers utilize their own facilities to produce wire for nails, using steel wire rod as their starting material; these producers are called “integrated producers.” Some integrated producers are further integrated through the steelmaking process, and produce steel wire rod from raw materials such as scrap, pig iron, and ferroalloys. Figure I-1 shows the general process for producing steel wire nails.

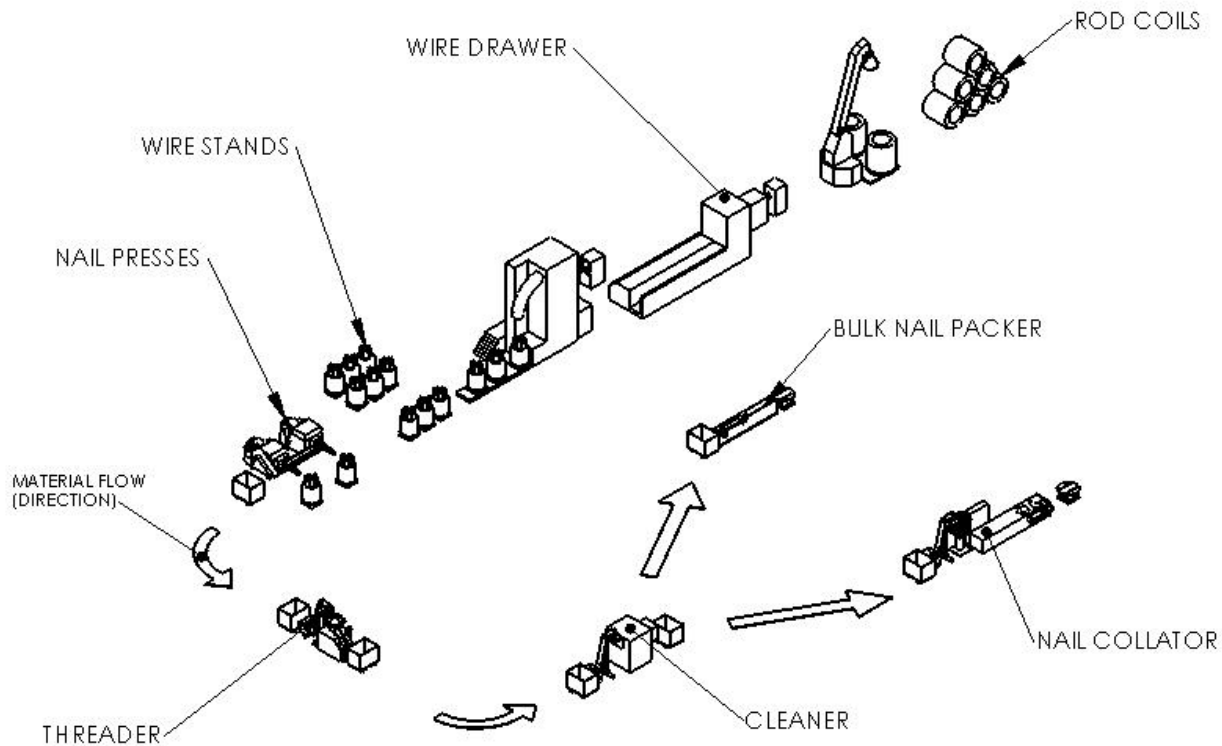
To produce nails, wire is fed from a large coil into a nail machine that automatically straightens the wire, forms the head of the nail, and cuts the nail from the wire, simultaneously forming the point and ejecting the finished nail. Nail machines are of two general types: one, known as a “cold-heading machine,” holds the wire near its end in gripper dies and forms the head by striking the leading end of the wire, forcing the end of the wire to fill a die cavity of the desired shape. The wire is fed through the grippers, and shape cutters form the point and cut the nail free from the wire coming off of the coil. The process is repeated for each individual nail produced by the cold-heading process. In the second type of nail machine, known as a “rotary heading machine,” the wire is fed continuously and cutting rollers cut individual nail blanks, simultaneously forming the point. The nail blanks are then inserted into a die ring and the heads are formed by compression of the end of the nail between the rotating ring and a heading roller. The completed nail is then ejected from the machine. Both types of nail machines are used to produce all styles of nails, and some manufacturers have both types in their facilities. These automatic machines are capable of producing a range of nail sizes and head and point styles by changing tooling and adjustment.

Nails that have helical twist, serrations, and other configurations on the shanks require an additional forming process. These nails are fed into other machines that roll, twist, stamp, or cut to required forms. These operations may also require heating of the nails before forming.

⁴¹ Unless otherwise noted, the information in this section is drawn from *Certain Steel Nails from China, Investigation No. 731-TA-1114 (Final)*, USITC Publication 4022, July 2008.

⁴² According to petitioners, all steel nails share the same basic physical characteristics, consisting of a head, shaft, and point; are produced to the same industry-wide standards; and although woodworking nails may have smaller heads and may differ in length and diameter, the differences are minor and do not delineate separate domestic like products.

Figure I-1
Steel nails: General process of producing nails



NOTE:
 ALL COLLATED NAILS ARE VINYL COATED IN-LINE ON THE COLLATING MACHINE.
 ALL BULK NAILS ARE COATED IN-LINE AT THE CLEANING STATION IF REQUIRED

Source: USITC Pub. 4022, *Certain Steel Nails from China, Investigation No. 731-TA-1114 (Final)*, July 2008, p I-13.

After forming, nails are tumbled on themselves in rotating drums to remove particles of head flash and the whiskers, which often remain on the cut and pointed ends. The same drum may contain a medium (such as sawdust) which effects cleaning and polishing of the nails during tumbling, otherwise the tumbled nails can be transferred to units that clean the nails with solvents or vapor degreasers. After tumbling and cleaning, the nails may be given subsequent processing, such as painting, resin coating, or galvanizing. Finally, nails for use in pneumatic nailing tools are processed through automatic equipment to collate the nails using paper strips, plastic strips, fine steel wire, or adhesive; nails for hand-driving are packaged in bulk (loose) in cartons or in smaller count boxes for the mass merchandise retail repair and remodeling market.^{43 44}

⁴³ Conference transcript, pp. 57-58 and 96-97 (Zinman).

⁴⁴ All domestic producers are capable of packaging nails in 1-and 5-pound boxes. Currently, Maze Nails, Specialty Nail, and ITW Paslode, advertise boxes of steel nails as small as 1-and 5-pounds. Pneu Fast advertises boxes of steel nails as small as 7-pounds. E-mail from ***, May 9, 2011.

Cut nails are produced from plate rather than from wire and are rectangular rather than round. Cut nails are used primarily for joining to masonry or concrete. Although cut nails may be made for any carpentry use, the main use other than masonry is for flooring in applications where an antique appearance is required. Cut nails are made from high-carbon steel plate that is sheared into strips. The strips are fed into specially designed nail machines, which shape the nails and form the heads. The cut nails are then case-hardened in a furnace and packed in 50-pound cartons (also known as large-count industry standard boxes) on pallets for the construction trades or either 1-pound or 5-pound boxes for the mass merchandise retail repair and remodeling market.

DOMESTIC LIKE PRODUCT ISSUES

Petitioners contend that there is a single domestic like product that is coextensive with the scope of the case, and further argue that the minor variations in nail features do not justify segmenting various types of nails into separate domestic like products.⁴⁵

⁴⁵ Petition, p. 15, and postconference brief of petitioners, p. 3.

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

INTRODUCTION

Steel nails are used in the building of houses and other structures, and are also used to make furniture and cabinets, as well as crates and pallets for shipping. Since construction is the single largest end use for steel nails, demand for steel nails is strongly influenced by activity in the construction market.

Channels of Distribution

The majority of shipments of steel nails by both U.S. producers and importers of product from the UAE and other sources went to distributors during 2008-10 (table II-1). While U.S. producers' shipments fluctuated modestly between distributor and end-user sales, and shipments of nonsubject imports were relatively stable in their distribution, shipments of imports from the UAE shifted markedly toward end users between 2008 and 2010.

Table II-1

Steel nails: Channels of distribution for domestic product and imports sold in the U.S. market, by source, 2008-10

Item	Year		
	2008	2009	2010
	Share of reported shipment quantity (<i>percent</i>)		
U.S. producers' U.S. shipments:			
Distributors	67.7	60.9	63.6
End users	32.3	39.1	36.4
U.S. shipments of imports from the UAE:			
Distributors	***	***	***
End users	***	***	***
U.S. shipments of imports from all other sources:			
Distributors	59.5	60.7	60.8
End users	40.5	39.3	39.2
Source: Compiled from data submitted in response to Commission questionnaires.			

Geographic Distribution

U.S.-produced and imported steel nails are sold throughout the United States. Among eight responding producers, five firms reported selling throughout the continental United States,¹ while the other three producers sold only in certain regions (including the Pacific Coast, Mountains, Midwest, Central Southwest and Southeast). Among 25 responding importers, 14 reported selling throughout the

¹ Three of these five producers also sold to Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.

continental United States,² and the other 11 reported selling in specific regions (including the Northeast, Midwest, Pacific Coast, Southeast, Central Southwest, and Mountains).

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, U.S. producers of steel nails have the ability to respond to changes in demand with moderate to large changes in the quantity of shipments of U.S.-produced steel nails to the U.S. market. The main contributing factors to this degree of responsiveness of supply are substantial excess capacity and moderate inventory levels.

Industry capacity

U.S. producers' capacity increased from 304,064 short tons in 2008 to 347,372 short tons in 2010. The industry capacity utilization rate declined from 40.3 percent in 2008 to 26.9 percent in 2010.

Alternative markets

U. S. producers' exports of steel nails have consistently accounted for less than 1 percent of their total shipments during 2008-10.

Inventory levels

The ratio of U.S. producers' inventories to total shipments was 13.3 percent in 2008, and 9.7 percent in both 2009 and 2010.

Production alternatives

None of the U.S. producers have produced other products on the machinery and equipment used to produce steel nails since 2008.

Subject Imports

Based on available information, the two responding UAE producers are likely to respond to changes in demand with moderate changes in the quantity of shipments of steel nails to the U.S. market.³ The main contributing factors to this degree of responsiveness of supply are the availability of a moderate amount of unused capacity, small to moderate inventory levels, and the fact that most current production is already directed to the United States.

² Eleven of these 14 importers also sold to Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.

³ These two producers, Dubai Wire and Precision Fasteners, accounted for ***.

Industry capacity

Total industry capacity in the UAE increased from *** short tons in 2008 to *** short tons in 2010. It is estimated to remain at *** short tons for 2011 and 2012. The industry capacity utilization rate was *** percent in 2008, *** percent in 2009, and *** percent in 2010.

Alternative markets

Most shipments of steel nails produced in the UAE ***. Exports to the United States increased from *** percent of shipments in 2008 to *** percent in 2010. U.S. exports are projected to be *** percent of total shipments in 2011 and *** percent in 2012.

Inventory levels

The ratio of inventories to total shipments for steel nails imported from the UAE declined from *** percent in 2008 to *** percent in 2010. The ratio is projected to be *** percent in 2011 and *** percent in 2012.

Production alternatives

***.

U.S. Demand

Demand Characteristics

Overall U.S. demand for steel nails is likely to be relatively insensitive to price changes since there are no close substitute products, and since steel nails account for a very small share of the cost of the final products in which they are used. New housing starts in the United States are the major factor influencing the overall demand for this product.⁴ Monthly new housing starts declined sharply during 2008 and then fluctuated within a narrow range during January 2009-March 2011 (figure II-1). Similarly, apparent U.S. consumption of steel nails decreased from 661,518 short tons in 2008 to 440,947 short tons in 2009 and then partially recovered to 526,467 short tons in 2010.

When asked how U.S. demand for steel nails had changed since January 2008, all 8 responding U.S. producers and 15 of 22 responding importers reported that demand had decreased. The other 7 importers reported that demand had fluctuated. Firms attributed the decrease to declines in housing construction and/or the weak general economy. Some firms also reported a decline in pallet and crate production and reduced expenditures on home improvements. Firms that reported that demand had fluctuated since 2008 reported that demand had improved slightly in 2009 and 2010.

⁴ Mr. George Skarich, the executive vice president of Mid Continent Nail, stated that housing starts are the major driver influencing nail sales. A smaller influence is the demand for pallet construction and other wood products. Conference transcript, pp. 30-31 (Skarich).

Figure II-1
Housing starts: Annualized rate of monthly housing starts, seasonally adjusted, January 2008-
March 2011



Source: U.S. Census Bureau, www.census.gov/const/starts.

Business Cycles

When asked whether the demand for steel nails is subject to business cycles or distinctive conditions of competition, 5 of 8 U.S. producers and 19 of 24 importers answered “yes.” While responses varied, some producers and importers reported that seasonality is influenced by construction activity, which is in turn influenced by weather conditions. These firms reported that demand is softer during November through February than at other times of the year. When asked if there have been any changes in business cycles since January 2008, a majority of firms reported that conditions have changed due to the recession and the severe slump in housing construction.

Substitute Products

The majority of producers and importers reported that no substitutes exist for steel nails. A few firms listed a number of possible substitutes including screws, staples, and anchors for applications. However, these products are not considered price competitive with steel nails.

Cost Share

Estimates by producers and importers indicate that steel nails account for a small share of the total cost of the final products in which they are used. In residential framing, roofing, fencing, siding, home remodeling, and general construction, the share of the final cost was estimated at one percent or less. In pallet and crate manufacturing, the cost share was estimated to be somewhat higher, ranging from over 1 percent to as much as 5 to 12 percent.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported steel nails depends upon such factors as relative prices, quality (e.g., grade standards, reliability of supply, defect rates, etc.), and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.).

Lead Times

The majority of all sales of steel nails by U.S. producers and importers of product from the UAE are from inventories rather than produced to order. Five of eight producers reported that 80 to 95 percent of their sales were from inventory, one reported that 50 percent were from inventory, one reported that 20 percent were from inventory, and one firm reported that all of its steel nails were produced to order. Producers' lead times from inventory ranged from 1 to 5 days, while lead times for items produced to order generally ranged from 14 to 28 days.⁵

Among 13 importers of steel nails from the UAE, the percentage of sales from U.S. inventories ranged from 50 percent to 100 percent, with 12 of the 13 firms reporting that 70 percent or more of its sales were from U.S. inventories. Reported lead times from U.S. inventories ranged from 1 to 7 days. For items produced to order, lead times ranged from 60 to 120 days. In addition, two importers reported that *** percent of their sales were from the UAE foreign producer inventories, with lead times from *** to *** days, and one importer reported that *** percent of its sales were from the UAE foreign producer inventories with a lead time of *** days.

Comparisons of Domestic Products, Subject Imports, and Nonsubject Imports

To determine whether U.S.-produced steel nails can generally be used in the same applications as imports from the UAE and nonsubject countries, producers and importers were asked whether the products can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. A majority of firms reported that U.S.-produced products and imports from the UAE and nonsubject countries can always or frequently be used interchangeably (table II-2).

Table II-2
Steel nails: Perceived degree of interchangeability of product produced in the United States and in other countries, by country pairs

Country pair	U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. UAE	2	5	0	0	13	2	3	0
U.S. vs. nonsubject	2	5	0	0	14	3	4	0
UAE vs. nonsubject	2	5	0	0	11	3	4	0

Note.--“A” = Always, “F” = Frequently, “S” = Sometimes, and “N” = Never.
 Source: Compiled from data submitted in response to Commission questionnaires.

Petitioners contend that steel nails are “commodity products” available in many different varieties from multiple suppliers. They point to common uses and specifications, and to the availability of nails

⁵ One producer reported that its lead times ranged from 30 to 60 days.

through distribution channels.⁶ Respondents, however, view the range of U.S.-produced nails differently and suggest several areas in which competition between U.S.-produced and UAE-produced steel nails might be limited. At the conference and in their postconference brief, the respondents stated that U.S. producers do not offer a wide enough product range in sufficient quantities to effectively service the broad U.S. market for steel nails and compete with the wide range of imports available from the UAE. In their brief, the respondents listed *** categories of nails that either are not produced in the United States, or where commercial production is “insignificant.” They stated that domestic mills do not have the ability to produce *** percent of the types of nails that they sell their customers.⁷ They also argued that U.S. producers do not offer nails in the widely varied packages that are purchased by do-it-yourself customers.⁸ Finally, they distinguish between steel nails that are hot-dipped galvanized and those that are produced from galvanized steel wire.^{9 10}

Importer *** reported that as long as the products are manufactured to the same specifications, they should always be interchangeable. Importer *** reported that the following factors limit the interchangeability of steel nails from the UAE with U.S.-produced products and imports from other countries: quality assurance; tool adaptability to match the exact tool tolerance of its customers; a superior coating from its galvanizing process; heat treatment of the nails; an in-house application test to ensure that the product that is being dispatched is perfectly fitted for the application for which it is bought; and a wide product line that is superior to product from the United States or any other country.

Firms were also asked how often differences in factors other than price between the U.S.-produced products and imports from the UAE and other nonsubject sources were a factor in their sales of steel nails (table II-3). With respect to the UAE, a majority of producers reported that these differences are “sometimes” or “never” a factor, while a majority of importers reported that they are “always” or “frequently” a factor. Producer *** reported that the base steel used in many imported nails ***. Importer *** reported that it purchases special galvanized nails from the UAE that are produced in an environmentally-conscious way and are not available from U.S. producers. Importer *** stated that its imports from the UAE are superior in technical support and packaging. Also, importer *** reported that the quality of the U.S.-produced product is inferior, the range of size/types is extremely limited, and

⁶ See conference transcript, p. 25 (Skarich). “Steel nails are commodity products. We all produce the same nails in bulk and collated to the same industry standards and specifications...Both the domestic producers and the UAE producers produce and sell a full spectrum of steel nails through distribution channels. We even produce and sell private label nails to some longstanding customers despite the fact that it can dilute our brand. We also sell some nails directly to end users. Distributors compete with each other to sell retailers, construction and industrial users throughout our country. Therefore, our nails and the rest of the domestic industry’s nails compete in all channels of distribution with all types of nails sold by the UAE in the U.S. market.”

⁷ Respondent’s Postconference Brief, pp. 23-25 and conference transcript, pp. 58-66 (Zinman).

⁸ The respondents stated that an important reason why Itochu buys from Dubai Wire is that it packages nails in private label boxes. Itochu’s private label program allows its retailers to place their store name, logo, and individual product SKUs on the products that Itochu sells them. Itochu’s witness stated that similar packaging is not available from U.S. producers. Conference transcript p. 66 (Zinman).

⁹ Conference transcript, pp. 58-60 (Zinman); Respondents’ Postconference Brief, pp. 22-25. Reportedly, *** percent of PrimeSource’s sales are to mass merchandise customers, with a substantial portion of the “hand drive” nails packaged in small packs (that is, one- and five-pound packs). Respondents’ Postconference Brief, pp. 49-50.

¹⁰ Petitioners, in turn, identify U.S. producers that sell to “Big Box” stores or otherwise sell bulk nails to customers such as PrimeSource itself (***). Petitioners’ Postconference Brief, pp. 26, 39. They further contend that the domestic industry collectively is “fully capable” of producing each nail product “should the demand exist at a fairly-traded price range.” Petitioners’ Postconference Brief, p. 11. See also *id.*, p. 20. Petitioners also dispute the significance of hot-dipped galvanizing nails, while noting that at least one U.S. producer (Maze) uses this manufacturing process. Conference transcript, p. 101 (Gordon).

customer service is nonexistent. With respect to nonsubject imports, a majority of both U.S. producers and U.S. importers reported that factors other than price were “sometimes” or “never” a factor in their sales of steel nails.

Table II-3

Steel nails: Perceived importance of factors other than price between steel nails produced in the United States and in other countries, by country pairs

Country pair	U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. UAE	0	2	3	2	5	4	6	2
U.S. vs. nonsubject	0	2	3	2	5	3	9	2
UAE vs. nonsubject	0	1	3	2	3	2	6	2
Note.--“A” = Always, “F” = Frequently, “S” = Sometimes, and “N” = Never.								
Source: Compiled from data submitted in response to Commission questionnaires.								

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

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of 10 firms¹ that accounted for more than *** percent of U.S. production of steel nails during 2010.

U.S. PRODUCERS

The petition identified 13 U.S. producers of steel nails.² The Commission received completed questionnaire responses from the petitioner, and from 8 of the other 12 firms identified in the petition, as well as partial information from two additional producers. Table III-1 presents U.S. producers' positions on the petition, ownership, plant locations, and shares of total reported U.S. production in 2010. Ten producers support the petition, none oppose it, and one takes no position. Producers accounting for *** percent of U.S. production in 2010 support the petition, while producers accounting for *** percent take no position. *** was the largest producer in 2010, followed by ***, and ***,³ all of which collectively accounted for nearly three-quarters of domestic production in 2010. Table III-2 presents important industry events during 2008-11.

Four U.S. producers are related to foreign producers of the subject merchandise and four are related to U.S. importers of the subject merchandise. In addition, as discussed in greater detail below, three U.S. producers directly import the subject merchandise from the UAE and one purchases the subject merchandise from U.S. importers.

¹ ***.

² Petition, pp. 2-5. Six other firms, identified during a previous investigation, were sent questionnaires although they are thought to be out-of-business. ***.

³ ***.

Table III-1

Steel nails: U.S. producers, positions on the petition, ownership, plant locations, and shares of total reported U.S. production, 2010

Firm	Position on petition	Firm ownership	U.S. plant location(s)	2010 U.S. production	
				Quantity (short tons)	Share (percent)
Davis Wire Corp.	***	Heico Acquisitions, Chicago, IL	Pueblo, CO	***	***
Independent Nail	***	a division of WH Maze Co., Peru, IL	Taunton, MA	***	***
ITW ¹	***	ITW Glenview, IL	Vernon Hills, IL; Schaumburg, IL; Grand Prairie, TX	***	***
Maze Nails	***	None	Peru, IL	***	***
Mid Continent Nail Corp.	Support	Libla Industries, Poplar Bluff, MO	Poplar Bluff, MO	***	***
Pneu-Fast Co.	***	N/A	Evanston, IL	***	***
Senco Brands, Inc. ²	***	Senco Holdings, Inc., Newport, KY	Cincinnati, OH	***	***
Specialty Fastening Systems, Inc.	***	Falcon Enterprises Canada	Prairie Grove, AR	***	***
Stanley Fastening Systems, L.P. ³	***	Stanley-Bostitch Holding Corp. and The Stanley Works, New Britain, CT	North Kingstown, RI; Clinton, CT; East Greenwich, RI; Shelbyville, IN	***	***
Tree Island Wire USA, Inc.	***	Tree Island Industries, Ltd. Richmond, BC	Ontario, CA	***	***
Wheeling-LaBelle Nail Co.	Support	None	Wheeling, WV	***	***
Total				***	100.0
<p>¹ ***.</p> <p>² ***. Senco provided ***.</p> <p>³ ***.</p> <p>Note.—*** did not respond to the Commission's questionnaire request and are believed to amount to less than *** percent of U.S. production.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires and from public sources.</p>					

Table III-2

Steel nails: Important industry events, 2008-11

* * * * *

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION ⁴

Table III-3 presents data on reported U.S. producers' capacity, production, and capacity utilization between 2008 and 2010. Figure III-1 graphically presents data on reported U.S. producers' capacity, production, and capacity utilization during the period for which data were collected in the investigation.

U.S. capacity of steel nails increased by 14.2 percent from 304,064 short tons in 2008 to 347,372 short tons in 2010.⁵ Production fell by 23.7 percent over the period, with the average capacity utilization rate dropped from 40.3 percent in 2008 to 26.9 percent in 2010. U.S. producers' capacity was well below apparent U.S. consumption in each year for which data were collected. Generally, U.S. producers of steel nails reported "prolonged shutdowns or production curtailment" as a result of reduction in demand. This led to a reduction in production workers. Reported constraints in the manufacturing process for U.S. producers of steel nails include the machinery used to produce the nails, as well as labor availability, maintenance of the machines, and consistent orders.⁶

Table III-3
Steel nails: U.S. capacity, production, and capacity utilization, 2008-10

Item	Calendar year		
	2008	2009	2010
Capacity (<i>short tons</i>)	304,064	337,287	347,372
Production (<i>short tons</i>)	122,391	90,023	93,379
Capacity utilization (<i>percent</i>)	40.3	26.7	26.9

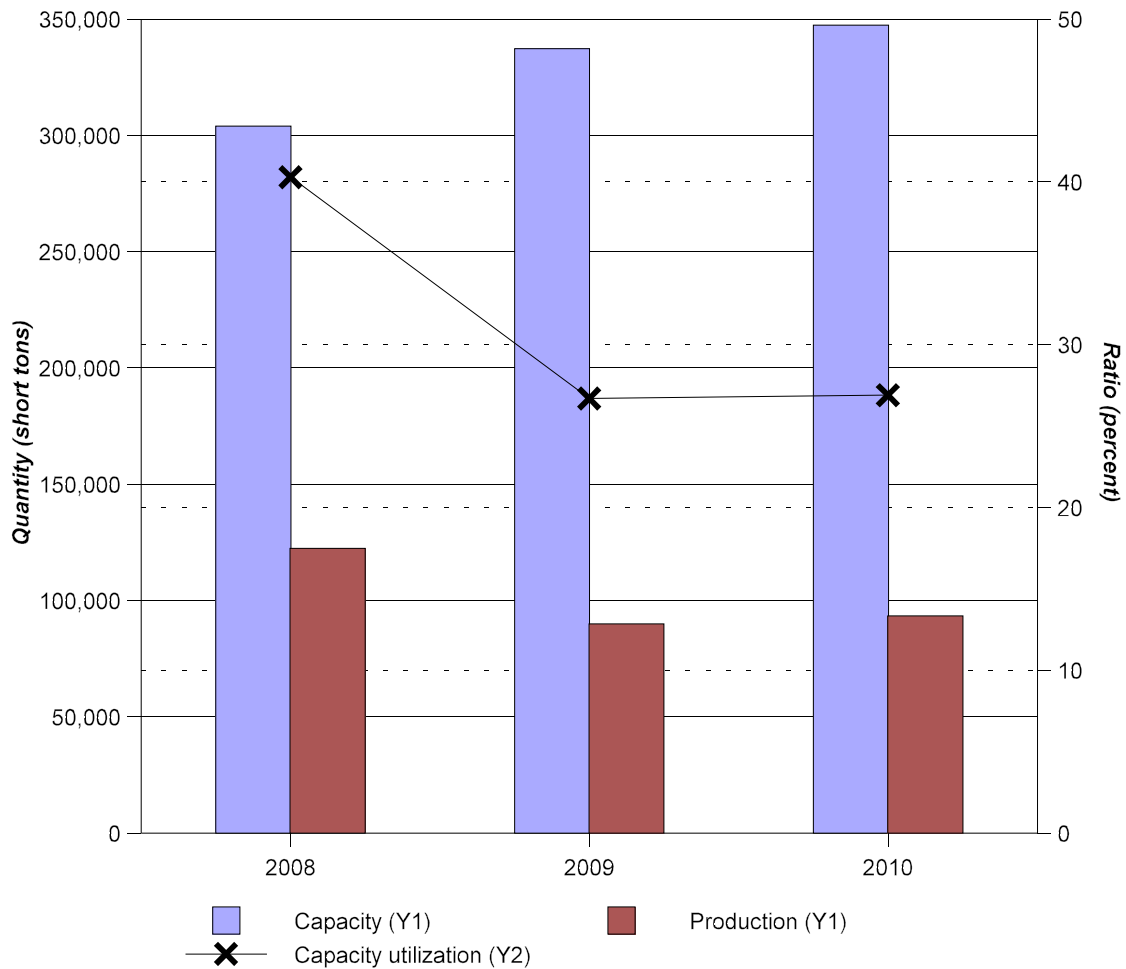
Source: Compiled from data submitted in response to Commission questionnaires.

⁴ ***.

⁵ Capacity was calculated ranging from 40 - 154 hours per week and 50 - 52 weeks per year. Reported capacity in the Commission's 2008 report (Investigation No. 731-TA-1114 (Final), June 2008) was nearly 650,000 short tons.

⁶ As reported in questionnaire responses.

Figure III-1
Steel nails: U.S. capacity, production, and capacity utilization, 2008-10



Source: Table III-3.

U.S. PRODUCERS' SHIPMENTS

Table III-4 presents information on U.S. producers' shipments of steel nails between 2008 and 2010. Three U.S. producers reported exporting steel nails,⁷ which made up a minimal share of the quantity of U.S. producers' shipments of steel nails.⁸

No U.S. producer reported any internal consumption of steel nails while transfers of steel nails to related firms ranged between *** and *** percent by quantity. U.S. producers' commercial shipments of steel nails decreased by *** percent by quantity from 2008 to 2010, and overall U.S. shipments fell by 23.8 percent.

⁷ ***.

⁸ U.S. producers of steel nails reported exporting to Australia, Canada, "Europe," Japan, Korea, Kuwait, Mexico, the Netherlands, and New Zealand.

Table III-4
Steel nails: U.S. producers' shipments, by types and shares, 2008-10

Item	Calendar year		
	2008	2009	2010
Quantity (<i>short tons</i>)			
Commercial shipments	***	***	***
Internal consumption	***	***	***
Transfers to related firms	***	***	***
U.S. shipments	122,834	96,916	93,613
Export shipments	***	***	***
Total shipments	***	***	***
Value (<i>1,000 dollars</i>)¹			
Commercial shipments	***	***	***
Internal consumption	***	***	***
Transfers to related firms	***	***	***
U.S. shipments	221,481	170,494	151,027
Export shipments	***	***	***
Total shipments	***	***	***
Unit value (<i>dollars per short ton</i>)¹			
Commercial shipments	***	***	***
Internal consumption	***	***	***
Transfers to related firms	***	***	***
U.S. shipments	\$1,803	\$1,759	\$1,613
Export shipments	***	***	***
Total shipments	***	***	***

Table continued on next page.

Table III-4--Continued
Steel nails: U.S. producers' shipments, by types and shares, 2008-10

Item	Calendar year		
	2008	2009	2010
Share of quantity (percent)			
Commercial shipments	***	***	***
Internal consumption	***	***	***
Transfers to related firms	***	***	***
U.S. shipments	***	***	***
Export shipments	***	***	***
Total shipments	100.0	100.0	100.0
Share of value (percent)			
Commercial shipments	***	***	***
Internal consumption	***	***	***
Transfers to related firms	***	***	***
U.S. shipments	***	***	***
Export shipments	***	***	***
Total shipments	100.0	100.0	100.0
¹ F.o.b. U.S. point of shipment. ² Not applicable.			
Note.—Because of rounding, figures may not add to the totals shown.			
Source: Compiled from data submitted in response to Commission questionnaires.			

U.S. PRODUCERS' IMPORTS AND PURCHASES

During the period for which data were collected, three U.S. producers reported direct imports of steel nails from the UAE. Five U.S. producers imported steel nails from nonsubject countries.⁹ Table III-5 presents data, by company, on domestic producers' direct imports, purchases of imported product, and purchases from other domestic producers.

Table III-5
Steel nails: U.S. producers' imports, purchases, and ratios to production, 2008-10

* * * * *

⁹ U.S. producers imported nonsubject steel nails from Austria, Canada, Colombia, Denmark, "Europe," Italy, Korea, Malaysia, Spain, and Taiwan.

Table III-6 presents combined data of five domestic producers' direct imports, purchases of imported product, and purchases from other domestic producers. U.S. producers of steel nails made purchases of steel nails from other domestic producers, the UAE, and other countries (both direct imports and purchases). The reasons cited for making these imports and purchases were generally to be able to offer products at lower prices, to complement a firm's product line with something it does not produce, to fill out inventory, to supplement capacity, and as an alternative to producing low-volume products.

Table III-6
Steel nails: U.S. producers' imports, purchases, and ratios to production, 2008-10

* * * * *

U.S. PRODUCERS' INVENTORIES

Table III-7, which presents end-of-period inventories for steel nails from 2008 to 2010, shows that inventories were declining, both absolutely and relative to production and shipments over the period for which data were collected.

Table III-7
Steel nails: U.S. producers' end-of-period inventories, 2008-10

Item	Calendar year		
	2008	2009	2010
Quantity (<i>short tons</i>)			
Inventories (<i>short tons</i>)	16,397	9,416	9,105
Ratio to production (<i>percent</i>)	13.4	10.5	9.8
Ratio to U.S. shipments (<i>percent</i>)	13.3	9.7	9.7
Ratio to total shipments (<i>percent</i>)	13.3	9.7	9.7
Note.—Because of rounding, figures may not add to the totals shown.			
Source: Compiled from data submitted in response to Commission questionnaires.			

U.S. PRODUCERS' EMPLOYMENT, WAGES, AND PRODUCTIVITY ¹⁰

Table III-8 presents data on U.S. producers' employment-related indicia. Employment of production-related workers ("PRWs") in the U.S. steel nail industry declined by 19.9 percent between 2008 and 2010, and total hours worked decreased by 23.2 percent. This drop was consistent with diminished production levels reported throughout the U.S. steel nail industry. Wages paid and hourly wages to PRWs also declined from 2008 to 2010, while productivity was relatively unchanged, resulting in a decrease in unit labor costs of 8.2 percent.

¹⁰ ***.

Table III-8
Steel nails: U.S. producers' employment-related data, 2008-10

Item	Calendar year		
	2008	2009	2010
Production and related workers (PRWs)	737	575	590
Hours worked by PRWs (<i>1,000 hours</i>)	1,551	1,232	1,192
Hours worked per worker	2,104	2,143	2,020
Wages paid to PRWs (<i>1,000 dollars</i>)	26,529	21,359	18,591
Hourly wages	\$17.11	\$17.33	\$15.60
Productivity (<i>short tons produced per 1,000 hours</i>)	78.9	73.1	78.4
Unit labor costs (<i>per short ton</i>)	\$216.76	\$237.27	\$199.09

Note.—Because of rounding, figures may not add to the totals shown.

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

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

U.S. Importers

Table IV-1 presents information on U.S. importers. Fourteen of the twenty-seven importers that submitted data in response to the Commission's U.S. importers' questionnaire indicated that they imported steel nails from the UAE. These 14 firms' imports of steel nails from the UAE appear to account for all of the subject U.S. imports from the UAE by quantity in the period 2008 to 2010. The 22 reporting importers of nonsubject imports accounted for nearly half of nonsubject imports in 2010, and reported imports from Austria, China, Denmark, Korean, Liechtenstein, Malaysia, Mexico, Poland, Spain, and Taiwan.

Table IV-1
Steel nails: U.S. importers and imports, by source, 2010

* * * * *

Four firms reported the following changes in their operations: office/warehouse openings, office/warehouse closings, acquisitions, assets sold to another firm, and relocation.

U.S. IMPORTS

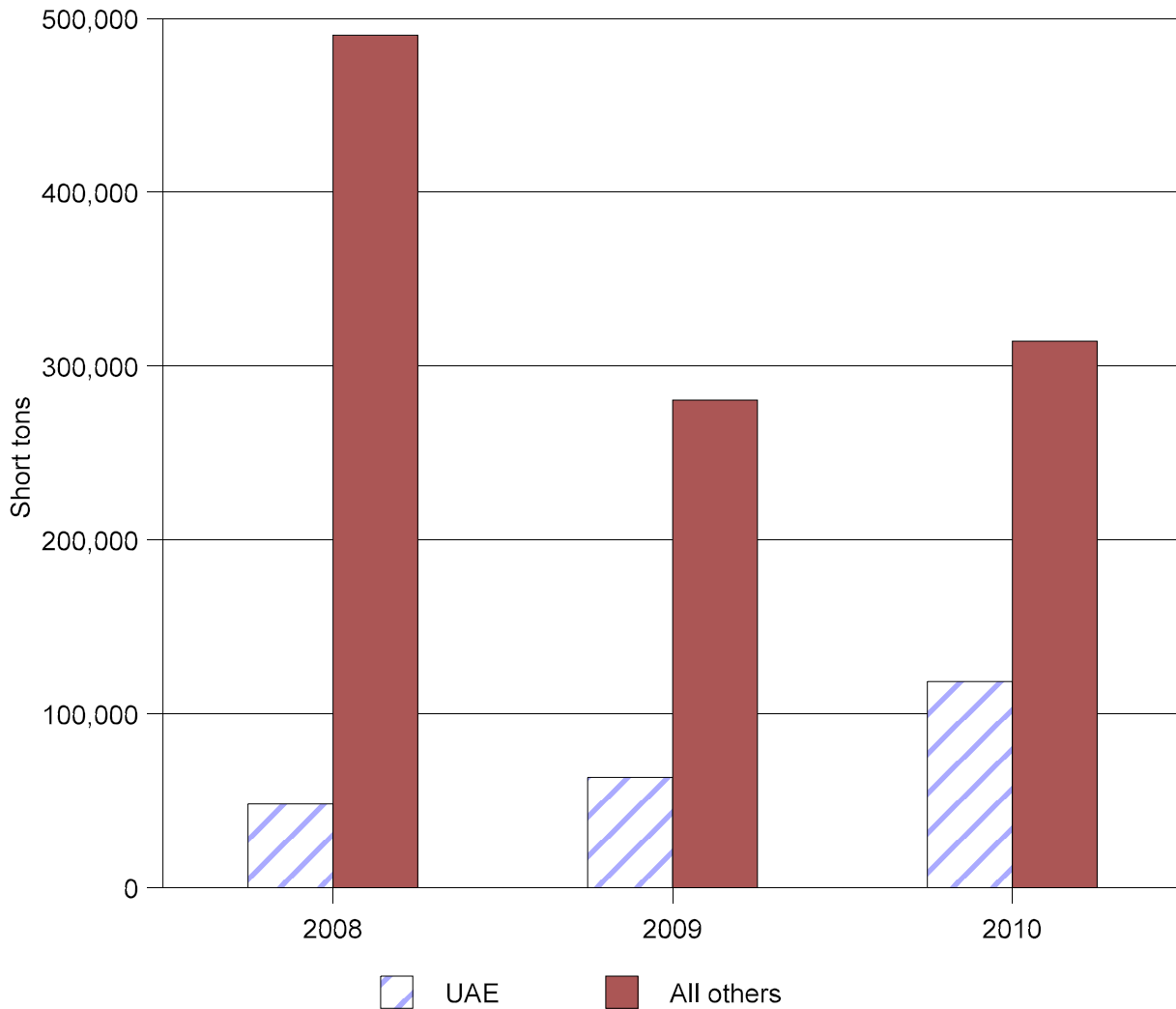
Table IV-2 and figure IV-1 present and depict U.S. imports of steel nails during 2008 to 2010. U.S. import data are based on official Commerce statistics excluding roofing nails.¹ U.S. imports of subject steel nails from the UAE increased by 145.7 percent from 48,256 short tons in 2008 to 118,558 short tons in 2010. The UAE accounted for 27.4 percent of total U.S. imports of steel nails during 2010. U.S. nonsubject imports fell by 35.9 percent from 490,428 short tons in 2008 to 314,296 short tons in 2010. Based on the import data presented in table IV-2. The average unit value of subject imports from the UAE exceeded those of nonsubject imports in 2008. However, the average unit value of subject imports from the UAE declined by 35.5 percent between 2008 and 2010, while those of nonsubject imports decreased by 10.1 percent. thus, in both 2009 and 2010, the average unit values of subject imports from the UAE were more than \$300 per short ton below those of nonsubject imports.

¹ HTS subheadings 7317.00.55, excluding statistical reporting number 7317.00.5501 (roofing nails); 7317.00.65; and 7317.00.75.

Table IV-2
Steel nails: U.S. imports, by sources, 2008-10

Source	Calendar year		
	2008	2009	2010
Quantity (short tons)			
UAE	48,256	63,494	118,558
Other sources	490,428	280,537	314,296
Total	538,684	344,031	432,854
Value (1,000 dollars)¹			
UAE	70,517	56,662	111,764
Other sources	686,105	336,747	395,266
Total	756,623	393,409	507,030
Unit value (per short ton)¹			
UAE	\$1,461	\$892	\$943
Other sources	1,399	1,200	1,258
Total	1,405	1,144	1,171
Share of quantity (percent)			
UAE	9.0	18.5	27.4
Other sources	91.0	81.5	72.6
Total	100.0	100.0	100.0
Share of value (percent)			
UAE	9.3	14.4	22.0
Other sources	90.7	85.6	78.0
Total	100.0	100.0	100.0
¹ Landed, duty-paid.			
Source: Compiled from official Commerce statistics.			

Figure IV-1
Steel nails: Quantity of subject and nonsubject U.S. imports, 2008-10



Source: Table IV-2.

The leading nonsubject countries are China (accounting for 34.8 percent of total U.S. imports of steel nails during 2010), Taiwan (13.2 percent), Korea (7.9 percent), Canada (4.1 percent), Mexico (3.2 percent), Poland (2.9 percent), and Malaysia (2.7 percent), with 33 other countries ranging between less than 0.05 percent and 0.9 percent of 2010 imports (table IV-3). The unit values of imports from each of the named nonsubject countries, except for Mexico, were higher than the unit values of imports from the UAE in 2009 and 2010, although unit values may be affected by the product mix.

Table IV-3
Steel nails: U.S. imports, by sources, 2008-10

Source	Calendar year		
	2008	2009	2010
Quantity (short tons)			
UAE	48,256	63,494	118,558
China	266,703	137,975	150,730
Taiwan	76,520	61,438	57,166
Korea	56,336	25,245	34,163
Canada	30,712	17,898	17,673
Mexico	16,238	10,626	13,704
Poland	4,965	6,306	12,439
Malaysia	13,283	10,493	11,634
Other sources	25,672	10,557	16,787
Total	538,684	344,031	432,854
Value (1,000 dollars)¹			
UAE	70,517	56,662	111,764
China	326,549	147,976	173,257
Taiwan	117,931	69,499	74,550
Korea	85,059	30,019	43,528
Canada	52,716	26,723	29,276
Mexico	23,188	13,100	11,282
Poland	8,567	8,715	15,159
Malaysia	16,954	9,426	12,176
Other sources	55,142	31,289	36,036
Total	756,623	393,409	507,030

Table continued on next page.

Table IV-3--Continued
Steel nails: U.S. imports, by sources, 2008-10

Source	Calendar year		
	2008	2009	2010
Unit value (per short ton)¹			
UAE	1,461	892	943
China	1,224	1,072	1,149
Taiwan	1,541	1,131	1,304
Korea	1,510	1,189	1,274
Canada	1,716	1,493	1,657
Mexico	1,428	1,233	823
Poland	1,726	1,382	1,219
Malaysia	1,276	898	1,047
Other sources	2,148	2,964	2,147
Average	1,405	1,144	1,171
¹ Landed, duty-paid. Not.--As discussed in Part I of this report, imports of steel nails from China, other than those from Paslode, are currently subject to an antidumping duty order. Source: Compiled from official Commerce statistics.			

NEGLIGENCE

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.² Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the same day that individually account for less than 3 percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are deemed not to be negligible.³ Imports from the UAE accounted for 27.4 percent of total imports of steel nails by quantity during 2010 and 27.3 percent between March 2010 and February 2011. Such imports occurred in every month during January 2008 - February 2011.

² Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

³ Section 771(24) of the Act (19 U.S.C. § 1677(24)).

APPARENT U.S. CONSUMPTION

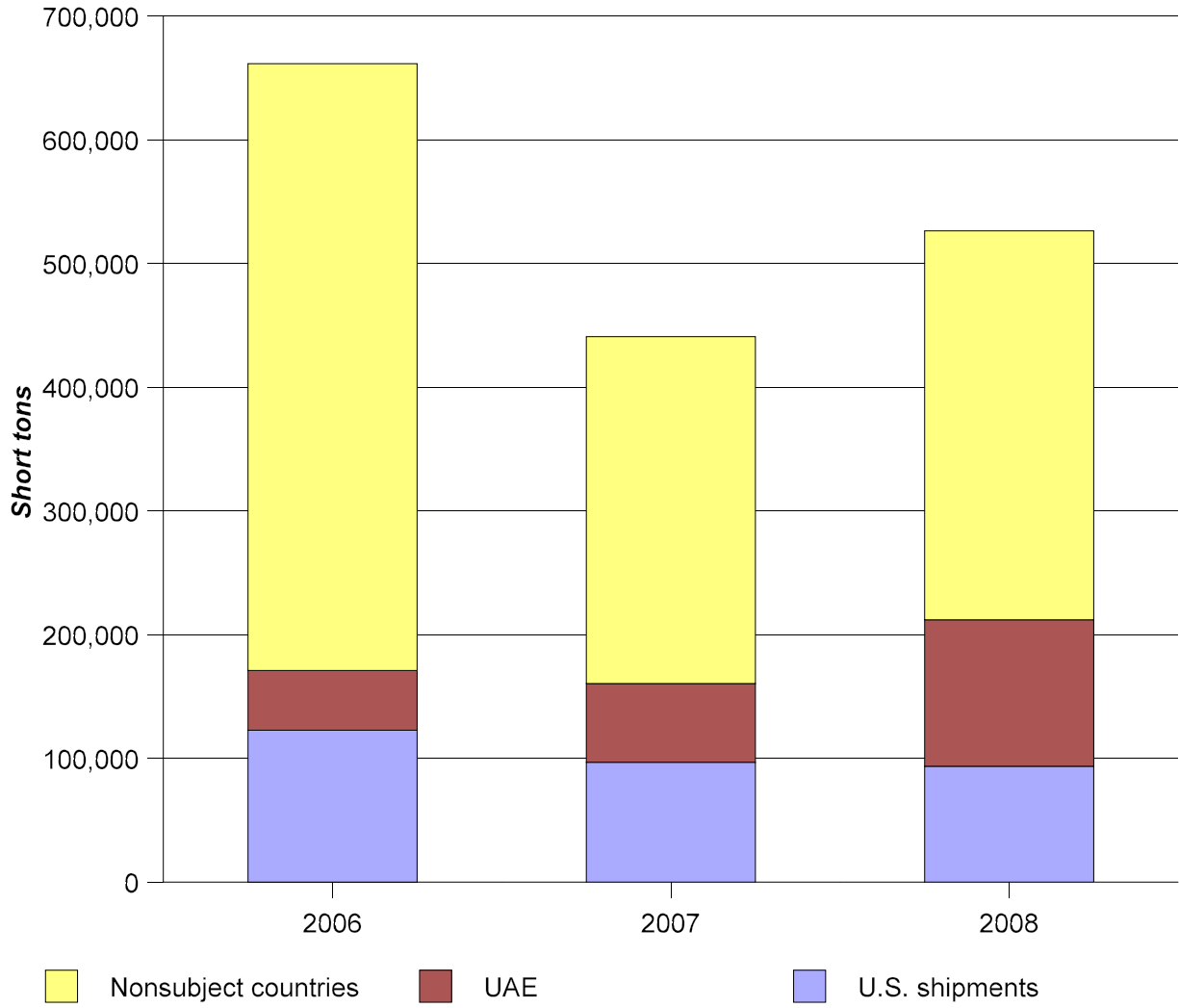
Data concerning apparent U.S. consumption of steel nails during the period for which data were collected are shown in table IV-4 and figure IV-2.

Table IV-4

Steel nails: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 2008-10

Item	Calendar year		
	2008	2009	2010
Quantity (<i>short tons</i>)			
U.S. producers' U.S. shipments	122,834	96,916	93,613
U.S. imports from-- UAE	48,256	63,494	118,558
Nonsubject countries ¹	490,428	280,537	314,296
Total U.S. imports	538,684	344,031	432,854
Apparent U.S. consumption	661,518	440,947	526,467
Value (<i>1,000 dollars</i>)			
U.S. producers' U.S. shipments	221,481	170,494	151,027
U.S. imports from-- UAE	70,517	56,662	111,764
Nonsubject countries ¹	686,105	336,747	395,266
Total U.S. imports	756,623	393,409	507,030
Apparent U.S. consumption	978,104	563,903	658,057
Source: Compiled from data submitted in response to Commission questionnaires and official Commerce statistics.			

Figure IV-2
Steel nails: Apparent U.S. consumption, by sources, 2008-10



Source: Table IV-4.

U.S. MARKET SHARES

U.S. market share data are presented in table IV-5.

Table IV-5
Steel nails: U.S. consumption and market shares, 2008-10

Item	Calendar year		
	2008	2009	2010
Quantity (<i>short tons</i>)			
Apparent U.S. consumption	661,518	440,947	526,467
Value (<i>1,000 dollars</i>)			
Apparent U.S. consumption	978,104	563,903	658,057
Share of quantity (<i>percent</i>)			
U.S. producers' U.S. shipments	18.6	22.0	17.8
U.S. imports from-- UAE	7.3	14.4	22.5
Nonsubject countries	74.1	63.6	59.7
All countries	81.4	78.0	82.2
Share of value (<i>percent</i>)			
U.S. producers' U.S. shipments	22.6	30.2	23.0
U.S. imports from-- UAE	7.2	10.0	17.0
Nonsubject countries	70.1	59.7	60.1
All countries	77.4	69.8	77.0
Note.—Because of rounding, figures may not add to the totals shown.			
Source: Compiled from data submitted in response to Commission questionnaires and official Commerce statistics.			

RATIO OF IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of imports to U.S. production of steel nails is presented in table

IV-6.

Table IV-6
Steel nails: U.S. production, U.S. imports, and ratios of imports to U.S. production, 2008-10

Item	Calendar year		
	2008	2009	2010
Quantity (<i>short tons</i>)			
U.S. production	122,391	90,023	93,379
Imports from:			
UAE	48,256	63,494	118,558
Nonsubject countries	490,428	280,537	314,296
Total imports	538,684	344,031	432,854
Ratio of U.S. imports to production (<i>percent</i>)			
Imports from:			
UAE	39.4	70.5	127.0
Nonsubject countries	400.7	311.6	336.6
Total imports	440.1	382.2	463.5
Note.—Because of rounding, figures may not add to the totals shown.			
Source: Compiled from data submitted in response to Commission questionnaires and official Commerce statistics.			

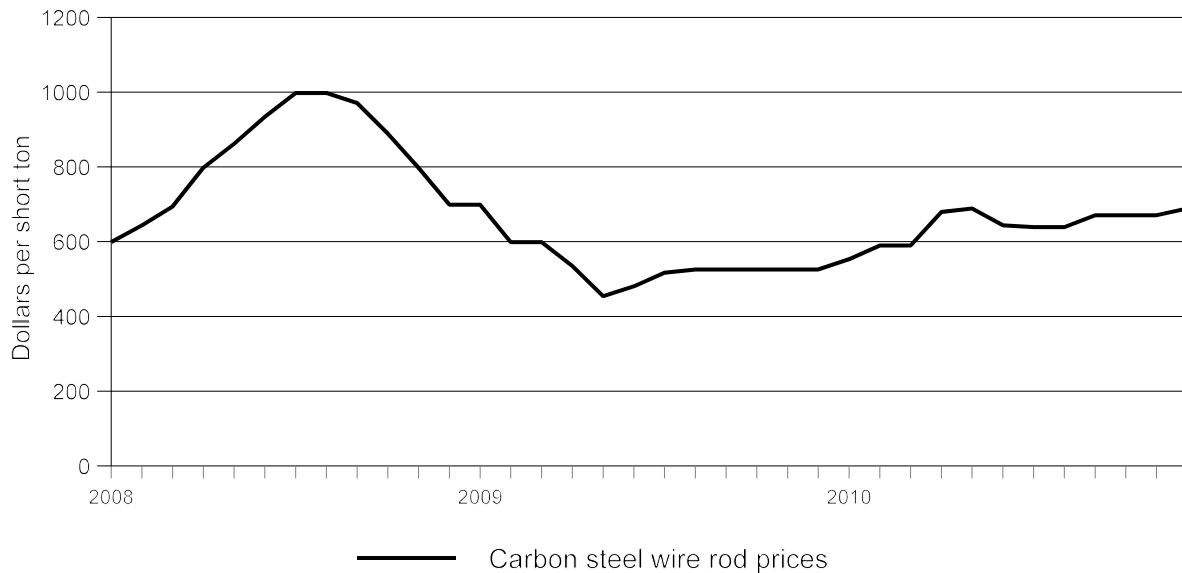
PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

Raw materials account for a substantial share of the cost of steel nails. They accounted for 65.8 percent of the cost of goods sold in 2008, 65.2 percent in 2009, and 58.8 percent in 2010. The main raw material used to produce certain steel nails is carbon steel wire rod. As shown in figure V-1, carbon steel wire prices increased during the first part of 2008, peaked in July/August, and then fell sharply during the remainder of 2008 and the early part of 2009. Carbon steel wire rod prices increased irregularly thereafter but remained below the peak levels reached in 2008.

Figure V-1
Carbon steel wire rod (mesh): North America, monthly, January 2008-December 2010



Source: <http://www.meps.co.uk/world-price>, retrieved on May 4, 2011.

U.S. Inland Transportation Costs

U.S. producers and importers of steel nails from the UAE were asked to estimate the percentage of the total delivered cost of these nails accounted for by U.S. inland transportation costs. The majority of producers' estimates ranged from 2 to 8 percent. Among importers, estimates ranged from 1.5 to 6 percent.

U.S. producers and importers of steel nails were also asked to estimate the percentages of their sales that were delivered within 100 miles, 101 to 1,000 miles, and over 1,000 miles from their production or storage facilities. Seven of eight producers reported that 70 to 100 percent of their sales were shipped 1,000 miles or less from their production facilities, while one producer reported that all of its shipments were over 1,000 miles. All importers of steel nails from the UAE reported that between 85 and 100 percent of their U.S. shipments were for distances of 1,000 miles or less from their U.S. point of shipment. The majority of producers and importers reported that they arrange shipping for their customers.

PRICING PRACTICES

Pricing Methods

Prices of steel nails are determined in a variety of ways including set price lists, transaction-by-transaction negotiations, and contracts. Among eight responding U.S. producers, two reported that they use set price lists, two use transaction-by-transaction negotiations, one uses both transaction-by-transaction negotiations and set price lists, and one uses both contracts and set price lists. Of the remaining producers, one begins with set price lists as a guide in negotiating a price, and the other uses set price lists with deviations made by specific geographic market to meet competition.

Importers reported using transaction-by-transaction negotiations, set price lists, contracts and combinations of these methods. One importer reported that it has a multi-level pricing structure that takes into account factors as the type of customer, the cost to service the customer, and reasonable margins. Another importer reported that its method of price setting varies by the market and by consumer demand.

Most sales of steel nails by U.S. producers and importers of steel nails from the UAE are on a spot basis. Seven of eight producers reported that all of their sales are on a spot basis, one reported that 76.5 percent of sales are on a spot basis, and one reported that 97.4 percent are on a spot basis.¹ Of the two producers reporting contract sales, one reported that its contracts are for three years with both prices and quantities fixed and no meet-or-release provisions, and the other reported that its contracts are for one year with prices but not quantities fixed and with meet-or-release provisions. For UAE, nine of 15 responding importers reported that all of their sales are on a spot basis, two reported that all sales are on a contract basis, and four reported a mixture of spot and contract sales. Importers' contracts range in duration from less than 6 months to 3 years, typically fix both prices and quantities, and may or may not contain meet-or-release provisions.

Sales Terms and Discounts

Quantity discounts and annual total volume discounts are commonly used by U.S. producers and importers. Three of eight producers reported using quantity discounts; one reported annual total volume discounts; two reported using a combination of quantity discounts and annual total volume discounts; one reported using quantity discounts, annual total volume discounts, and other specialized discounts broken out by different channels of distribution;² and one reported that it does not provide discounts. Sixteen of 25 importers also reported using quantity and/or annual total volume discounts or negotiated rebates to large customers. Six producers and three importers reported providing early payment discounts of 1 to 2 percent. U.S. producers and importers quote on both an f.o.b and on a delivered basis.

¹ Of the two producers reporting contract sales, one reported that its contracts are for three years with both prices and quantities fixed and no meet-or-release provisions, and the other reported that its contracts are for one year with prices but not quantities fixed and with meet-or-release provisions.

² ***.

PRICE DATA

The Commission requested U.S. producers and importers of steel nails to provide quarterly data for the total quantity and net f.o.b. value of the following products shipped to unrelated U.S. customers during January 2008-December 2010:

Product 1.– 3" by 0.131" bright smooth, plastic-strip collated nails

Product 2.– 3" by 0.120" bright smooth, plastic-strip collated nails

Product 3.– 2 3/8" by 0.113" bright screw and ring shank nails, plastic-strip collated

Product 4.– 3 1/4" by 0.148" 16D smooth vinyl-coated sinkers, bulk

Product 5.– 2" by 0.113" bright, drive screw, machine quality pallet nails, bulk

Product 6.– 2" by 0.099" bright, drive screw, wire-welded collated in coils

Six U.S. producers and 13 importers of steel nails from the UAE provided usable pricing data for sales of the requested products, although no firms reported pricing for all products for all quarters. Pricing data reported by these firms accounted for approximately 6.7 percent of the value of U.S. producers' shipments of steel nails and 1.5 percent of the value of U.S. shipments of U.S. imports from the UAE during 2008-10.

Price Trends

Quarterly weighted-average prices and shipment quantities for the six products are presented in tables V-1 through V-6 and figure V-2.³ U.S. prices for all six products reached their highest levels during the third or fourth quarters of 2008, then declined in the following quarters, and remained at lower levels throughout 2009 and 2010. Prices of products 1, 2, 3, and 6 imported from the UAE also reached peak levels in 2008 and then were lower during the following two years. The prices of products 4 and 5 from the UAE both fluctuated with no clear trends during the periods where sales were reported. U.S. shipment quantities for products 1, 2, 3, and 5 all declined irregularly between the first quarter of 2008 and the fourth quarter of 2010, while shipments of product 6 increased moderately during this period.⁴ U.S. imports of all six products from the UAE increased during the periods where they were reported. A summary of price ranges and percentage changes in prices is presented in table V-7.

³ Price data for nonsubject imports are presented in appendix D. Prices of products 4 and 5, which are sold on a bulk basis, were requested and reported in short tons rather than in thousands of nails, since this is how they are commonly sold.

⁴ Sales of U.S.-produced product 4 were sporadic.

Table V-1

Steel nails: Weighted-average f.o.b. prices and quantities of domestic and imported product and margins of underselling/(overselling), by quarters, 2008-10

* * * * *

Table V-2

Steel nails: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, 2008-10

* * * * *

Table V-3

Steel nails: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by quarters, 2008-10

* * * * *

Table V-4

Steel nails: Weighted-average f.o.b. prices and quantities of domestic and imported product 4 and margins of underselling/(overselling), by quarters, 2008-10

* * * * *

Table V-5

Steel nails: Weighted-average f.o.b. prices and quantities of domestic and imported product 5 and margins of underselling/(overselling), by quarters, 2008-10

* * * * *

Table V-6

Steel nails: Weighted-average f.o.b. prices and quantities of domestic and imported product 6 and margins of underselling/(overselling), by quarters, 2008-10

* * * * *

Figure V-2

Steel nails: Weighted-average prices and quantities of domestic and imported product, by quarters, January 2008-December 2010

* * * * *

Table V-7

Steel nails: Summary of weighted-average f.o.b. prices for products 1-6 from the United States and the UAE, January 2008-December 2010

* * * * *

Price Comparisons

Margins of underselling and overselling by product are presented in table V-8. Prices for steel nails imported from the UAE were below those for U.S.-produced product in 46 of 62 quarterly comparisons; margins of underselling ranged from 1.1 to 83.3 percent. In 16 instances, prices of product from the UAE were higher; margins of overselling ranged from 0.0 to 43.7 percent.

Table-V-8

Steel nails: Instances of underselling (overselling) of imports from UAE and the range of margins, by products, January 2008-December 2010

Item	Underselling		Overselling	
	Number of instances	Range (percent)	Number of instances	Range (percent)
Product 1	11	4.5-22.7	1	2.2-2.2
Product 2	7	2.6-10.6	5	1.9-16.5
Product 3	11	1.1-45.5	1	3.6-3.6
Product 4	1	17.8	5	18.4-39.7
Product 5	4	3.9-20.4	4	0.0-43.7
Product 6	12	59.6-83.3	-	-
Total	46	1.1-83.3	16	0.0-43.7

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

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers to report any instances of lost sales or revenues they experienced due to competition from imports from UAE during 2008-10. Of the eight responding U.S. producers, three reported that they had to either reduce prices or roll back announced price increases. The 296 lost sales allegations totaled \$44 million and involved 40,670 short tons of steel nails and the 239 lost revenues allegations totaled \$256,231 and involved 4,747 tons. Staff attempted to contact all of the purchasers listed in tables V-9 and V-10. Sixteen purchasers accounting for 207 of the allegations responded and a summary of the information obtained follows.

Table V-9

Steel nails: U.S. producers' lost sales allegations

* * * * *

Table V-10

Steel nails: U.S. producers' lost revenue allegations

* * * * *

Purchasers responding to the lost sales and lost revenue allegations were also asked if they had switched from purchasing from U.S. producers to suppliers of UAE product. Four of 16 responding purchasers reported that they had switched since 2008, and three of these purchasers reported that price was the reason.⁵ One purchaser reported that its supplier shifted production overseas, that the mill in the UAE seemed cheapest, and that in order to be competitive it has sourced about half of its nails from the UAE during 2009 and 2010. One purchaser reported that it had not switched purchases to the UAE since 2008 because it was already purchasing from them in 2008.

Eight of 11 responding purchasers reported that U.S. producers had reduced prices because of competition from imported product from the UAE. One purchaser stated that in addition to import price competition, raw material costs declines also contributed to price decreases while another purchaser stated that Mid-Continental has kept it competitive in the last several years by working at little or no margins at both the manufacturer and distributor levels. Another purchaser reported that price changes were not caused by import competition from UAE product, but by changes in material and shipping costs.

⁵ A third firm reported indicated both “yes” and “no,” reporting “Price is not the only reason for the switch. Because of the volume of nails we sell, one supplier cannot meet our demands for product. We never buy from just one supplier.”

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

BACKGROUND

Nine U.S. firms provided financial data on their operations on steel nails.¹ These data are believed to account for the great majority of U.S. operations on steel nails since 2008. No firms reported internal consumption, although *** reported transfers to related firms. Because these intercompany transfers accounted for *** of total net sales during the period for which data were collected, they are not shown separately in this section of the report. All firms reported a fiscal year end of December 31 except ***.

In the past three years, the U.S. steel nail industry has experienced notable consolidation. Six U.S. producers of steel nails have exited the industry – Air Nail, Atlas Steel & Wire, Phoenix Nail, Stanley Fastening, Treasure Coast, and Wheeling-LaBelle.² Further, Mid Continent purchased some or all of the steel nail production assets of ***.³

OPERATIONS ON STEEL NAILS

Income-and-loss data for U.S. firms on their operations on steel nails are presented in table VI-1, while selected financial data, by firm, are presented in table VI-2. The domestic industry experienced a continuous decline in operating income from 2008 to 2010, with both total net sales quantity and value decreasing throughout this time frame. Net sales value declined to a greater extent than net sales quantity, thus the per-unit net sales value decreased from 2008 to 2010. The per-unit cost of goods sold (“COGS”) also decreased from 2008 to 2010 due primarily to reduced raw material costs; however, per-unit COGS declined less than per-unit revenue, which led to an overall decline in gross and operating income during this time.

Although per-unit revenue, costs, gross income, and operating income were lower in 2010 as compared to 2008, from 2008 to 2009, per-unit gross profit increased as per-unit COGS declined more than per-unit revenue; however, per-unit SG&A expenses increased as volume declined, which led to a slight decline in per-unit operating income from 2008 to 2009.

While the aforementioned trends reflect the overall results for the nine U.S. producers that provided questionnaire responses for the preliminary phase of this investigation, there was some variation among the reporting firms. All nine firms reported lower net sales quantities in 2010 as compared to 2008; however, several firms (***) reported increases in net sales quantities from 2008 to 2009 followed by declines from 2009 to 2010, and several firms (***) reported decreases in net sales quantities from 2008 to 2009 followed by increases from 2009 to 2010.

In terms of per-unit revenue, six of the nine firms reported lower per-unit revenue in 2010 as compared to 2008, with ***.⁴ From 2008 to 2009, five of the nine firms reported a decline in per-unit revenue, while *** reported increases in per-unit revenue during this time. From 2009 to 2010, four of the nine firms reported a decline in per-unit revenue, with *** reporting increases in per-unit revenue during this time.

¹ The U.S. firms are Davis Wire, ITW, Maze Nails, Mid Continent, Pneufast, Specialty Fastening, Stanley Fastening, Tree Island, and Wheeling-LaBelle.

² Conference transcript, pp. 12-13 (Gordon).

³ Mid Continent’s U.S. producer questionnaire, pp. 5-6.

⁴ ***. E-mail correspondence from ***, May 4, 2011.

Table VI-1
Steel nails: Results of operations of U.S. producers, 2008-10

Item	Fiscal year		
	2008	2009	2010
Quantity (short tons)			
Total net sales	122,495	97,544	93,006
Value (\$1,000)			
Total net sales	220,887	172,626	150,824
COGS	179,500	136,605	123,503
Gross profit/(loss)	41,387	36,021	27,321
SG&A expenses	22,999	21,527	16,693
Operating income/(loss)	18,388	14,493	10,628
Interest expense	664	351	347
Other income/(expense)	(4,814)	(3,692)	(1,908)
Net income/(loss)	12,910	10,451	8,372
Depreciation	8,778	6,864	7,775
Cash flow	21,688	17,315	16,147
Ratio to net sales (percent)			
COGS:			
Raw materials	53.5	51.6	48.2
Direct labor	6.1	5.8	6.1
Other factory costs	21.7	21.7	27.6
Total COGS	81.3	79.1	81.9
Gross profit/(loss)	18.7	20.9	18.1
SG&A expenses	10.4	12.5	11.1
Operating income/(loss)	8.3	8.4	7.0
Net income/(loss)	5.8	6.1	5.6
Unit value (per short ton)			
Total net sales	\$1,803	\$1,770	\$1,622
COGS:			
Raw materials	964	913	781
Direct labor	110	102	98
Other factory costs	391	385	448
Total COGS	1,465	1,400	1,328
Gross profit/(loss)	338	369	294
SG&A expenses	188	221	179
Operating income/(loss)	150	149	114
Net income/(loss)	105	107	90
Number of firms reporting			
Operating losses	3	5	5
Data	9	9	9
Source: Compiled from data submitted in response to Commission questionnaires.			

Table VI-2
Steel nails: Results of operations of U.S. producers, by firm, 2008-10

* * * * *

In terms of operating income, seven of the nine firms reported lower operating income or deepening operating losses in 2010 as compared to 2008, while *** reporting some improvement in their financial performance during this time. From 2008 to 2009, seven of the nine firms reported a decline in operating income, while *** reported improved operating income during this time. From 2009 to 2010, three of the nine firms (***) reported a decline in operating income or deepening losses, while all other firms reported stable or improved financial performance during this time.^{5 6}

Variance Analysis

A variance analysis for steel nails is presented in table VI-3.⁷ The information for the variance analysis is derived from table VI-1. The analysis shows that the decrease in operating income from 2008 to 2010 is primarily attributable to an unfavorable price variance that more than offset a favorable net cost/expense variance (that is, prices declined to a greater extent than costs/expenses).

⁵ Respondents Dubai Wire and Itochu state that the Commission should exclude *** from the domestic industry because of their primary interest as importers of steel nails. Postconference brief of Dubai Wire and Itochu, pp. 17-18. ***.

⁶ The Petitioner stated in its postconference brief that ***'s operating income is "materially overstated." Petitioner's Postconference Brief, p. 35. ***.

⁷ A variance analysis is calculated in three parts, sales variance, cost of sales variance, and SG&A expense variance. Each part consists of a price variance (in the case of the sales variance) or a cost variance (in the case of the cost of sales and SG&A expense variance) and a volume variance. The sales or cost variance is calculated as the change in unit price times the new volume, while the volume variance is calculated as the change in volume times the old unit price. Summarized at the bottom of the table, the price variance is from sales; the cost/expense variance is the sum of those items from COGS and SG&A variances, respectively; and the volume variance is the sum of the volume variance lines under price and cost/expense variance.

Table VI-3
Steel nails: Variance analysis on operations of U.S. producers, 2008-10

Item	Between fiscal years		
	2008-10	2008-09	2009-10
Value (\$1,000)			
Total net sales:			
Price variance	(16,887)	(3,269)	(13,770)
Volume variance	(53,176)	(44,993)	(8,031)
Total net sales variance	(70,063)	(48,262)	(21,801)
Cost of sales:			
Cost variance	12,785	6,333	6,746
Volume variance	43,212	36,562	6,355
Total cost variance	55,997	42,895	13,102
Gross profit variance	(14,066)	(5,366)	(8,700)
SG&A expenses:			
Expense variance	769	(3,213)	3,833
Volume variance	5,537	4,685	1,002
Total SG&A variance	6,306	1,472	4,834
Operating income variance	(7,760)	(3,894)	(3,866)
Summarized as:			
Price variance	(16,887)	(3,269)	(13,770)
Net cost/expense variance	13,554	3,120	10,579
Net volume variance	(4,427)	(3,745)	(674)
Note.-- Unfavorable variances are shown in parentheses; all others are favorable.			
Source: Compiled from data submitted in response to Commission questionnaires.			

Capital Expenditures and Research and Development Expenses

The responding firms' aggregate data on capital expenditures and research and development ("R&D") expenses are shown in table VI-4. Five firms provided capital expenditure data, while only two firms provided data on R&D expenses. Capital expenditures for steel nails increased irregularly from 2008 to 2010. Mid Continent accounted for *** percent of total capital expenditures during the period for which data were requested, which was ***, while ITW accounted for *** reported R&D expenses during this same time. According to Mid Continent, capital expenditures primarily reflect ***.⁸ According to ITW, R&D expenses include ***.⁹

⁸ Petitioner's Postconference Brief, exhibit 1, p.9.

⁹ E-mail correspondence from ***, April 29, 2011.

Table VI-4
Steel nails: Capital expenditures and research and development expenses of U.S. producers, 2008-10

* * * * *

Assets and Return on Investment

The Commission’s questionnaire requested data on assets used in the production, warehousing, and sale of steel nails to compute return on investment (“ROI”). Data on the U.S. producers’ total assets and their ROI are presented in table VI-5. From 2008 to 2010, the total assets for certain steel nails declined from \$89.1 million in 2008 to \$71.7 million in 2010. The ROI declined by 5.8 percentage points during the period for which data were requested.

Table VI-5
Steel nails: Asset values and return on investment of U.S. producers, 2008-10

Item	Fiscal year		
	2008	2009	2010
Assets:	Value (\$1,000)		
Total assets, net	89,065	72,571	71,687
Operating income or (loss)	18,388	14,493	10,628
	Share (percent)		
Return on investment	20.6	20.0	14.8
Source: Compiled from data submitted in response to Commission questionnaires.			

CAPITAL AND INVESTMENT

The Commission requested U.S. producers of steel nails to describe any actual or potential negative effects of imports of steel nails from the UAE on their firms’ growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. Their responses follow.

Actual Negative Effects

* * * * *

Anticipated Negative Effects

* * * * *

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

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

THE INDUSTRY IN THE UNITED ARAB EMIRATES¹

The petition identified four alleged producers of steel nails in the UAE: Dubai Wire FZE ("Dubai Wire"),² Dubai, UAE; Millennium Steel & Wire LLC ("Millennium"),³ Dubai, UAE; Samrat Wire Industry, LLC ("Samrat Wire"),⁴ Dubai, UAE; and Steel Racks Factory ("Steel Racks"),⁵ Ajman, UAE. In addition, Precision Fasteners LLC ("Precision Fasteners")⁶ was identified and supplied data on its operations in the UAE.

Dubai Wire's capacity *** through 2012. Production followed a similar trend and is projected to ***.⁷ The company also indicated that *** other products on the same equipment and machinery used in

¹ Samrat Wire Industry, LLC and Steel Racks Factory did not respond to the Commission's questionnaire request (they did not in the 2008 case either). According to Dubai Wire, . . . "they are small companies which produce only for the local market and do not export." Dubai Wire contacted these companies in the 2007 - 2008 investigations and they said they were not interested in participating. Conference transcript, p. 75 (Wed).

² Dubai Wire estimates that it produces *** percent of total steel nails produced in the UAE in 2010 as well as *** percent of total exports to the United States in 2010.

³ Millennium ceased production of nails in 2009 and according to its questionnaire response (question II-5), "***."

⁴ Samrat Wire was established in 1999 as the successor to Wire & Wire Products Industries; the parent company is M/s Samarat Group of Companies. Samrat Wire "has planned to produce 12,000 metric tons of wire and wire products per year. The range of wire products to be manufactured includes the following: wire nails (sinker nails, common box, finish, casting, panel pin, roofing nails, tile nails, blued nails, wire collated nails, E.G. nails, spike & hot dip galvanized nails); cable armored wire; black annealed wire; galvanized binding wire; A.C.S.R. wire; fish cage wire; and spring wire." <http://www.mesteel.com/swil/>, retrieved April 14, 2011.

⁵ Steel Racks' web site shows that it produces "all sizes of mild steel wire nails" (common nails, roofing nails, twisted nails (brand "super nails"), screws and bolts, and accessories for shop display fittings). <http://www.showracksdubai.com/Steelracks/html/products.htm>, retrieved April 14, 2011.

⁶ Precision Fasteners LLC was incorporated in 2008 and started commercial operations and shipment of certain steel nails into the United States in 2008. It produces roofing nails using the same machinery and equipment as well as production employees. In 2010, its sales of subject steel nails accounted for *** percent of total sales, *** percent of sales is accounted for by nonsubject nails with the remaining *** percent related to trading activities unrelated to nails.

⁷ Dubai Wire estimates that the subject steel nails account for *** percent of its total sales.

the production of steel nails.⁸ Dubai Wire indicated in its questionnaire response that ***.⁹ Dubai Wire's home market sales ***.¹⁰ Shipments to the United States ***. Additionally, in 2010 exports to all other markets made up approximately *** percent of their total shipments. Precision Fasteners's capacity *** through 2012.¹¹ Production followed a similar trend and is projected to ***. Its home market sales and exports to countries other than the United States ***. Shipments to the United States ***. Information for Dubai Wire and Precision Fastener are presented in table VII-1.

Table VII-1
Steel nails: Reported operations in the UAE, 2008-10, and projected 2011-12

* * * * *

U.S. IMPORTERS' INVENTORIES

Inventories of U.S. imports as reported are presented in table VII-2. Inventories of UAE steel nails increased from 2008 to 2010, as did the ratios of inventories to imports although the ratio to U.S. shipments of imports dropped by ***. Inventories from all other sources declined, however, the ratios of inventories to nonsubject imports and inventories to U.S. shipments of nonsubject imports in 2010 were generally comparable to those in 2008.

Table VII-2
Steel nails: U.S. importers' end-of-period inventories of imports, by source, 2008-10

* * * * *

U.S. IMPORTERS' CURRENT ORDERS

Twelve U.S. importers reported that they had already placed orders for steel nails from the UAE (42,165 short tons or nearly one-third of 2010 total imports) scheduled for entry into the United States in 2011.

ANTIDUMPING AND COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS

No producer, importer, or foreign producer reported any countervailing or antidumping duty orders on steel nails from the UAE in third-country markets.

⁸ In its questionnaire response to question II-4 (Same equipment, machinery, and workers) Dubai Wire provided the following statement: “***.”

⁹ In its questionnaire response to question II-2 (Change in operations) Dubai Wire provided the following statement: “***.”

¹⁰ Mr. Ved (Dubai Wire) stated at the Commission's conference, “There's no wooden construction, so it's very limited on the nail business. So we have a substantial -- the share is there, but the volumes do not exist.” Conference transcript, p. 90 (Ved).

¹¹ “***.”

INFORMATION ON NONSUBJECT COUNTRIES

Steel nails are produced in a number of countries. Table VII-3 presents global export data for the world for HTS heading 7317, which includes all nails and staples, including nonsubject roofing nails and other nonsubject products. Except for roofing nails, nonsubject product in the data is believed to be minimal. In the case of the UAE and Canada, for which export data are not available from the same source, partner country import data (called “mirror exports”) are provided. In addition to the UAE, the top fourteen 2010 exporting countries are also listed. In 2010, the UAE accounted for 11.0 percent of world exports of nails and staples. The next fourteen largest exporting countries totaled 82.6 percent of world exports in 2010; China alone accounted for 53.9 percent.

Table VII-3
Nails and staples: Reporting countries' export statistics 2008-10

Source	Calendar year		
	2008	2009	2010
Quantity (short tons)			
United Arab Emirates ¹	78,539	103,341	192,902
China	1,272,896	891,703	944,897
Taiwan	92,001	81,195	74,108
Poland	61,895	52,924	64,298
Korea	64,132	30,451	41,051
Germany	46,222	30,642	31,298
United States	39,983	26,935	30,533
Czech Republic	23,842	24,848	29,459
Belgium	31,136	24,569	27,936
Lithuania	25,754	23,586	27,014
Turkey	12,898	18,191	24,942
Russia	17,480	24,904	23,879
Malaysia	23,836	25,296	23,645
Ukraine	29,983	29,883	22,141
Canada ²	31,423	18,433	18,236
Subtotal	1,852,019	1,406,901	1,576,339
Other sources	259,862	266,913	195,253
Total	2,111,881	1,673,814	1,771,591
¹ Estimated from official Commerce statistics and Global Trade Atlas. ² Mirror exports (imports from source reported by all reporting countries).			
Source: Compiled from <i>Global Trade Atlas</i> .			

APPENDIX A
***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION****[Investigation No. 731-TA-1185
(Preliminary)]****Certain Steel Nails From the United
Arab Emirates****AGENCY:** United States International
Trade Commission.**ACTION:** Institution of antidumping
investigation and scheduling of a
preliminary phase investigation.**SUMMARY:** The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-1185 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from The United Arab Emirates of certain steel nails, provided for in subheadings 7317.00.55, 7317.00.65 and 7317.00.75 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 16, 2011. The Commission's views are due at Commerce within five business days thereafter, or by May 23, 2011.

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

DATES: *Effective Date:* March 31, 2011.**FOR FURTHER INFORMATION CONTACT:** Fred Ruggles (202-205-3187, fred.ruggles@usitc.gov), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the

Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on March 31, 2011, by Mid Continent Nail Corporation, Poplar Bluff, Missouri.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with this investigation for 8:45 a.m. on April 21, 2011, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact in writing the Secretary to the Commission not later than April 19, 2011, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within

which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 26, 2011, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

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

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

By order of the Commission.

Issued: March 31, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011-8155 Filed 4-5-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-520-804]

Certain Steel Nails From the United Arab Emirates: Initiation of Antidumping Duty Investigation

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

DATES: *Effective Date:* April 27, 2011.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Mino Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0665 or (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 2011, the Department of Commerce (the Department) received the petition concerning imports of certain steel nails from the United Arab Emirates (UAE) filed in proper form by Mid Continent Nail Corporation (the petitioner). See Petition for the Imposition of Antidumping Duties: Certain Steel Nails from the United Arab Emirates, dated March 31, 2011 (the Petition). Based on the Department's request concerning certain business proprietary information in the Petition, the petitioner filed additional information on April 4, 2011. On April 6, 2011, the Department issued a request for additional information and clarification of certain areas in the Petition. The petitioner filed a response to the Department's request for information on April 11, 2011 (hereinafter, Supplement to the Petition). The petitioner filed two addenda to the Petition on April 14, 2011, one of which requested a country-wide sales-below-cost investigation (hereinafter, Second Supplement to the Petition).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of certain steel nails from the UAE are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping duty investigation that the petitioner is requesting that the Department initiate (see "Determination of Industry Support for the Petition" section below).

Period of Investigation

The period of investigation (POI) is January 1, 2010, through December 31, 2010. See 19 CFR 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are certain steel nails from the UAE. For a full description of the scope of the investigation, please see the "Scope of the Investigation" in Appendix I of this notice.¹

Comments on Scope of Investigation

We reviewed the scope in the Petition to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by May 10, 2011, twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Questionnaire

The Department requests comments from interested parties regarding the appropriate physical characteristics of certain steel nails to be reported in response to the Department's antidumping questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as general product characteristics and the product-comparison criteria. We find that it is not always appropriate to use all

product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe certain steel nails, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping questionnaire, limited to those issues addressed in the comments, we must receive comments at the above address by May 10, 2011. Additionally, rebuttal comments, limited to those issues addressed in the comments, must be received by May 17, 2011.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for (i) at least 25 percent of the total production of the domestic like product and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A) or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been

¹ The Department is conducting a changed-circumstances review concerning the antidumping duty order on certain steel nails from the People's Republic of China that addresses the exclusion of roofing nails. See *Certain Steel Nails from the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review* (signed April 14, 2011).

injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), aff'd 865 F.2d 240 (Fed. Cir. 1989), cert. denied 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain steel nails constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic-like-product analysis in this case, see Antidumping Duty Investigation Initiation Checklist: Certain Steel Nails from the United Arab Emirates (Initiation Checklist) at Attachment II, Analysis of Industry Support for the Petition Covering Certain Steel Nails, on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry-support data contained in the Petition with reference to the domestic like product as defined in the "Scope of Investigation" section above. To establish industry support, the petitioner provided its production volume of the domestic like product in 2010 as well as the 2010 production volume of companies that support the Petition. The petitioner compared the total production of itself and supporters

of the Petition to the estimated total production of the domestic like product for the entire domestic industry. See Volume I of the Petition at 5 and Exhibits IN-1 and IN-5, and Supplement to the Petition at 4-7. The petitioner estimated 2010 production of the domestic like product by non-petitioning companies based on its knowledge of the certain steel nail production capabilities and their relative proportion of total domestic sales. See Volume I of the Petition at Exhibit IN-5 and Supplement to the Petition at 5-6. We have relied upon data the petitioner provided for purposes of measuring industry support. For further discussion, see Initiation Checklist at Attachment II.

On April 5, 2011, we received an industry support challenge from an importer of certain steel nails from the UAE. The petitioner responded to this submission in its Supplement to the Petition. See Supplement to the Petition at 6 and Initiation Checklist at Attachment II. The Department's review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that the petitioner has established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See section 732(c)(4)(D) of the Act and Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. See Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See *id.*

The Department finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section

771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigation that it is requesting the Department to initiate. See *id.*

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than fair value. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioner contends that the industry's injured condition is illustrated by reduced market share, reduced production, reduced shipments, reduced capacity and capacity utilization, underselling and price depression or suppression, reduced employment, decline in financial performance, lost sales and revenue, and increase in import volume and penetration. See Volume I of the Petition at 14-41, Exhibits IN-1, IN-4-13, and IN-16-20, and Supplement to the Petition at 8. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are supported by adequate evidence and meet the statutory requirements for initiation. See Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petition Covering Certain Steel Nails from the United Arab Emirates.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of certain steel nails from the UAE. The sources of data for the deductions and adjustments relating to the U.S. prices and cost of production are also discussed in the initiation checklist. See Initiation Checklist.

Export Price

The petitioner based U.S. prices on price quotes from the U.S. distributors/trading companies for sale offers of certain steel nails in the United States produced in and exported from the UAE by Dubai Wire FZE (DWE) and Millennium Steel and Wire (MSW), the two largest UAE producers/exporters of certain steel nails. See Initiation Checklist at 6; see also Volume I of the

Petition at 42–46, Exhibit IN–17, and Volume II of the Petition at Exhibits AD–1 and AD–2. The petitioner substantiated the U.S. prices with declarations from persons who obtained and received the information. See Volume II of the Petition at Exhibits AD–1 and Supplement to the Petition at Exhibit Supp. 5. The petitioner asserts that the quoted sale offers are typical of sales of certain steel nails produced in the UAE and sold in the United States. *Id.* With respect to all price quotes, the petitioner was able to obtain product descriptions, prices per box, and the specific sale, payment, and delivery terms. The petitioner made adjustments for foreign inland freight, foreign port expenses, ocean freight, U.S. port expenses, U.S. harbor maintenance tax and merchandise processing fees, U.S. inland freight, the distributor's markup, and early-payment discount. See Initiation Checklist at 6–8; see also Volume I of the Petition at 46–54, Exhibits AD–1, AD–2, AD–5 through AD–13, and Supplement to the Petition at 8–15, Exhibits Supp. 5–9. See Initiation Checklist for additional details.

Normal Value

DWE

The petitioner provided information that the UAE home market may be viable with respect to DWE. See Initiation Checklist at 9; see also Volume I of the Petition at 55 and Volume II of the Petition at Exhibit AD–6. Through market research, the petitioner obtained a quoted transaction price for certain steel nails produced by DWE and sold or offered for sale to customers in the UAE. *Id.* The petitioner substantiated the home market price with a declaration from the person who obtained the information. *Id.* The petitioner asserts that, aside from dimensions, the product subject to the quoted transaction price is substantially identical to subject merchandise sold by DWE in the United States. See Initiation Checklist at 9 and Volume I of the Petition at 56. The petitioner made an adjustment to the starting price for foreign inland freight. See Initiation Checklist at 9 and Volume II of the Petition at Exhibits AD–9 and AD–15. Because the quoted U.S. prices for nails produced and/or exported by DWE were for a product having dimensions different from the dimensions of the product sold or offered for sale as reflected in the quoted UAE transaction, the petitioner made a downward difference-in-merchandise adjustment to normal value pursuant to 19 CFR 351.411. See Initiation Checklist at 9;

see also Volume I of the Petition at 68–69, Volume II of the Petition at Exhibits AD–4, AD–24, and AD–25, and Supplement to the Petition at 14–15, Exhibits Supp. 7 and Supp. 10.

The petitioner also made a circumstance-of-sale adjustment to normal value for U.S. credit expenses pursuant to 19 CFR 351.410(c). See Initiation Checklist at 9; see also Volume I of the Petition at 53, Volume II of the Petition at Exhibits AD–2, AD–14, and Supplement to the Petition at 13–14 and Exhibits Supp. 6, Supp. 7, and Supp. 9.

Sales-Below-Cost Allegation

The petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of certain steel nails from the UAE were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. See Second Supplement to the Petition.² The Statement of Administrative Action (SAA) submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements Act states that an allegation of sales below COP need not be specific to individual exporters or producers. See SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA states, at 833, that “Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.”

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department must have “reasonable grounds to believe or suspect” that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. *Id.*

² In the Second Supplement to the Petition, the petitioner alleged that producers of steel nails in the UAE sold subject merchandise in their home market at less than the COP, consistent with section 773(b) of the Act. In the Second Supplement to the Petition at 5, the petitioner demonstrated that DWE's price was below cost by comparing the home-market price for DWE to constructed value (CV) rather than to COP (according to section 773(e) of the Act constructed value consists of COP plus an amount for profit). We compared the home-market price to the revised COP and found that the price was below the COP. See Initiation Checklist at Attachment V.

Cost of Production

Pursuant to section 773(b)(3) of the Act, the petitioner calculated COP based on costs of manufacturing (COM), selling, general, and administrative expenses (SG&A), and packing expenses. The petitioner did not include an amount for financial expense. See Initiation Checklist at 9–11.

The petitioner calculated raw materials, labor, energy, and packing based on the production experience of a U.S. producer of certain steel nails, adjusted for known differences to manufacture certain steel nails in the UAE using publically available data. See Initiation Checklist for details of the calculation of raw materials, labor, energy, and packing. To calculate the factory overhead and SG&A, the petitioner relied on the cost data from a steel-fabricating company in the UAE. See Initiation Checklist at 9–11. We adjusted the petitioner's calculation of COP in order to avoid the double counting of energy expenses. See Initiation Checklist.

Based upon a comparison of the net price of the foreign like product in the comparison market to the COP calculated for the product, we find reasonable grounds to believe or suspect that sales of the foreign like product in the comparison market were made at prices below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Normal Value Based on Constructed Value

Because the petitioner alleged sales below cost, and pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, we calculated normal value based on CV. We calculated CV using the same average COM, SG&A, financial and packing figures used to compute the COP. We added the average profit rate based on the most recent financial statements of a company in the same general industry in the UAE as the producers of certain steel nails. See Initiation Checklist at 9–11. We also made a circumstance-of-sale adjustment to normal value for U.S. credit expenses pursuant to 19 CFR 351.410(c). See Initiation Checklist at 7–8, 12–13; see Volume I of the Petition at 53 and Volume II of the Petition at Exhibits AD–2, AD–14; see Supplement to the Petition at 13–14 and Exhibits Supp. 6, Supp. 7, and Supp. 9.

MSW

The petitioner asserts that it was unable to obtain home market pricing

data for products that were identical or similar to the products MSW offered for sale to the United States. Further, the petitioner provided information indicating that MSW may not have a viable home market or third-country market. See Initiation Checklist at 9; see also Volume I of the Petition at 58 and Volume II of the Petition at AD-6. Because the petitioner has alleged that all sales to countries other than the United States constitute less than the five-percent threshold provided for in section 773(a)(1)(B)(ii)(II) of the Act, the petitioner based normal value on CV for MSW. *Id.* See Initiation Checklist for additional details.

Normal Value Based on Constructed Value

Pursuant to section 773(e) of the Act, the petitioner calculated CV based on COM, SG&A, packing expenses, and profit using the same methodology as described with respect to DWE. The petitioner also made a circumstance-of-sale adjustment to normal value for U.S. credit expenses pursuant to 19 CFR 351.410(c). See Initiation Checklist at 7-8, 12-13; see also Volume I of the Petition at 53, Volume II of the Petition at Exhibits AD-2, AD-14, and Supplement to the Petition at 13-14 and Exhibits Supp. 6, Supp. 7, and Supp. 9.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of certain steel nails are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of respective net export prices and normal value calculated in accordance with section 773(a)(1) of the Act, the estimated dumping margins for certain steel nails from the UAE range from 61.54 to 81.82 percent for DWE. Based on a comparison of respective net export prices and normal value based on CV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for certain steel nails from the UAE range from 152.37 to 184.41 percent for DWE and from 150.13 to 154.26 percent for MSW. See Initiation Checklist at 14 and Attachments VI and VII.

Initiation of Antidumping Investigation

Based upon the examination of the Petition on certain steel nails from UAE, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain steel nails from UAE are being, or are likely to be, sold in the United States at less than fair value. In accordance with

section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted-dumping allegations, 19 CFR 351.301(d)(5). See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008). The Department stated that “[w]ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.” See *id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in this investigation pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the Harmonized Tariff Schedule of the United States (HTSUS) numbers 7317.00.55, 7317.00.65, and 7317.00.75, the three HTSUS categories most specific to the subject merchandise, for entries made during the POI. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within 10 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department’s website at <http://ia.ita.doc.gov/apo>.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the representatives of the Government of the UAE. We will attempt to provide a copy of the public version of the Petition to the foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

ITC Notification

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

Preliminary Determinations by the ITC

The ITC will preliminarily determine, no later than May 16, 2011, whether there is a reasonable indication that imports of certain steel nails from the UAE are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping or countervailing duty proceeding must certify to the accuracy and completeness of that information. See section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping or countervailing duty proceeding initiated on or after March 14, 2011. See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule*. The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting

party does not comply with the revised certification requirements.

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

Dated: April 20, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this investigation are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this investigation are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

Excluded from the scope of this investigation are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this investigation are the following products:

- Non-collated (*i.e.*, hand-drive or bulk), two-piece steel nails having plastic or steel washers (“caps”) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500” to 8”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual washer or cap diameter of 0.900” to 1.10”, inclusive;

- Non-collated (*i.e.*, hand-drive or bulk), steel nails having a bright or

galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 4”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive, and whose packaging and packaging marking are clearly and prominently labeled “Roofing” or “Roof” nails;

- Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 1.75”, inclusive; an actual shank diameter of 0.116” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive, and whose packaging and packaging marking are clearly and prominently labeled “Roofing” or “Roof” nails;

- Non-collated (*i.e.*, hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75” to 3”, inclusive; an actual shank diameter of 0.131” to 0.152”, inclusive; and an actual head diameter of 0.450” to 0.813”, inclusive, and whose packaging and packaging marking are clearly and prominently labeled “Roofing” or “Roof” nails;

- Corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;

- Thumb tacks, which are currently classified under HTSUS 7317.00.10.00;

- Fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;

- Certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and

- Fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2011-10187 Filed 4-26-11; 8:45 am]

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APPENDIX B
CONFERENCE WITNESSES

CALENDAR OF PUBLIC CONFERENCE

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

Subject: Certain Steel Nails from the United Arab Emirates
Inv. No.: 731-TA-1185 (Preliminary)
Date and Time: April 21, 2011 - 8:45 a.m.

Sessions were held in connection with this preliminary investigation in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

**In Support of the Imposition of
Antidumping Duty Order:**

Wiley Rein LLP
Washington, D.C.
on behalf of

Mid Continent Nail Corporation

David W. Libla, President, Mid Continent Nail Corporation

George J. Skarich, Executive Vice President of Sales & Marketing, Mid Continent Nail Corporation

Chris M. Pratt, Director of Internal Audit & Reporting Systems, Mid Continent Nail Corporation

Adam H. Gordon
Robert E. DeFrancesco, III)- OF COUNSEL

APPENDIX C
SUMMARY DATA

Table C-1
Steel nails: Summary data concerning the U.S. market, 2008-10

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

Item	Reported data			Period changes		
	2008	2009	2010	2008-10	2008-09	2009-10
U.S. consumption quantity:						
Amount	661,518	440,947	526,467	-20.4	-33.3	19.4
Producers' share (1)	18.6	22.0	17.8	-0.8	3.4	-4.2
Importers' share (1):						
UAE	7.3	14.4	22.5	15.2	7.1	8.1
All other sources	74.1	63.6	59.7	-14.4	-10.5	-3.9
Total imports	81.4	78.0	82.2	0.8	-3.4	4.2
U.S. consumption value:						
Amount	978,104	563,903	658,057	-32.7	-42.3	16.7
Producers' share (1)	22.6	30.2	23.0	0.3	7.6	-7.3
Importers' share (1):						
UAE	7.2	10.0	17.0	9.8	2.8	6.9
All other sources	70.1	59.7	60.1	-10.1	-10.4	0.3
Total imports	77.4	69.8	77.0	-0.3	-7.6	7.3
U.S. imports from:						
UAE:						
Quantity	48,256	63,494	118,558	145.7	31.6	86.7
Value	70,517	56,662	111,764	58.5	-19.6	97.2
Unit value	\$1,461	\$892	\$943	-35.5	-38.9	5.6
Ending inventory quantity	***	***	***	***	***	***
All other sources:						
Quantity	490,428	280,537	314,296	-35.9	-42.8	12.0
Value	686,105	336,747	395,266	-42.4	-50.9	17.4
Unit value	\$1,399	\$1,200	\$1,258	-10.1	-14.2	4.8
Ending inventory quantity	***	***	***	***	***	***
All sources:						
Quantity	538,684	344,031	432,854	-19.6	-36.1	25.8
Value	756,623	393,409	507,030	-33.0	-48.0	28.9
Unit value	\$1,405	\$1,144	\$1,171	-16.6	-18.6	2.4
Ending inventory quantity	70,310	52,653	58,443	-16.9	-25.1	11.0

Table continued on next page.

Table C-1--Continued
Steel nails: Summary data concerning the U.S. market, 2008-10

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

Item	Reported data			Period changes		
	2008	2009	2010	2008-10	2008-09	2009-10
U.S. producers!:						
Average capacity quantity	304,064	337,287	347,372	14.2	10.9	3.0
Production quantity	122,391	90,023	93,379	-23.7	-26.4	3.7
Capacity utilization (1)	40.3	26.7	26.9	-13.4	-13.6	0.2
U.S. shipments:						
Quantity	122,834	96,916	93,613	-23.8	-21.1	-3.4
Value	221,481	170,494	151,027	-31.8	-23.0	-11.4
Unit value	\$1,803	\$1,759	\$1,613	-10.5	-2.4	-8.3
Export shipments:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	16,397	9,416	9,105	-44.5	-42.6	-3.3
Inventories/total shipments (1) . .	13.3	9.7	9.7	-3.6	-3.6	0.0
Production workers	737	575	590	-19.9	-22.0	2.6
Hours worked (1,000s)	1,551	1,232	1,192	-23.2	-20.5	-3.3
Wages paid (\$1,000s)	26,529	21,359	18,591	-29.9	-19.5	-13.0
Hourly wages	\$17.11	\$17.33	\$15.60	-8.8	1.3	-10.0
Productivity (tons/1,000 hours) .	78.9	73.1	78.4	-0.7	-7.4	7.3
Unit labor costs	\$216.76	\$237.27	\$199.09	-8.2	9.5	-16.1
Net sales:						
Quantity	122,495	97,544	93,006	-24.1	-20.4	-4.7
Value	220,887	172,626	150,824	-31.7	-21.8	-12.6
Unit value	\$1,803	\$1,770	\$1,622	-10.1	-1.9	-8.4
Cost of goods sold (COGS)	179,500	136,605	123,503	-31.2	-23.9	-9.6
Gross profit or (loss)	41,387	36,021	27,321	-34.0	-13.0	-24.2
SG&A expenses	22,999	21,527	16,693	-27.4	-6.4	-22.5
Operating income or (loss)	18,388	14,493	10,628	-42.2	-21.2	-26.7
Capital expenditures	***	***	***	***	***	***
Unit COGS	\$1,465	\$1,400	\$1,328	-9.4	-4.4	-5.2
Unit SG&A expenses	\$188	\$221	\$179	-4.4	17.5	-18.7
Unit operating income or (loss) .	\$150	\$149	\$114	-23.9	-1.0	-23.1
COGS/sales (1)	81.3	79.1	81.9	0.6	-2.1	2.8
Operating income or (loss)/ sales (1)	8.3	8.4	7.0	-1.3	0.1	-1.3

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

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

Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.

APPENDIX D
NONSUBJECT COUNTRY PRICE DATA

Nonsubject Price Comparisons

Table D-1 compares quarterly weighted-average prices of nonsubject imports with U.S. producer prices and UAE prices for products 1-6 during 2008-10. Figure D-1 presents domestic and import prices for each of the specified price items individually. Prices of imports from individual nonsubject countries were generally lower than U.S. producer prices in the majority of comparisons, with the exception of Taiwan. Prices of imports from individual nonsubject countries were generally higher than prices of imports from the UAE for Korea, Malaysia, Mexico, and Taiwan, but were lower than UAE prices in the majority of comparisons for China, and for all comparisons for Poland.

Table D-1

Steel nails: Number of quarterly price comparisons of imported nonsubject and U.S. products 1, 2, 3, 4, 5, and 6 and imported nonsubject and UAE products 1, 2, 3, 4,5, and 6

Nonsubject Countries	United States		UAE	
	Higher ¹	Lower	Higher ¹	Lower
China	21	45	27	40
Korea	19	42	33	24
Malaysia	0	5	4	1
Mexico	4	20	15	5
Poland	0	7	0	7
Taiwan	32	34	60	5
Total	77	153	140	82

¹ "Higher" signifies that the price of the nonsubject country's product was higher than the U.S. or UAE price.

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

Figure D-1

Steel nails: Weighted-average prices and quantities of domestic and imported product, by quarters, January 2008-December 2010

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