

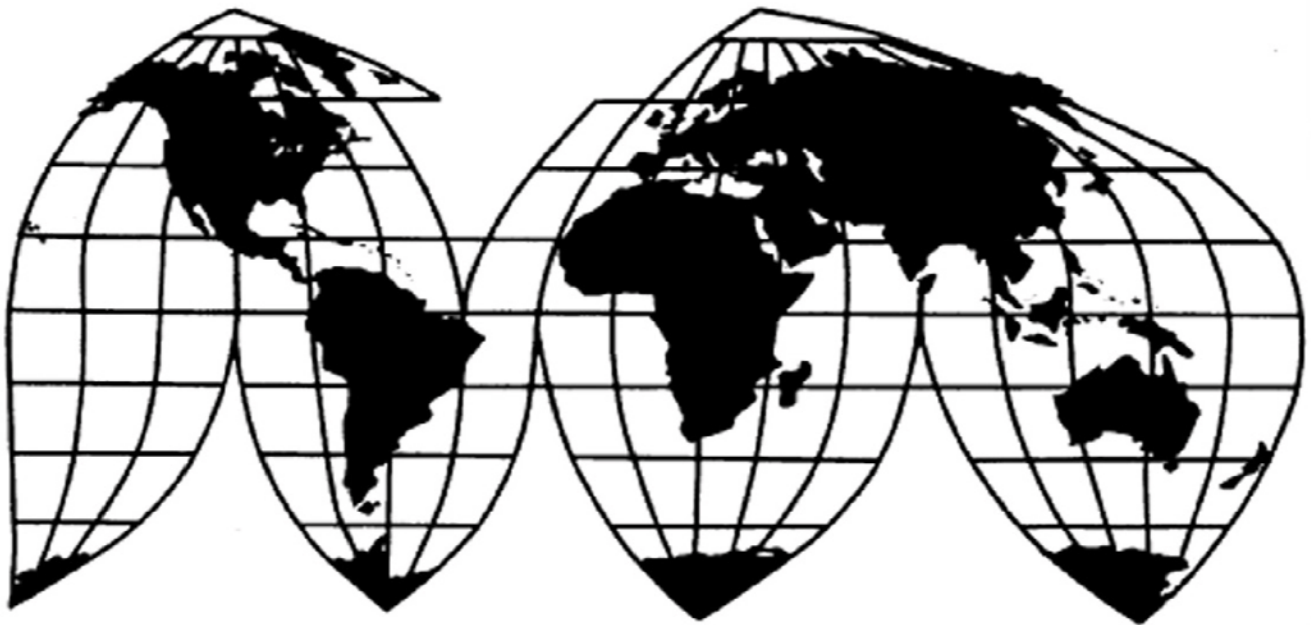
Seamless Refined Copper Pipe and Tube From China and Mexico

Investigation Nos. 731-TA-1174-1175 (Preliminary)

Publication 4116

November 2009

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-1174-1175 (Preliminary)

SEAMLESS REFINED COPPER PIPE AND TUBE FROM CHINA AND MEXICO

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, 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 injured² or threatened with material injury,³ by reason of imports from China and Mexico of seamless refined copper pipe and tube, provided for in subheadings 7411.10.10, and 8415.90.80 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).

COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. 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 affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 investigations.

BACKGROUND

On September 30, 2009, a petition was filed with the Commission and Commerce by Cerro Flow Products, Inc., St. Louis, MO; Kobe Wieland Copper Products, LLC, Pine Hall, NC; Mueller Copper Tube Products, Inc. and Mueller Copper Tube Company, Inc., Memphis, TN, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV

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 Commissioner Charlotte R. Lane, Commissioner Irving A. Williamson, and Commissioner Dean A. Pinkert determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of seamless refined copper pipe and tube from China and Mexico.

³ Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of seamless refined copper pipe and tube from China and Mexico.

imports of seamless refined copper pipe and tube from China and Mexico. Accordingly, effective September 30, 2009, the Commission instituted antidumping duty investigation Nos. 731-TA-1174-1175 (Preliminary).

Notice of the institution of the Commission's investigations 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 October 6, 2009 (74 FR 51318). The conference was held in Washington, DC, on October 21, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of seamless refined copper pipe and tube from China and Mexico that are allegedly sold in the United States at less than fair value.¹

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping 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 or threatened with material injury, or that 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 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 duty petition in these investigations was filed on September 30, 2009, by domestic producers Cerro Flow Products, Inc. (“Cerro”), St. Louis, Missouri; Kobe Wieland Copper Products, LLC (“Kobe Wieland”), Pine Hall, North Carolina; Mueller Copper Tube Products, Inc. and Mueller Copper Tube Company, Inc. (“Mueller”), Memphis, Tennessee. Petitioners appeared at the staff conference and filed a joint postconference brief.

Respondents that participated in the staff conference and filed postconference briefs include Shanghai Hailiang Copper Co. Ltd. (“Hailiang”), a Chinese producer of the subject merchandise; Golden Dragon Precise Copper Tube Group Inc., GD Affiliates S. de R.L. de C.V., and GD Copper (U.S.A.) Inc., a Chinese producer, a Mexican producer, and a U.S. importer of subject merchandise, respectively (collectively, “Golden Dragon”); IUSA, S.A. de C.V. (“IUSA”) and Nacional de Cobre, S.A. de C.V. (“Nacobre”), Mexican producers of subject merchandise (collectively, “Mexican Respondents”); and Dayco Industries, LLC (“Dayco”), Homewerks Worldwide, LLC (“Homewerks”), JMF Company (“JMF”), and Marubeni American Corp. (“Marubeni”), importers of subject merchandise (collectively, “Importer Respondents”).

A joint postconference statement was filed by Luvata Alltop (Zhongshan), Ltd., Luvata Tube (Zhongshan) Ltd., foreign producers of subject merchandise in China, Luvata Monterrey S. de R.L. de C.V., described as a future foreign producer of subject merchandise in Mexico, and Luvata Franklin, Inc. and Luvata Grenada LLC, importers of subject merchandise (collectively, “Luvata”). A postconference statement was also filed by Johnson Controls, Inc., a purchaser of subject imports.

¹ Commissioners Lane, Pinkert, and Williamson determine that there is a reasonable indication that the domestic industry is materially injured, and Chairman Aranoff, Vice Chairman Pearson, and Commissioner Okun determine that there is a reasonable indication that the domestic industry is threatened with material injury, by reason of the subject imports from China and Mexico. All Commissioners join in parts I-VI.B of these Views.

² 19 U.S.C. § 1673b(a) (2000); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chem. Corp. v. United States, 20 CIT 353, 354-55 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

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

The Commission received questionnaire responses from 12 domestic producers, estimated to account for 95 percent of U.S. production of seamless refined copper pipe and tube (hereinafter, “SRC pipe and tube”).⁴ The Commission received questionnaire responses from 42 importers, believed to account for 91 percent of total imports from China, 100 percent of total imports from Mexico, and 44 percent of total imports from all other sources.⁵ The Commission sent foreign producer questionnaires to 14 Chinese firms and six Mexican firms believed to be producing SRC pipe and tube. The Commission received questionnaire responses from 10 Chinese firms, believed to account for 97.9 percent of Chinese export shipments to the United States in 2008, and from four Mexican firms, believed to account for *** percent of Mexican export shipments in 2008.⁶

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.”⁷ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff 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.”⁸ In turn, the Tariff 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”⁹

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.¹⁰ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹¹ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹²

⁴ CR/PR at III-1. The responding producers other than the petitioning firms are Cambridge Lee, Freeport-McMoRan, H & H, Howell Metal, National Copper, Packless, Precision Tube, S.T. Products, and Wolverine. CR/PR at Table III-1.

⁵ CR/PR at IV-1, CR/PR at Table IV-1 (list of reporting importers).

⁶ CR at VII-3, VII-7; PR at VII-3, VII-5.

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(10).

¹⁰ 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 the following: (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).

¹¹ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹² 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

(continued...)

Although the Commission must accept the U.S. Department of Commerce's ("Commerce") determination as to the scope of the imported merchandise that is subsidized or sold at less than fair value,¹³ the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁴ 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 domestic like product issues.¹⁵

B. Product Description and Analysis

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

Seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter ("OD"), regardless of wall thickness, bore (e.g., smooth, enhanced with inner-grooves or ridges), manufacturing process (e.g., hot finished, cold-drawn, annealed), outer surface (e.g., plain or enhanced with grooves, ridges, fins, or gills), end finish (e.g., plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (e.g., plastic, paint), insulation, attachments (e.g., plain, capped, plugged, with compression or other fitting), or physical configuration (e.g., straight, coiled bent, wound on spools). The scope covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials ("ASTM") ASTM-B42, ASTM-B68, ASTM-B75, ASTM-B88, ASTM-B88M, ASTM-B188, ASTM-B251, ASTM-B251M, ASTM-B280, ASTM-B302, ASTM-B306, ASTM-B359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of these investigations are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope. "Refined copper" is defined as: (1) metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits

¹² (...continued)

consideration of an industry adversely affected by the imports under consideration.").

¹³ See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 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).

¹⁴ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the 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 the Commission's determination defining six like products in investigations where Commerce found five classes or kinds).

¹⁵ 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).

<u>ELEMENT</u>	<u>LIMITING CONTENT PERCENT BY WEIGHT</u>
Ag - Silver	0.25
As - Arsenic	0.5
Cd - Cadmium	1.3
Cr - Chromium	1.4
Mg - Magnesium	0.8
Pb - Lead	1.5
S - Sulfur	0.7
Sn - Tin	0.8
Te - Tellurium	0.8
Zn - Zinc	1.0
Zr - Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of these investigations are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length.¹⁶

SRC pipe and tube is fabricated of high-purity copper and has a circular cross section. Depending upon the requirements of industry standards or customer specifications, additional characteristics can include the following: outer surface coatings for corrosion protection or insulation; marking with paint or plastic color coding for product identification; cleaning, pressurizing with nitrogen gas, and capping of each end to assure interior cleanliness; end finishes; and attachments.¹⁷

SRC pipe and tube applications generally involve fluids under pressure, either for conveyance or closed-loop thermal transfer, in which copper's properties (e.g., strength, malleability, thermal conductivity, and corrosion resistance) are important. Conveyance applications include residential, commercial, industrial, and municipal water systems, as well as distribution systems for other liquids and gases. Thermal transfer applications in which SRC pipe and tube are used include heating systems, commercial refrigeration systems, and air-conditioning systems.¹⁸

"Plumbing" or "standard" SRC pipe and tube (hereafter "plumbing tube") is commonly produced to various standards of the American Society for Testing and Materials ("ASTM"), which specify chemical composition, outside diameter, wall thickness, and other characteristics of the SRC pipe or tube based on end-use applications. Commercial or industrial SRC pipe and tube (hereafter "commercial tube") is produced to either ASTM specifications or nonstandard specifications of customers, e.g., original equipment manufacturers ("OEMs"), which can include inner or outer features to enhance thermal transfer capabilities. Common applications for commercial SRC pipe and tube include refrigeration, freezer, heating, and air conditioner systems and units.¹⁹

¹⁶ Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations, 74 Fed. Reg. 55194 (Oct 27, 2009). Commerce explained that the products subject to these investigations are currently classifiable under subheadings 7411.10.1030, 7411.10.1090 of the Harmonized Tariff Schedule of the United States (HTS), and may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Id.

¹⁷ CR at I-7, PR at I-5

¹⁸ CR at I-7-8, PR at I-5-6.

¹⁹ CR at I-8, PR at I-6.

SRC pipe and tube production involves three stages: (1) prefabricating, which includes melting, casting, and either extrusion or rolling of rough tubing; (2) intermediate fabrication, consisting of cold drawing of unfinished tubing; and (3) finishing of the SRC pipe and tube.²⁰

C. Parties' Arguments

Petitioners request that the Commission define a single domestic like product consisting of all SRC pipe and tube, coterminous with the scope of these investigations.²¹ While Mexican Respondents do not contest Petitioners' proposed definition of the domestic like product at the preliminary phase of these investigations, they contend that the record would support defining plumbing tube and SRC commercial tube as separate domestic like products.²² Luvata urges the Commission to note the distinction between plumbing and commercial tube as a relevant condition of competition in the SRC pipe and tube market, and relies in that regard upon the factors the Commission traditionally considers in defining the domestic like product.²³

Petitioners assert that all SRC pipe and tube share the same basic physical characteristics and uses in that all SRC pipes and tubes are seamless products, they have circular cross sections, they consist entirely or virtually entirely of refined copper, and they are used to transport fluids, either in conveyance applications or in closed loops for thermal transfer. Petitioners contend that there is some degree of interchangeability between plumbing and commercial tube. All plumbing tube must conform to ASTM specifications and some commercial tube is also produced to ASTM specifications, and the specifications of purchasers of commercial tube can mirror ASTM specifications or can be stated in terms of ASTM specifications with adjustments or additions.²⁴ They maintain that, although plumbing tube is generally sold to distributors and retailers and commercial tube is generally sold to OEMs, there is some overlap in channels of distribution between plumbing and commercial tube.²⁵ Petitioners argue that, overall, customers perceive SRC pipe and tube as a single product, with a broad mix of variations across a continuum. They also claim that the prefabrication stage of production for plumbing and commercial tube is generally the same, that some U.S. producers manufacture both plumbing and commercial tube, and that at least one producer does so in the same facilities, using common production equipment and employees.²⁶ Petitioners acknowledge that the methods for setting prices for plumbing and commercial tube differ. Plumbing tube is sold at a discount off published price lists whereas commercial tube is sold at the price of the copper at the time of the sale plus a fabrication charge negotiated annually between the SRC pipe and tube mill and the OEM purchaser. Petitioners claim that, notwithstanding these pricing structure differences, prices for SRC pipe and tube products generally fall within a continuum of prices that are ultimately determined primarily by the market price for copper as well as variations in finishing costs and relative demand for different SRC pipe and tube products.²⁷

Mexican Respondents note, regarding physical characteristic and uses, that plumbing tube is used in residential and commercial construction for water distribution, while commercial tube is

²⁰ CR at I-11, I-9.

²¹ Petition at 35-36, Petitioners Postconference Brief at 9-15.

²² Mexican Respondents Postconference Brief at 5-7.

²³ Luvata Postconference Brief at 7-15.

²⁴ Petitioners Postconference Brief at 9-11.

²⁵ Petitioners Postconference Brief at 12.

²⁶ Petitioners Postconference Brief at 13. Petitioners assert that Kobe Wieland and Cerro produce both plumbing and commercial tube, but they do not suggest that Cerro does so in the same facilities with the same workers. Instead, Petitioners refer to Kobe Wieland as the only domestic producer that produces both plumbing and commercial tube on the same production line at its Pine Hall, North Carolina facility.

²⁷ Petitioners Postconference Brief at 14.

predominantly used for containing refrigerants. They assert that plumbing tube is sold in both straight lengths and coils and is smooth internally and externally, whereas, they contend, commercial tube is predominantly sold in coils and is often internally “rifled,” *i.e.*, striated or textured.²⁸ Luvata similarly argues that plumbing and commercial tubing differ in several key respects, including shape, length, temper, diameter, thermal conductivity, and smoothness of interior surfaces, which determine the uses for which the plumbing and commercial tubing are ideally suited.²⁹ Luvata also asserts, based on these differences, that plumbing and commercial tube are not interchangeable.³⁰ Mexican Respondents and Luvata contend that channels of distribution also differ, with plumbing tube sold ready for installation through distributors and retailers, and commercial tube sold for further manufacture to OEMs, primarily manufacturers of air conditioning units.³¹ Mexican Respondents argue that plumbing and commercial tube are generally produced in different facilities with different workers, with each U.S. producer ***.³² Luvata claims that plumbing and commercial tube are most efficiently manufactured using different processes and that switching production between plumbing and commercial tubes requires fundamental changes and substantial investments.³³ Luvata claims that customers and producers perceive differences between plumbing and commercial tube. It contends that plumbing tube is essentially a commodity product while commercial tube is subject to more exacting specifications of individual commercial tube purchasers.³⁴ Mexican Respondents and Luvata also cite the distinction between the approaches for setting prices in the sale of plumbing and commercial tube.³⁵

D. Analysis

Physical Characteristics and Uses. All SRC pipe and tube share certain basic physical characteristics, including being seamless, made of refined copper, and having a circular cross section. All SRC pipe and tube are used to transport or circulate fluids.³⁶ The record indicates, however, that specifications for SRC pipe and tube used in plumbing applications and SRC pipe and tube used in commercial applications generally differ, with plumbing tube conforming to ASTM standards and commercial tube conforming to individual OEMs’ specifications or ASTM standards. For instance, it appears that tube meeting certain ASTM standards (*e.g.*, ASTM designations B-280, B-903, Type K, Type L, Type M, DWV, and ARC/RST) is designated for use in commercial applications (*i.e.*, in conjunction with heating, ventilation, air conditioning and refrigeration systems), but some may also be used in plumbing applications.³⁷ Accordingly, there is some degree of similarity in the physical characteristics and uses of plumbing and commercial tube, although the current record does not shed much light on the extent of that similarity.

Interchangeability. The limited record in these preliminary phase investigations also indicates that there is at least some interchangeability between plumbing tube and commercial tube. Requirements for commercial tube can include the same ASTM standards applicable to plumbing tube, or can mirror ASTM standards, or reflect ASTM standards plus other elements. According to Petitioners, distributors

²⁸ Mexican Respondents Postconference Brief at 5-6.

²⁹ Luvata Postconference Brief at 8-9.

³⁰ Luvata Postconference Brief at 9-10.

³¹ Mexican Respondents Postconference Brief at 6, Luvata Postconference Brief at 10-11.

³² Mexican Respondents Postconference Brief at 5-7.

³³ Luvata Postconference Brief at 12-13.

³⁴ Luvata Postconference Brief at 11-12.

³⁵ Mexican Respondents Postconference Brief at 7, Luvata Postconference Brief at 13-14.

³⁶ See CR/PR at Tables I-1, I-2.

³⁷ See CR/PR at Tables I-1, I-2; Petitioners Postconference Exhibit 1.

and converters can purchase commercial tube and repackage it for resale as plumbing tube, or may purchase plumbing tube and convert it for resale as commercial tube product.³⁸

Channels of distribution. All parties agree that domestic producers generally sell SRC pipe and tube for plumbing applications to distributors and retailers and that they generally sell commercial tube to OEMs. It appears, however, that both distributors and SRC pipe and tube mills sell tube conforming to ASTM designations (e.g., Type K, Type L, Type M, DWV, and ARC/RST) to OEMs.³⁹ Accordingly, there appears to be overlap between the channels through which plumbing and commercial tube are sold.

Common Manufacturing Facilities, Production Processes, and Production Employees. The initial stages of production are the same for plumbing and commercial tube and, therefore, they can be produced in the same facilities with the same processes, and production employees. Although some producers confine their production to either plumbing tube or commercial tube, certain producers produce both plumbing and commercial tube, and at least one producer manufactures both in the same facility with the same employees. Thus, the limited information in this record suggests that there is some degree of shared facilities, processes, and employees in the production of plumbing and commercial tube.

Producer and Customer Perceptions. Although producers and customers may view SRC pipe and tube to some extent as falling on a continuum of a single product, the record indicates that market participants also perceive a distinction between plumbing and commercial tube.

Price. It is uncontested that plumbing and commercial tube are sold under different price structures. Plumbing tube is sold on the spot market at a discount off price lists published by certain domestic producers, whereas commercial tube is sold at the contemporaneous COMEX price of copper plus a negotiated per-pound fabrication charge that is fixed for a 12-month period.⁴⁰ Notwithstanding the different pricing structures, domestic producers maintain that prices for SRC pipe and tube overall may fall generally on a continuum of prices determined primarily by the prevailing market price for copper, variations in finishing costs, and relative demand for different SRC pipe and tube products.⁴¹

Conclusion. The record indicates that plumbing and commercial tube possess both similarities and differences with respect to physical characteristics and uses. There appears, moreover, to be at least a minimal degree of interchangeability between plumbing and commercial tube, as well as some similarities in terms of the channels through which they are traded, and some commonality of manufacturing facilities and employees. Although plumbing and commercial tube are sold under different price structures, the current record is not clear as to whether or to what extent those structural differences result in actual price differences between plumbing and commercial tube. Therefore, we conclude, on the basis of the current record, that there is not a clear dividing line between plumbing and commercial tube. We note, moreover, that most respondent parties do not disagree with Petitioners' view that all SRC pipe and tube constitute a single domestic like product. We also note that the Mexican Respondents and Luvata have not framed their arguments as requests to define plumbing and commercial tube as separate domestic like products for purposes of these preliminary phase investigations.⁴² Accordingly, we find one domestic like product, coterminous with the scope, consisting of all SRC pipe and tube. We intend in any final phase of these investigations to solicit additional information on the distinctions between plumbing and commercial tube.

³⁸ Petitioners Postconference Brief at 9-11.

³⁹ Petitioners Postconference Brief at 12.

⁴⁰ Mexican Respondents Postconference Brief at 7, Luvata Postconference Brief at 13-14.

⁴¹ Petitioners Postconference Brief at 14.

⁴² Luvata notes that the welded copper tube produced by Luvata Franklin, Inc. is not within the domestic like product. Luvata does not request expansion of the domestic like product to include welded copper tube. Rather, Luvata asserts simply that welded copper tube, although more costly than SRC pipe and tube, can be substituted for SRC pipe and tube under certain circumstances. Luvata Postconference Brief at 3-4.

IV. DOMESTIC INDUSTRY

The domestic industry is defined as the domestic “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.”⁴³ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market. Based on our definition of the domestic like product, we define the domestic industry as all domestic producers of SRC pipe and tube.

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). Subsection 1677(4)(B) 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.⁴⁴ Exclusion of such producers is within the Commission’s discretion based upon the facts presented in each investigation. In these investigations, several domestic producers may be related parties based on their relationship to exporters of the subject merchandise, importations of subject imports, or purchases of subject imports.⁴⁵ No party, however, has argued for exclusion of any producer as a related party.

Wolverine ***.⁴⁶ Although Wolverine is a related party, we find that appropriate circumstances do not exist to exclude it from the domestic industry.⁴⁷ The ***.⁴⁸ We note that Wolverine ***.⁴⁹ Wolverine is a substantial domestic producer; it accounted for *** percent of domestic production in 2008, and it was the *** largest producer in that year.⁵⁰ Wolverine ***.⁵¹

⁴³ 19 U.S.C. § 1677(4)(A).

⁴⁴ 19 U.S.C. § 1677(4)(B).

⁴⁵ The Commission has concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of imports. The Commission has found such control to exist where the domestic producers were responsible for a predominant proportion of an importer’s purchases and the importer’s purchases were substantial. See, e.g., Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (April 1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (April 1997).

⁴⁶ Wolverine’s ***. CR/PR at Table III-7. Wolverine would be a related party based on its *** percent interest in the Chinese producer and exporter Wolverine Tube (Shanghai), if it were in a position to exercise direct or indirect control over Wolverine Tube (Shanghai). CR/PR at Table III-1.

⁴⁷ Chairman Aranoff and Commissioner Okun find that appropriate circumstances exist to exclude Wolverine from the domestic industry. The record in these preliminary phase investigations indicates that Wolverine’s primary interest lies in importation. During the period of investigation, Wolverine reduced its domestic capacity and production while it increased its importation of subject pipe and tube. The ratio of Wolverine’s total subject imports to production went from *** percent in 2006, to *** percent in 2008, and was *** percent in the first half of 2009. Moreover, in 2005 Wolverine became the exclusive North American distributor for Golden Dragon, a subject producer in China. Golden Dragon’s Postconference Brief, Exhibit 8. According to conference testimony, “[t]his arrangement in fact meshed very well with Wolverine’s decision to take capacity offline because Golden Dragon produced a line of tubing for the industrial market that was similar to the tubes Wolverine produced.” Conference Transcript at 101 (Weil). Wolverine *** the petition. We will consider this issue further in any final phase investigation.

⁴⁸ CR/PR at Table III-7.

⁴⁹ CR/PR at Table III-7.

⁵⁰ CR/PR at Table III-1.

⁵¹ CR/PR Table III-7.

The Petitioners argue that *** and that excluding Wolverine would skew the Commission's analysis of the condition of the domestic industry by disregarding these closures.⁵² The record, however, is not clear as to whether subject imports may have played a role in the closure of any U.S. operations. Wolverine reports that it closed its Decatur, Alabama manufacturing operation facilities in December 2007 "due to the competitive nature of the majority of products produced in Decatur," but does not state whether, or to what extent, subject imports may have been part of this competition.⁵³ The Commission will continue to explore the nature of this competition in any final phase investigations.

For purposes of these preliminary phase investigations, we do not find that appropriate circumstances exist to exclude Wolverine as a related party. The record does not reflect that Wolverine is in a position to exercise direct or indirect control over Wolverine Tube (Shanghai). Wolverine has been a substantial domestic producer throughout the period of investigation. Its interests appear to have been focused on domestic production and importation at different times during the period of investigation, and it is unclear why its interests appear to have changed. Moreover, Wolverine *** in view of its *** operating performance. Its operating income as a ratio of net sales was *** the industry average ***.^{54 55} ⁵⁶ Therefore, we do not find appropriate circumstances to exclude Wolverine from the domestic industry, although we intend to examine this issue in any final phase investigations.

Cambridge Lee is wholly owned by IUSA, a Mexican producer and exporter of SRC pipe and tube and, therefore, Cambridge Lee is a related party.⁵⁷ ***.⁵⁸ We find, however, that appropriate circumstances do not exist to exclude Cambridge Lee from the domestic industry. ***.⁵⁹ ***. Nonetheless, Cambridge Lee accounted for *** percent of domestic production in 2008 and is, thus, the *** domestic producer. Moreover, Cambridge Lee *** in view of its *** operating performance for most of the period. Its operating income as a ratio of net sales was *** the industry average from 2006 to 2008, and *** the average *** in interim 2009.^{60 61} Accordingly, we find, on balance, that circumstances are not appropriate to exclude Cambridge Lee from the domestic industry, although we also intend to review this issue in any final phase investigations.

⁵² Petitioner's Postconference Brief at 16.

⁵³ ***. CR/PR at Table III-3. ***.

⁵⁴ CR/PR at Table VI-2.

⁵⁵ In these investigations, Vice Chairman Aranoff does not rely on individual company operating income margins in assessing whether particular related parties benefit from importation of subject merchandise. Rather, she has based her determination regarding whether to exclude related parties principally on their ratios of subject imports to domestic shipments and on whether their primary interests lie in domestic production or importation. As discussed above, appropriate circumstances exist to exclude Wolverine.

⁵⁶ For purposes of the preliminary phase of these investigations, Commissioner Pinkert does not rely upon financial performance as a factor in determining whether there are appropriate circumstances to exclude related parties from the domestic industry. The present record is not sufficient to infer from the companies' profitability on their U.S. operations whether they have derived a specific benefit from importing. See Allied Mineral Products v. United States, 28 C.I.T. 1861, 1865-67 (2004).

⁵⁷ CR/PR at Table III-1.

⁵⁸ CR/PR at Table III-7.

⁵⁹ CR/PR at Table III-7.

⁶⁰ CR/PR at Table VI-2.

⁶¹ Chairman Aranoff does not rely on individual company operating income margins in assessing whether particular related parties benefit from importation of subject merchandise. Rather, she bases her determination regarding whether to exclude related parties principally on their ratios of subject imports to domestic shipments and on whether their primary interests lie in domestic production or importation.

Despite a relatively high subject imports to domestic shipment ratio, she does not find that Cambridge Lee showed a decline in its domestic production proportional to its increase in imports. Therefore, she does not find that appropriate circumstances exist to exclude Cambridge Lee from the domestic industry.

Seven other domestic producers are or may be related parties. ***. ***.⁶² ***.⁶³ ***.⁶⁴ Kobe Wieland is *** percent owned by Wieland-Werke, a German firm, which, in turn, owns an interest in the Chinese exporter Wolverine Tube (Shanghai).⁶⁵ Kobe Wieland ***.⁶⁶ Mueller is *** in the joint venture Jiangsu Mueller-Xingrong Copper, a Chinese exporter.⁶⁷ Precision Tube is a sister company of Mueller, which, as noted above, has an ownership interest in the Chinese exporter Jiangsu Mueller-Xingrong Copper.

It is clear that *** are related parties by virtue of their importation of subject merchandise. The other four producers also may be related parties by virtue of corporate relationships to, or purchases of, subject merchandise. We need not resolve, however, the question of whether all of these seven producers are related parties because we would not find appropriate circumstances exist to exclude any of them from the domestic industry.

*** each accounted for a very small percentage of domestic production.⁶⁸ Thus, neither inclusion nor exclusion of their individual data would skew the industry data. Moreover, to the extent they imported or purchased subject imports, their imports or purchases were small relative to their production.⁶⁹ Accordingly, their interests appear to be those of domestic producers. Moreover, they do not appear to have derived a significant benefit from their potential related party status. *** operating income as a ratio of net sales was below the industry average throughout the period of investigation, and the ratios for *** were below the industry average for a majority of the period of investigation.⁷⁰

*** Mueller nor Kobe Wieland ***.⁷¹ Moreover, Kobe Wieland ***. Additionally, these producers ***. Kobe Wieland's operating income as a ratio of net sales was ***. Although the financial performance of Mueller ***,⁷² there is no indication that this relatively ***. Mueller and Kobe Wieland are also Petitioners, further indicating that their interests are those of domestic producers notwithstanding their potential related party status. Finally, *** accounted for only *** percent of subject imports from China in 2008.⁷³ *** purchases were equivalent to only *** percent of its production in *** and *** percent in ***.⁷⁴ Moreover, *** supports the petition.⁷⁵

For the reasons stated above, we find that appropriate circumstances do not exist to exclude any domestic producer from the domestic industry. We therefore define the domestic industry to include all domestic producers of SRC pipe and tube. We intend in any final phase of these investigations to revisit the question of whether appropriate circumstances exist to exclude any related party, particularly Wolverine and Cambridge Lee, from the domestic industry.

⁶² CR/PR at Table III-7.

⁶³ CR/PR at Table III-7.

⁶⁴ CR/PR at Table III-7, IV-1. Howell is an importer because it is a division of CMC, an importer, rather than a separate legal entity.

⁶⁵ CR/PR at Table III-1, III-3.

⁶⁶ CR/PR at Table III-7.

⁶⁷ CR/PR at Table III-1.

⁶⁸ Precision Tube accounted for *** percent of domestic production, *** for *** percent, Packless for *** percent, and *** for *** percent, and Precision Tube for *** percent. CR/PR at Table III-1.

⁶⁹ CR/PR at Table III-7. ***. Id.

⁷⁰ CR/PR at Table VI-2.

⁷¹ CR/PR at Table III-7. Mueller accounted for *** percent of total domestic production in 2008, and Kobe Wieland accounted for *** percent. CR/PR at Table III-1. Id.

⁷² CR/PR at Table VI-7.

⁷³ CR/PR at Table III-7. *** accounted for *** percent of domestic production in 2008.

⁷⁴ CR/PR at Table IV-1.

⁷⁵ CR/PR at Table III-1.

V. CUMULATION

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like products in the U.S. market.⁷⁶ In assessing whether subject imports compete with each other and with the domestic like product,⁷⁷ the Commission has generally considered the following four factors:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁷⁸

Although no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁷⁹ Only a “reasonable overlap” of competition is required.⁸⁰

A. Parties’ Arguments

Petitioners and the Chinese producer Hailiang contend that the Commission should cumulate subject imports from China and Mexico as there is a reasonable overlap of competition. They assert that the domestic like product and subject imports from China and Mexico are fungible and that there is considerable overlap between them, notwithstanding the greater focus of the imports from Mexico on plumbing tube and the greater focus of imports from China on commercial tube. They contend that the geographic overlap and simultaneous presence requirement are also satisfied. They also argue that the domestic like product and subject imports from China and Mexico are sold through the same channels of distribution.⁸¹

Mexican Respondents contend that these investigations are concerned solely with threat of material injury and, therefore, they limit their cumulation arguments to the Commission’s threat analysis. They argue, in the context of cumulation for purposes of threat of material injury, that the subject imports are not substantially fungible because the SRC pipe and tube from China are concentrated in commercial

⁷⁶ 19 U.S.C. § 1677(7)(G)(i).

⁷⁷ The SAA expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA, H.R. Rep. 103-316, vol. I at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁷⁸ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986) at 8 n.29, aff’d sub nom. Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁷⁹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁸⁰ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁸¹ Petitioners Postconference Brief at 25-29, Hailiang Postconference Brief at 2-7.

tube and the SRC pipe and tube from Mexico is concentrated in plumbing tube. They also contend that plumbing and commercial tube are generally sold through different channels of distribution and are priced differently.⁸² These arguments are also relevant to the Commission's present material injury cumulation analysis.

B. Analysis

In these investigations, the threshold criterion is satisfied because the Petitioners filed the antidumping duty petitions with respect to China and Mexico on the same day. None of the cumulation exceptions applies. Subject imports from China and Mexico are therefore eligible for cumulation. We consequently examine whether there is a reasonable overlap of competition between subject imports from China and Mexico, as well as among subject imports and the domestic like product.

Fungibility.⁸³ There appears to be a reasonable degree of fungibility with respect to the subject imports from China and Mexico as well as with respect to the subject imports from each source and the domestic like product. The questionnaire responses indicate that market participants perceive domestic SRC pipe and tube and subject imports to be interchangeable. A majority of responding domestic producers and importers reported that the domestic product is always or frequently interchangeable with the subject imports from each subject source and that the Chinese and Mexican SRC pipe and tube are interchangeable with each other.⁸⁴

The available data suggest that, notwithstanding the greater focus of the imports from Mexico on plumbing tube and the greater focus of imports from China on commercial tube, the subject imports from both China and Mexico include both plumbing and commercial tube to some degree. We note, moreover, that Petitioners assert that there is at least some degree of fungibility among products used for plumbing and commercial and industrial purposes.⁸⁵ We intend to further examine this issue in any final phase investigations.

Geographic Overlap. All responding domestic producers reported that they serve a nationwide market.⁸⁶ Official Commerce statistics show that the largest ports of entry for both the Chinese and the Mexican imports were in Texas, with more than one-half the subject imports from China entering at Houston-Galveston and Dallas-Fort Worth and a large majority of the subject imports from Mexico entering the port at Laredo.⁸⁷ Moreover, 12 of 34 importers reported that they serve a nationwide market.⁸⁸ Additionally, it appears, as Petitioners allege, that although some importers sell subject imports from China or Mexico only to a limited number of geographic regions, in the aggregate importers sell subject imports to all geographic regions within the continental United States.⁸⁹ Accordingly, the record indicates that there was significant geographic overlap between the subject imports from China and Mexico and between subject imports and the domestic like product.

⁸² Mexican Respondents Postconference Brief at 35-41.

⁸³ Commissioner Lane notes that, with respect to fungibility, her analysis does not require such similarity of products that a perfectly symmetrical fungibility is required, and she notes that this factor would be better described as an analysis of whether subject imports from each country and the domestic like product could be substituted for each other. See Separate Views of Commissioner Charlotte R. Lane, Certain Lightweight Thermal Paper from China, Germany, and Korea, Invs. Nos. 701-TA-451 and 731-TA-1126 to 1128 (Prelim.), USITC Pub. 3964 (Nov. 2007).

⁸⁴ CR/PR at Table II-2.

⁸⁵ See Petitioners Postconference Brief at 10.

⁸⁶ CR/PR at II-1.

⁸⁷ CR/PR at Tables IV-4, IV-5.

⁸⁸ CR/PR at II-1.

⁸⁹ Petitioners Postconference Brief at 27-28.

Channels of Distribution. Closely related to the fungibility issue, U.S. producers' shipments and shipments of subject imports from China and Mexico all included shipments to both distributors and end users. A very rough indication of the relative shares of the subject imports and the domestic like product accounted for by plumbing and commercial tube is provided by the fact that sales to distributors may be concentrated in plumbing tube, whereas sales to OEMs may generally reflect sales of commercial tube. Over the period of investigation, shipments of the domestic like product ranged between 60 and 64 percent to distributors and between 36 and 40 percent to OEMs. Subject imports from China ranged between 7 and 14 percent to distributors and between 86 and 93 percent to OEMs. Subject imports from Mexico, on the other hand, ranged between *** percent and *** percent to distributors and between *** and *** percent to OEMs.⁹⁰ Accordingly, imports from each subject source appear to overlap in channels of distribution more with the domestic like product than with each other but, nevertheless, there is sufficient overlap between the subject imports from China and Mexico to support cumulation.

Simultaneous Presence. Official import statistics show that subject imports from China and those from Mexico have each been present in the U.S. market in each month of the period of investigation.⁹¹

Conclusion. Although it appears that there may be some limits on fungibility as between plumbing and commercial tube, channel of distribution data indicate that both plumbing and commercial tube were included among the shipments of domestic tube, subject imports from China, and subject imports from Mexico. We find that the tube-type and channel of distribution overlaps between the subject imports from China and Mexico are sufficient to support cumulation, particularly given the absence, on this limited preliminary phase record, of more direct and specific information on fungibility and actual plumbing to commercial tube ratios. Accordingly, on these bases, and because there is geographic overlap and simultaneous presence, we find that there is a reasonable overlap of competition between subject imports from China and Mexico and between subject imports and the domestic like product. Therefore, we cumulatively assess the volume and effects of subject imports from China and Mexico for purposes of determining whether there is reasonable indication that the domestic industry is materially injured by reason of the subject imports. In any final phase of these investigations, we will solicit further information on the extent to which subject imports from China and Mexico are fungible with each other and the extent to which they are sold in the same channels of distribution.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS⁹²

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.⁹³ 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

⁹⁰ CR/PR at Table II-1.

⁹¹ CR/PR at Table IV-6.

⁹² Negligibility under 19 U.S.C. § 1677(24) is not an issue in these investigations. Subject imports from each subject country far exceeded the negligibility threshold during the period September 2008 to August 2009, the most recent 12-month period preceding the filing of the petition for which data are available. Specifically, by quantity, subject imports from China accounted for 44.7 percent, and subject imports from Mexico for 29.3 percent, of total imports of SRC pipe and tube in that period. CR/PR at IV-12.

⁹³ 19 U.S.C. §§ 1671b(a), 1673b(a).

the context of U.S. production operations.⁹⁴ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁹⁵ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁹⁶ 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.”⁹⁷

Although the statute requires the Commission to determine whether there is a reasonable indication that the domestic industry is “materially injured by reason of” unfairly traded imports,⁹⁸ 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.⁹⁹ 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.¹⁰⁰

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.¹⁰¹ In performing its examination, however, the Commission need not

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

⁹⁵ 19 U.S.C. § 1677(7)(A).

⁹⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁹⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁹⁸ 19 U.S.C. §§ 1671b(a), 1673b(a).

⁹⁹ 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).

¹⁰⁰ 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).

¹⁰¹ 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 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

(continued...)

isolate the injury caused by other factors from injury caused by unfairly traded imports.¹⁰² 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.¹⁰³ It is clear that the existence of injury caused by other factors does not compel a negative determination.¹⁰⁴

Assessment of whether 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 imports.”^{105 106} Indeed, the

¹⁰¹ (...continued)

export performance and productivity of the domestic industry”); accord Mittal Steel, 542 F.3d at 877.

¹⁰² 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.”).

¹⁰³ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

¹⁰⁴ 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.”).

¹⁰⁵ 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.

¹⁰⁶ Commissioner Pinkert does not join this paragraph or the following four 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. Mittal explains as follows:

What Bratsk held is that “where commodity products are at issue and fairly traded, price-competitive, nonsubject 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 nonsubject 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.

Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”¹⁰⁷

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.¹⁰⁸ 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.¹⁰⁹ 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. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.^{110 111}

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.¹¹²

¹⁰⁷ 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.”).

¹⁰⁸ Mittal Steel, 542 F.3d at 875-79.

¹⁰⁹ 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).

¹¹⁰ 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.

¹¹¹ 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.

¹¹² 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.”).

B. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury by reason of subject imports.

1. Demand Conditions

SRC pipe and tube is principally used in plumbing, refrigeration, and air conditioning systems. Demand for SRC pipe and tube, therefore, is largely derived from residential construction, commercial construction, and the market for air conditioning and refrigeration units. The parties agree that demand for SRC pipe and tube declined over the period examined owing to the recession, the reduction in residential and commercial construction, and the credit crisis. They also note that demand declined with increased substitution of plastic (known as PVC and PEX) and aluminium pipe and tube in the place of SRC pipe and tube.¹¹³ Petitioners argue that substitution of plastic tube for copper tube in residential plumbing increased through 2006, but leveled off thereafter.¹¹⁴

When measured by apparent domestic consumption, U.S. demand declined over the period of investigation, as Petitioners and respondents agree, from 1.13 billion pounds in 2006 to 867.8 million pounds in 2008, a 23.5 percent decline, and was 23.7 percent lower in interim 2009, at 370.2 million pounds, than in interim 2008, at 485.4 million pounds.¹¹⁵

2. Supply Conditions

The domestic industry is the largest source of supply in the U.S. market. Domestic producers' market share was 77.0 percent in 2006, 76.0 percent in 2007, and 71.5 percent in 2008. The domestic industry's market share was 72.0 percent in interim 2009 compared with 71.8 percent in interim 2008.¹¹⁶ U.S. producers' production capacity exceeds domestic demand.¹¹⁷ Twelve domestic producers accounted for 95 percent of U.S. SRC pipe and tube production in 2008.¹¹⁸ The record indicates that some domestic producers manufacture only plumbing tube, some manufacture only commercial tube, and some manufacture both plumbing and commercial tube.¹¹⁹ Mueller, Cerro, and Kobe Wieland are the largest domestic producers, accounting for, respectively, *** percent, *** percent, and *** percent of reported domestic production.¹²⁰

¹¹³ Petitioners Postconference Brief at 23.

¹¹⁴ Petitioners Postconference Brief at 23, IUSA/Nacobre Postconference Brief at 12-19, Hailiang Postconference Brief at 7-12, Golden Dragon Postconference Brief at 9-18, Importer Respondents Postconference Brief at 4-13. Petitioners also explain that, in 2006, the air conditioning industry migrated to a higher Seasonal Energy Efficiency Ratio ("SEER") standard, from SEER 10 to SEER 13, which increased demand for SRC pipe and tubes with higher thermal conductivity per pound; *i.e.*, tubes with inner grooves and thinner walled smooth-bore tubes. Petitioners state that this migration resulted in an increase in total feet of SRC pipe and tube sold, although they estimate that total pounds sold was probably unchanged because of decreases in the wall thicknesses of that pipe and tube. Petitioners Postconference Brief at 23.

¹¹⁵ CR/PR at Tables IV-8, C-1.

¹¹⁶ CR/PR at Tables IV-8, C-1.

¹¹⁷ CR/PR at III-2. Domestic producers' capacity was 1.2 billion pounds in 2006, 1.2 billion pounds in 2007 and 1.1 billion pounds in 2008 and 545.6 million pounds in interim 2008 and 526.9 million pounds in interim 2009. CR/PR at Table III-2.

¹¹⁸ CR/PR at Table III-1, *id.* at n.1 .

¹¹⁹ *E.g.*, Petitioners Postconference Brief at 13, Mexican Respondents Postconference Brief at 5-7.

¹²⁰ CR/PR at Table III-1.

The market share of subject imports increased from 15.1 percent in 2006 to 21.0 percent in 2008 and was 21.8 percent in interim 2009 compared with 21.5 percent in interim 2008.¹²¹ The record indicates that the majority of subject imports from China are commercial tube and the majority of subject imports from Mexico are plumbing tube.¹²² *** and *** were the largest reporting U.S. importers of subject SRC pipe and tube, accounting for, respectively, *** percent and *** percent of reported subject imports.¹²³

The market share of nonsubject imports was relatively constant over the period of investigation, at 7.9 percent in 2006, 7.4 percent in 2007, 7.4 percent in 2008, and 6.2 percent in interim 2009 compared with 6.7 percent in interim 2008.¹²⁴

3. Interchangeability

There is a high degree of substitutability between the domestic like product and subject imports when they are produced to the same specifications. As noted above, market participants perceive domestic SRC pipe and tube and subject imports to be interchangeable. A majority of reporting domestic producers and importers reported that the domestic product is always or frequently interchangeable with the subject imports from each subject source and that the Chinese and Mexican SRC pipe and tube are interchangeable with each other.¹²⁵ We note, however, as discussed above, that the interchangeability between plumbing and commercial tube appears to be somewhat limited with respect to finished product characteristics, channels of distribution, and the manner in which they are priced. Regarding price, as explained above, plumbing tube is sold at a discount off published price lists while commercial tube is sold at the prevailing COMEX price of copper plus a fabrication charge.¹²⁶

C. Volume 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.”¹²⁷

Notwithstanding the decline in apparent U.S. consumption over the period of investigation, cumulated subject imports increased irregularly from 2006 to 2008. They decreased from 170.9 million pounds in 2006 to 165.8 million pounds in 2007 before increasing to 182.5 million pounds in 2008, for a 6.7 percent overall absolute increase from 2006 to 2008. The cumulated subject imports were 80.7 million pounds in interim 2009, or 22.8 percent lower than in interim 2008, when they were 104.5 million pounds.¹²⁸ Subject imports as a share of domestic consumption increased from 15.1 percent in 2006 to 16.6 percent in 2007 and 21.0 percent in 2008; they were 21.5 percent in interim 2008 and 21.8 percent in interim 2009.¹²⁹

¹²¹ CR/PR at Tables IV-5, C-1.

¹²² Petitioners Postconference Brief at 25-29, Hailiang Postconference Brief at 2-7; Mexican Respondent’s Postconference Brief at 38.

¹²³ CR/PR at Table IV-1. ***. Id.

¹²⁴ CR/PR at Tables IV-5, C-1.

¹²⁵ CR/PR at Table II-2.

¹²⁶ Mexican Respondents Postconference Brief at 7, Luvata Postconference Brief at 13-14.

¹²⁷ 19 U.S.C. § 1677(7)(C)(i).

¹²⁸ CR/PR at Tables IV-2, C-1.

¹²⁹ CR/PR at Table IV-8. The ratio of cumulated subject imports to U.S. production followed a similar trend, increasing from 19.3 percent in 2006 to 21.1 percent in 2007 and 28.3 percent in 2008, and it was 29.8 percent in interim 2009 compared with 29.0 percent in interim 2008. CR/PR at Table IV-9.

For purposes of the preliminary phase of these investigations, we find that volume of subject imports is significant, both in absolute terms and relative to consumption in the United States.

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.¹³⁰

As addressed above, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product when they are produced to the same specifications, and that price is an important consideration in SRC pipe and tube purchasing decisions.¹³¹

The Commission collected quarterly pricing data for four SRC pipe and tube products.¹³² Usable pricing data were provided by eight domestic producers, accounting for 9 percent of domestic producers' shipments during the period examined, and 19 importers, accounting for 82 percent of shipments of subject imports from China and 7 percent of shipments of subject imports from Mexico during the period examined.¹³³ Subject imports undersold the domestic product in 56 of 80 comparisons, at margins ranging from 0.3 to 46.0 percent.¹³⁴ Accordingly, we find that underselling was significant during the period examined.

Prices for both the domestically produced product and the subject imports fluctuated during the period examined. Weighted-average sales prices for U.S.-produced products 1, 2, and 4 declined by 1.8 to 15.2 percent, while prices of product 3 increased by 13.9 percent. Weighted average sales prices of products 1, 3, and 4 imported from China decreased by 0.8 to 44.7 percent and prices of product 2 increased by 23.2 percent. Weighted average sales prices of products 1 and 2 imported from Mexico decreased by 6.0 and 15.3 percent respectively and prices of product 3 and 4 increased by 10.5 and 15.1 percent.¹³⁵

We find some evidence that subject import competition suppressed domestic like product prices during the period examined. Although domestic producers were able to increase prices to some extent in the 2006 to 2008 period, they were not able to increase them sufficiently to cover increased COGS, and the COGS/sales ratio increased in this period.¹³⁶ The domestic industry's unit COGS increased by \$0.60 from 2006 to 2008, while domestic producers' unit net sales value increased by only \$0.55 which was insufficient to offset the increase in COGS. Thus, the COGS to net sales ratio steadily increased from 89.0 percent in 2006, to 90.7 percent in 2007, and 91.5 percent in 2008. Unit COGS was \$2.50 in interim 2009, 38.8 percent lower than in interim 2008, but net sales value was 53.1 percent lower in interim 2009

¹³⁰ 19 U.S.C. § 1677(7)(C)(ii).

¹³¹ CR/PR at Tables II-2, II-3.

¹³² CR at V-4.

¹³³ CR at V-4.

¹³⁴ CR at V-13. Subject imports from China undersold the domestic product in 25 of 41 comparisons, at margins ranging from 1.5 to 35.2 percent, and subject imports from Mexico undersold the domestic like product in 31 of 39 comparisons, at margins ranging from 0.3 to 46.0 percent. Id.

¹³⁵ CR at V-4.

¹³⁶ CR/PR at Table VI-1, C-1.

than in interim 2008, which resulted in a continued deterioration of the COGS/sales ratio. The ratio was 92.7 percent in interim 2008 and 93.2 percent in interim 2009.¹³⁷

We note, moreover, the record indicates that the domestic industry lost sales and revenues to subject imports. Twelve of 18 responding purchasers named in lost sales and lost revenue allegations indicated that they had switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China and Mexico during the period of investigation. Five of those 12 purchasers indicated that the lower price of the subject imports was the reason for their shift. Of the seven purchasers that indicated that price was not the reason for the shift, three purchasers indicated that domestic producers were not able to supply enough product, one purchaser indicated that both availability and pricing were reasons for the switch, and one purchaser indicated that their “switch was caused by a better incentive from our buying group.” Four of 12 responding purchasers named in lost sales and lost revenue allegations indicated that U.S. producers reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube from China or Mexico since January 2006.¹³⁸

As significant volumes of subject imports entered the U.S. market and consistently undersold the domestic like product, the domestic industry experienced downward pricing pressure, evidenced by a steadily deteriorating COGS/sales ratio, and lost sales. We find that the significant volume of subject imports during the period examined had significant adverse price effects on domestic producers’ prices.

E. Impact of the Subject Imports¹³⁹

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.”¹⁴⁰ 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.”¹⁴¹

Based on the record of these preliminary phase investigations, we find that, according to most measures, the domestic industry’s performance declined over the period examined as subject import volume rose. Domestic industry production declined 27.2 percent between 2006 and 2008, from 884.9

¹³⁷ CR/PR at Tables VI-1, C-1. Unit COGS was \$3.31 in 2006, \$3.69 in 2007, \$3.91 in 2008, and \$2.50 in interim 2009 compared with \$4.09 in interim 2008. *Id.* Unit net sales value was \$3.72 in 2006, \$4.07 in 2007, \$4.27 in 2008, and \$4.41 in interim 2008 and \$2.69 in interim 2009. CR/PR at Table C-1. The difference between unit COGS in interim 2008 and interim 2009 was partly attributable to an increase in factory overhead as well as raw material costs. CR/PR at Table VI-1. Raw material costs accounted for approximately 85 percent of the total cost of goods sold for U.S. producers during 2006 to 2008. Copper is the main raw material used to produce SRC pipe and tube. The COMEX price of copper has fluctuated since 2006 ranging from \$1.39 per pound to \$3.94 per pound. CR at V-1.

¹³⁸ CR at V-14, V-18.

¹³⁹ Commerce initiated antidumping duty investigations based on estimated dumping margins of 60.5 percent ad valorem for SRC pipe and tube from China and dumping margins ranging from 76.5 to 85.7 ad valorem for SRC pipe and tube from Mexico. Seamless Refined Copper Pipe and Tube from the People’s Republic of China and Mexico: Initiation of Antidumping Duty Investigation, 74 Fed. Reg. 55194, 55198 (Oct. 27, 2009).

¹⁴⁰ 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.”)

¹⁴¹ 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 (Prelim.), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

million pounds in 2006 to 644.0 million pounds in 2008, and was 24.8 percent lower in interim 2009, at 271.2 million pounds, than in interim 2008, at 360.5 million pounds.¹⁴² Domestic capacity decreased 10.6 percent between 2006 and 2008, from 1.22 billion pounds to 1.09 billion pounds in 2008. Capacity was 545.6 million pounds in interim 2008 and 526.9 million pounds in interim 2009.¹⁴³ The domestic industry's rate of capacity utilization decreased from 72.5 percent in 2006 to 59.0 percent in 2008, a decline of 13.5 percentage points, and was 14.6 percentage points lower in interim 2009, at 51.5 percent, than in interim 2008, at 66.1 percent.¹⁴⁴

The domestic industry's net sales decreased from 902.1 million pounds in 2006 to 652.1 million pounds in 2008, a decline of 27.7 percent, and were 23.0 percent lower in interim 2009, at 278.6 million pounds, than in interim 2008, at 361.9 million pounds.¹⁴⁵ The domestic industry's U.S. shipments of SRC pipe and tube followed a similar trend, decreasing from 873.5 million pounds in 2006 to 620.9 million pounds in 2008, a decrease of 28.9 percent, and were 23.5 percent lower in interim 2009, at 266.5 million pounds, than in interim 2008, at 348.4 million pounds.¹⁴⁶ The domestic industry's share of apparent U.S. consumption decreased from 77.0 percent in 2006 to 71.5 percent in 2008, and was slightly higher in interim 2009, at 72.0 percent, than in interim 2008, at 71.8 percent.¹⁴⁷

Domestic industry employment declined 19.1 percent, from 3,913 workers in 2006 to 3,166 workers in 2008. Employment was 16.8 percent lower in interim 2009, at 2,730 workers, than in interim 2008, at 3,280 workers.¹⁴⁸

Domestic producers' net sales value declined from \$3.35 billion in 2006 to \$2.79 billion in 2008, a 16.9 percent decline. Net sales value was 53.1 percent lower in interim 2009, at \$748.7 million, than in interim 2008, at \$1.60 billion.¹⁴⁹ As previously discussed, as unit COGS increased from 2006 to 2008, average sales values increased less rapidly due to price competition by the subject imports. As a result, operating income exhibited a slow steady decline while the ratio of COGS to net sales rose. The domestic industry's operating income declined from \$290.2 million, or 8.7 percent of sales, in 2006 to \$171.4 million, or 6.1 percent of sales, in 2008. The disparity between changes in unit COGS and average sales value continued in the interim period. Although unit COGS was \$1.59 lower in interim 2009 than in interim 2008, average sales value was \$1.72 lower. The domestic industry's operating

¹⁴² CR/PR at Tables III-2, C-1.

¹⁴³ CR/PR at Tables III-2, C-1. We note that some domestic plants producing SRC pipe and tube closed during the period examined. ***. CR/PR at Table III-3. Luvata Grenda, ***, shut down its SRC pipe and tube operations that year. CR at III-4. National Copper closed its SRC pipe and tube plant in Dowagiac, Michigan, with a capacity of *** pounds, in November 2008. Id. (Linderme Tube Co. closed a plant in September 2008, but its assets and customers were acquired by S.T. Products). We intend in any final phase investigations to look further into any plant closures during the period examined to determine the reason for those closures and to assure that we are not attributing to subject imports capacity reductions that are attributable to other causes.

¹⁴⁴ CR/PR at Table III-2, C-1.

¹⁴⁵ CR/PR at Tables VI-1, C-1.

¹⁴⁶ CR/PR at Tables III-5, C-1. Producers' inventories declined on an absolute basis, but rose on a relative basis, from 2006 to 2008. Inventories were lower on an absolute basis but higher on a relative basis in interim 2009 than in interim 2008. CR/PR at Table III-6.

¹⁴⁷ CR/PR at Tables IV-4-5, C-1.

¹⁴⁸ CR/PR at Table III-8. Hours worked declined from 8.0 million in 2006 to 6.6 million in 2008, and were 3.5 million in interim 2008 and 2.7 million in interim 2009. Id. Labor productivity in terms of pounds per hour declined from 108.4 pounds in 2006 to 96.2 pounds in 2008, a decline of 11.3 percent. CR/PR at Tables III-8, C-1.

Productivity was 3.4 percent lower in interim 2009, at 98.5 pounds, than in interim 2008, at 102.0 pounds. Id.

¹⁴⁹ CR/PR at Tables VI-1, C-1.

income was lower in interim 2009, at \$22.0 million, or 2.9 percent of sales, than in interim 2008, at \$84.1 million, or 5.3 percent of sales.¹⁵⁰

The domestic industry's capital expenditures increased from \$30.7 million in 2006 to \$*** million in 2008, a level *** percent higher than that in 2006. Its capital expenditures, however, were *** percent lower in interim 2009, at \$*** million, than in interim 2008, at \$*** million.¹⁵¹ Its return on investment declined from 22.0 percent in 2006 to 17.3 percent in 2008.¹⁵²

For purposes of these preliminary phase investigations, we find that there is a causal nexus between the subject imports and the deteriorating condition of the domestic industry. Subject imports increased their market share in 2007 and 2008 at the expense of domestic producers. Subject imports undersold the domestic like product and contributed to the price suppression experienced by domestic producers over the period examined. Thus, we conclude that, for purposes of the preliminary phase of these investigations, the subject imports have had a significant adverse impact on the domestic industry.

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 significant decline in apparent U.S. consumption over the period examined may have had a role in the domestic industry's deteriorating performance during the period examined.¹⁵³ In any final phase of these investigations, we intend to explore further the role that any changes in demand played in the performance of the domestic industry in order to ensure that we do not attribute to subject imports the effects of any adverse demand conditions.¹⁵⁴

We have also concluded that nonsubject imports do not break the causal link between subject imports and the material injury suffered by the domestic industry. Unlike the subject imports, nonsubject imports maintained a fairly constant market share over the period examined, at 7.9 percent in 2006, 7.4 percent in 2007, and 7.4 percent in 2008. The market share of nonsubject imports was 6.7 percent in interim 2008 and 6.2 percent in interim 2009.¹⁵⁵ Moreover, the limited information on the record regarding prices for nonsubject imports indicate that nonsubject imports were priced higher than the domestic like product in the majority of comparisons and therefore did not undersell the domestic like product to the same extent as did subject imports, which undersold the domestic product in the majority of comparisons.¹⁵⁶ Thus, any material injury we have found from subject imports cannot be attributed to nonsubject imports.

Consequently, we conclude for purposes of these preliminary phase investigations that there is a causal nexus between the subject imports and the adverse condition of the domestic industry, which

¹⁵⁰ CR/PR at Tables VI-1, C-1.

¹⁵¹ CR/PR at Tables VI-4, C-1. Research and development expenses increased from \$735,000 in 2006 to \$2.1 million in 2008, and were higher in interim 2009, at \$1.1 million, than in interim 2008, at \$924,000. CR/PR at Table VI-4.

¹⁵² CR/PR at Tables VI-5, C-1.

¹⁵³ We note that, contrary to respondents' claim, the volume of subject imports did not simply follow demand trends. This is evidenced most notably by increased shipments of subject imports in 2007 and 2008 when apparent U.S. consumption declined and by the increase in subject imports' market share at the expense of the domestic industry. See CR/PR at Table C-1.

¹⁵⁴ Commissioner Pinkert finds it unlikely that SRC pipe and tube is a commodity product for Bratsk purposes. He points out in this regard that there are significant limitations on the interchangeability of plumbing and commercial subject product. On the other hand, he finds it likely that nonsubject imports were a significant factor in the U.S. market during the period – they held a market share of 7.9 percent in 2006 (which declined to 6.2 percent in interim 2009). Because, based on the preliminary phase record, he finds that one of the triggering factors under Bratsk is unlikely to have been satisfied, he does not consider whether nonsubject imports would have replaced the subject imports without benefit to the domestic industry had the subject imports exited the market during the period.

¹⁵⁵ CR/PR at Table IV-2.

¹⁵⁶ CR/PR at Appendix E.

demonstrates a reasonable indication that the domestic industry is materially injured by reason of the subject imports.

CONCLUSION

For the foregoing reasons, and based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of SRC pipe and tube from China and Mexico that are allegedly sold in the United States at less than fair value.

**SEPARATE VIEWS OF CHAIRMAN SHARA L. ARANOFF,
VICE CHAIRMAN DANIEL R. PEARSON, AND
COMMISSIONER DEANNA TANNER OKUN**

Based on the record in the preliminary phase of these investigations, we find a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of seamless refined copper (SRC) pipe and tube from China and Mexico that are allegedly sold in the United States at less than fair value.¹

I. SUMMARY

There is a reasonable indication that the domestic SRC pipe and tube industry is threatened with material injury by reason of subject imports. The volume of subject imports increased both absolutely and relatively during a period of declining demand. Since 2006, subject imports have captured a growing share of the U.S. market at prices that consistently undersold domestic prices. Subject imports are likely to continue to increase substantially relative to domestic consumption and production.

Responding producers in China and Mexico have ample excess capacity and the Mexican industry is adding considerable capacity. These producers are export oriented and, as their home market shipments have declined, they have become increasingly reliant on export markets. Given that price is an important factor in purchasing decisions and that SRC pipe and tube from China and Mexico is substitutable with the domestic product, it is likely that future purchases in this somewhat depressed market will be of subject copper pipe and tube. These factors indicate the likelihood of substantially increased imports from China and Mexico unless orders are issued.

II. CUMULATION

For purposes of determining if a threat of material injury exists, cumulation is discretionary. Under section 771(7)(H) of the Tariff Act, the Commission may “to the extent practicable” cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation are satisfied.² In addition to considering the four cumulation factors described above, the Commission has considered other factors such as the similarity of the volume trends and pricing data of subject imports from countries under investigation.³

In reaching our decisions in the preliminary phase of these investigations, we adopt and concur with the majority’s discussion of reasonable overlap of competition, although we will further investigate differences in product mix and distribution channels, and reconsider the weight of any such differences in any final phase of these investigations.

Respondents IUSA and Nacional Cobre argue that subject imports from Mexico must be assessed independently of those from China in a threat analysis. They argue that a reasonable overlap of competition is lacking because of product mix differences and also note differences in volume trends. The volume of subject imports from Mexico declined between 2006 and 2008, while the volume of

¹ We join in and adopt as our own sections I.-VI.B. of the majority opinion.

² 19 U.S.C. § 1677(7)(H).

³ See Torrington Co. v. United States, 790 F.Supp. at 1172 (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F.Supp. 730, 741-42 (Ct. Int’l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F.Supp. 1068, 1072 (Ct. Int’l Trade 1988).

imports from China rose. The disparities, respondents argue, are even more pronounced if market share is considered, as the market share of imports from Mexico remained stable over the POI while the market share of subject imports from China rose.⁴

Having found a reasonable overlap of competition, we consider other factors. The volume of subject imports from Mexico declined between 2006 and 2008, by 10.6 percent, while the volume of subject imports from China increased by 22.0 percent. In market share terms, subject imports from Mexico were not stable, as argued by respondents, but increased somewhat from 7.0 percent in 2006 to 8.2 percent in 2008. Market share of subject imports from China also increased, though more significantly, from 8.0 percent in 2006 to 12.8 percent in 2008. Even though the total volume of subject imports from Mexico declined between 2006 and 2008, the decline in volume was less significant than the overall decline in apparent U.S. consumption, and market share rose as a result. Available information on the interim period suggests greater convergence in the response of subject imports. The volume of subject imports from Mexico in interim 2009 was 21.9 percent lower than the volume reported in interim 2008. For subject imports from China, import volume for interim 2009 was 23.4 percent lower than the volume entering in interim 2008.⁵

Turning to pricing data, we note that imports from Mexico undersold the domestic like product somewhat more frequently than did subject imports from China. Subject imports from Mexico undersold the domestic like product in 31 of 39 quarterly comparisons, or 79.5 percent, while subject imports from China undersold in 27 of 41 instances, or 65.9 percent.⁶

The industry in Mexico is significantly smaller than the industry in China, but the industry in Mexico is expected to undergo significant expansion in the very near future, while respondents in China report that capacity will contract. Both industries rely on export markets to absorb a significant share of shipments. The industry in Mexico is closely intertwined with both the U.S. industry and that in China. All of the reported capacity expansions will be undertaken by producers with related parties in the U.S. (Luvata, IUSA, Wolverine) or in China (Golden Dragon).⁷

Based on the record gathered in the preliminary phase of these investigations, we find sufficient evidence to justify considering the impact of subject imports cumulatively in our threat analysis. However, as with our finding that the record indicates a reasonable overlap of competition, we will investigate and reconsider these matters in any final phase.

III. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

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.”⁸ The Commission may not make

⁴ IUSA postconference brief at 37-43.

⁵ CR/PR at Table C-2.

⁶ Price data tables V-1 to V-4 excluding domestic shipments for Wolverine provided by staff on November 12, 2009.

⁷ Vice Chairman Pearson does not exclude Wolverine from the domestic industry. He has reached his conclusions by relying on volume data as represented in Table C-1 of the staff report and pricing data as shown in Tables V-1-V-5. CR/PR at Tables V-1-V-5 and C-1. Including Wolverine in the domestic industry does not affect subject import market share or volume trends but somewhat affects the incidence of underselling. Trends and their magnitude are very similar regardless of whether Wolverine is included or excluded and Vice Chairman Pearson joins in the conclusions drawn here.

⁸ 19 U.S.C. § 1677(7)(F)(ii).

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.⁹ In making our determination, we consider all statutory threat factors that are relevant to these investigations.¹⁰

A. Likely Volume of the Subject Imports

We consider the likely future volume of subject imports both in absolute terms and relative to domestic consumption and production. For the reasons stated below, we find that, although the absolute volume of subject imports may not increase over current levels, subject imports are likely to continue to increase substantially relative to domestic consumption and production.

Our analysis begins with the trends observed over the period of investigation. In absolute terms, the volume of subject imports increased from 170.930 million pounds in 2006 to 182.453 million pounds in 2008, an increase of 6.7 percent. In interim 2009, subject import volume was 80.728 million pounds, 22.8 percent below interim 2008, when cumulated subject import volume was 104.549 million pounds.¹¹

The increase in absolute import volume between 2006 and 2008 occurred at a time when apparent U.S. consumption was dropping significantly. As we have noted, demand for SRC is closely tied to new construction and to spending on the repair or replacement of plumbing, heating/ventilation/air conditioning or refrigeration equipment. The period of investigation was marked by significant

⁹ 19 U.S.C. § 1677(7)(F)(ii).

¹⁰ 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,
* * *
- (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). To organize our analysis, we discuss the applicable statutory threat factors using the same volume/price/impact framework that applies to our material injury analysis. Statutory threat factors (II), (III), (V), and (VI) are discussed in the analysis of subject import volume. Statutory threat factor (IV) is discussed in the price effects analysis, and statutory threat factor (IX) is discussed in the impact analysis. Statutory threat factor (VII) is inapplicable, as no imports of agricultural products are involved in these investigations. No party has argued 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).

¹¹ CR/PR at Table C-2.

contractions in demand for new construction, and the ensuing general recession has further weakened demand for the product. Apparent U.S. consumption in 2008 was 23.5 percent below the 2006 level. Apparent U.S. consumption in the interim 2009 period was 370.226 million pounds, 23.7 percent lower than the interim 2008 level.¹²

The combination of rising absolute import volumes and declining total apparent U.S. consumption translated into market share gains for the cumulated subject imports. In 2006, subject imports accounted for 15.1 percent of apparent U.S. consumption. By 2008, subject imports accounted for 21.0 percent of apparent U.S. consumption.^{13 14}

The increased volume of subject imports contributed to a sharp increase in inventories held by importers. The volume of end-of-period inventories of subject imports rose from *** million pounds in 2006, equivalent to *** percent of U.S. shipments of imports, to *** million pounds, or *** percent of shipments. By the end of interim 2009, importer inventories of subject imports were *** million pounds, or *** percent of shipments. Inventories at the end of the POI were *** percent higher than at the end of 2006, despite persistent and significant declines in apparent U.S. consumption.¹⁵ Furthermore, importers report over *** of subject imports planned for delivery to the U.S. market after June 30, 2009.¹⁶

Respondents have argued that this increase in volume was not significant because the decline in shipments mirrored the decline in apparent U.S. consumption,¹⁷ because subject imports just replaced nonsubject imports,¹⁸ and because subject imports supply different markets.¹⁹ The decline in subject imports did not mirror the decline in overall demand for most of the period of investigation, as the absolute volume of subject imports rose from 2006 to 2008 as apparent U.S. consumption declined by more than 20 percent. The absolute decline in nonsubject import volume somewhat exceeded the increase in absolute subject import volume, but nonsubject imports' market share was little changed over the period of investigation.²⁰

Based on the preliminary record, and without purchaser questionnaire responses, it is difficult to evaluate respondents' arguments regarding differences in product mix, channels of distribution, and quality. The record suggests that subject imports are concentrated in somewhat different portions of the market.²¹ But the record also suggests that the domestic industry participates actively in both segments of the market, shipping significant volumes into all channels of distribution.²² Imports from China include some plumbing products and imports from Mexico include commercial products.²³ A production

¹² CR/PR at Table C-2.

¹³ CR/PR at Table C-2.

¹⁴ Vice Chairman Pearson does not exclude Wolverine from the domestic industry. He has reached his conclusions by relying on volume data as represented in Table C-1 of the staff report. CR/PR at Table C-1. Including Wolverine in the domestic industry increases the domestic industry's market share but does not affect the market share or volume of subject imports. With Wolverine included in the domestic industry, the domestic industry's share of apparent U.S. consumption declined from 77.0 percent in 2006 to 71.5 percent in 2008, as the share of consumption held by subject imports rose from 15.1 percent to 21.0 percent. *Id.* Vice Chairman Pearson otherwise joins in the conclusions drawn here.

¹⁵ CR/PR at Table VII-5.

¹⁶ CR at VII-11, PR at VII-7.

¹⁷ Dayco postconference brief at 15-18.

¹⁸ Dayco postconference brief at 18-19, Shanghai Hailiang postconference brief at 15-16.

¹⁹ Shanghai Hailiang postconference brief at 11-12.

²⁰ CR/PR at Table C-2.

²¹ We note that the record indicates that one of the planned new mills in Mexico will produce commercial SRC pipe and tube, suggesting that product mix concentrations may be more similar in the imminent future. CR at VII-8, PR at VII-5.

²² CR/PR at Table II-1.

²³ CR/PR at Table II-1.

line currently under construction in Mexico will increase the capacity for producing commercial products; the closure of another facility in Mexico is projected to increase production in the United States.²⁴ The record also suggests that market participants find subject imports and the domestic like product to be good substitutes. We intend to pursue all of these issues in any final phase of these investigations. However, the record in this preliminary phase suggests that the increased market presence of subject imports was significant.

In addition to examining the past trends, we have analyzed the likely future volume of subject imports in the context of demand for SRC pipe and tube in the U.S. market in the imminent future. As noted, apparent U.S. consumption declined throughout the POI. The decline appeared to continue, and perhaps sharpen, in the latter part of the period. Nothing on the record indicates that demand will recover in the imminent future, and the record also indicates that the SRC pipe and tube market, regardless of demand level, will continue to face pressure from increasingly attractive substitute products.

We have considered the likely volume of cumulated subject imports. The SRC pipe and tube industries in China and Mexico have a large combined capacity of over one billion pounds.²⁵ The industry in Mexico is expanding, with new plants and additions to capacity at existing facilities. Two of these projects are being carried out by companies that currently produce SRC pipe and tube in China, Golden Dragon and Luvata Tube (Zhongshan) Ltd.²⁶ Because of their relatively low rates of capacity utilization, subject producers have ample excess capacity.²⁷ Producers in China and Mexico are highly export-oriented and, as their home market shipments have declined, their exports to the U.S. market have become an increasingly important segment of their shipments. In addition, responding producers' inventories are significant relative to total shipments to the United States.²⁸

The Commission received questionnaire responses from 10 SRC pipe and tube producers in China, estimated to account for virtually all exports to the United States in 2008 but only about 40 percent of the estimated 1.7 billion pounds of production.²⁹ Responding producers increased capacity moderately between 2006 and 2008 but report declining capacity for 2009 and 2010. Responding producers saw production decline over the POI, but capacity utilization declined even faster, falling from 78.0 percent in 2006 to 66.9 percent in 2008 and was only 56.2 percent in interim 2009. Responding producers project significant improvements in capacity utilization in 2009 and 2010, but the improvements will be achieved primarily through reducing capacity.³⁰

Respondents have argued that volume from China is unlikely to be significant in the imminent future because ***³¹ and that the industry in China is focused mainly on the domestic market.³² As we have noted, the absolute volume of imports to the United States from China increased from 2006 to 2008, and market share rose or held steady throughout the period of investigation. The record indicates that, although the market for SRC pipe and tube in China might be growing, shipments by responding producers to the home market did not rise, either absolutely or relatively. Shipments to the Chinese home market by responding producers fell from 456.964 million pounds, or 61.1 percent of shipments, in

²⁴ CR at VII-8, PR at VII-5.

²⁵ CR/PR at Tables VII-1 and VII-3.

²⁶ CR at VII-3-VII-4 and VII-8, PR at VII-2-3 and VII-5.

²⁷ Responding producers in China and Mexico reported capacity utilization rates of 66.9 and *** percent in 2008 and of 56.2 and *** percent, respectively, in the first half of 2006. CR/PR at Tables VII-1 and VII-3.

²⁸ In 2008, cumulated end-of-period inventories were *** percent of reported exports to the United States. By January-June 2009, cumulated end-of-period inventories were *** percent of reported exports to the United States. CR/PR at Tables VII-1 and VII-3.

²⁹ CR/PR at VII-3 and Table VII-1.

³⁰ CR/PR at Table VII-1.

³¹ Golden Dragon postconference brief at 36-38.

³² Shanghai Hailiang postconference brief at 25-28.

2006, to 369.469 million, or 52.1 percent, in 2008. In interim 2009, shipments to the domestic market were just 45.4 percent of shipments. Exports, on the other hand, rose from 37.0 percent of shipments in 2006 to 45.9 percent in 2008. Exports to all markets, including the U.S. market, accounted for 51.5 percent of all Chinese shipments in interim 2009. As exports became more important to the Chinese producers, the U.S. market became more important as well. Shipments to the U.S. market rose from 11.1 percent of all shipments in 2006 to 15.3 percent in 2008; shipments to the U.S. market were 17.3 percent of all shipments in interim 2009. The record does not suggest that these persistent trends of increased export reliance by Chinese producers, in particular reliance on exports to the U.S. market, and declining home-market shipments would change in the imminent future.

Responding Chinese producers report planned reductions in capacity.³³ These reported reductions are difficult to understand if the domestic market in China is as strong and growing as reported by respondents. However, even with these reported reductions in capacity, the industry will have upwards of 200 million pounds of unused capacity in the immediate future, and the increased reliance on exports suggest that a significant portion of any additional production would be directed to export markets in general and to the U.S. market in particular.³⁴

The Commission received questionnaire responses from four producers in Mexico, estimated to account for *** percent of exports to the U.S. market over the period of investigation. Responding Mexican producers reported a negligible increase in capacity between 2006 and 2008, but significant capacity increases are planned for the imminent future. Production capacity in 2010 is forecast at ***, a *** percent increase over 2008 capacity. Production in 2010 is projected at ***, a significant increase over 2008 and projected 2009 levels, but even this increase will leave significant unused capacity. Capacity utilization for 2010 is estimated at *** percent, down from *** percent in 2006 and *** percent in 2008. Based on these projections, the industry in Mexico will have *** of unused capacity in 2009 and *** of unused capacity in 2010.³⁵

Capacity in Mexico is slated to increase significantly, but questionnaire data do not suggest these increases are being spurred by rising home market demand.³⁶ Shipments to the Mexican home market declined both absolutely and relatively between 2006 and 2008, falling from *** and *** percent of shipments in 2006 to *** and *** percent in 2008. At the same time the importance of the export market rose. Total exports were *** percent of shipments in 2006 and *** percent of shipments in 2008. The U.S. market was easily the most important export market for Mexican producers, accounting for *** percent of all shipments and *** percent of all exports in 2006, rising to *** percent of all shipments and *** percent of all exports in 2008. The U.S. market remained the leading export market for Mexican SRC pipe and tube late in the POI, and respondents' own projections forecast 2010 shipments to the U.S. market as exceeding shipment volume in any other year of the POI.³⁷

Respondents have argued that subject imports from Mexico are not likely to be significant in the imminent future because import volume declined between 2006 and 2008; because IUSA's production has been shifted to the U.S. market; and although three new mills are slated to open in 2010, none of these new mills will compete for "major" U.S. contracts. Luvata's new mill is intended to replace its

³³ We note that *** producers in China report capacity expansions for 2010. ***. CR at VII-5, PR at VII-3.

³⁴ CR/PR at Table VII-1.

³⁵ CR/PR at Table VII-3.

³⁶ The industry in Mexico is dominated by producers related to producers in other major markets. GD Affiliates is related to Golden Dragon, a producer in China; IUSA is related to Cambridge-Lee, a U.S. producer; and Luvata Monterrey is related to an SRC pipe and tube producer in China as well as a U.S. producer of non-subject welded copper pipe.

³⁷ CR/PR at Table VII-3.

U.S. production of welded pipe and Golden Dragon's new facility is intended to reduce the volume of its exports from China to the U.S.³⁸

Exports to the U.S. market declined between 2006 and 2008, but the decline in apparent U.S. consumption was steeper, and the share of the U.S. market held by subject imports from Mexico rose, rather than remaining stable, over the POI. Golden Dragon's shifting of production to Mexico to replace its China exports does not suggest that the volume of exports from Mexico would decline in the imminent future, just as Luvata's shifting from U.S. non-subject production to Mexican production of subject material also does not suggest a decline in exports.

We will explore these issues, including the reported shift of IUSA production to a U.S. facility, the potential for exports shifting from China to Mexico, and the importance of any product mix differences, in any final phase of these investigations. Available record data, however suggest that the U.S. market is an extremely important market for producers in Mexico, that it will continue to be so, and that producers in Mexico will have significant additional production capacity to fill in the near future.

For the foregoing reasons, we find, for purposes of the preliminary phase of these investigations, that the volume of cumulated subject imports is likely to be significant within the imminent future, particularly when considered relative to consumption and production in the United States.

B. Likely Price Effects of the Subject Imports

In assessing the likely price effects of subject imports, we consider pricing developments during the period examined and likely developments in the imminent future in light of key conditions of competition in the U.S. market. The record indicates that there is at least a fair degree of substitutability between domestically produced SRC pipe and tube and subject imports. In particular, plumbing SRC pipe and tube is produced to industry-wide standards. A majority of both domestic producers and importers reported the domestic like product as being always or frequently interchangeable with subject imports from both China and Mexico, and a majority of responding domestic producers and importers also reported subject imports from China and Mexico as being always or frequently interchangeable, despite alleged product mix differences.³⁹

The Commission collected quarterly pricing data for four SRC pipe and tube products. These products covered a relatively modest share of the domestic like product and imports from Mexico but a substantial majority of imports from China.⁴⁰ Prices for all four products remained fairly stable or rose earlier in the POI, despite falling demand, but dropped off in 2008 and beyond. Prices for sales of domestically produced product 1 peaked in the third quarter of 2006, but were still close to that peak in 2007 and 2008; in 2009, however, prices for the domestic like product had fallen below early 2006 levels. A similar pattern was seen in product 2 sales. Prices peaked in 2008 for products 3 and 4 but then fell off sharply.⁴¹

³⁸ IUSA postconference brief at 3, 49-50.

³⁹ CR/PR at Table II-2.

⁴⁰ CR at V-4, PR at V-3 and price data tables V-1 to V-4 excluding domestic shipments for Wolverine provided by staff on November 12, 2009.

⁴¹ Price data tables V-1 to V-4 excluding domestic shipments for Wolverine provided by staff on November 12, 2009.

Underselling by subject imports was consistent. Subject imports undersold the domestic like product in 58 of 80 quarterly comparisons.^{42 43}

The domestic industry provided lost sales allegations involving \$155 million and 44 million pounds, along with lost revenue allegations totaling \$1 million and 17 million pounds of pipe.⁴⁴ Purchaser responses to these allegations were mixed. At least ***. Purchasers were mixed in their recollection as to whether domestic producers lowered prices in response to import prices, as well as regarding complaints about domestic industry quality, availability, and product mix.⁴⁵

We are mindful of product differences in the market, that the two types of SRC pipe and tube are sold to different customers under different pricing methods, and that raw material prices do not play precisely the same role in these pricing schemes. We are also mindful that the SRC pipe and tube market will face pressure both from declining demand and increasingly competitive substitute products. We intend to seek additional information on all these factors in any final phase of these investigations.

Nonetheless, based on the record as whole, we find that subject imports are entering at prices likely to have significant adverse effects on U.S. prices and at prices likely to increase demand for subject imports relative to domestic consumption and production. All respondents agree that SRC pipe and tube from all three sources are at least frequently interchangeable for each other. Underselling by subject imports was common throughout the POI, and subject import volume increased both absolutely and relatively during a period of declining demand. The domestic industry was relatively successful in maintaining prices during the POI despite declining demand and high, volatile copper prices. It was only later in the period, as subject imports continued to gain market share in a declining market, that prices began to weaken. Apparent U.S. consumption is likely to continue to decline, or at best to remain at current depressed levels. With fewer sales available in the market in the imminent future, the significant volume of subject imports at low prices is likely to place downward pressure on domestic prices. Accordingly, we find adverse price effects to be likely in the imminent future, given the likely significant volume of subject imports.

C. Likely Impact of the Subject Imports

Apparent U.S. consumption of SRC pipe and tube declined throughout the period of investigation. Apparent U.S. consumption was 1.000 billion pounds in 2007, down 11.8 percent from 2006. In 2008, apparent consumption declined another 13.3 percent, to 867.776 million pounds. The declines seen from 2006 to 2008 continued and apparently accelerated late in the POI. Apparent U.S. consumption in interim 2009 was 370.226 million pounds, compared to 485.415 million pounds in interim 2008.⁴⁶ Given that SRC pipe and tube demand is closely tied to construction and to repair or upgrading of existing structures, the weakness seen in the POI is not surprising. Nor is the market likely to rebound in the imminent future.

⁴² Price data tables V-1 to V-4 excluding domestic shipments for Wolverine provided by staff on November 12, 2009.

⁴³ Vice Chairman Pearson does not exclude Wolverine from the domestic industry. He has reached his conclusions by relying on pricing data as shown in Tables V-1-V-6. CR/PR at Tables V-1-V-6. Including Wolverine in the domestic industry somewhat affects the incidence of underselling. Trends and their magnitude are very similar regardless of whether Wolverine is included or excluded and Vice Chairman Pearson joins in the conclusions drawn here.

⁴⁴ CR at V-14, PR at V-7.

⁴⁵ CR at V-14-V-26 and Tables V-7 and V-8; PR at V-7-V-11 and Tables V-7 and V-8.

⁴⁶ CR/PR at Table C-2.

Shipments of SRC pipe and tube by the domestic industry declined throughout the POI as well. Domestic shipments in 2007 were 641.821 million pounds, down 12.5 percent from 2006. Shipments in 2008 were 567.414 million pounds, down 11.6 percent from the preceding year.⁴⁷

In light of these persistent declines in domestic shipments, it is not surprising to see similar declines in many of the industry's indicators. Capacity was unchanged between 2006 and 2008. Production declined by 20.5 percent, and capacity utilization slipped from 72.9 percent in 2006 to 57.9 percent in 2008. Inventories declined absolutely, but rose from 6.9 percent of shipments in 2006 to 7.9 percent in 2008. The number of production workers declined by 12.9 percent between 2006 and 2008 and the number of hours worked declined by 10.7 percent. Net sales value declined by 10.0 percent between 2006 and 2008, and operating income declined by 38.9 percent.⁴⁸ Several production or production-related facilities closed, and two producers, National and Linderme, closed.⁴⁹

The industry had to cope with rising costs as well. Between 2006 and 2008, the unit cost of goods sold increased by 18.2 percent.⁵⁰ Cost increases were driven almost entirely by increases in the cost of copper. The COMEX price of copper rose from just over \$2.00 in early 2006 to a peak of nearly \$4.00 in 2008, and the industry's per-unit raw material cost rose by *** percent between 2006 and 2008.⁵¹

A combination of declining demand and rising raw material costs would suggest poor financial performance, but the SRC pipe and tube industry's performance was relatively strong between 2006 and 2008. Operating income as a percentage of sales was 9.9 percent in 2006, 7.9 in 2007, and 6.7 percent in 2008. This represents a fairly steady erosion, but modest compared to the significant decline in apparent U.S. consumption or domestic shipments. The industry was also able to undertake significant capital expenditures. Indeed, capital expenditures in 2008 were 42.3 percent higher than in 2006.⁵² ***.⁵³ The industry's return on investment declined between 2006 and 2008 but remained high throughout.⁵⁴ Taken as a whole, the industry's financial performance during 2006-2008 suggests that it is reasonably well-positioned to absorb significant fluctuations in both demand and raw materials costs.⁵⁵

However, the record also indicates that subject import volume continued to increase relative to declining consumption and production throughout the period of investigation, and while the domestic industry retained a majority of the market, it lost market share to subject imports after 2007. Prices for SRC pipe and tube weakened in the latter portion of the POI as subject imports increased both absolutely and relatively. By the end of the POI, the domestic industry was still earning an operating profit, but it was significantly lower than it had been as recently as 2008.⁵⁶ The deterioration in the industry's performance late in the period of investigation suggests that the adverse effects of increases in subject import volume and adverse effects from import pricing had begun to affect the domestic industry.

⁴⁷ CR/PR at Table C-2.

⁴⁸ CR/PR at Table C-2.

⁴⁹ CR at III-4 and Table III-3, PR at III-3 and Table III-3.

⁵⁰ CR/PR at Table C-2.

⁵¹ CR/PR at V-1 and Table VI-1A.

⁵² CR/PR at Table C-2.

⁵³ CR at VI-3, PR at VI-1.

⁵⁴ Email from Elizabeth Haines, 11/20/2009.

⁵⁵ Vice Chairman Pearson does not exclude Wolverine from the domestic industry. He has reached his conclusions by relying on industry performance data as represented in Tables VI-1-VI-5 and C-1 of the staff report. CR/PR at Tables VI-1-VI-5 and C-1. Including Wolverine in the domestic industry shows the industry as experiencing ***. Trends and their magnitude are very similar regardless of whether Wolverine is included or excluded and Vice Chairman Pearson joins in the conclusions drawn here.

⁵⁶ CR/PR at Table C-2.

Nothing in the record suggests that these conditions will improve in the imminent future. As noted above, producers in China and Mexico have significant unused capacity, declining shipments to home markets, and increasing reliance on exports, particularly to the U.S. market. Capacity in Mexico is expected to rise, and unused capacity in China is significant relative to the declining U.S. market. Subject imports undersold the domestic like product throughout the period of investigation, and the record does not indicate changes in pricing or underselling in the imminent future.

We have considered whether there are other factors, including declining demand and nonsubject imports, that will likely have an imminent impact on the domestic industry. As discussed above, the record during the period of investigation suggests that the domestic industry has positioned itself to absorb significant fluctuations in demand. In addition, nonsubject imports have held a relatively constant market share. In any final phase of these investigations, we intend to explore further the role that nonsubject imports and any changes in demand play in the performance of the domestic industry in order to ensure that we do not attribute to subject imports the effects of any other adverse factors.

Therefore, we conclude, for purposes of the preliminary phase of these investigations, that there is a likely causal nexus between the subject imports and an imminent adverse impact on the domestic industry, which demonstrates a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports.

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 SRC pipe and tube is threatened with material injury by reason of subject imports from China and Mexico that are allegedly sold in the United States at less than fair value.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed on September 30, 2009, with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by Cerro Flow Products, Inc. (“Cerro”) St. Louis, MO; Kobe Wieland Copper Products, LLC (“Kobe Wieland”), Pine Hall, NC; Mueller Copper Tube Products, Inc. and Mueller Copper Tube Company, Inc. (“Mueller”), Memphis, TN. The petition alleges 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 seamless refined copper pipe and tube (“SRC pipe and tube”)¹ from China and Mexico. Information relating to the background of the investigations is provided below.²

Effective date	Action
September 30, 2009	Petition filed with Commerce and the Commission; institution of Commission investigations (74 FR 51318, October 6, 2009)
October 21, 2009	Commission’s conference ¹
October 27, 2009	Commerce’s notice of initiation of antidumping duty investigations (74 FR 55194)
November 13, 2009	Commission’s vote
November 16, 2009	Commission determinations transmitted to Commerce
November 23, 2009	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 these investigations.

² *Federal Register* notices cited in the tabulation are presented in appendix 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, alleged 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. *Part IV* presents the volume of imports of the subject merchandise. *Part V* presents the pricing of U.S.-produced and imported subject products. *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

SRC pipe and tube generally involve fluids under pressure, either for conveyance or closed-loop thermal transfer applications. The leading U.S. producers of SRC pipe and tube are Mueller and Cerro, while leading producers of SRC pipe and tube outside the United States include Golden Dragon Precise Copper Tube ("Golden Dragon") and Shanghai Hailiang Copper ("Hailiang") of China and IUSA and

Nacional de Cobre of Mexico. The leading U.S. importer of SRC pipe and tube from China is Wolverine Tube Inc. (“Wolverine”), while the leading importer of SRC pipe and tube from Mexico is Cambridge-Lee Industries (“Cambridge-Lee”). Leading importers of SRC pipe and tube from nonsubject countries include CMC and Nordyne.

Apparent U.S. consumption of SRC pipe and tube totaled approximately 868 million pounds (\$3.6 billion) in 2008. Currently, 12 firms are known to produce SRC pipe and tube in the United States. U.S. producers’ U.S. shipments of SRC pipe and tube totaled 621 million pounds (\$2.6 billion) in 2008, and accounted for 71.5 percent of apparent U.S. consumption by quantity and 72.5 percent by value. U.S. imports from subject sources totaled 182 million pounds (\$728 million) in 2008 and accounted for 21.0 percent of apparent U.S. consumption by quantity and 20.1 percent by value. U.S. imports from nonsubject sources totaled 64 million pounds (\$268 million) in 2008 and accounted for 7.4 percent of apparent U.S. consumption by quantity and 7.4 percent by value.

SUMMARY DATA AND DATA SOURCES

A summary of data collected in the investigations is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on questionnaire responses of 12 firms that accounted for 95 percent of U.S. production of SRC pipe and tube during 2008. U.S. imports from China and Mexico are based on official import statistics of Commerce. Data regarding the Chinese industry are based on ten foreign producer questionnaire responses, data regarding the Mexican industry are based on four foreign producer questionnaire responses, while information with respect to other foreign industries is drawn from questionnaire responses and public sources.

PREVIOUS AND RELATED TITLE VII INVESTIGATIONS

SRC pipe and tube has not been the subject of any prior countervailing or antidumping duty investigations in the United States.

NATURE AND EXTENT OF ALLEGED SALES AT LTFV

Alleged Sales at LTFV

On October 27, 2009, Commerce published a notice in the *Federal Register* of the initiation of its antidumping duty investigations on SRC pipe and tube from China³ and Mexico.⁴ Commerce has initiated antidumping duty investigations based on estimated dumping margins of 60.5 percent for SRC pipe and tube from China and 76.5 percent to 85.7 percent for SRC pipe and tube from Mexico.

³ *Seamless Refined Copper Pipe and Tube from the People’s Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 74 FR 55194, October 27, 2009.

⁴ *Ibid.*

THE SUBJECT MERCHANDISE

Commerce's Scope

Commerce has defined the imported merchandise subject to these investigations as:

Seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter ("OD"), regardless of wall thickness, bore (e.g., smooth, enhanced with inner-grooves or ridges), manufacturing process (e.g., hot finished, cold-drawn, annealed), outer surface (e.g., plain or enhanced with grooves, ridges, fins, or gills), end finish (e.g., plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (e.g., plastic, paint), insulation, attachments (e.g., plain, capped, plugged, with compression or other fitting), or physical configuration (e.g., straight, coiled bent, wound on spools). The scope covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials ("ASTM") ASTM-B42, ASTM-B68, ASTM-B75, ASTM-B88, ASTM-B88M, ASTM-B188, ASTM-B251, ASTM-B251M, ASTM-B280, ASTM-B302, ASTM-B306, ASTM-B359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of these investigations are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope. "Refined copper" is defined as: (1) metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits

<u>ELEMENT</u>	<u>LIMITING CONTENT PERCENT BY WEIGHT</u>
Ag - Silver	0.25
As - Arsenic	0.5
Cd - Cadmium	1.3
Cr - Chromium	1.4
Mg - Magnesium	0.8
Pb - Lead	1.5
S - Sulfur	0.7
Sn - Tin	0.8
Te - Tellurium	0.8
Zn - Zinc	1.0
Zr - Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of these investigations are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to these investigations are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090, of the Harmonized Tariff Schedule of the United States (HTS). Products subject

to these investigations may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085.⁵

Tariff Treatment

SRC pipe and tube is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting numbers 7411.10.1030 and 7411.10.1090. SRC pipe and tube may also enter under HTS statistical reporting numbers 7407.10.1500 (refined copper hollow profiles), 7419.99.5050 (which also contains various other products of refined copper and copper alloys), 8415.90.8065 (which also contains parts other than SRC pipe and tube, for heat pumps), and 8415.90.8085 (which also contains parts other than SRC pipe and tube, including those of other air conditioning machinery). Current tariff rates for SRC pipe and tube are presented in appendix D. Imports of SRC pipe and tube from countries that qualify for normal trade relations (including China) enter the United States at general duty rates of 1.5 percent under HTS subheading 7411.10.10, 3.0 percent under HTS subheading 7407.10.15, or 1.4 percent under HTS subheading 8415.90.80; whereas such imports under HTS subheading 7419.99.50 enter the United States free of duty. Imports of SRC pipe and tube from Mexico are eligible to enter the United States under these HTS subheadings at the “free” special-duty rate, as Mexico is a signatory of the North American Free Trade Agreement.

THE PRODUCT

Description and Applications

SRC pipe and tube are fabricated products⁶ of high-purity copper,⁷ distinguished by a circular cross section of varying nominal sizes (typically 0.04"–12")⁸ and wall thicknesses.⁹ The inner and outer tubing surfaces are either smooth or enhanced (e.g., with grooves, ridges, fins, or grills).¹⁰ Depending upon the requirements of industry standards or customers' specifications, additional characteristics can include: outer surface coatings (e.g., paint, plastics, other materials) for corrosion protection or insulation; marking with paint or plastic color coding for product identification; cleaning, pressurizing with nitrogen gas, and capping of each end to assure interior cleanliness; end finishes (e.g., plain, swaged, flared, expanded, crimped, or threaded); and attachments (e.g., plain, capped, or plugged).¹¹ SRC pipe and tube is available in straight lengths, bent to shape, coiled without spools (“pancake coils”),

⁵ *Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 74 FR 55194, October 27, 2009.

⁶ SRC pipe and tube producers distinguish between “tubes” with smooth ends and joined together by soldering or brazing, versus “pipes” that are threaded. Almost all products considered in these investigations are tubes rather than pipes. Conference transcript, p. 63 (Hansen).

⁷ “Refined copper” contains either (1) at least 99.85 percent by weight of copper or (2) at least 97.5 percent by weight of copper with the content of other elements not exceeding specific percentage weight limits listed in Note 1(a) to Chapter 74 Copper and Related Articles, HTS (2009 Rev. 1), XV 74-1. Amendments to petition (October 13, 2009), exhibit D.

⁸ Capillary tube is available with actual outside diameters (“ODs”) less than 0.04". The nominal size of 12" is equivalent to an OD of 12.130" (the upper with limit in the petition scope), or more specifically an actual OD of 12.125" with a tolerance of ± 0.005 ". Counsel for petitioners, e-mail correspondence with Commission staff, November 3, 2009; and amendments to petition (October 16, 2009), exhibit 51.

⁹ Petition, p. 12.

¹⁰ Petition, p. 10.

¹¹ Petition, pp. 10, and 12-13.

or coiled onto spools.¹² “Line sets” consist of two different sizes of SRC pipe and tube, a smaller-diameter liquid line (commonly with end finishes) and a larger-diameter suction line (commonly insulated), usually to connect outdoor air conditioners and heat pumps with indoor evaporator units.¹³

End-use applications for SRC pipe and tube take advantage of copper’s strength, malleability and ductility (i.e., readily bent or formed), thermal conductivity, resistance to corrosion and fouling, and chemical (e.g., lead-free) purity.¹⁴ SRC pipe and tube applications generally involve fluids under pressure, either for conveyance or closed-loop thermal transfer. Conveyance applications include residential, commercial, institutional, industrial, and municipal water systems, as well as distribution systems for other liquids and gasses. Thermal transfer applications include residential, commercial, institutional, and industrial heating systems; commercial refrigeration systems (e.g., refrigerated display cases for frozen food in grocery stores); and combined or split-unit air-conditioning systems.¹⁵

“Plumbing” (or “standard”) tubing is commonly produced to various standards of the American Society for Testing and Materials (“ASTM”). The ASTM designations specify the chemical composition, outside diameter, wall thickness, strength, hardness, cleanliness, roundness, marking, and other requirements for SRC pipe and tube, based on end-use applications.¹⁶

“Commercial” (or “industrial”) tubing is produced to either industry standard (e.g., ASTM) specifications or customer (including original equipment manufacturer (“OEM”)) nonstandard specifications, including any surface enhancements (e.g., grooves, ridges, fins, or grills) designed to enhance thermal transfer capabilities. Common applications for commercial SRC pipe and tube include refrigeration and heating units; split-system central, room and window, central, and vehicle air conditioners; and chillers and freezers.¹⁷

Applicable ASTM designations for SRC pipe and tube and specific end-use applications are listed in table I-1. Common pipe and tube designations, relevant ASTM standards, and end-use applications are presented in table I-2.

¹² Petition, pp. 10 and 12.

¹³ Petition, p. 10; and amendments to petition (October 13, 2009), p. 4.

¹⁴ Amendments to petition (October 13, 2009), p. 5.

¹⁵ Petition, p. 11.

¹⁶ Petition, pp. 11-12.

¹⁷ Petition, p. 12.

Table I-1

SRC pipe and tube: American Society for Testing and Materials (ASTM) standard designations, titles, and specified end-use applications

ASTM designation	Title	Specified end-use applications
B-42	<i>Standard Specification for Seamless Copper Pipe, Standard Sizes</i>	Plumbing and boiler feed lines
B-68	<i>Standard Specification for Seamless Copper Tube, Bright Annealed</i>	Refrigeration, oil lines, gasoline lines, and other applications requiring interior surfaces free of scale and dirt
B-75	<i>Standard Specification for Seamless Copper Tube</i>	General engineering applications
B-88	<i>Standard Specification for Seamless Copper Water Tube</i>	Water and fire-sprinkler systems
B-88M	<i>Standard Specification for Seamless Copper Water Tube (Metric)</i>	Water and fire-sprinkler systems
B-188	<i>Standard Specification for Seamless Copper Bus Pipe and Tube</i>	Electrical conductors
B-251	<i>Standard Specification for Wrought Seamless Copper and Copper-Alloy Tube</i>	Applications listed in ASTM B-68 and ASTM B-75
B-251M	<i>Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tube (Metric)</i>	Applications listed in ASTM B-68 and ASTM B-75
B-280	<i>Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service</i>	Air conditioning and refrigeration units
B-302	<i>Standard Specification for Threadless Copper Pipe</i>	Assembled piping systems
B-306	<i>Standard Specification for Copper Drainage Tube (DWV)</i>	Sanitary drainage, waste, and vent piping
B-359	<i>Standard Specification for Copper and Copper-Alloy Seamless Condenser and Heat Exchanger Tubes With Integral Fins</i>	Surface condensers, evaporators, and heat exchangers
B-743	<i>Standard Specification for Seamless Copper Tube in Coils</i>	Refrigeration, air conditioning, and oil lines
B-819	<i>Standard Specification for Seamless Copper Tube for Medical Gas Systems</i>	Medical gas systems requiring specially cleaned interior surfaces
B-903	<i>Standard Specification for Seamless Copper Tube for Heat Exchanger Tubes with Internal Enhancement</i>	Refrigeration, air conditioning, and other heat exchangers

Source: Petition, p. 10 and exhibits 8-18; amendments to petition (October 13, 2009), p. 3 and exhibits B-C; and amendments to petition (October 16, 2009), exhibits 51-53.

Table I-2

SRC pipe and tube: Designations, color codes, standards, applications, sizes, tempers, and lengths

Designation	Color Code	ASTM	Applications	Commercially available lengths		
				Size	Drawn	Annealed
Type K (thicker walled ¹)	Green	B-88	Water service and distribution Fire protection Solar energy Fuel and fuel oil Heating, ventilation, air conditioning Snow melting Compressed air Natural gas Liquified petroleum gas Vacuums	Straight lengths:		
				¼"–8"	20'	20'
				10"	18'	18'
				12"	12'	12'
				Coils:		
				¼"–1"	—	60'
					—	100'
				1¼"–1½"	—	60'
				2"	—	40'
					—	45'
Type L (intermediate walled ¹)	Blue	B-88	Water service and distribution Fire protection Solar energy Fuel and fuel oil Heating, ventilation, air conditioning Snow melting Compressed air Natural gas Liquified petroleum gas Vacuums	Straight lengths:		
				¼"–10"	20'	20'
				12"	18'	18'
				Coils:		
				¼"–1"	—	60'
					—	100'
				1¼"–1½"	—	60'
				2"	—	40'
					—	45'
				Type M (thinner walled ¹)	Red	B-88
¼"–12"	20'	—				
DWV	Yellow	B-306	Drain, waste, vent Heating, ventilation, air conditioning Solar energy	Straight lengths:		
				1¼"–8"	20'	—
ACR/RST	Blue	B-280	Air conditioning Refrigeration Natural gas Liquified petroleum gas Compressed air	Straight lengths:		
				¾"–4½"	20'	(²)
				Coils:		
			1/8"–1 5/8"	—	50'	
OXY/MED	(K) Green (L) Blue	B-819	Medical gasses Compressed air Vacuums	Straight lengths:		
				¼"–8"	20'	—

¹ Wall thicknesses differ for Types K, L, and M plumbing pipes having a common nominal outside diameter, being greater for Type K than for Type L, and lesser for Type M than for Type L.

² Available by special order.

Source: Petition, p. 12; and Copper Development Association (CDA), "Table 1, Copper Tube: Types, Standards, Applications, Tempers, Lengths," *The Copper Tube Handbook*, 2006, p. 20.

Manufacturing Processes¹⁸

Production steps for SRC pipe and tube can be segmented into three processing stages: (1) prefabricating, which includes melting, casting, and either extrusion or rolling of rough tubing; (2) intermediate fabrication, consisting of cold drawing of unfinished tubing; and (3) finishing of the SRC pipe and tube.¹⁹ The starting material is metallic copper in the form of refined cathodes (“primary copper”), scrap (“secondary copper”), or ingots. The exact input mix depends on both the cost and availability of the various forms of copper and on the technical capabilities of the melting furnace. Primary copper is purchased from copper producers that electrolytically refine blister copper from smelting furnaces into plate-shaped copper cathodes of at least 99.95 percent purity. Secondary copper is a mix of recycled (“old”) scrap bales consisting of copper wire and tubing recovered from demolished or renovated structures and “home” or “runaround” (“new”) scrap returned from downstream production steps within the SRC pipe and tube mill. Brick-shaped copper ingots, cast from melted-down cathodes and scrap, are more commonly consumed by SRC pipe and tube mills with smaller-scale melting furnaces with doors that cannot accommodate cathodes and baled scrap.

Prefabricating

The production process begins with melting and refining of copper in a furnace to produce molten copper. A shaft furnace is adequate to melt high-purity cathodes, new scrap, and ingots into molten copper that does not need further refining. Alternatively, inclusion of less-pure old scrap in the initial furnace charge requires a reverberatory or other hearth-type furnace that allows for further refining of the molten copper. The copper charge is melted at temperatures between 2,300° to 2,400° F (above the melting point of copper at 1,981° F) and fire-refined by exposure to oxygen. Most impurities are converted into oxides that are trapped in the surface slag, whereas less-readily oxidized impurities (especially tin and nickel) must be removed by reaction with a special slag compound. The molten copper is stirred with greenwood poles (“poling”), which burn and vaporize to create a stirring action that drives the conversions to completion. The molten copper is sampled periodically to monitor the progress of refining. After the surface slag is skimmed off, the fire-refined melt exceeds 99.9 percent pure copper, similar to fire-refined primary copper smelted from ore. Phosphorous is added to deoxidize the molten copper to produce “phosphorous-deoxidized, high residual phosphorus copper” (“DHP,” with standard designation UNS C12200).²⁰

In the casting step, the molten copper is transferred from the melting/refining furnace to either a holding furnace or tundish (reservoir dam) that is heated to maintain the molten copper at constant temperature for casting. The surface of the molten copper is protected from oxidation by a layer of pulverized graphite. The SRC pipe and tube industry relies on three different technologies to cast molten copper into unfabricated forms. “Continuous casting” and “semi-continuous casting” are both well-

¹⁸ This section is compiled from the petition, pp. 13-19; conference, petitioners’ exhibits 5-7; staff field trip notes, October 14, 2009; Rainer Hergemoeller, “Modern Production Methods for High Volume Copper Tube Manufacturing,” TubeNet; and e-mail correspondence of Commission staff with counsel for petitioners, November 2 and 3, 2009.

¹⁹ Conference, petitioners’ exhibits 5-7.

²⁰ The Unified Numbering System (UNS) for Metals and Alloys is the standard designation and identification system in North America. The “C” indicates “copper” and the following five digits identify the specific pure or alloyed copper. UNS C12200 is the standard designation for DHP that contains a minimum of 99.9 percent copper (including silver) and 0.015–0.040 phosphorous. Copper Development Association (CDA), “CDA UNS Standard Designations for Wrought and Cast Copper and Copper Alloys: Introduction,” 2009.

established technologies for producing large-diameter solid “logs” or thick-walled hollow “tube rounds.” In the continuous casting process, molten metal flows into vertical graphite-lined cylindrical steel molds, that are water-cooled to quickly solidify the copper, which is gripped and withdrawn from the bottom as more molten copper is poured into the tops of the molds. Some mills utilize casting molds fitted with water-cooled central cores to produce tube rounds. A moving saw cuts the withdrawn log or tube round into billets, approximately two- to four-feet long, to fit the downstream extrusion or rolling equipment. In the semi-continuous casting process, a water-cooled floor of the mold cavity seals the vertical mold until the molten copper solidifies. More molten copper is poured into the top of the mold at the same rate as the floor is lowered. When the log or tube round reaches the depth of the pit beneath the mold, the mold is (and central core are) raised to allow the log or tube round to be removed from the pit for sawing into shorter billets.

A billet is preheated (to approximately 1,535° F) before being placed in an horizontal extrusion press. The press includes a ram fitted with a dummy block (that is smaller in diameter than the billet), and a rod slightly smaller in diameter than that of the die opening, if the billet was either cast hollow or already pierced (or alternatively a piercing mandrel, if the billet is still solid).²¹ The ram forces the heated copper over the rod (or mandrel) and through the die to form a long rough tube. The material (referred to as a “shell”) that accumulates over the dummy block is removed for remelting. The extruded rough tube is carried along a run-out table to maintain its straightness until it is cool enough to be cleaned and descaled. The ends are removed, and the length is subsequently coiled in preparation for drawing.

A more recent innovation is the “continuous horizontal cast and roll” (“cast and roll”) process²² that combines horizontal casting and milling, followed by planetary rolling,²³ and is capable of producing rough tubing directly from molten copper.²⁴ Molten copper flows into a graphite-lined mold fitted with a graphite-coated mandrel inside and emerges as a hollow shell. The hollow shell is cut by a saw into 30- to 60-foot long “shells.” The shell does not need to be reheated, but is fitted with a mandrel, before being fed into a high-reduction rolling mill with a series of rolling heads to reduce both the outside diameter and wall thickness of the shell to the final dimensions.

Petitioners’ witnesses claim that there are no differences in the resulting product from either the extrusion or the cast and roll processes,²⁵ although producing larger diameters still requires the extrusion method.^{26 27} By contrast, a domestic purchaser (through counsel) characterized foreign-origin cast-and-rolled inner groove SRC pipe and tube as “...produced directly from copper’s molten state, thereby

²¹ If the reheated billet is solid, it is pierced lengthwise with a mandrel (pointed rod) to form a hole through its center, that will eventually become the inner wall of the resulting tubing. Solid billets can be pierced either prior to or concurrent with extrusion. However, according to counsel for petitioners, billet piercing is no longer prevalent among major global producers. Counsel for petitioners, e-mail correspondence with Commission staff, November 2, 2009.

²² Page-Fura PC, on behalf of Johnson Controls, Inc., written submission to the Commission, October 26, 2009, p. 3.

²³ Conference, petitioners’ exhibit 5.

²⁴ Page-Fura PC, on behalf of Johnson Controls, Inc., written submission to the Commission, October 26, 2009, p. 3.

²⁵ Conference transcript, p. 52 (Arndt, Hansen, and Sigloch).

²⁶ Conference transcript, p. 52 (Sigloch).

²⁷ Wolverine was the first U.S. producer to adopt the cast and roll technology, but its Roxboro, NC, mill was closed prior to the current period of investigation. Cerro established a cast and roll production line in its Cedar City, UT, mill, around 2002, which currently has a production capacity of *** pounds per annum. KobeWieland was the most recent to install cast and roll lines (commissioned after June 2009) in its Pine Hill, NC, mill. Counsel for petitioners, e-mail correspondence with Commission staff, November 2, 2009.

resulting in a seamless product unlikely to fail in its chosen applications.”²⁸ According to counsel for this purchaser, this technology was first introduced in China, and cast-and-rolled SRC pipe and tube historically has been available from China and more recently from Mexico, but not from U.S. producers. The purchaser also reported being unable to obtain pricing and other information from a domestic producer about its cast-and-rolled inner-groove SRC pipe and tube.²⁹

Intermediate fabrication

The rough tube or shell resulting from the prefabrication stage is successively cold drawn through a series of steel dies to reduce diameter and wall thickness (by approximately 35 percent per draw) to final dimensions. Before the tube is drawn, a tapered plug mandrel is inserted into one end and that end is crimped to fit through the die and is gripped by the jaws of the drawing machine. As the tube is drawn, the die and mandrel reduce the outer diameter and wall thickness, respectively. The mandrel also imparts either a smooth or enhanced (grooved) surface to the inside of the tube.³⁰ After drawing, tubing to be finished as straight lengths is passed through a series of straightening rolls that bend the tubing less at each successive roll station so that the tubing emerges straight and can be subsequently cut to length. Tubing to be finished as coils is passed through rolls that impart a bend of the coil radius as the tubing emerges from the coiler.

Finishing

Finishing steps depend on the specific type of SRC pipe and tube being produced: (1) Straight-length tubing may be either cut to final lengths or re-coiled (e.g., into pancake coils). (2) Likewise, coiled tubing may be either re-coiled (e.g., into pancake coils), level wound, or straightened and cut to final length. (3) Tubing for thermal transfer applications is prepared by annealing (heat softening) before being passed through a series of rollers and over a mandrel to impart enhancements (i.e., fins, ridges, grooves, gills, etc.) to the inner surface. Similar enhancements can also be imparted to the outer surface by additional operations. For some types of SRC pipe and tube, the ends also can be finished by swaging, flaring, expanding, crimping, or threading. The tubing is tested for conformity with industry standards or customer specifications prior to annealing, marking and color coding, and cleaning.

SRC pipe and tube is sold either as-drawn (“hard”) or annealed (“soft”) after cutting to length, re-coiling, . SRC pipe and tube (either in straight lengths or coils) to be annealed is passed through either a continuous (long, heated box) furnace or an in-line induction (short, electric-powered) furnace, at 1,300° F in a non-reactive gas atmosphere to prevent oxidation of the copper. Some mills utilize bell furnaces for batch annealing in which coils are stacked beneath the bell and heated in a non-reactive atmosphere. Soft (annealed) SRC pipe and tube can be distinguished from hard (as-drawn) by the matte surface finish and lesser stiffness of annealed tubing. Otherwise, annealed and non-annealed SRC pipe and tube are of the same product quality and exhibit the same performance characteristics when in contact with fluids.

²⁸ ***, purchases cast-and-rolled inner-groove SRC pipe and tube from ***. Specific product quality characteristics reported by the purchaser were the tubing's even and compact structure, precise dimensions, few residuals present on inner surfaces, unique groove shape, increased inner surface area, and greater heat transfer capability. Page-Fura PC, on behalf of ***, written submission to the Commission, October 26, 2009, p. 2.

²⁹ According to counsel for ***. Ibid., p. 3.

³⁰ Inner and outer enhancements can be imparted to the tube during the finishing stage.

Tubing surfaces are cleaned to remove any remaining drawing lubricants or other debris, which is particularly critical for SRC pipe and tube designed to carry medical gases and cooling refrigerants. Outer surfaces can be coated for corrosion protection or insulation, marked or color coded for product identification, and attachments added to the ends, depending upon the requirements of industry standards or customer specifications.

DOMESTIC LIKE PRODUCT ISSUES

No domestic like product issues have been raised in these investigations, although certain other types of metallic and nonmetallic tubing can substitute for SRC pipe and tube.³¹ Petitioners propose a single domestic like product – all forms of SRC pipe and tube – coextensive with the scope.³² According to petitioners, SRC pipe and tube producers consider all SRC pipe and tube as a continuum of products, but OEMs often require nonstandard specifications to meet their particular end-use applications.³³ Respondents claim two distinctly different types of³⁴ and market segments for³⁵ SRC pipe and tube – plumbing versus industrial – but did not contest petitioners’ proposal for the preliminary phase of these investigations.³⁶

³¹ See the section entitled “Substitutability Issues” in *Part II* of this report.

³² Conference transcript, pp. 16 and 187-188 (Levy); and petitioners’ postconference brief, p. 9.

³³ Amendments to petition (October 13, 2009), p. 5.

³⁴ Respondents’ postconference brief (IUSA and Nacobre), pp. 5-7.

³⁵ Conference transcript, p. 126 (O’Brien); and respondents’ postconference briefs, (Golden Dragon) pp. 5-81; and (Hailian) pp. 3 and 8.

³⁶ Conference transcript, p. 126 (O’Brien); and respondents’ postconference brief (IUSA and Nacobre), p. 7. Other respondents did not state their position regarding domestic like product issues in their postconference briefs.

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

U.S. MARKET CHARACTERISTICS

All 11 responding U.S. producers and 12 of 34 responding importers reported selling SRC pipe and tube nationally. Twelve of the remaining responding importers reported selling to the southeast, 10 reported selling to the southwest, nine reported selling to the Pacific coast, eight reported selling to the northeast and/or Midwest, and three importers reported selling to the mountain region.

CHANNELS OF DISTRIBUTION

Plumbing tube is sold to wholesalers, retailers, and distributors who in turn sell it to different end users while industrial tube is generally sold to OEMs such as Carrier, Trane, and York.¹

A majority of U.S.-produced and Mexican imports of SRC pipe and tube are sold to distributors while a majority of imports from all sources except for Mexico are sold directly to end users. As shown in table II-1, in each full-year period, 59.9 to 62.7 percent of shipments of U.S.-produced SRC pipe and tube were to distributors, with the rest of the shipments to end users. The share of reported U.S. shipments of U.S. imports from Mexico made to end users decreased from *** percent in 2006 to *** in 2008. The share of reported U.S. shipments of U.S. imports from China made to end users decreased from 95.0 percent in 2006 to 88.1 percent in 2008, while the share of reported U.S. shipments of U.S. imports from countries other than China and Mexico made to end users decreased from 90.4 percent in 2006 to 83.7 percent in 2008.

SUPPLY AND DEMAND CONSIDERATIONS

Supply

U.S. Supply

Based on available information, U.S. SRC pipe and tube producers have the ability to respond to changes in demand with large changes in the quantity of shipments of U.S.-produced SRC pipe and tube to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are the availability of unused capacity and the ability to produce alternate products; supply responsiveness is constrained somewhat by a limited ability to ship to alternate markets and the somewhat limited ability to use inventories to increase shipments.

Industry capacity

U.S. producers' capacity utilization decreased from 72.5 percent in 2006 to 59.0 percent in 2008. This level of capacity utilization indicates that U.S. producers have unused capacity with which they could increase production of SRC pipe and tube in the event of a price change.

Alternative markets

Exports by the U.S. producers, as a share of total shipments, increased from 3.6 percent in 2006 to 4.5 percent in 2008. These data indicate that U.S. producers have somewhat limited ability to divert shipments to or from alternative markets in response to changes in the price of SRC pipe and tube.

¹ Petitioners' postconference brief, p. 20, Conference transcript, p. 25 (J. Hansen), p. 97 (Weil).

Table II-1

SRC pipe and tube: U.S. producers' and importers' U.S. shipments of SRC pipe and tube, by sources and channels of distribution, 2006-08, and January-June 2009

Item	Period			
	2006	2007	2008	Jan.-June 2009
Share of reported shipments (percent)				
Domestic producers' U.S. shipments of SRC pipe and tube to:				
Distributors	62.7	61.8	59.9	63.9
End users	37.3	38.2	40.1	36.1
U.S. importers' U.S. shipments of SRC pipe and tube from China:				
Distributors	8.2	7.1	11.9	14.1
End users	91.8	92.9	88.1	85.9
U.S. importers' U.S. shipments of SRC pipe and tube from Mexico:				
Distributors	***	***	***	***
End users	***	***	***	***
U.S. importers' U.S. shipments of SRC pipe and tube from all other countries to:				
Distributors	9.6	13.3	16.3	38.4
End users	90.4	86.7	83.7	61.6
Note.—Data for domestic producers include only U.S. commercial shipments.				
Source: Compiled from data submitted in response to Commission questionnaires.				

Inventory levels

The ratio of end-of-period inventories to total shipments for the U.S. producers increased from 6.1 percent in 2006 to 7.4 percent in 2008. These data indicate that U.S. producers are somewhat limited in their ability to use inventories as a means of increasing shipments of SRC pipe and tube to the U.S. market.

Production alternatives

Five of twelve responding U.S. producers indicated that they produce products other than SRC pipe and tube on the equipment and machinery that is used to produce SRC pipe and tube. Producers indicated that they can produce products such as ***.

Supply constraints

Three of 11 responding U.S. producers indicated that they had refused, declined, or been unable to supply SRC pipe and tube since January 2006. *** indicated that in the spring of 2006 and spring of 2008 it had declined new customers because of unusual demand as a result of the spike in commodity

prices. *** indicated that it had declined opportunities due to capacity restraints brought about by ***. *** indicated that in January 2006, there was a change in HVAC standards designed to improve energy efficiency that caused a short-term spike in demand for products meeting these specifications, which caused extended delivery times in the industry. It also indicated that during periods of high seasonal demand, delivery times may be extended.

Subject Imports from China

Based on available information, Chinese producers have the ability to respond to changes in demand with large changes in the quantity of shipments of SRC pipe and tube to the U.S. market.² The main contributing factors to the high degree of responsiveness of supply are the availability of unused capacity, the existence of alternate markets, and some ability to produce alternate products; supply responsiveness is constrained by the somewhat limited ability to use inventories.

Industry capacity

Chinese producers' capacity utilization decreased from 78.0 percent in 2006 to 66.9 percent in 2008. This level of capacity utilization indicates that Chinese producers have unused capacity with which they could increase production of SRC pipe and tube in the event of a price change.

Alternative markets

Shipments of SRC pipe and tube from China to markets other than the United States (both exports to alternative markets and shipments to the home market) decreased from approximately 88.9 percent of total shipments in 2006 to 84.7 percent in 2008. Thus, available data indicate that subject producers in China have the ability to divert shipments to or from their home market and alternative markets in response to changes in the price of SRC pipe and tube.

Inventory levels

The ratio of end-of-period inventories to total shipments for the Chinese producers decreased from 7.1 percent in 2006 to 2.9 percent in 2008. These data indicate that Chinese producers have a somewhat limited ability to use inventories as a means of increasing shipments of SRC pipe and tube to the U.S. market.

Production alternatives

Two of nine responding Chinese producers indicated that they produce products other than SRC pipe and tube on the equipment and machinery that is used to produce SRC pipe and tube. ***, ***.

Supply constraints

Importer *** indicated that it has refused, declined, or been unable to supply SRC pipe and tube because it can not compete with pricing by domestic mills.

² Nine Chinese producers responded to the foreign producers' questionnaire. Their exports to the United States represented 98 percent of total reported U.S. imports from China.

Subject Imports from Mexico

Based on available information, Mexican producers have the ability to respond to changes in demand with large changes in the quantity of shipments of SRC pipe and tube to the U.S. market.³ The main contributing factors to the high degree of responsiveness of supply are the availability of unused capacity, the existence of alternate markets, and some ability to produce alternate products; supply responsiveness is constrained by the somewhat limited ability to use inventories.

Industry capacity

Mexican producers' capacity utilization decreased from *** percent in 2006 to *** percent in 2008. This level of capacity utilization indicates that Mexican producers have unused capacity with which it could increase production of SRC pipe and tube in the event of a price change.

Alternative markets

Shipments of SRC pipe and tube from Mexico to markets other than the United States (both exports to alternative markets and shipments to the home market) decreased from approximately *** percent of total shipments in 2006 to *** percent in 2008. Thus, available data indicate that Mexican producers have the ability to divert shipments to or from its home market and alternative markets in response to changes in the price of SRC pipe and tube.

Inventory levels

The ratio of end-of-period inventories to total shipments for Mexican producers decreased from *** percent in 2006 to *** percent in 2008. These data indicate that Mexican producers have a limited ability to use inventories as a means of increasing shipments of SRC pipe and tube to the U.S. market.

Production alternatives

One of four Mexican producers indicated that they produce products other than SRC pipe and tube on the equipment and machinery that is used to produce SRC pipe and tube. ***.

Supply constraints

Importer *** indicated that it has refused, declined, or been unable to supply SRC pipe and tube because it can not compete with pricing by domestic mills. Importer *** indicated that it refused many orders due to its inability to compete with pricing by U.S. producers and due to a lack of supply available in their Mexican inventories.

Demand

Based on available information, it is likely that any change in the price level of SRC pipe and tube will result in a moderate change in the quantity of SRC pipe and tube demanded. The main contributing factors are substitute products and the small cost share of SRC pipe and tube in its end-use products.

³ Four Mexican producers responded to the foreign producers' questionnaire. Their exports to the United States represented *** percent of total reported U.S. imports from Mexico.

Demand Characteristics

As described in more detail in Part I, SRC pipe and tube is generally used for fluids under pressure, either for conveyance or in a closed loop for thermal transfer.⁴ Conveyance applications include water applications, as well as distribution systems for other liquids and gases while thermal transfer applications include heating systems, commercial refrigeration systems (such as grocery store refrigerated cases), and combined or split-unit air conditioning systems of all sizes.⁵

SRC pipe and tube is typically sold either as plumbing tube or commercial tube. “Plumbing tube” is typically manufactured according to ASTM standards with specifications for chemistry, outside diameter, wall thickness, strength, hardness, cleanliness, and roundness. Applications include domestic water service and distribution; fire protection; solar; fuel/fuel oil; HVAC; snow melting; compressed air; natural gas; liquified petroleum gas; and vacuum. “Commercial tube” may be similarly produced to industry standard specifications or may be produced to OEM specifications, including tubes with grooves, ridges, fins, or gills designed to enhance the efficiency of thermal transfer. Common applications for commercial tube include refrigeration units (mobile refrigeration), heating units, split-system central air conditioners, room and window air conditioners, central air conditioners, vehicle air conditioners, chillers, and freezers.⁶

U.S. demand for SRC pipe and tube depends on demand for construction, air conditioning and refrigeration, and industrial manufacturing and the price of substitute goods such as PEX tubing.⁷ U.S. producer Mueller indicates that new home construction plays an important role in demand for both plumbing and commercial SRC pipe and tube and that much of the demand for plumbing tube is derived from nonresidential construction rather than residential construction.⁸ KobeWeiland also notes that the warmer the weather is early in the year, the better the air conditioning season will be; thus increasing demand in the replacement market, which they estimate makes up about 35 to 65 percent of the market.⁹ U.S. producer and importer Cambridge-Lee indicated that it is difficult to estimate demand for SRC pipe and tube from housing starts because of the substitution of plastic in the residential construction, but nonresidential construction is a more reliable indicator of changes in demand because SRC pipe and tube is typically used.¹⁰ Importer JMF indicated that the relatively cool summers over the last two or three years has decreased demand for SRC pipe and tube.¹¹ Importer Golden Dragon estimated that replacement units make up 60 to 70 percent of the market for air conditioning units, which use SRC pipe and tube and no plastic tubing.¹²

Respondent Hailiang indicated that demand for both the plumbing and commercial pipe segments rely on commercial and residential construction.¹³ Respondents Dayco, Homewerks, JMF, and Marubeni indicated that the retail segments of the plumbing market have been impacted by the recession less than

⁴ Petition, p. 11.

⁵ Ibid.

⁶ Petition, pp. 11-12.

⁷ Petition, p. 38. PEX is a cross-linked polyethylene tubing that is sold in straight lengths or coils. Conference transcript, p. 141 (M. Hansen).

⁸ Conference transcript, pp. 52-53 (J. Hansen).

⁹ Conference transcript, pp. 53-54 (Sigloch).

¹⁰ Conference transcript, pp. 146-147 (Kerins).

¹¹ Conference transcript, p. 147 (M. Hansen).

¹² Conference transcript, pp. 147-149 (Weil).

¹³ Respondent Hailiang’s postconference brief, p. 8.

the wholesale segment because many homeowners chose to remodel instead of purchasing new homes.¹⁴ They also stated that sales of SRC pipe and tube for HVAC in the industrial market for nonresidential buildings has fared better than sales of copper tubing for HVAC for residential buildings.¹⁵

The real value of total construction decreased by 26 percent between January 2006 and September 2009 (see figure II-1). The real value of residential construction decreased by 63 percent between January 2006 and August 2009 while the real value of nonresidential construction increased by 22 percent between January 2006 and August 2009. Also, seasonally adjusted housing starts decreased by 74 percent between January 2006 and September 2009.

All 11 responding U.S. producers and 23 of 30 responding importers indicated that demand for SRC pipe and tube in the United States has decreased since 2006. Six importers indicated that demand had fluctuated and the remaining responding importer indicated that demand had not changed during that period.

Three of five responding producers and four of 12 responding importers indicated that demand for SRC pipe and tube decreased outside the U.S. since 2006. Two importers reported the demand outside the U.S. increased and two importers reported that demand increased for commercial tube, but decreased for plumbing tube. One producer and two importers indicated that demand outside of the United States fluctuated and the remaining one producer and two importers indicated that there was no change in demand. Several responding firms attributed decreases in demand to the global economic downturn and several firms attributed increases in demand to increased demand in China and developing countries. Importer *** indicated that the primary market for copper plumbing tube outside the U.S. is Europe, where the market has exhibited increased use of PVC tube and a decline in construction and that the primary market for commercial tube outside the U.S. is China and other developing nations.

Business Cycles

Nine of 11 responding producers and 18 of 29 responding importers indicated that the SRC pipe and tube market is subject to distinctive business cycles or conditions of competition. Several producers and importers indicated that the SRC pipe and tube market is subject to both seasonal and business cycles and that the business cycle is influenced by the construction market. Importer *** indicated that construction tends to taper off in fall and pick back up in spring, with the summer being the busiest time. U.S. producer Muller indicated that residential construction typically peaks in the spring and early summer months, and, to a lesser extent, so does commercial construction because of the winter weather discourages construction starts in the northern tier of states.¹⁶

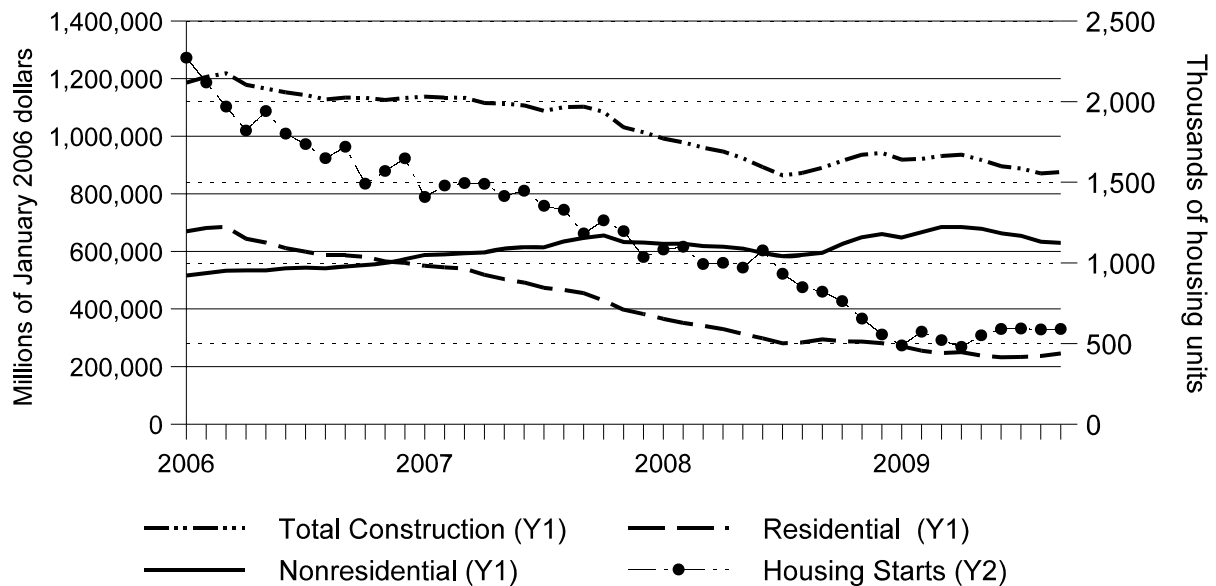
Seven of nine responding producers and 15 of 16 responding importers indicated that these distinctive business cycles or conditions of competition for SRC pipe and tube have changed since January 2006. Importers *** indicated that the increase in government energy efficiency standards increased demand above the typical business cycle in 2006 and 2007 and altered the anticipated seasonality.

¹⁴ Respondents Dayco, Homewerks, JMF, and Marubeni's postconference brief, p. 5.

¹⁵ Ibid, p. 6.

¹⁶ Conference transcript, pp. 54-55 (M. Hansen).

Figure II-1
Construction spending and housing starts: Total, residential, and nonresidential construction spending in the United States, seasonally adjusted annual rate, deflated by the producer price index and seasonally adjusted housing starts monthly, January 2006-September 2009



Note: Expenditures on private residential improvements to rental, vacant, and seasonal properties are not included in the construction spending data. Expenditures are deflated by the producer price index for intermediate goods (seasonally adjusted).

Source: U.S. Census Bureau, Manufacturing, Mining and Construction Statistics, Construction Spending. <http://www.census.gov/const/www/c30index.html#>, and Bureau of Labor Statistics (retrieved November 9, 2009).

Substitute Products

Both petitioners and respondents indicate that demand for SRC pipe and tube has decreased because of substitution of other types of tubing. Generally this has been attributed to the increase in the price of copper relative to other materials such as plastic and aluminum. The COMEX price of copper fluctuated since 2006, increasing by 80 percent between January 2006 and April 2008.¹⁷

Importer Golden Dragon believes that the main reason that substitutes for tube have developed is that the price of copper has increased dramatically in recent years.¹⁸ It indicated that although the switch to aluminum requires certain tradeoffs for air conditioning manufacturers, such as heat transfer efficiency, OEMs have been willing to substitute aluminum tubing given the high price of copper.¹⁹ It also noted that plastic tube has been used in indoor plumbing applications because there is no concern of heat transfer complications and because PEX tube installation is less expensive since it does not require the same technical skill as copper tube installation.²⁰ Purchaser Johnson Controls indicated that, given the

¹⁷ Platt's Metal Week and USGS.

¹⁸ Conference transcript, pp. 97-98 (Weil).

¹⁹ Conference transcript, p. 99 (Weil).

²⁰ Conference transcript, pp. 99-100 (Weil).

application of inner grove tube in its “Building Efficiency” products, it is not able to substitute other materials such as plastic or steel.²¹

Petitioners indicate that because investment in nonresidential structures and custom built residential structures has held up better than for corporate-built single-family residential structures (such as by Ryan Homes) and because the substitution of plastic tube for SRC pipe and tube in corporate-built single-family residential structures had largely occurred by the end of 2006, increased substitution of plastic tube was not an issue during the POI.²² Respondents Dayco, Homewerks, JMF, and Marubeni indicate that the share of new housing starts using copper tube for their water distribution system fell from *** percent in 2006 to *** percent in 2008 for single-family detached homes and from *** percent in 2006 to *** percent in 2008 for multifamily homes, while the share of housing starts using PEX tube increased for both single-family and multifamily homes.²³

Seven of nine responding producers and 17 of 24 responding importers indicated that there are substitutes for SRC pipe and tube. The most frequently cited substitutes were plastic tube (such as PEX or PVC), aluminum tube, and stainless steel tube.

Cost Share

SRC pipe and tube generally makes up a very small share of the final cost of construction that it is used in, although it may be a larger share of the plumbing system that it is used in.²⁴ Petitioners indicated that copper plumbing represents a few hundred dollars out of the total cost of a \$100,000 house and that there was considerable variation in the amount of copper tube in a large chiller unit as compared to a small air conditioner.²⁵ Petitioners estimated the cost share of SRC pipe and tube to be in a range of HVAC applications ranges from *** to *** percent.²⁶ Importer Golden Dragon indicated that in a residential air conditioner, the cost share of SRC pipe and tube will be on the low side and be larger for large chillers.²⁷

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported SRC pipe and tube 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.). Based on available data, staff believes that there is a high degree of substitutability between domestically produced SRC pipe and tube and SRC pipe and tube imported from China and Mexico.

Factors Affecting Purchasing Decisions

Petitioners indicated that SRC pipe and tube producers compete primarily on the basis of price because SRC pipe and tube produced to a given specification is highly interchangeable whether it is

²¹ Johnson Controls, written submission to the Commission, October 26, 2009 , p. 5.

²² Petitioners’ postconference brief, exhibit 14, response to question 9.

²³ Respondents Dayco, Homewerks, JMF, and Marubeni’s postconference brief, p. 5.

²⁴ Conference transcript, p. 56 (J. Hansen).

²⁵ Petitioner’s postconference brief, exhibit 14, response to question 8 and conference transcript, p. 56 (Hansen) and p. 55 (Sigloch).

²⁶ Petitioner’s postconference brief, exhibit 14, response to question 8.

²⁷ Conference transcript, p. 135 (Weil).

manufactured in the United States, Mexico, or China.²⁸ Importer Homewerks indicates that it competes on the basis of a superior product range and services and not necessarily lower price, offering over 80 different copper tube items to retail customer, smaller case pack sizes than domestic manufacturers use, and being the first to offer security tagging and consumer friendly labeling and packaging.²⁹ Importer JMF indicated that it cannot compete on the basis of price with domestic producers, so it attempts to out-service the copper tube mills by usually shipping its SRC pipe and tube in one day and within two days 98 percent of the time.³⁰ Purchaser Johnson Controls indicated it does not base its decisions on price but, rather on the performance parameters and capability of the materials and products that it purchases.³¹ It purchases product that is made from a cast and roll process and has not found SRC pipe and tube produced using other methods to be of the same quality and reliability.³² Petitioners indicated that there is no difference between SRC pipe and tube produced from the cast and roll and extrusion processes.³³

Comparison of U.S.-Produced and Imported SRC Pipe and Tube

In order to determine whether U.S.-produced SRC pipe and tube can generally be used in the same applications as imports from China and Mexico, U.S. producers and U.S. importers were asked whether the products can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. As shown from table II-2, at least 70 percent of responding producers and between 31 and 33 percent of responding importers indicated that SRC pipe and tube produced in the United States and imported from China and Mexico are “always” used interchangeably and all or all but one responding producer and between 63 and 67 percent of responding importers reported that they are at least “frequently” used interchangeably.

Importer *** indicated plumbing tube produced in Mexico is interchangeable with U.S.-produced plumbing tube, but that Mexico does not currently export a significant amount of interchangeable commercial tube products to the U.S. importer *** indicates that, generally, imported copper tube product is better quality (higher copper content) and has more consistent wall thicknesses. Importer Copper and Brass indicated that the products that it produces in Mexico and supplies to the U.S. market include military specification tube for ship building, heat exchanges for petrochemical applications, sugar tubes for producing sugar, wave guide tubes for cellular communications, and heavy wall copper tubes often used in heat exchange applications and electronic applications.³⁴ They indicate that these products are probably a fraction of the one to two percent of the scope that Copper and Brass imports into the U.S. market.³⁵ Importer *** indicated that its SRC pipe and tube is generally perceived as being of higher quality than that of U.S. producers.

Importer *** indicates that commercial and industrial buyers prefer cast and roll-produced product because of higher copper content (cathode only) and tighter specifications. Purchaser Johnson

²⁸ Conference transcript, pp. 9, 16 (Levy).

²⁹ Conference transcript, pp. 80-81 (Altman).

³⁰ Conference transcript, pp. 168-169 (Hansen).

³¹ Johnson Controls, written submission to the Commission, October 26, 2009, p. 2.

³² Ibid, p. 2.

³³ Conference transcript, p. 52 (Arndt, J. Hansen, Sigloch). KobeWieland indicated that some sizes cannot be produced with cast and roll methods, but that for all sizes that can be produced with both methods, there is no difference. Ibid. (Sigloch).

³⁴ Conference transcript, pp. 114-115 (Kelly).

³⁵ Conference transcript, pp. 161 (Kelly).

Table II-2

SRC pipe and tube: Perceived interchangeability between SRC pipe and tube produced in the United States and in other countries, by country pairs

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. subject countries:								
U.S. vs. China	7	2	1	0	9	9	9	0
U.S. vs. Mexico	6	2	0	0	5	5	6	0
U.S. vs. nonsubject countries:								
U.S. vs. Canada	5	0	2	0	6	2	6	0
U.S. vs. Malaysia	4	0	0	0	5	3	4	0
U.S. vs. other nonsubject	1	0	1	0	5	3	1	0
Subject countries comparisons:								
China vs. Mexico	6	0	0	0	4	5	2	0
Nonsubject countries comparisons:								
China vs. Canada	5	0	0	0	5	2	3	0
China vs. Malaysia	4	0	0	0	5	3	3	0
China vs. other nonsubject	1	0	0	0	4	2	0	0
Mexico vs. Canada	5	0	0	0	5	2	3	0
Mexico vs. Malaysia	4	0	0	0	5	2	2	0
Mexico vs. other nonsubject	1	0	0	0	5	2	0	0
Canada vs. Malaysia	4	0	0	0	4	2	2	0
Canada vs. other nonsubject	0	0	0	0	4	2	0	0
Malaysia vs. other nonsubject	1	0	0	0	4	2	0	0
Note.--A = Always, F = Frequently, S = Sometimes, N = Never. Source: Compiled from data submitted in response to Commission questionnaires.								

Controls indicated that inner groove tube produced from a continuous horizontal cast and roll process has historically only been available from Chinese sources and more recently Mexican sources.³⁶

At least one-half of responding producers and 40 percent of responding importers reported that SRC pipe and tube produced in the United States and imported from nonsubject countries are “always” used interchangeably. All responding producers and at least 36 percent of importers reported that SRC pipe and tube imports from Canada, China, Malaysia, and Mexico compared to imports from each other and other countries are “always” used interchangeably.

As indicated in table II-3, all responding U.S. producers and 48 percent of responding importers indicated that differences other than price between SRC pipe and tube produced in the United States and imported from China and Mexico were at most “sometimes” a significant factor in their sales. All responding U.S. producers and at least one-half of responding importers indicated that differences other

³⁶ Johnson Controls, written submission to the Commission, October 26, 2009, p. 3. Johnson Controls indicates that only one of the petitioners (KobeWeiland) has recently introduced cast and roll products to the market and that it has been unable to obtain any pricing or related information to confirm the domestic product will be as reliable, efficient and competitive as existing sources.

Table II-3

SRC pipe and tube: Perceived differences other than price between SRC pipe and tube produced in the United States and in other countries, by country pairs

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. subject countries:								
U.S. vs. China	0	0	6	4	7	6	7	5
U.S. vs. Mexico	0	0	3	4	2	4	4	4
U.S. vs. nonsubject countries:								
U.S. vs. Canada	0	0	5	2	1	1	3	5
U.S. vs. Malaysia	0	0	3	0	3	2	3	2
U.S. vs. other nonsubject	0	0	2	0	0	2	4	3
Subject countries comparisons:								
China vs. Mexico	0	0	0	4	1	1	3	2
Nonsubject countries comparisons:								
China vs. Canada	0	0	2	1	0	2	2	3
China vs. Malaysia	0	0	2	0	1	1	4	1
China vs. other nonsubject	0	0	0	0	0	1	2	2
Mexico vs. Canada	0	0	3	1	0	1	2	3
Mexico vs. Malaysia	0	0	2	0	1	1	2	1
Mexico vs. other nonsubject	0	0	0	0	0	1	2	3
Canada vs. Malaysia	0	0	2	0	1	0	2	1
Canada vs. other nonsubject	0	0	0	0	0	0	2	2
Malaysia vs. other nonsubject	0	0	0	0	0	0	2	2
Note.--A = Always, F = Frequently, S = Sometimes, N = Never. Source: Compiled from data submitted in response to Commission questionnaires.								

than price between SRC pipe and tube produced in the United States and imported from nonsubject countries were at most “sometimes” a significant factor in their sales. All responding U.S. producers and at least 60 percent of responding importers indicated that differences other than price between SRC pipe and tube produced in the United States and imported from nonsubject countries were at most “sometimes” a significant factor in their sales.

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 margins of dumping was presented earlier in this report and information on the volume of imports of the subject merchandise is presented in *Part IV*. Information on the pricing of U.S. and imported subject products is presented in *Part 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 12 firms that accounted for 95 percent of U.S. production of SRC pipe and tube during 2008.

U.S. PRODUCERS

The Commission sent producer questionnaires to 35 firms identified as U.S. producers of SRC pipe and tube by the petitioners.¹ Twelve firms submitted questionnaire responses.² Presented in table III-1 is a list of current domestic producers of SRC pipe and tube and each company's position on the petition, production location(s), related and/or affiliated firms, and share of reported domestic production of SRC pipe and tube in 2008. Two firms, *** and ***, accounted for *** percent of reported 2008 domestic production of SRC pipe and tube.

Five U.S. producers are related to foreign producers of the subject merchandise and one is related to U.S. importers of the subject merchandise. In addition, as discussed later in this section, five U.S. producers directly import ***.

¹ Converters (redraw mills and independent line set fabricators) comprise approximately *** percent of total U.S. production. Petitioners' postconference brief, Exh. 14.

² ***.

Table III-1

SRC pipe and tube: U.S. producers, positions on the petition, U.S. production locations, related and/or affiliated firms, and shares of 2008 reported U.S. production

Firm	Position on petition	U.S. production location(s)	Related and/or affiliated firms	Share of production (percent)
Cambridge-Lee	***	Reading, PA	United Copper Industries (U.S.) Cambridge-Lee Holdings (U.S.) Tanjore Corp. (U.S.) Tubo dl Pastege (U.S.) IUSA (Mexico)	***
Cerro	Petitioner	St. Louis, MO	Marmon Holdings	***
Freeport-McMoRan	***	Elizabeth, NJ	Freeport-McMoRan Copper (U.S.)	
H & H	***	Vanderbilt, MI	Sunspring Metal Corp. (Taiwan)	***
Howell Metal	***	New Market, VA	Commercial Metals (CMC)(U.S.) Cometals Commonwealth	***
Kobe Wieland	Petitioner	Pine Hall, NC Wheeling, IL	Wieland Holdings (U.S.) Kobe Copper (U.S.) Wieland-Werke (Germany) Wolverine Tube Shanghai (China) Kobelco & Materials Copper (Japan) Kobelco & Materials Copper (Malaysia) Kobelco & Materials Copper (Thailand)	***
Mueller	Petitioner	Fulton, MS Wynne, AR	Mueller Industries Jiangsu Mueller-Xingrong Copper Mueller Europe Precision Tube (U.S.)	***
National Copper	***	Dowagiac, MI Huntsville, AL	None	***
Packless	***	Waco, TX	None	***
Precision Tube	***	North Wales, PA	Mueller Streamline Co. Jiangsu Mueller-Xingrong Copper Mueller Europe Mueller	***
S.T. Products	***	Duncansville, PA	S.T. Products Holdings (U.S.)	***
Wolverine	***	Ardmore, TN Huntsville, AL Shawnee, OK	Wolverine Tube Shanghai (China) Wolverine Tubagem (Portugal) WLVN de LatinoAmerica (Mexico)	***

Note.—Because of rounding, shares may not total to 100.0 percent.

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

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

U.S. producers' capacity, production, and capacity utilization data for SRC pipe and tube are presented in table III-2. These data show capacity to produce SRC pipe and tube decreased by 10.6 percent from 2006 to 2008 and decreased by 3.4 percent between the interim periods. Production of SRC pipe and tube decreased by 27.2 percent from 2006 to 2008 and decreased by 24.8 percent between the interim periods. Capacity utilization decreased by 13.5 percentage points from 2006 to 2008, and decreased by 14.6 percentage points between the interim periods.

Table III-2
SRC pipe and tube: U.S. capacity, production, and capacity utilization, 2006-08, January-June 2008, and January-June 2009

Item	Calendar year			January-June--	
	2006	2007	2008	2008	2009
Capacity (1,000 pounds)	1,221,065	1,209,136	1,091,428	545,627	526,855
Production (1,000 pounds)	884,942	786,635	644,032	360,486	271,249
Capacity utilization (percent)	72.5	65.1	59.0	66.1	51.5

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

U.S. producers were asked if they had experienced any plant openings, relocations, expansions, acquisitions, consolidations, closures, or prolonged shutdowns because of strikes or equipment failure; curtailment of production because of shortages of materials; or any other change in the character of their operations or organization relating to the production of SRC pipe and tube since January 1, 2006. Eight U.S. producers provided responses which are presented in table III-3.

The domestic industry closed several SRC pipe and tube plants during the period examined: Luvata Grenda shut down production in 2006;³ Wolverine closed its Jackson, MS, plant in September 2006 (capacity *** pounds) and its Decatur, AL, plant in December 2007 (capacity *** pounds);⁴ Linderme Tube Co. closed in September 2008 (capacity *** pounds);⁵ and National Copper closed its Dowagiac, MI, plant in November 2008 (capacity *** pounds).⁶

³ ***.

⁴ Wolverine U.S. producer questionnaire, p. 4. Wolverine subsequently reported that the Jackson plant produced welded copper pipe and tube. Golden Dragon postconference brief, p. 34 and exh. 8.

⁵ Linderme's assets and customer base were purchased by S.T. Products. Found at <http://www.lindermetube.com/>, on October 26, 2009.

⁶ ***.

Table III-3
SRC pipe and tube: Changes in U.S. producers' production operations

* * * * *

Five U.S. producers reported the production of other products on the same equipment and machinery and using the same production and related workers employed in the production of SRC pipe and tube, as presented in table III-4.

Table III-4
SRC pipe and tube: Production of other products on the same equipment and machinery

* * * * *

U.S. PRODUCERS' SHIPMENTS

Data on domestic producers' shipments of SRC pipe and tube are presented in table III-5. U.S. shipments accounted for 95.5 percent of U.S. producers' total shipments of SRC pipe and tube in 2008, and 95.6 percent in interim 2009. U.S. producers reported no internal consumption. Transfers to related firms accounted for *** percent of U.S. producers' total shipments of SRC pipe and tube in 2008 and *** percent interim 2009.⁷ U.S. shipments decreased by 28.9 percent from 2006 to 2008, and decreased by 23.5 percent between the interim periods. The unit value of U.S. shipments increased by 11.5 percent from 2006 to 2008, and decreased by 39.1 percent in the interim periods. Exports of SRC pipe and tube were reported by nine firms.⁸ These exports decreased by 9.6 percent from 2006 to 2008, and decreased by 27.1 percent between the interim periods. Exports accounted for 4.5 percent of U.S. producers' total shipments during 2008, and 4.4 percent in interim 2009. The export markets listed included ***.

⁷ ***.

⁸ ***.

Table III-5
SRC pipe and tube: U.S. producers' shipments, by types, 2006-08, January-June 2008, and January-June 2009

Item	Calendar year			January-June--	
	2006	2007	2008	2008	2009
Quantity (1,000 pounds)					
Commercial shipments	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	873,514	760,389	620,882	348,389	266,537
Export shipments	32,331	31,064	29,239	16,746	12,212
Total shipments	905,845	791,453	650,121	365,135	278,749
Value (1,000 dollars)					
Commercial shipments	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	3,320,204	3,113,613	2,632,047	1,539,732	717,598
Export shipments	121,983	126,476	125,222	74,030	32,906
Total shipments	3,442,187	3,240,089	2,757,269	1,613,762	750,504
Unit value (per pound)					
Commercial shipments	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	3.80	4.09	4.24	4.42	2.69
Export shipments	3.77	4.07	4.28	4.42	2.69
Total shipments	3.80	4.09	4.24	4.42	2.69
Share of quantity (percent)					
Commercial shipments	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	96.4	96.1	95.5	95.4	95.6
Export shipments	3.6	3.9	4.5	4.6	4.4
Total shipments	100.0	100.0	100.0	100.0	100.0
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' INVENTORIES

Data collected in these investigations on domestic producers' end-of-period inventories of SRC pipe and tube are presented in table III-6. Domestic producers' inventories decreased by 13.6 percent from 2006 to 2008, and decreased by 16.0 percent in interim 2009 compared with interim 2008. U.S. producers' inventories were equivalent to between 6.1 and 7.4 percent of U.S. producers' total shipments during 2006 to June 2009. Producers generally do not maintain significant inventories of SRC pipe and tube because of the volatility of copper prices.⁹

Table III-6
SRC pipe and tube: U.S. producers' end-of-period inventories, 2006-08, January-June 2008, and January-June 2009

Item	Calendar year			January-June--	
	2006	2007	2008	2008	2009
Inventories (1,000 pounds)	55,351	52,864	47,828	48,841	41,008
Ratio to production (percent)	6.3	6.7	7.4	6.8	7.6
Ratio to U.S. shipments (percent)	6.3	7.0	7.7	7.0	7.7
Ratio to total shipments (percent)	6.1	6.7	7.4	6.7	7.4

Note.—Partial-year ratios are based on annualized production and shipments.
 Source: Compiled from data submitted in response to Commission questionnaires.

U.S. PRODUCERS' IMPORTS AND PURCHASES

Three of the U.S. producers reported that they directly imported SRC pipe and tube from ***,¹⁰ three imported from ***,¹¹ and two imported from ***¹² during the period examined. Eight of the U.S. producers reported that they purchased SRC pipe and tube from other U.S. producers,¹³ two purchased imports from ***,¹⁴ two purchased imports from ***,¹⁵ and four purchased imports from nonsubject sources.¹⁶ U.S. producers' imports and purchases of SRC pipe and tube from China and Mexico are presented in table III-7.

Table III-7
SRC pipe and tube: U.S. producers' imports and purchases, 2006-08, January-June 2008, and January-June 2009

* * * * *

⁹ Petitioners' postconference brief, p. 32.

¹⁰ ***.

¹¹ ***.

¹² ***.

¹³ ***.

¹⁴ ***.

¹⁵ ***.

¹⁶ ***.

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

U.S. producers' aggregate employment data for SRC pipe and tube are presented in table III-8.¹⁷ In the aggregate, U.S. SRC pipe and tube producers reported a 19.1 percent decrease in the number of production and related workers employed in the manufacture of SRC pipe and tube from 2006 to 2008, and a 16.8 percent decrease in interim 2009 compared with interim 2008. *** accounted for the major share of the decrease in number of employees from 2006 to 2008, and *** accounted for the majority of the decrease in interim 2009. Productivity decreased 11.3 percent from 2006 to 2008, and by 3.4 percent in interim 2009 compared with interim 2008.

Table III-8
SRC pipe and tube: U.S. producers' employment-related data, 2006-08, January-June 2008, and January-June 2009

Item	Calendar year			January-June--	
	2006	2007	2008	2008	2009
Production and related workers (PRWs)	3,913	3,628	3,166	3,280	2,730
Hours worked by PRWs (<i>1,000 hours</i>)	8,034	7,565	6,571	3,473	2,718
Wages paid to PRWs (<i>1,000 dollars</i>)	148,451	148,136	129,242	69,495	54,963
Hourly wages	\$18.48	\$19.58	\$19.67	\$20.01	\$20.22
Productivity (<i>pounds produced per 1,000 hours</i>)	108.4	102.2	96.2	102.0	98.5
Unit labor costs (<i>per 1,000 pounds</i>)	\$0.17	\$0.19	\$0.20	\$0.20	\$0.21

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

¹⁷ ***.

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

U.S. IMPORTERS

Importer questionnaires were sent to 78 firms believed to be importers of subject SRC pipe and tube, as well as to all U.S. producers of SRC pipe and tube.¹ Usable questionnaire responses were received from 42 companies,² representing 91 percent of total imports from China, 100 percent of total imports from Mexico, and 44 percent of total imports from all other sources. Table IV-1 lists all responding U.S. importers of SRC pipe and tube from China, Mexico, and other sources, their locations, and their shares of U.S. imports in 2008. In 2008, the largest importer of SRC pipe and tube from China was ***, the largest importer of SRC pipe and tube from Mexico was ***, and the largest importer of SRC pipe and tube from other sources was ***.

¹ The Commission sent questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by U.S. Customs and Border Protection (“Customs”), may have imported greater than one percent of total imports under HTS subheadings 7411.10.1030 or 7411.10.1090 in any one year since 2006.

² The Commission received questionnaire responses from 11 firms that reported that they did not import SRC pipe and tube during the period examined. Those firms are: ***.

Table IV-1
SRC pipe and tube: U.S. importers, source(s) of imports, U.S. headquarters, and shares of imports in 2008

Firm	Headquarters	Share of 2008 imports (percent)				
		China	Mexico	Subject sources	Other	Total
Abco	Chatham, MA Memphis, TN	***	***	***	***	***
Ask Products	Aurora, IL	***	***	***	***	***
Automotive Technical	Dacula, GA	***	***	***	***	***
Browning Metal	Purchase, NY	***	***	***	***	***
Cambridge-Lee	Reading, PA	***	***	***	***	***
CMC	Fort Lee, NJ	***	***	***	***	***
Copper & Brass	Houston, TX	***	***	***	***	***
CPW America	Houston, TX	***	***	***	***	***
David Bleich	Calabasas, CA	***	***	***	***	***
Dayco	Mira Loma, CA	***	***	***	***	***
Dial	Phoenix, AZ	***	***	***	***	***
Engineered Controls	Elon, NC	***	***	***	***	***
GD Copper	Ponte Vedra Beach, FL	***	***	***	***	***
Gemaire	Deerfield Beach, FL	***	***	***	***	***
Hitachi	San Jose, CA	***	***	***	***	***
Homewerks	Wheeling, IL	***	***	***	***	***
H&H	Vanderbilt, MI	***	***	***	***	***
JMF	Bettendorf, IA	***	***	***	***	***
Jones Stephens	Moody, AL	***	***	***	***	***
Kobe Wieland	Pine Hall, NC	***	***	***	***	***
Linesets	Phoenix, AZ	***	***	***	***	***
Lloyds Pacific	Hacienda Heights, CA	***	***	***	***	***

Table continued on next page.

Table IV-1--Continued

SRC pipe and tube: U.S. importers, source(s) of imports, U.S. headquarters, and shares of imports in 2008

Firm	Headquarters	Share of 2008 imports (percent)				
		China	Mexico	Subject sources	Other	Total
Luvata Franklin	Franklin, KY	***	***	***	***	***
Luvata Grenada	Grenada, MS	***	***	***	***	***
Marubeni	New York, NY	***	***	***	***	***
MGM	Las Vegas, NV	***	***	***	***	***
Modine	Racine, WI	***	***	***	***	***
NWI	Oceanside, CA	***	***	***	***	***
National Bronze & Metals	Houston, TX	***	***	***	***	***
National Coil	Longview, TX	***	***	***	***	***
New Pacific	Wilmington, CA	***	***	***	***	***
Nordyne	O'Fallon, MO	***	***	***	***	***
Packless	Waco, TX	***	***	***	***	***
Panduit	Tinley Park, IL	***	***	***	***	***
Pepco	Irving, TX	***	***	***	***	***
Refricenter	Miami, FL	***	***	***	***	***
S.T. Products	Duncansville, PA	***	***	***	***	***
Toyota	Georgetown, KY	***	***	***	***	***
Wells Plumbing	Chicago, IL	***	***	***	***	***
Wieland Metal	Wheeling, IL	***	***	***	***	***
Wolverine	Huntsville, AL Ardmore, TN Shawnee, OK Carrollton, TX	***	***	***	***	***
Zhajiag Hailiang	Zhejiang, China	***	***	***	***	***
Total		100.0	100.0	100.0	100.0	100.0

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

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

U.S. IMPORTS

U.S. imports are based on official import statistics of Commerce.³ Table IV-2 presents data for U.S. imports of SRC pipe and tube from China, Mexico, and all other sources. China is the largest foreign supplier of SRC pipe and tube to the United States, accounting for 45.0 percent of the quantity of total imports in 2008, and 44.8 percent of the value. Mexico is the second-largest foreign supplier of SRC pipe and tube to the United States, accounting for 28.9 percent of the quantity of total imports in 2008 and 28.3 percent of the value.

From 2006 to 2008, the quantity and value of imports of SRC pipe and tube from China increased by 22.0 percent and 44.0 percent, respectively, then decreased by 23.4 percent and 57.2 percent, respectively, in interim 2009 compared with interim 2008. The unit value of imports of SRC pipe and tube from China increased by 18.1 percent from 2006 to 2008, and decreased by 44.2 percent in interim 2009 compared with interim 2008. From 2006 to 2008, the quantity of imports of SRC pipe and tube from Mexico decreased by 10.6 percent and the value increased by 0.9 percent; they decreased by 21.9 percent and 51.1 percent, respectively, in interim 2009 compared with interim 2008. The unit value of imports of SRC pipe and tube from Mexico increased by 12.9 percent from 2006 to 2008, and decreased by 37.4 percent in interim 2009 compared with interim 2008. The quantity and value of imports from nonsubject countries decreased by 28.5 percent and by 14.7 percent, respectively, from 2006 to 2008, and by 29.3 percent and 57.9 percent, respectively, in interim 2009 compared with interim 2008. The unit value of imports of SRC pipe and tube from nonsubject sources increased by 19.3 percent from 2006 to 2008, and decreased by 40.4 percent in interim 2009 compared with interim 2008.

Nonsubject imports of SRC pipe and tube are presented in table IV-3. Canada and Malaysia are the largest nonsubject foreign suppliers of SRC pipe and tube to the United States.⁴

³ SRC pipe and tube is classifiable in the Harmonized Tariff Schedule of the United States (“HTS”) under subheadings 7411.10.1030 or 7411.10.1090.

⁴ Other major nonsubject suppliers include Korea, Japan, Germany, and Chile.

Table IV-2

SRC pipe and tube: U.S. imports, by sources, 2006-08, January-June 2008, and January-June 2009

Source	Calendar year			January-June	
	2006	2007	2008	2008	2009
Quantity (1,000 pounds)					
China	91,113	90,624	111,126	64,439	49,388
Mexico	79,817	75,199	71,327	40,110	31,340
Subtotal	170,930	165,823	182,453	104,549	80,728
Nonsubject	90,088	74,226	64,441	32,477	22,961
Total	261,018	240,049	246,894	137,026	103,689
Value (1,000 dollars)¹					
China	309,873	348,772	446,282	259,591	110,981
Mexico	279,361	284,287	281,957	162,388	79,376
Subtotal	589,234	633,059	728,239	421,979	190,357
Nonsubject	314,358	292,345	268,218	136,025	57,314
Total	903,592	925,404	996,457	558,004	247,671
Unit value (per pound)¹					
China	\$3.40	\$3.85	\$4.02	\$4.03	\$2.25
Mexico	3.50	3.78	3.95	4.05	2.53
Subtotal	3.45	3.82	3.99	4.04	2.36
Nonsubject	3.49	3.94	4.16	4.19	2.50
Average	3.46	3.86	4.04	4.07	2.39
Share of quantity (percent)					
China	34.9	37.8	45.0	47.0	47.6
Mexico	30.6	31.3	28.9	29.3	30.2
Subtotal	65.5	69.1	73.9	76.3	77.9
Nonsubject	34.5	30.9	26.1	23.7	22.1
Total	100.0	100.0	100.0	100.0	100.0
Share of value (percent)					
China	34.3	37.7	44.8	46.5	44.8
Mexico	30.9	30.7	28.3	29.1	32.0
Subtotal	65.2	68.4	73.1	75.6	76.9
Nonsubject	34.8	31.6	26.9	24.4	23.1
Total	100.0	100.0	100.0	100.0	100.0
¹ Landed, U.S. port of entry, duty-paid.					
Source: Compiled from official Commerce statistics.					

Table IV-3

SRC pipe and tube: U.S. imports from nonsubject countries, by sources, 2006-08, January-June 2008, and January-June 2009

Source	Calendar year			January-June	
	2006	2007	2008	2008	2009
Quantity (1,000 pounds)					
Canada	25,375	17,557	20,016	9,957	8,638
Malaysia	20,853	23,039	15,633	4,998	6,565
Korea	8,871	8,550	8,816	6,265	3,119
Japan	14,148	10,864	4,726	3,297	195
Germany	4,134	3,936	3,930	2,279	1,810
Chile	4,000	2,458	3,688	1,976	666
United Kingdom	3,995	3,651	2,805	1,627	981
Greece	7,138	2,603	2,486	952	543
All other	1,575	1,569	2,341	1,125	443
Total	90,088	74,226	64,441	32,477	22,961
Value (1,000 dollars)¹					
Canada	86,739	65,556	80,748	42,678	20,721
Malaysia	77,483	89,966	64,082	19,039	15,386
Korea	29,218	32,981	36,266	25,821	7,416
Japan	49,027	42,197	20,908	14,292	627
Germany	15,344	19,134	20,151	11,438	6,006
Chile	13,652	9,433	14,509	7,782	1,603
United Kingdom	12,441	15,080	11,922	7,151	2,491
Greece	24,148	9,958	10,282	3,881	1,736
All other	6,307	8,040	9,349	3,944	1,328
Total	314,358	292,345	268,218	136,025	57,314
Unit value (per pound)¹					
Canada	\$3.42	\$3.73	\$4.03	\$4.29	\$2.40
Malaysia	3.72	3.90	4.10	3.81	2.34
Korea	3.29	3.86	4.11	4.12	2.38
Japan	3.47	3.88	4.42	4.34	3.21
Germany	3.71	4.86	5.13	5.02	3.32
Chile	3.41	3.84	3.93	3.94	2.41
United Kingdom	3.11	4.13	4.25	4.39	2.54
Greece	3.38	3.83	4.14	4.08	3.20
All other	4.00	5.12	3.99	3.50	3.00
Total	3.49	3.94	4.16	4.19	2.50
¹ Landed, U.S. port of entry, duty-paid.					
Source: Compiled from official Commerce statistics.					

CUMULATION CONSIDERATIONS

In assessing whether subject imports are likely to compete with each other and with the domestic like product with respect to cumulation, the Commission generally has considered the following four factors: (1) the degree of fungibility, including specific customer requirements and other quality-related questions; (2) presence of sales or offers to sell in the same geographic markets; (3) common channels of distribution; and (4) simultaneous presence in the market. Channels of distribution and fungibility (interchangeability) are discussed in Part II of this report.

Geographic Markets

Table IV-4 presents imports from China by Customs districts from 2006 to 2008, while table IV-5 presents imports from Mexico by Customs districts for the same period. Houston-Galveston, TX, was the largest district of entry for imports from China, accounting for 48.7 percent of total subject imports during 2008. New Orleans, LA, was the second largest port, with 11.1 percent of imports from China. Laredo, TX, was the largest district of entry for imports from Mexico, accounting for 89.0 percent of total subject imports during 2008. El Paso, TX, was the second largest port, with 9.0 percent of subject imports.

Table IV-4

SRC pipe and tube: U.S. imports from China, by Customs district, 2006-08

Customs district	Calendar year			Share of 2008 (percent)
	2006	2007	2008	
Quantity (1,000 pounds)				
Baltimore, MD	237	430	0	0.0
Boston, MA	597	1,062	1,241	1.1
Buffalo, NY	260	603	562	0.5
Charleston, SC	2	0	90	0.1
Charlotte, NC	387	244	237	0.2
Chicago, IL	2,426	2,025	5,875	5.3
Cleveland, OH	240	35	486	0.4
Dallas-Fort Worth, TX	9,435	7,886	6,871	6.2
Detroit, MI	646	753	459	0.4
Great Falls, MT	0	2	139	0.1
Honolulu, HI	0	0	7	0.0
Houston-Galveston, TX	50,999	47,814	54,124	48.7
Laredo, TX	2	43	17	0.0
Los Angeles, CA	5,701	8,337	5,743	5.2
Miami, FL	5,049	2,724	2,169	2.0
Minneapolis, MN	389	193	1,054	0.9
Mobile, AL	917	623	3,563	3.2
New Orleans, LA	2,599	8,913	12,371	11.1
New York, NY	581	1,051	728	0.7
Nogales, AZ	102	146	2	0.0
Norfolk, VA	245	434	331	0.3
Ogdensburg, NY	46	30	17	0.0
Philadelphia, PA	29	0	13	0.0
San Francisco, CA	225	95	51	0.0
San Juan, PR	90	139	176	0.2
Savannah, GA	6,825	5,736	11,845	10.7
Seattle, WA	276	127	132	0.1
St. Albans, VT	35	5	0	0.0
St. Louis, MO	4	353	2,509	2.3
Tampa, FL	2,768	819	312	0.3
Washington, DC	1	0	0	0.0
Total	91,113	90,624	111,126	100.0

Source: Compiled from official Commerce statistics.

Table IV-5
SRC pipe and tube: U.S. imports from Mexico, by Customs district, 2006-08

Customs district	Calendar year			Share of 2008 (percent)
	2006	2007	2008	
Quantity (1,000 pounds)				
Chicago, IL	0	0	1	0.0
Cleveland, OH	3	0	0	0.0
El Paso, TX	11,855	6,038	6,446	9.0
Laredo, TX	66,411	68,623	63,480	89.0
Miami, FL	432	184	580	0.8
San Diego, CA	13	1	1	0.0
San Juan, PR	1,102	353	820	1.1
Total	79,817	75,199	71,327	100.0
Source: Compiled from official Commerce statistics.				

Simultaneous Presence in the Market

SRC pipe and tube produced in China and Mexico was present throughout the period for which data were collected. Table IV-6 presents monthly import entries into the United States by sources.

Table IV-6

SRC: U.S. imports, monthly entries into the United States, by sources, 2006-08, and January-August 2009

Source	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
2006:													
China	6,026	5,474	7,197	8,298	7,615	9,417	9,253	8,678	9,054	8,857	6,042	5,202	91,113
Mexico	6,660	6,093	8,670	6,651	9,046	11,676	8,070	6,944	3,515	3,348	4,089	5,054	79,817
Subtotal	12,686	11,567	15,866	14,949	16,661	21,094	17,323	15,622	12,569	12,205	10,131	10,256	170,930
All other	8,200	8,011	7,547	7,277	8,084	8,389	8,346	8,919	6,444	6,579	6,145	6,148	90,088
Total	20,886	19,579	23,413	22,226	24,745	29,482	25,669	24,541	19,012	18,784	16,276	16,404	261,018
2007:													
China	6,095	5,879	8,884	6,882	8,146	11,180	11,256	8,448	6,275	7,715	5,659	4,205	90,624
Mexico	6,623	5,171	8,243	6,858	9,594	6,082	5,811	7,160	5,722	4,651	4,642	4,642	75,199
Subtotal	12,718	11,049	17,127	13,740	17,741	17,262	17,067	15,608	11,998	12,365	10,301	8,847	165,823
All other	5,964	5,964	6,518	5,966	6,077	6,433	7,521	5,698	5,609	5,960	6,500	6,017	74,226
Total	18,681	17,013	23,645	19,707	23,817	23,695	24,588	21,307	17,606	18,325	16,801	14,863	240,049
2008:													
China	8,957	7,570	11,533	13,683	13,328	9,368	13,332	12,307	6,553	6,473	4,942	3,079	111,126
Mexico	5,942	6,583	8,855	7,484	5,675	5,570	6,761	6,489	6,129	5,306	2,823	3,710	71,327
Subtotal	14,900	14,152	20,389	21,168	19,003	14,938	20,093	18,795	12,682	11,779	7,765	6,789	182,453
All other	5,009	5,557	6,258	5,794	4,728	5,131	7,460	5,193	5,715	4,275	5,258	4,064	64,441
Total	19,908	19,710	26,646	26,962	23,731	20,069	27,553	23,989	18,396	16,054	13,023	10,853	246,894
2009													
China	6,012	6,834	9,989	7,611	8,836	10,107	8,661	8,387	(¹)	(¹)	(¹)	(¹)	66,436
Mexico	5,679	4,864	5,575	5,735	5,771	3,717	4,843	3,234	(¹)	(¹)	(¹)	(¹)	39,418
Subtotal	11,690	11,698	15,564	13,346	14,607	13,823	13,504	11,622	(¹)	(¹)	(¹)	(¹)	105,854
All other	3,981	3,481	3,913	3,179	4,075	4,331	4,015	4,365	(¹)	(¹)	(¹)	(¹)	31,341
Total	15,672	15,179	19,477	16,525	18,681	18,155	17,519	15,987	(¹)	(¹)	(¹)	(¹)	137,195

¹ Not available.

Source: Compiled from official statistics of Commerce.

NEGLIGENCE

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.⁵ 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.⁶ Imports from China accounted for 44.7 percent of total imports of SRC pipe and tube by quantity during September 2008 - August 2009. Imports from Mexico accounted for 29.3 percent of total imports of SRC pipe and tube by quantity during September 2008 - August 2009.

⁵ 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)).

⁶ Section 771(24) of the Act (19 U.S.C. § 1677(24)).

APPARENT U.S. CONSUMPTION

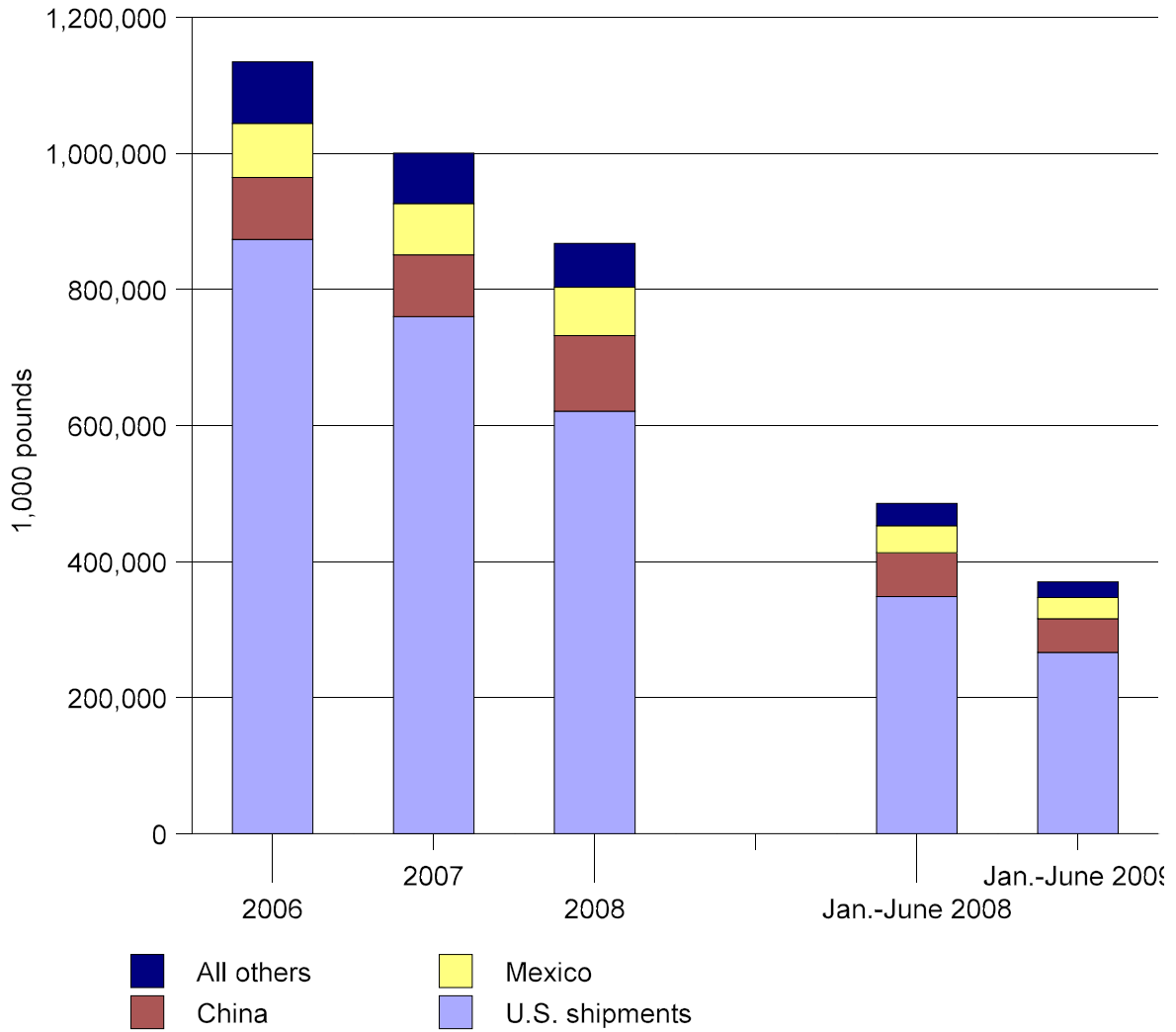
Data concerning apparent U.S. consumption of SRC pipe and tube during the period shown in table IV-7 and figure IV-1 are based on questionnaire responses for U.S. shipments and official Commerce statistics import data. The quantity of apparent U.S. consumption decreased by 23.5 percent from 2006 to 2008, and then decreased by 23.7 percent in interim 2009 compared with interim 2008. U.S. demand for SRC pipe and tube is primarily from new residential construction, new commercial construction, and the replacement market for air conditioning and refrigeration units.⁷

Table IV-7
SRC pipe and tube: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2006-08, January-June 2008, and January-June 2009

Item	Calendar year			January-June	
	2006	2007	2008	2008	2009
Quantity (1,000 pounds)					
U.S. producers' U.S. shipments	873,514	760,389	620,882	348,389	266,537
U.S. shipments of imports from--					
China	91,113	90,624	111,126	64,439	49,388
Mexico	79,817	75,199	71,327	40,110	31,340
Subtotal	170,930	165,823	182,453	104,549	80,728
Nonsubject countries	90,088	74,226	64,441	32,477	22,961
Total U.S. import shipments	261,018	240,049	246,894	137,026	103,689
Apparent U.S. consumption	1,134,532	1,000,438	867,776	485,415	370,226
Value (1,000 dollars)					
U.S. producers' U.S. shipments	3,320,204	3,113,613	2,632,047	1,539,732	717,598
U.S. shipments of imports from--					
China	309,873	348,772	446,282	259,591	110,981
Mexico	279,361	284,287	281,957	162,388	79,376
Subtotal	589,233	633,059	728,238	421,979	190,357
Nonsubject countries	314,358	292,345	268,218	136,025	57,314
Total U.S. import shipments	903,592	925,404	996,456	558,004	247,671
Apparent U.S. consumption	4,223,796	4,039,017	3,628,503	2,097,736	965,269
Note.—Because of rounding, figures may not add to the totals shown.					
Source: Compiled from official Commerce statistics.					

⁷ Petitioners' postconference brief, p. 23.

Figure IV-1
SRC pipe and tube: Apparent U.S. consumption, by sources, 2006-08, January-June 2008, and
January-June 2009



Source: Table IV-7.

U.S. MARKET SHARES

U.S. market share data are presented in table IV-8. The quantity of the U.S. producers' market share decreased by 5.4 percentage points from 2006 to 2008 and was 0.2 percentage points higher in interim 2009 compared with interim 2008. In contrast, the share of subject imports from China increased by 4.8 percentage points from 2006 to 2008, on the basis of quantity, and increased by 0.1 percentage points in interim 2009 compared to interim 2008. The share of subject imports from Mexico increased by 1.2 percentage points from 2006 to 2008, then increased by 0.2 percentage points in interim 2009 compared to interim 2008. Nonsubject imports' market share decreased by 0.5 percentage points from 2006 to 2008, and again in interim 2009 compared with interim 2008.

Table IV-8
SRC pipe and tube: U.S. consumption and market shares, 2006-08, January-June 2008, and January-June 2009

Item	Calendar year			January-June	
	2006	2007	2008	2008	2009
Quantity (1,000 pounds)					
Apparent U.S. consumption	1,134,532	1,000,438	867,776	485,415	370,226
Value (1,000 dollars)					
Apparent U.S. consumption	\$4,223,796	\$4,039,017	\$3,628,503	\$2,097,736	\$965,269
Share of quantity (percent)					
U.S. producers' U.S. shipments	77.0	76.0	71.5	71.8	72.0
U.S. imports from--					
China	8.0	9.1	12.8	13.3	13.3
Mexico	7.0	7.5	8.2	8.3	8.5
Subtotal	15.1	16.6	21.0	21.5	21.8
Nonsubject countries	7.9	7.4	7.4	6.7	6.2
All countries	23.0	24.0	28.5	28.2	28.0
Share of value (percent)					
U.S. producers' U.S. shipments	78.6	77.1	72.5	73.4	74.3
U.S. imports from--					
China	7.3	8.6	12.3	12.4	11.5
Mexico	6.6	7.0	7.8	7.7	8.2
Subtotal	14.0	15.7	20.1	20.1	19.7
Nonsubject countries	7.4	7.2	7.4	6.5	5.9
All countries	21.4	22.9	27.5	26.6	25.7
Note.--Because of rounding, figures may not add to the totals shown.					
Source: Compiled from official Commerce statistics.					

RATIO OF IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of imports to U.S. production of SRC pipe and tube is presented in table IV-9. Imports from China were equivalent to 10.3 percent of U.S. production during 2006, increased to 17.3 percent during 2008, and were 18.2 percent in interim 2009. Imports from Mexico were equivalent to 9.0 percent of U.S. production during 2006, increased to 11.1 percent during 2008, and were 11.6 percent in interim 2009 .

Table IV-9
SRC pipe and tube: U.S. production, U.S. imports, and ratios of imports to U.S. production, 2006-08, January-June 2008, and January-June 2009

Item	Calendar year			January-June	
	2006	2007	2008	2008	2009
Quantity (1,000 pounds)					
U.S. production	884,942	786,635	644,032	360,486	271,249
Imports from:					
China	91,113	90,624	111,126	64,439	49,388
Mexico	79,817	75,199	71,327	40,110	31,340
Subtotal	170,930	165,823	182,453	104,549	80,728
Nonsubject countries	90,088	74,226	64,441	32,477	22,961
Total imports	261,018	240,049	246,894	137,026	103,689
Ratio of U.S. imports to production (percent)					
Imports from:					
China	10.3	11.5	17.3	17.9	18.2
Mexico	9.0	9.6	11.1	11.1	11.6
Subtotal	19.3	21.1	28.3	29.0	29.8
Nonsubject countries	10.2	9.4	10.0	9.0	8.5
Total imports	29.5	30.5	38.3	38.0	38.2
Note.—Because of rounding, figures may not add to the totals shown.					
Source: Compiled from official Commerce statistics.					

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

Raw material costs accounted for approximately 85 percent of the total cost of goods sold for U.S. producers during 2006 to 2008. Per-unit raw material costs increased by 17 percent between 2006 and 2008 from \$2.85 per pound in 2006 to \$3.33 per pound in 2008. Copper is the main raw material used to produce SRC pipe and tube. The COMEX price of copper has fluctuated since 2006 ranging from \$1.39 per pound to \$3.94 per pound (see figure V-1).

U.S. Inland Transportation Costs

Transportation costs for U.S. inland shipments of SRC pipe and tube generally account for a small-to-moderate share of the delivered price of these products. U.S. producers reported that the costs ranged up to 3 percent of the delivered price for SRC pipe and tube, while most U.S. importers reported that the costs ranged from 1 to 3.5 percent of the delivered price for SRC pipe and tube.

PRICING PRACTICES

Pricing Methods

Pricing methods for sales of SRC pipe and tube to the plumbing and industrial markets differ. Petitioners indicate that plumbing tube products are typically sold on a spot basis using a price list and a multiplier that applies equally to all list prices on a given price sheet. They note that a supplier may bid for a total volume without knowing which products from its price list the customer will decide to take.¹ Petitioners indicated that SRC pipe and tube sold to industrial end-users is typically sold using annual contracts with prices quoted on the basis of the COMEX copper price, plus a per-pound fabrication charge. They note that under these annual contracts SRC pipe and tube producers generally compete based on the quoted fabrication charge with the understanding that the COMEX price will adjust depending upon the date(s) of shipment.²

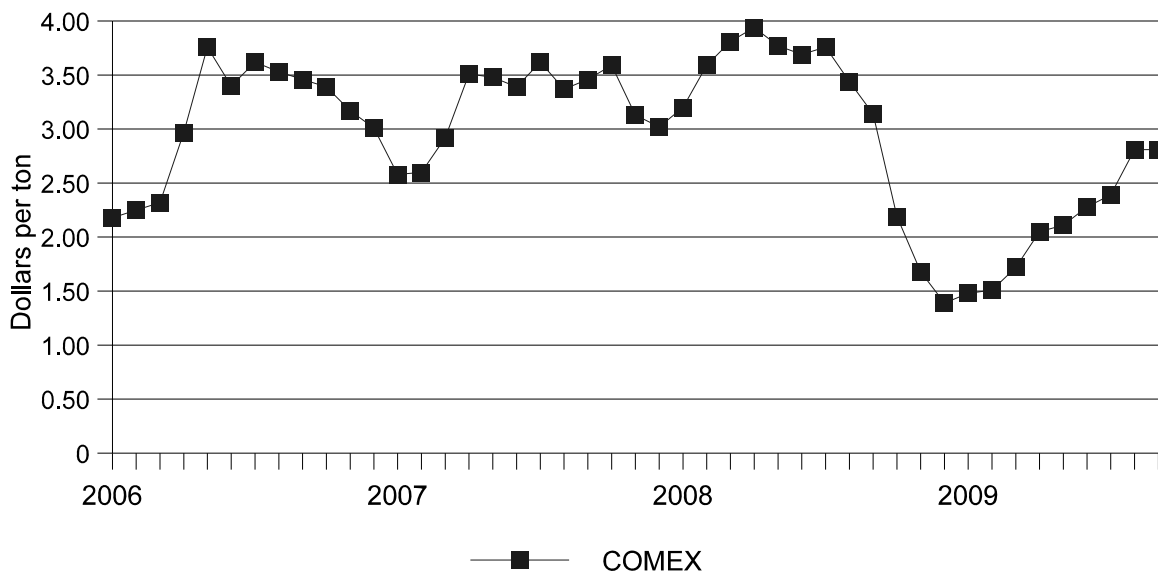
All producers reported using transaction-by-transaction negotiations for some of their sales of SRC pipe and tube, with five of eleven producers also reporting using a price list and four producers also reporting using contracts. Twenty-four of 34 responding importers reported that the prices they charge for at least some of their sales are determined using transaction-by-transaction negotiations. Thirteen importers reported using contracts and eight importers reported using price lists for at least some of their sales. Five of 11 responding producers and 17 of 28 responding importers reported making their sales on a delivered basis only. Five producers and eight importers reported making their sales on an f.o.b. basis only and the remaining responding producers and importers reported making their sales on both f.o.b. and delivered bases. Six of 12 responding producers and 16 of 30 importers reported that at least 90 percent of their sales of SRC pipe and tube are made to order. Three of 12 responding producers and 11 of 30 importers reported that at least 90 percent of their sales are from inventory.

Seven of 11 responding producers and 12 of 25 responding importers reported making at least 99 percent of their sales on a spot basis and two producers and three importers reported making at least 65 percent of their sales on a spot basis. Five importers reported making at least 90 percent of their sales on

¹ Petition, p. 38.

² Petition, p. 39.

Figure V-1
SRC pipe and tube: Monthly average COMEX high-grade copper, first position prices, by month, January 2006-September 2009



Source: Platt's Metal Week and USGS.

a short term contract basis, which typically run from 4 months to a year. Two importers (***) reported making at least 60 percent of their sales on a long-term contract basis, although *** defined long-term contracts as “one year and longer” in length. One producer, (***) reported making 45 percent of its sales on a short-term contract basis, 35 percent of its sales on a spot basis, and 20 percent of its sales on a long-term (two to three years) contract basis. *** reported making 60 percent of its sales on a short-term contract basis and 35 percent of its sales on a long-term (two years) contract basis.

Lead Times

U.S. producers reported lead times from inventory of up to two weeks and lead times for sales of product-to-order of two to six weeks. Lead times for delivery for all but two responding U.S. importers ranged up to two weeks on sales from inventory and most importers reported lead times on sales of product produced-to-order ranging from 2 to 16 weeks. Seven of 10 responding producers and 25 of 32 responding importers reported that they generally arrange for the transportation to their customers' locations. Eight of 11 responding U.S. producers and seven of 29 responding importers reported making at least 60 percent of their sales within 101 to 1,000 miles of their storage or production facilities. Seven responding importers reported making at least 79 percent of their sales over 1,000 miles from their storage or production facilities and 10 responding importers reported making at least 60 percent of their sales within 1,000 miles of their storage or production facilities.

Sales Terms and Discounts

Eight producers and 11 importers reported the use of quantity discounts, five producers and three importers reported using annual volume discounts, and two producers and 16 importers reported having no discount policy.

PRICE DATA

The Commission requested U.S. producers and importers of SRC pipe and tube to provide quarterly data for the total quantity and f.o.b. value of SRC pipe and tube that was shipped to unrelated customers in the U.S. market during January 2006-June 2009. The products for which pricing data were requested are as follows:

Product 1.– Seamless refined copper pipe and tube, ½" Type L, hard temper, 20' lengths

Product 2.– Seamless refined copper pipe and tube, 3/8" OD, ACR/RST coil, 50'-100' lengths

Product 3.– Seamless refined copper pipe and tube, 3/8" OD, inner-grooved LWC, 0.0115"-0.0180" bottom wall thickness

Product 4.– Seamless refined copper pipe and tube, 3/8" OD, smooth bore LWC, 0.0115"-0.0180" bottom wall thickness

Eight U.S. producers, 15 importers of SRC pipe and tube from China, and four importers of SRC pipe and tube from Mexico provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. Pricing data reported by these firms accounted for approximately 9 percent of U.S. producers' shipments of SRC pipe and tube, 82 percent of U.S. shipments of subject imports from China, and 7 percent of U.S. shipments of subject imports from Mexico in 2008.

Price Trends

Price data are shown in tables V-1 to V-4 and figure V-2. Nonsubject price data are presented in appendix E. Price trend summary data are presented in table V-5. Weighted-average sales prices for U.S.-produced products 1, 2, and 4 declined by 1.8 to 15.2 percent, while prices of product 3 increased 13.9 percent. Weighted average sales prices of products 1, 3, and 4 imported from China decreased by 0.8 to 44.7 percent and prices of product 2 increased by 23.2 percent. Weighted average sales prices of products 1 and 2 imported from Mexico decreased by 6.0 and 15.3 percent respectively and prices of product 3 and 4 increased by 10.5 and 15.1 percent.

Table V-1

SRC pipe and tube: Weighted-average f.o.b. prices and quantities of domestic and imported product 1¹ and margins of underselling/(overselling), by quarters, January 2006-June 2009

Period	United States		China			Mexico		
	Price (per pound)	Quantity (pounds)	Price (per pound)	Quantity (pounds)	Margin (percent)	Price (per pound)	Quantity (pounds)	Margin (percent)
2006:								
Jan.-Mar.	\$2.74	7,394,358	\$***	***	***	\$***	***	***
Apr.-June	4.13	8,226,689	--	0	--	***	***	***
July-Sept.	4.83	3,277,929	***	***	***	***	***	***
Oct.-Dec.	3.77	3,914,621	***	***	***	***	***	***
2007:								
Jan.-Mar.	3.31	5,860,450	--	0	--	***	***	***
Apr.-June	4.26	6,360,921	***	***	***	***	***	***
July-Sept.	4.36	3,476,189	***	***	***	***	***	***
Oct.-Dec.	4.05	4,402,591	***	***	***	***	***	***
2008:								
Jan.-Mar.	4.29	5,635,891	***	***	***	***	***	***
Apr.-June	4.44	3,947,024	***	***	***	***	***	***
July-Sept.	4.10	4,066,436	***	***	***	***	***	***
Oct.-Dec.	2.87	3,422,527	--	0	--	***	***	***
2009:								
Jan.-Mar.	2.21	3,761,046	***	***	***	***	***	***
Apr.-June	2.53	3,899,545	***	***	***	***	***	***

¹ Product 1: Seamless refined copper pipe and tube, ½" Type L, hard temper, 20' lengths.

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

Table V-2

SRC pipe and tube: Weighted-average f.o.b. prices and quantities of domestic and imported products 2¹ and margins of underselling/(overselling), by quarters, January 2006-June 2009

Period	United States		China			Mexico		
	Price (per pound)	Quantity (pounds)	Price (per pound)	Quantity (pounds)	Margin (percent)	Price (per pound)	Quantity (pounds)	Margin (percent)
2006:								
Jan.-Mar.	\$3.23	3,495,395	\$***	***	***	\$***	***	***
Apr.-June	5.03	3,849,574	***	***	***	***	***	***
July-Sept.	5.56	2,380,202	***	***	***	***	***	***
Oct.-Dec.	4.41	1,773,052	***	***	***	***	***	***
2007:								
Jan.-Mar.	3.52	2,704,227	***	***	***	***	***	***
Apr.-June	4.61	3,603,277	***	***	***	***	***	***
July-Sept.	4.60	2,399,608	***	***	***	***	***	***
Oct.-Dec.	4.38	2,146,543	***	***	***	***	***	***
2008:								
Jan.-Mar.	4.32	2,377,640	***	***	***	***	***	***
Apr.-June	4.79	2,523,517	***	***	***	***	***	***
July-Sept.	4.25	2,272,923	***	***	***	***	***	***
Oct.-Dec.	3.41	1,511,707	***	***	***	***	***	***
2009:								
Jan.-Mar.	2.48	1,735,800	***	***	***	***	***	***
Apr.-June	2.74	1,720,584	***	***	***	***	***	***
¹ Product 2: Seamless refined copper pipe and tube, 3/8" OD, ACR/RST coil, 50'-100' lengths. Source: Compiled from data submitted in response to Commission questionnaires.								

Table V-3

SRC pipe and tube: Weighted-average f.o.b. prices and quantities of domestic and imported products 3¹ and margins of underselling/(overselling), by quarters, January 2006-June 2009

* * * * *

Table V-4

SRC pipe and tube: Weighted-average f.o.b. prices and quantities of domestic and imported products 4¹ and margins of underselling/(overselling), by quarters, January 2006-June 2009

* * * * *

Figure V-2

SRC pipe and tube: Weighted-average f.o.b. prices and quantities of domestic and imported product, by quarters, January 2006-June 2009

* * * * *

Table V-5

SRC pipe and tube: Summary of weighted-average f.o.b. prices for products 1-4 from the United States, China, and Mexico

Item	Number of quarters	Low price (per ton)	High price (per ton)	Change in price ¹ (percent)
Product 1				
United States	14	\$2.21	\$4.83	-7.8%
China	11	***	***	-44.7%
Mexico	14	***	***	-6.0%
Product 2				
United States	14	2.48	5.56	-15.2%
China	14	***	***	23.2%
Mexico	14	***	***	-15.3%
Product 3				
United States	14	***	***	13.9%
China	14	***	***	-13.3%
Mexico	5	***	***	10.5%
Product 4				
United States	14	***	***	-1.8%
China	2	***	***	-0.8%
Mexico	6	***	***	15.1%

¹ Percentage change from the first quarter in which price data were available to the last quarter in which price data were available, based on unrounded data.

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

Price Comparisons

Margins of underselling and overselling for the period are presented in table V-6. As can be seen from the table, prices for SRC pipe and tube imported from China were below those for U.S.-produced SRC pipe and tube in 25 of 41 instances; margins of underselling ranged from 1.5 to 35.2 percent. In the remaining 16 instances, prices for SRC pipe and tube imported from China were above those for U.S.-produced SRC pipe and tube; margins of overselling ranged from 1.2 to 38.1 percent. Prices for SRC pipe and tube imported from Mexico were below those for U.S.-produced SRC pipe and tube in 31 of 39 instances; margins of underselling ranged from 0.3 to 46.0 percent. In the remaining eight instances, prices for SRC pipe and tube imported from Mexico were above those for U.S.-produced SRC pipe and tube; margins of overselling ranged from 1.2 to 42.2 percent.³

Table V-6
SRC pipe and tube: Instances of underselling/overselling and the range and average of margins, January 2006-June 2009

Source	Underselling			Overselling		
	Number of instances	Range (percent)	Average margin (percent)	Number of instances	Range (percent)	Average margin (percent)
China	25	1.5 to 35.2	11.4	16	1.2 to 38.1	13.1
Mexico	31	0.3 to 46.0	8.7	8	1.2 to 42.2	14.7
Total	56	0.3 to 46.0	9.9	24	1.2 to 42.2	13.6

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

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers of SRC pipe and tube to report any instances of lost sales or revenues they experienced due to competition from imports of SRC pipe and tube from China and/or Mexico since January 2006. Petitioners provided both allegations of lost sales and revenues in the petition. Of the seven responding non-petitioning U.S. producers, two reported that they had to either reduce prices or roll back announced price increases and two producers indicated that they had lost sales of SRC pipe and tube to imports from China and Mexico. One of these producers provided additional lost sales allegations. The 38 lost sales allegations made by producers totaled \$155 million and involved 44 million pounds of SRC pipe and tube and the 15 lost revenues allegations totaled \$1 million and involved 17 million pounds of SRC pipe and tube. Staff contacted 38 purchasers, and a summary of the information obtained follows (tables V-7 and V-8).

Twelve of 18 responding purchasers named in lost sales and lost revenue allegations indicated that they switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China and Mexico since January 2006. Five of these 12 purchasers indicated that price was the reason for the shift. Of the seven purchasers that indicated that price was not the reason for the shift, three purchasers (***) indicated that domestic producers were not able to supply enough product, one purchaser (***) indicated that both

³ ***.

Petitioners indicated that ***.

Table V-7
SRC pipe and tube: U.S. producers' lost sales allegations

* * * * *

Table V-8
SRC pipe and tube: U.S. producers' lost revenue allegations

* * * * *

availability and pricing were reasons for the switch, one purchaser (***) indicated that their “switch was caused by a better incentive from our buying group,” one purchaser (***) noted a quality, service, and lead-time reduction, and one purchaser (***) noted product quality and performance. Four of 12 responding purchasers (***) named in lost sales and lost revenue allegations indicated that U.S. producers reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube from China or Mexico since January 2006. Three purchasers indicated that they were not certain if U.S. producers lowered their prices during this time period to compete with price of SRC pipe and tube from China or Mexico.

*** disagreed with the *** lost sales allegations made against his company. *** indicated that the accepted quote for the imported product was not lower than the rejected quote for U.S. product. He indicated that the metal price was not a factor and that fabrication costs and duties above base metal costs were higher than the costs of U.S. product. *** also indicated that the U.S. supplier which had been his company's ***. Prior to ***, he indicated that his company was satisfied with its U.S. vendor. *** indicated that while his firm had switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico since January 2006, price was not the reason for the shift. He indicated that his U.S. supplier was not able to supply material and forced it to find a second supplier, and that now his company is committed to maintain at least two suppliers. He also noted that to the best of his recollection, U.S. producers did not reduce their prices of SRC pipe and tube to compete with prices of SRC pipe and tube from China or Mexico.

*** of *** agreed with the lost sales allegation made by ***. He indicated that the accepted quote for imported product was \$***/lb (same as the domestic quoted price) for the metal and \$*** for fabrication and freight for a total value of \$***. *** indicated that *** uses both domestic and imported copper tube. He noted that ***'s SRC pipe and tube is highly engineered to *** and to date only domestic producer *** and a Chinese supplier have qualified to provide the raw copper tube that meet their quality specifications and tolerances. *** indicated that qualified SRC pipe and tube must meet specifications regarding ***. He notes that *** attempted to qualify one additional source from the U.S., but the supplier was unable to provide a qualifying product. *** claimed that while his firm had switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China and Mexico since January 2006 and that price was a reason, it was not the only reason for the shift. He indicated that the industry has been particularly hard hit in the economic downturn because of the strong correlation between plumbing product demand and the strength or weakness of the housing market. *** indicated that sales of ***'s product are down for 2009 and that it accepted the U.S. producer's quote, but ordered less volume than the *** lbs. offered. He also noted that historically ***'s purchases of SRC pipe and tube shifts between qualified suppliers based both on price and quality offered. *** also indicated that while U.S. producers reduced their prices in order to compete with prices of SRC pipe and tube from China or Mexico, that there have only been limited reductions since 2006 and no reductions in 2008 or 2009.

*** disagreed with the lost sales allegation made by ***. *** indicated that his company was planning on purchasing this order from *** and then selling to a customer, but the purchase was not made since the customer decided not to purchase the product, although his firm did however secure an order for

this job (with different quantities) at a later date.⁴ He indicates that the customer said he was going to wait on the market and buy as needed in hope for better pricing. *** indicated that he had no idea what his competition's price was to customer and that his firm purchased the majority of its copper pipe from ***.

*** of *** disagreed with the lost sales allegation made by ***. *** indicated that the material purchased from their supplier was the same whether *** firm used domestic or foreign copper. While *** indicated that *** firm switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico, *** noted that, in January 2008 her firm switched to material from China because the U.S. supplier did not have adequate capacity to cover their needs. *** also indicated that since January 2006, U.S. producers did not reduce their prices in order to compete with prices of SRC pipe and tube from China or Mexico.

*** of *** disagreed with the lost sales allegation made by ***. He indicated that the supplier *** told him they could not keep up with their demand. *** noted that he pays \$***/lb. plus duties for imported copper tube and that the U.S. supplier *** indicated that they would not be able to supply his firm's needs. In regard to all of his purchases since January 2006, he indicated that while his firm switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico, price was not the reason for the switch; rather the U.S. supplier *** could not supply his firm's requirements. *** also indicated that since January 2006 U.S. producers had raised their prices of SRC pipe and tube.

*** of *** agreed with the lost revenue allegation by ***. He indicated that since January 2006 his firm has not switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico, but that U.S. producers have reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube imported from China or Mexico and that "it is still going on."

*** of *** agreed with the lost sales allegation made by ***. He indicated that the allegation included product provided under two jobs. *** indicated that the *** went to Mexico and the *** went to China. He indicated that since January 2006, his firm switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico and that price was the reason for the switch. *** also reported that U.S. producers reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube imported from China or Mexico. *** indicated that in several cases, the cost of the imported "finished product" was less than the raw material cost based on the COMEX price at the time of the closing bid.

*** of *** disagreed with the lost sales allegation made by ***. He indicated that he is familiar with the quote from *** and indicates that his firm sent out the inquiry in line with the contract they had in place. *** noted that the number of short tons in the quote would represent about *** percent of *** total requirements so "capacity constraints are obvious." While agreeing with the rejected quote numbers, he indicated that his firm did not pay the amount provided and that the amount noted in the "accepted quote" was not possible given the market price of metal at that time. *** indicated that *** was their sole supplier for several years prior to being replaced by U.S. producer *** due to major quality problems and that his firm incurred major production disruptions in 2004 due to lack of capacity in the U.S. market. *** indicated that his company went on the open market and purchased some material in 2004 from *** as well as from other U.S. and foreign suppliers due to capacity constraints in the United States). He claimed that the material his firm purchased from *** exhibited many of the same quality problems as when they were the primary supplier to ***. He noted that his firm moved away from ***. *** claims that ***, as well as all but one U.S. manufacturer of copper tube, does not have the ability to produce ***. He also indicated that since January 2006 his firm has not switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico. *** also noted that he cannot speak as to whether U.S. producers reduced their prices of SRC pipe and tube in order to compete

⁴ Staff telephone interview with ***, October 16, 2009.

with prices of SRC pipe and tube imported from China or Mexico since he has been under contract since 2005.

*** of *** disagreed with the lost revenue allegation made by ***. He indicated that *** rejected the U.S. producer's quote for all 112 items in the proposal due to their attempt to change the historical method of calculating the copper cathode premium charge. Mr. Burlew indicated that when the quote was revised to use the ***, only the price of the first item (which was for ***) was adjusted downward and that *** accepted this quotation with no other reductions. He also noted that the first item was awarded *** due to continued quality problems and tube weight issues and that *** material which they did not have with the material from the Chinese supplier. While *** indicated that since January 2006 his firm switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico, he indicated that his firm switched to imported material because of quality, service, and reduced lead times since the Chinese suppliers have U.S. representatives who warehouse finished goods for his firm. He also noted that he is not certain why *** lowered their price on the one item mentioned, but believes it was related to improvements in efficiencies as a result of production ***.

*** of *** agrees with the lost sales allegation made by ***. He indicated that since January 2006 his firm switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico and that price was the reason for the switch. *** also indicated that U.S. producers reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube imported from China or Mexico.

*** of *** in indicated that in 2007 (the allegation was in March 2007) *** company only obtained the product described in the allegation from domestic sources of supply. *** indicated that since January 2006 *** firm had switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico, but that any sourcing decisions were driven by product quality and performance and not pricing. *** reported that U.S. producers have not reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube from China or Mexico and that any changes in U.S. producer pricing that may have occurred were of no influence to ***'s sourcing decisions. *** indicated that during August 2007, *** switched from purchasing from U.S. producer *** to Chinese producer ***. *** indicated that until 2009, ***,⁵

*** of *** agreed with the lost revenue allegations made by ***. *** indicated that ***. He noted that the manufacturer had to lower its price to his firm because its wholesale customers would have purchased imported product if it could not meet competitive conditions.⁶ He indicated that since January 2006 his firm has not switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico, but that U.S. producers reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube imported from China or Mexico.

In response to the lost revenue allegation made by ***, *** of *** indicated that his company does not purchase or have sources to purchase imported copper tube from. He stated that his purchases for *** were from domestic producers. *** indicated that he paid 5 percent more than the *** multiplier net stated as the rejected quote for the U.S. product and that the U.S. producer did not lower its price. He responded that since January 2006, his firm has not switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico. *** added that although it is possible, he is not certain whether U.S. producers reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube imported from China or Mexico.

*** of *** disagreed with the lost sale allegation made by ***. He indicated that this supplier was the highest bidder of all, including two other U.S. sources who would have gotten an order before this supplier with the pricing referenced here. *** noted that the two items in the allegation had been purchased from *** for over 10 years and when that source ***, the Mexican source agreed to continue the supply at the same price. He indicated that the U.S. source referenced above was quoted in September

⁵ Email from ***, November 6, 2009.

⁶ Email from ***, October 13, 2009.

2009, and it was told that it was not competitive although there are other U.S. suppliers with pricing that is competitive with Mexico and China. While *** indicated that since January 2006, his firm did switch purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico, he indicated that this switch was due to the availability of certain alloys in addition to pricing. *** also indicated that since January 2006, U.S. producers have not raised their prices of SRC pipe and tube.

*** of *** agreed with the lost sales allegation made by ***. He indicated that his firm did switch purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico and that price was the reason for the switch. *** also indicated that U.S. producers reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube imported from China or Mexico.

*** of *** disagreed with the two lost sales allegations and one lost revenue allegation made by *** but agreed with one lost sales allegation made by ***. *** indicated that the *** pound allegation made by *** was awarded to a domestic supplier. He noted that the *** pound allegation was an unsolicited quote and that business for this product was already contractually committed for 2009. *** indicated that the lost revenue allegation was a quote from a U.S. producer for a price increase, and due to a sharp decrease in sales, *** was not accepting price increases. With regard to the lost sales allegation that he agreed with, he noted that *** awarded this requirement to a Chinese producer, as well as a domestic producer, both of which quoted a lower price than this quote. He indicated that his firm switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico and that price was the reason for the switch. *** noted that *** still purchases significant quantities from U.S. producers but that it is important to have multiple supply sources. He also indicated that the HVAC industry has suffered a sharp decrease in sales, and that a reduction in prices could be the result of lower demand generally, and increased competition from domestic and foreign producers.

The representative for *** did not respond to the specific lost sales allegation. However, he did indicate that since January 2006, the firm switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico and that price was the reason for the switch. He also reported that U.S. producers did not reduce their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube imported from China or Mexico.

*** of *** agreed with the lost sales allegation made by ***. He indicated that the fabrication cost of the imported quote was \$***/lb., plus a \$***/lb. premium. *** also indicated that sales were lost to imports from both China and Mexico (only Mexico was named in the allegation). He indicated that since January 2006, his firm switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico and that price was the reason for the switch. However, *** stated that U.S. producers had not reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube imported from China or Mexico.

*** of *** did not specifically agree or disagree with the lost revenue allegation made by ***. *** indicated that his company places a premium on the use of domestic material and doesn't actively solicit information on imported copper. He responded that since January 2006, his firm has not switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico and that U.S. producers had not reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube imported from China or Mexico.

*** of *** disagreed with the lost sales allegation made by ***. He indicated that he did not recall the quote. *** reported that since January 2006, his firm switched purchases of SRC pipe and tube from U.S. producers to suppliers of SRC pipe and tube from China or Mexico, but that price was not the reason for the switch, rather that ***. He also indicated that U.S. producers had not reduced their prices of SRC pipe and tube in order to compete with prices of SRC pipe and tube imported from China or Mexico.

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

Introduction

Eleven U.S. firms provided usable financial data on their operations on SRC pipe and tube.¹ These data are believed to account for the large majority of U.S. operations on SRC pipe and tube. No firms reported internal consumption, and *** reported transfers to related firms. Transfers accounted for only *** percent of total net sales value in 2008. Accordingly, data for such operations are not presented separately in this section of the report. All firms reported a fiscal year end on or near December 31 ***.²

Operations on SRC Pipe and Tube

Income-and-loss data for U.S. firms on their operations on SRC pipe and tube 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 net sales (quantity and value) and operating income from 2006 to 2008, as well as between the comparable interim periods. The per-pound net sales value increased from 2006 to 2008, then declined in January-June 2009 as compared to January-June 2008. From 2006 to 2008, the per-pound cost of goods sold (“COGS”) and selling, general, and administrative (“SG&A”) expenses, combined, increased more than revenue, thus leading to a decline in profits. Between the comparable interim periods, per-pound revenue decreased more than operating costs and expenses, which led to a continued decline in profitability in January-June 2009 as compared to January-June 2008. Similarly, COGS as a ratio to net sales modestly increased throughout the period for which data were collected, which indicates that such costs were increasing at a somewhat greater rate (2006 to 2008) or decreasing at a somewhat lower rate (January-June 2008 to January-June 2009) as compared to revenue.

Raw material costs are the primary component of total COGS, accounting for 85 percent of total COGS during the period for which data were collected. While all components of COGS generally increased on a per-pound basis from 2006 to 2008, the most significant increase occurred in raw material costs (copper cathode, ingot, and/or scrap), which increased by \$0.48, or 17 percent, from 2006 to 2008. Between the comparable interim periods, per-pound raw material costs declined by \$1.66, or 46 percent, while direct labor and other factory costs moderately increased. Thus, the overall decline in per-pound COGS between the comparable interim periods is the result of the decline in raw material costs.

¹ The U.S. producers are ***.

² Full year financial data for all U.S. producers cover fiscal years 2006 to 2008.

Table VI-1

SRC pipe and tube: Results of operations of U.S. producers, 2006-08, January-June 2008, and January-June 2009

Item	Fiscal year			January-June	
	2006	2007	2008	2008	2009
Quantity (1,000 pounds)					
Total net sales	902,149	778,614	652,123	361,851	278,630
Value (\$1,000)					
Total net sales	3,352,765	3,172,202	2,787,044	1,596,519	748,672
COGS	2,984,580	2,876,789	2,549,697	1,480,169	697,925
Gross profit	368,185	295,413	237,347	116,350	50,747
SG&A expenses	77,987	71,597	65,984	32,260	28,727
Operating income	290,198	223,816	171,363	84,090	22,020
Interest expense	14,196	12,966	11,920	5,721	2,843
Other income/(expense)	(5,975)	(786)	(827)	(2,696)	(437)
Net income	270,027	210,064	158,616	75,673	18,740
Depreciation	38,760	37,400	35,885	17,323	18,567
Cash flow	308,787	247,464	194,501	92,996	37,307
Ratio to net sales (percent)					
COGS:					
Raw materials	76.6	77.8	78.0	80.9	71.1
Direct labor	3.2	3.1	3.3	3.0	5.1
Other factory costs	9.2	9.8	10.2	8.9	17.0
Total COGS	89.0	90.7	91.5	92.7	93.2
Gross profit	11.0	9.3	8.5	7.3	6.8
SG&A expenses	2.3	2.3	2.4	2.0	3.8
Operating income	8.7	7.1	6.1	5.3	2.9
Net income	8.1	6.6	5.7	4.7	2.5
Unit value (per pound)					
Total net sales	\$3.72	\$4.07	\$4.27	\$4.41	\$2.69
COGS:					
Raw materials	2.85	3.17	3.33	3.57	1.91
Direct labor	0.12	0.13	0.14	0.13	0.14
Other factory costs	0.34	0.40	0.44	0.39	0.46
Total COGS	3.31	3.69	3.91	4.09	2.50
Gross profit	0.41	0.38	0.36	0.32	0.18
SG&A expenses	0.09	0.09	0.10	0.09	0.10
Operating income	0.32	0.29	0.26	0.23	0.08
Net income	0.30	0.27	0.24	0.21	0.07
Number of firms reporting					
Operating losses	1	1	3	1	4
Data	10	10	11	11	11
Source: Compiled from data submitted in response to Commission questionnaires.					

Table VI-2

SRC pipe and tube: Results of operations of U.S. producers, by firm, 2006-08, January-June 2008, and January-June 2009

* * * * *

While the overall industry, as well as ***, reported a decline in profitability during the period for which data were requested, *** in January-June 2009.³ According to petitioners, ***. Further, petitioners' stated that per-pound selling expenses are lower for sales to OEMs as compared to sales of standard products to distributors and retailers.^{4 5 6}

Variance Analysis

A variance analysis is presented in table VI-3. The information for the variance analysis is derived from table VI-1. The analysis shows that the decline in operating income from 2006 to 2008 is primarily attributable to an unfavorable net cost/expense variance that more than offset a favorable price variance (that is, costs and expenses rose more than prices). Between the comparable interim periods, the decline in operating income is primarily attributable to an unfavorable price variance that more than offset a favorable net cost/expense variance (that is, prices declined more than costs/expenses).⁷

³ The other U.S. producers to report an operating loss during interim 2009 were ***, which reported much smaller levels of sales as compared to ***, and reported operating losses ***. In addition, three firms (***) reported small operating losses in 2008.

⁴ Petitioners' postconference brief, exh. 14.

⁵ SG&A expenses represent only 2.6 percent of total operating costs during the period for which data were collected, and are not a major factor behind the industry's reported financial performance.

⁶ At the conference, the petitioners were asked to discuss the level of profitability each firm believes they would have achieved absent the effects of subject imports from China and Mexico, and when they last achieved such profitability. In response to this question, the petitioners stated in their postconference brief that, "...***. Since Cerro, KobeWieland and Mueller have each embarked on significant expansion and modernization projects in the last ten years, each companies' payback targets were expected to be met at the time of the approvals." Petitioners' postconference brief, exh. 14.

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 lines under price and cost/expense variance. The net volume component is generally the smallest component.

Table VI-3

SRC pipe and tube: Variance analysis on operations of U.S. producers, 2006-08, and January-June 2008-09

Item	Between fiscal years			Jan.-June
	2006-08	2006-07	2007-08	2008-09
Value (\$1,000)				
Total net sales:				
Price variance	363,481	278,545	130,187	(480,668)
Volume variance	(929,202)	(459,108)	(515,345)	(367,179)
Total net sales variance	(565,721)	(180,563)	(385,158)	(847,847)
Cost of sales:				
Cost variance	(392,278)	(300,900)	(140,261)	441,824
Volume variance	827,161	408,691	467,353	340,420
Total cost variance	434,883	107,791	327,092	782,244
Gross profit variance	(130,838)	(72,772)	(58,066)	(65,603)
SG&A expenses:				
Expense variance	(9,611)	(4,289)	(6,018)	(3,886)
Volume variance	21,614	10,679	11,631	7,419
Total SG&A variance	12,003	6,390	5,613	3,533
Operating income variance	(118,835)	(66,382)	(52,453)	(62,070)
Summarized as:				
Price variance	363,481	278,545	130,187	(480,668)
Net cost/expense variance	(401,889)	(305,189)	(146,280)	437,938
Net volume variance	(80,427)	(39,738)	(36,360)	(19,340)
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. Nine firms provided capital expenditure data, and four firms provided data on R&D expenses. Capital expenditures increased from 2006 to 2008, but declined between the comparable interim periods. *** reported the majority of total capital expenditures. Cerro's capital expenditures primarily reflect the completion of an expansion and modernization program at the firm's Cedar City, UT, facility, while KobeWieland's capital expenditures primarily reflect ongoing expenditures for expansion and modernization of the firm's Pine Hall, NC, facility.⁸

⁸ Petitioners' post-conference brief, exh. 14.

Table VI-4

SRC pipe and tube: Capital expenditures and research and development expenses of U.S. producers, 2006-08, January-June 2008, and January-June 2009

Item	Fiscal year			January-June	
	2006	2007	2008	2008	2009
Value (\$1,000)					
Capital expenditures:					
Total	30,744	40,816	***	***	***
R&D expenses:					
Total	735	1,865	2,137	924	1,115
Source: Compiled from data submitted in response to Commission questionnaires.					

Assets and Return on Investment

The Commission’s questionnaire requested data on assets used in the production, warehousing, and sale of SRC pipe and tube to compute return on investment (“ROI”). Data on the U.S. producers’ total assets and their ROI are presented in table VI-5. From 2006 to 2008, the total assets for SRC pipe and tube decreased from \$1.3 billion in 2006 to \$992 million in 2008, and the ROI declined from 22.0 percent in 2006 to 17.3 percent in 2008.

CAPITAL AND INVESTMENT

The Commission requested U.S. producers of SRC pipe and tube to describe any actual or potential negative effects of imports of SRC pipe and tube from China and Mexico on their firms’ growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. Their responses are next.

Actual Negative Effects

* * * * * * *

Anticipated Negative Effects

* * * * * * *

Table VI-5

SRC pipe and tube: Asset values and return on investment of U.S. producers, 2006-08

Item	Fiscal year		
	2006	2007	2008
Value of assets:	Value (\$1,000)		
Current assets:			
Cash and equivalents	78,214	130,337	99,479
Accounts receivable, net	327,419	312,999	221,858
Inventories	435,236	347,095	210,618
Other	58,767	83,148	71,478
Total current assets	899,636	873,579	603,433
Property, plant and equipment:			
Original cost	831,874	771,065	834,629
Less: accumulated depreciation	492,067	479,740	526,405
Equals: book value	339,807	291,325	308,224
Other non-current assets	80,244	79,649	80,326
Total assets	1,319,687	1,244,553	991,983
Operating income or (loss)	290,198	223,816	171,363
Share (percent)			
Return on investment	22.0	18.0	17.3
Source: Compiled from data submitted in response to Commission questionnaires.			

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

(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,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider *** . . . as a whole in making a determination of 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 under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the 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

(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).²

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 and the global market.

THE INDUSTRY IN CHINA

The Chinese SRC pipe and tube industry has experienced significant recent expansion in response to the country's rapid growth in demand by downstream industry sectors driven by China's rapid overall economic development. However, according to the 2009 U.S. Geological Survey, although Chinese smelter and refinery capacity has expanded in recent years, its mine and refinery production are insufficient to meet growing domestic consumption needs for refined copper,³ so China is a leading global importer of copper in the forms of refined metal and scrap.⁴

The Commission requested data from the 14 firms that were listed in the petition as producing SRC pipe and tube in China during the period of the investigation. The Commission received a response from 10 firms,⁵ and data regarding the Chinese industry are based on the 10 foreign producer questionnaires received. These responses are believed to account for approximately 97.9 percent of Chinese export shipments to the United States in 2008. In addition to the responding Chinese producers of SRC pipe and tube, U.S. importers identified the following producers/exporters as other Chinese sources for their imports of SRC pipe and tube: ***. Chinese respondents estimate the total production of

² Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

³ Pui Kwan Tse, "The Mineral Industry of China," *2007 Mineral Yearbook* (advanced release), U.S. Geological Survey, February 2009, pp. 9.5 – 9.6.

⁴ *Ibid.*, pp. 9.3 and 9.23.

⁵ Producers in China that submitted foreign producer questionnaires were: ***, ***.

SRC pipe and tube in China at 1.7 billion in 2008 and the Chinese industry's capacity utilization is 80 percent.^{6 7}

Table VII-1 presents information on the Chinese industry's SRC pipe and tube operations. Chinese capacity increased 9.8 percent from 2006 to 2008, and decreased 4.1 percent between the interim periods, and were projected to increase in 2009 and 2010. Chinese production increased in 2007, then decreased in 2008 for an overall decline of 5.7 percent from 2006 to 2008. Chinese production also decreased by 27.8 percent in interim 2009 compared to interim 2008. Chinese capacity utilization decreased steadily from 2006 to 2008, then decreased in interim 2009 compared with interim 2008. Chinese producers projected an increase in capacity utilization in 2009 and 2010. The share of Chinese shipments sold to its home market decreased from 61.1 percent to 52.1 percent during 2006 to 2008. The majority of Chinese producer export shipments was to countries other than the United States.⁸ Chinese total exports as a share of its total shipments increased from 37.0 percent to 45.9 percent during 2006 to 2008. ***.

Table VII-2 presents the Chinese producers' share of their total sales represented by sales of SRC pipe and tube, and the other products produced on the same equipment and machinery used to produce SRC pipe and tube.

⁶ Hailiang's postconference brief, p. 26. The China Nonferrous Metals Industry Association reported that in 2007, China's copper tube production capacity (including nonsubject products) was *** pounds and its production was *** pounds. Hailiang submission, November 2, 2009, exh. 2.

⁷ Petitioners reported that in 2009, there were reportedly 18 major SRC pipe and tube producers in China with a combined capacity of approximately 2 billion pounds (operating at 35 percent capacity). Petitioners' postconference brief, p. 4.

⁸ These other export markets include: ***.

Table VII-1

SRC pipe and tube: Chinese production capacity, production, shipments, and inventories, 2006-08, January-June 2008, January-June 2009, and projected 2009-10

Item	Actual experience					Projections	
	2006	2007	2008	January-June		2009	2010
				2008	2009		
Quantity (1,000 pounds)							
Capacity	936,341	990,960	1,028,166	549,838	527,194	838,124	846,722
Production	730,175	740,864	688,328	410,268	296,343	613,548	632,782
End of period inventories	52,710	39,067	20,845	25,693	16,183	15,424	16,480
Shipments							
Internal consumption/ transfers	13,890	13,709	14,062	7,524	10,368	19,569	23,978
Home market	456,964	439,876	369,469	214,456	135,426	316,224	343,513
Exports to--							
The United States	82,655	78,710	108,801	70,550	51,558	90,335	65,426
All other markets	193,838	224,491	217,128	131,388	100,954	195,425	205,159
Total exports	276,493	303,201	325,929	201,938	152,512	285,760	270,585
Total shipments	747,347	756,786	709,461	423,919	298,306	621,553	638,076
Ratios and shares (percent)							
Capacity utilization	78.0	74.8	66.9	74.6	56.2	73.2	74.7
Inventories to production	7.2	5.3	3.0	3.1	2.7	2.5	2.6
Inventories to total shipments	7.1	5.2	2.9	3.0	2.7	2.5	2.6
Share of total quantity of shipments:							
Internal consumption/ transfers	1.9	1.8	2.0	1.8	3.5	3.1	3.8
Home market	61.1	58.1	52.1	50.6	45.4	50.9	53.8
Exports to--							
The United States	11.1	10.4	15.3	16.6	17.3	14.5	10.3
All other markets	25.9	29.7	30.6	31.0	33.8	31.4	32.2
All export markets	37.0	40.1	45.9	47.6	51.1	46.0	42.4
Note – Because of rounding, figures may not add to the totals shown.							
Source: Compiled from data submitted in response to Commission questionnaires.							

Table VII-2
SRC pipe and tube: Share of Chinese producers' total sales, other products produced on the same equipment and machinery

* * * * *

THE INDUSTRY IN MEXICO

The Commission requested data from six firms that were listed in the petition as possible producers of SRC pipe and tube in Mexico during the period of the investigation. The Commission received responses from four firms, which accounted for *** percent of Mexican exports during the period of investigation.⁹

Table VII-3 presents information on the Mexican industry's operations in Mexico.¹⁰ Mexican producers' capacity decreased from 2006 to 2007, then increased in 2008, and during January-June 2009 and is projected to increase in 2010. Mexican production of SRC pipe and tube decreased by *** percent from 2006 to 2008 and decreased by *** percent between the interim periods. Mexican capacity utilization *** percent in 2006 to *** percent in 2008. Capacity utilization in 2009 is projected to be *** percent.

The volume of Mexican producers' shipments to its home market ranged from *** percent in 2008 to *** percent in 2006. The *** of Mexican producers' exports was exported to the United States, and ranged from *** percent to *** percent of total shipments.¹¹ Table VII-4 presents the Mexican producers' share of their total sales represented by sales of SRC pipe and tube, and the other products produced on the same equipment and machinery used to produce SRC pipe and tube.

One Mexican producer, Luvata Monterrey, began production in 2009, ***.¹² Another Mexican producer, GD Affiliates is adding new capacity (*** pounds) to begin production in 2010. IUSA reported that ***.¹³ IUSA has commissioned a new plant, Pasteje, to produce commercial SRC pipe and tube.¹⁴ Wolverine has a SRC pipe and tube plant in Mexico where copper pipe and tube produced at Wolverine's Shawnee, OK plant is further fabricated.¹⁵

Table VII-3
SRC pipe and tube: Mexican production capacity, production, shipments, and inventories, 2006-08, January-June 2008, January-June 2009, and projected 2009-10

* * * * *

Table VII-4
SRC pipe and tube: Share of Mexican producers' total sales, other products produced on the same equipment and machinery

* * * * *

⁹ Producers in Mexico that submitted foreign producer questionnaires were: ***.
¹⁰ The Mexican SRC pipe and tube industry relies upon both domestic and foreign sources of copper imports.
¹¹ The other export markets are ***.
¹² Luvata Monterrey foreign producer questionnaire, p. 5.
¹³ IUSA foreign producer questionnaire, p. 5.
¹⁴ IUSA and Nacional de Cobre's postconference brief, p. 49.
¹⁵ ***.

U.S. IMPORTERS' INVENTORIES OF SRC PIPE AND TUBE

Thirteen U.S. importers reported inventories of imports of SRC pipe and tube from China during the period for which data were collected, three firms reported inventories from Mexico, and eleven firms reported inventories from nonsubject countries. Data collected in these investigations on U.S. importers' end-of-period inventories of SRC pipe and tube are presented in table VII-5. Inventories from China and Mexico increased from 2006 to 2008 then decreased in interim 2009 compared with interim 2008.

Table VII-5
SRC pipe and tube: U.S. importers' end-of-period inventories of imports, 2006-08, January-June 2008, and January-June 2009

Source	Calendar year			January-June	
	2006	2007	2008	2008	2009
Imports from China:					
Inventories (1,000 pounds)	3,124	3,152	6,369	10,351	8,735
Ratio to imports (percent)	4.5	4.1	6.3	8.8	8.9
Ratio to U.S. shipments of imports (percent)	4.7	4.4	7.1	10.7	10.3
Imports from Mexico:					
Inventories (1,000 pounds)	***	***	***	***	***
Ratio to imports (percent)	***	***	***	***	***
Ratio to U.S. shipments of imports (percent)	***	***	***	***	***
Imports from subject sources:					
Inventories (1,000 pounds)	***	***	***	***	***
Ratio to imports (percent)	***	***	***	***	***
Ratio to U.S. shipments of imports (percent)	***	***	***	***	***
Imports from all other sources:					
Inventories (1,000 pounds)	***	***	***	***	***
Ratio to imports (percent)	***	***	***	***	***
Ratio to U.S. shipments of imports (percent)	***	***	***	***	***
Imports from all sources:					
Inventories (1,000 pounds)	16,525	16,339	14,983	21,464	16,889
Ratio to imports (percent)	8.5	8.6	7.4	9.1	9.2
Ratio to U.S. shipments of imports (percent)	8.8	8.8	7.9	10.4	10.0
Note.—Because of rounding, figures may not add to the totals shown. Partial-year ratios are based on annualized import and shipment data.					
Source: Compiled from data submitted in response to Commission questionnaires.					

U.S. IMPORTERS' CURRENT ORDERS

Twenty-three U.S. importers reported imports or the arrangement of imports of SRC pipe and tube of *** pounds from China, and twelve importers reported imports of *** pounds from Mexico after June 30, 2009.¹⁶

ANTIDUMPING AND COUNTERVAILING DUTY INVESTIGATIONS IN THIRD-COUNTRY MARKETS

SRC pipe and tube have not been subject to any import injury investigations in third country markets.

INFORMATION ON PRODUCERS IN NONSUBJECT COUNTRIES

In assessing whether the domestic industry is materially injured or threatened with material injury “by reason of subject imports,” the legislative history states “that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors (including nonsubject imports) ‘to ensure that it is not attributing injury from other sources to the subject imports.’”¹⁷ Canada and Malaysia are leading nonsubject sources for U.S. imports of SRC pipe and tube (see table IV-3).

Canada

Wolverine Tube (Canada) Inc. (Wolverine Canada) is a major producer of SRC pipe and tube in Canada.¹⁸ As part of its plans to exit the North American residential plumbing tube market, parent-company Wolverine announced, in July 2008, the sell-off of Wolverine Canada’s residential plumbing tube operations, to focus on heat-transfer tubing, fabricated assemblies, and metal-joining products.¹⁹ Subsequently, Wolverine Canada’s product line was expanded beyond uncoated SRC pipe and tube through acquisition of Kamco Products (Kamco) in November 2008, a leading Canadian and North American producer of coated SRC pipe and tube.²⁰ Kamco’s plastic-coated SRC pipe and tube is encased in polyethylene for corrosion resistance in conveyance of fuel oil, natural gas and liquified petroleum gas, and potable water in industrial and municipal service sectors.²¹ Further information was not readily available about Wolverine Canada’s annual production capacity.

¹⁶ Those firms are ***.

¹⁷ Mittal Steel Point Lisas Ltd. V. United States, Slip Op. 2007-1552 at 17 (Fed. Cir. Sept. 18, 2008), quoting from Statement of Administrative Action on Uruguay round Agreements Act, H.R. Rep. 103-316, Vol. 1 at 851-52; see also Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 32006).

¹⁸ Petition, p. 25.

¹⁹ Wolverine, “Wolverine Tube Sells Canadian Plumbing Tube Unit for \$42 Million,” press release, July 8, 2008.

²⁰ Wolverine-Canada, Kamco Div., “Wolverine Tube (Canada) Inc. Acquires the Assets of Kamco Products, a Division of Granby Steel Tanks,” November 1, 2008.

²¹ Kamco, “Profile;” and “Products.”

Malaysia

MetTube Sdn Bhd (MetTube) is the first integrated mill in Malaysia that produces SRC pipe and tube from melting, casting, extruding, and drawing of refined copper.²² Both smooth and inner-groove SRC pipe and tube are produced by MetTube for the air conditioning and refrigeration industries. MetTube's tubing is available either unannealed or with varying degrees of annealing, and in spooled coils, pancake coils, and straight lengths.²³ MetTube's tubing is produced to several different foreign-market specifications, including ASTM B-75, the U.S. specification for seamless copper tube for general engineering applications.²⁴ Total annual production capacity at MetTube's facility in Selangor state is nearly 26,500 short tons per annum.²⁵ MetTube claims to be shipping to customers and partners in 31 countries worldwide.²⁶

Outokumpu Copper Products (Malaysia) Sdn. Bhd. (Outokumpu-Malaysia) is a producer of SRC pipe and tube for air conditioning and refrigeration (ACR), along with copper profiles and sections,²⁷ as a member of Luvata (formerly Outokumpu Copper Products before May 2006) since 1998.²⁸ ***²⁹***³⁰. Further information was not readily available about these Malaysian producers' annual production capacities or product lines.

²² MetTube was established in 1991 as a joint venture between Metdist Ltd. (United Kingdom) and Mitsubishi Materials Corp. (Japan). MetTube, "MetTube & You- Chairman Statement;" and MetTube, "Virtual Tour- MetTube Today."

²³ MetTube, "MetTube & You- Product Range."

²⁴ MetTube, "MetTube & You- Product Specifications."

²⁵ Total annual production capacity originally reported as 24,000 metric tons. MetTube, "MetTube & You- MetTube Today."

²⁶ Ibid.; and MetTube, "Tube & You- Global Market."

²⁷ *E-Directory.com.my, Malaysia Manufacturers Directory*, "Outokumpu Copper Products (Malaysia) Sdn Bhd (417125-K).

²⁸ Luvata, "About Luvata, Our History," 2009.

²⁹ ***.

³⁰ ***.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: September 25, 2009.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.
[FR Doc. E9-24094 Filed 10-5-09; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1174-1175 (Preliminary)]

Seamless Refined Copper Pipe and Tube From China and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigation Nos. 731-TA-1174-1175 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Mexico of seamless refined copper pipe and tube, provided for in subheadings 7411.10.10, and 8415.90.80 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 November 16, 2009. The Commission's views are due at Commerce within five business days thereafter, or by November 23, 2009.

For further information concerning the conduct of these investigations 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:* September 30, 2009.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Haines (202-205-3200), 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 these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on September 30, 2009, by Cerro Flow Products, Inc., St. Louis, MO; Kobe Wieland Copper Products, LLC, Pine Hall, NC; Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc., Memphis, TN.

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations 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 these investigations 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 these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, 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 these investigations for 9:30 a.m. on October 21, 2009, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202-205-3200) not later than October 16, 2009, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these

investigations 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 October 26, 2009, a written brief containing information and arguments pertinent to the subject matter of the investigations. 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 investigations must be served on all other parties to the investigations (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: These investigations are 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.

Issued: September 30, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-23988 Filed 10-5-09; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-678]

In the Matter of Certain Energy Drink Products; Notice of Commission Decision Not To Review an Initial Determination Granting Motion To Amend the Complaint and the Notice of Investigation To Add Six Additional Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 7) issued by the presiding administrative law judge ("ALJ") in the above-captioned investigation granting a motion filed by complainants Red Bull GmbH and Red Bull North America, Inc. (collectively, "Red Bull") to amend the complaint and notice of investigation to add six new respondents.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708-5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <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>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 17, 2009, based on a complaint filed by Red Bull GmbH and Red Bull North America, Inc. ("Red Bull"). 74 FR 28725 (June 17, 2009). The complaint as amended alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain energy drink products by reason of infringement of U.S. Trademark Registration Nos. 3,092,197; 2,946,045; 2,994,429; and

3,479,607 and U.S. Copyright Registration No. VA0001410959. The complaint initially named six respondents: Chicago Import, Inc.; Lamont Dist., Inc. a/k/a Lamont Distributors Inc.; India Imports, Inc., a/k/a International Wholesale Club; Washington Food and Supply of DC, Inc., a/k/a Washington Cash & Carry; Vending Plus, Inc.; and Baltimore Beverage Co.

On September 8, 2009, the ALJ issued the subject ID, granting Red Bull's motion to amend the complaint and notice of investigation to add six new respondents: Posh Nosh Imports; Greenwich, Inc.; Advantage Food Distributors, Ltd.; Wheeler Trading, Inc.; Avalon International General Trading, LLC; and Central Supply, Inc. No petitions for review were filed. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: September 30, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-23989 Filed 10-5-09; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-461 (Final)]

Ni-Resist Piston Inserts From Korea

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On September 21, 2009, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation (*Ni-Resist Piston Inserts from the Republic of Korea: Final Negative Countervailing Duty Determination*, 74 FR 48059, September 21, 2009). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the countervailing duty investigation concerning Ni-resist piston inserts from Korea (investigation No. 701-TA-461 (Final)) is terminated.

DATES: *Effective Date:* September 21, 2009.

FOR FURTHER INFORMATION CONTACT: Angela M. W. Newell (202-708-5409),

Dated: October 21, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-25857 Filed 10-26-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(A-570-964, A-201-838)

Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations

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

EFFECTIVE DATE: October 27, 2009.

FOR FURTHER INFORMATION CONTACT:

Maisha Cryor at (202) 482-5831 or Zhulietta Willbrand at (202) 482-3147 (the People's Republic of China (the "PRC")), AD/CVD Operations, Office 4; George McMahon at (202) 482-1167 or James Terpstra at (202) 482-3965 (Mexico), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On September 30, 2009, the Department of Commerce (the "Department") received petitions concerning imports of seamless refined copper pipe and tube ("copper pipe and tube") from the PRC and Mexico filed in proper form by Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners"). See Petitions for the Imposition of Antidumping Duties on Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico, dated September 30, 2009 (the "Petitions"). On October 5, 2009, October 8, 2009, October 14, 2009, and October 16, 2009, the Department issued a request for additional information and clarification of certain areas of the Petitions. On October 14, 2009, the Department contacted Petitioners by telephone seeking additional information and clarification regarding the PRC portion of the Petition. See Memo to the File from Maisha Cryor, "Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Margin Calculation,"

dated October 15, 2009. On October 16, 2009, the Department contacted Petitioners by telephone seeking additional information and clarification regarding the scope of the Petition. See Memo to the File from Dana M. Griffies, Import Policy Analyst, "Petition for the Imposition of Antidumping Duties Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Suggested Scope Changes," dated October 16, 2009.

On October 19, 2009, the Department contacted Petitioners by telephone seeking additional information and clarification regarding industry support. See Memo to the File from Dana M. Griffies, Import Policy Analyst, "Petition for the Imposition of Antidumping Duties Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Industry Support," dated October 19, 2009. Based on the Department's requests, Petitioners filed additional information on October 13, 2009 (hereinafter, "Supplement to the Petitions, dated October 13, 2009"), October 15, 2009 (hereinafter, "Supplement to the PRC Petition, dated October 15, 2009"), October 16, 2009 (hereinafter, "Second Supplement to the Petitions, dated October 16, 2009"), October 19, 2009 (hereinafter, "Third Supplement to the Petitions¹,"), and October 20, 2009 (hereinafter, "Fourth Supplement to the Petitions"). The period of investigation ("POI") for the PRC is January 1, 2009, through June 30, 2009. The POI for Mexico is July 1, 2008, through June 30, 2009. See 19 CFR 351.204(b)(1).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the "Act"), Petitioners allege that imports of copper pipe and tube from the PRC and Mexico 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 Petitioners filed the Petitions on behalf of the domestic industry because Petitioners are interested parties as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping duty investigations that Petitioners are

requesting that the Department initiate (see "Determination of Industry Support for the Petitions" section below).

Scope of Investigations

The products covered by these investigations are copper pipe and tube from the PRC and Mexico. For a full description of the scope of the investigations, please see the "Scope of the Investigations," in Appendix I of this notice.

Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with Petitioners 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 November 9, 2009, 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 determinations.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of copper pipe and tube to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, 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 listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as 1) general product characteristics and 2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base

¹ Final amendments regarding the Petition for the Imposition of Antidumping Duties: Seamless Refined Copper Pipe and Tube from the People's Republic of China, and the Petition for the Imposition of Antidumping Duties: Seamless Refined Copper Pipe and Tube from Mexico, were filed on October 19, 2009 (collectively, "Third Supplement to the Petitions, dated October 19, 2009").

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 copper pipe and tube, 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 product matching. 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 duty questionnaires, we must receive comments at the above-referenced address by November 9, 2009. Additionally, rebuttal comments must be received by November 16, 2009.

Determination of Industry Support for the Petitions

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.

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 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 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (Ct. Int'l Trade 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, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that copper pipe and tube constitutes 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: Copper Pipe and Tube from the PRC ("PRC Initiation Checklist") at Attachment II, and Antidumping Duty Investigation Initiation Checklist: Copper Pipe and Tube from Mexico ("Mexico Initiation Checklist") at Attachment II, dated concurrently with this notice and on file in the Central Records Unit ("CRU"), Room 1117 of the main Department of Commerce building.

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the "Scope of the Investigations," in Appendix I of this notice. To establish industry support, Petitioners provided their own 2008 shipments of the domestic like product, and compared this to the estimated total shipments of the domestic like product for the entire

domestic industry. See Petitions, at 2–9, and Exhibits 1–7, Supplement to the Petitions, dated October 13, 2009, at 8–10, and Exhibit G, Second Supplement to the Petitions, dated October 16, 2009, at 2–3, and Exhibit 54, and Fourth Supplement to the Petitions, dated October 20, 2009, at 7–8 and Exhibit 59. Petitioners argue that shipments are a reasonable proxy for production because most domestic production is sold on the merchant market. See Petitions, at 8 and Exhibits 4–7. Petitioners estimated total 2008 shipments of the domestic like product based on two industry-specific reports that publish shipment and production information, as well as two individuals who are knowledgeable of the U.S. industry. See Petitions, at 8 and Exhibits 2–3, Supplement to the Petitions, dated October 13, 2009, at 8–10 and Exhibit G, and Second Supplement to the Petitions, dated October 16, 2009, at 2–3 and Exhibit 54, and Fourth Supplement to the Petitions, dated October 20, 2009, at 7–8 and Exhibit 59; see also PRC Initiation Checklist at Attachment II, and Mexico Initiation Checklist at Attachment II.

Our review of the data provided in the Petitions, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petitions 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; see also PRC Initiation Checklist at Attachment II, and Mexico 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 Petitions account for at least 25 percent of the total production of the domestic like product. See PRC Initiation Checklist at Attachment II, and Mexico 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 Petitions 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 Petitions. Accordingly, the Department determines that the Petitions were filed on behalf of the

domestic industry within the meaning of section 732(b)(1) of the Act. *See id.*

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping duty investigations that they are requesting the Department initiate. *See id.*

Allegations and Evidence of Material Injury and Causation

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

Petitioners contend that the industry's injured condition is illustrated by reduced market share, lost sales and revenues, reduced production, reduced capacity utilization rate, underselling and price depression and suppression, reduced workforce, decline in financial performance, and an increase in import penetration. 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 properly supported by adequate evidence and meet the statutory requirements for initiation. *See* PRC Initiation Checklist at Attachment III and Mexico Initiation Checklist at Attachment III.

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 these investigations of imports of copper pipe and tube from the PRC and Mexico. The sources of data for the deductions and adjustments relating to the U.S. price, the factors of production (for the PRC) and cost of production ("COP") (for Mexico) are also discussed in the country-specific initiation checklists. *See* PRC Initiation Checklist at 6–10 and Mexico Initiation Checklist at 6–10.

Export Price

The PRC

For the PRC, Petitioners calculated export price ("EP") based on a price quote made during the POI for a copper pipe and tube product by a Chinese producer, sale term delivered. *See* PRC

Initiation Checklist at 6; *see also* Petitions, at 28–29, and Exhibit 20, and Supplement to the Petitions, dated October 13, 2009, at 12, and Exhibit G. Petitioners substantiated the U.S. price quote with an affidavit. *See* Petitions, at Exhibit 20. Petitioners made adjustments to EP for ocean freight, foreign inland freight, and a distributor commission. *See* PRC Initiation Checklist at 6–7; *see also* Petitions, at Exhibits 21 and 23, and Supplement to the Petitions, dated October 13, 2009, at 18–20, and Exhibit L. Petitioners made no other adjustments. *See* PRC Initiation Checklist for additional details.

Mexico

For Mexico, Petitioners based U.S. price on the invoice from an actual sale of Type K and Type L copper pipe and tube, produced by a Mexican manufacturer and sold to a U.S. customer in January 2009. *See* Mexico Initiation Checklist; *see also* Petitions, at 31 and Exhibit 20, and Supplement to the Petitions, dated October 13, 2009, at 21 and Exhibit N. Petitioners substantiated the U.S. prices used with an affidavit and a declaration from persons who obtained the information. *See* Supplement to the Petitions, at 21 and Exhibit N. Petitioners conservatively assumed the selling expenses to be zero in their calculation of the net U.S. price. Petitioners deducted ocean freight and foreign inland freight expenses but made no other adjustments. *See* Mexico Initiation Checklist at 7; *see also* Petition, at 32 and Exhibit 35, and Supplement to the Petitions, dated October 13, 2009, at 22, and Exhibit P. *See* the Mexico Initiation Checklist for additional details.

Normal Value

The PRC

Petitioners state that the PRC is a non-market economy ("NME") country and no determination to the contrary has been made by the Department. *See* Petitions, at 29; *see also* *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order*, 74 FR 46971 (September 14, 2009); *see also* *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Antidumping Duty Order*, 74 FR 38395 (August 3, 2009).

In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the

Department and, therefore, remains in effect for purposes of the initiation of the PRC investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of the PRC investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issue of the PRC's NME status and the granting of separate rates to individual exporters.

Citing section 773(c)(4) of the Act, Petitioners contend that India is the appropriate surrogate country for the PRC because: 1) it is at a level of economic development comparable to that of the PRC; and 2) it is a significant producer of copper pipe and tube. *See* Petitions, at 29–30, and Exhibits 26 and 27. Based on the information provided by Petitioners, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate-country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioners calculated the NV and dumping margins for the U.S. price, discussed above, using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated NV based on their own consumption rates for producing copper pipe and tube in 2009. *See* Petitions at 30, and Exhibits 28 and 34. In calculating NV, Petitioners based the quantity of each of the inputs used to manufacture and pack copper pipe and tube in the PRC based on their own production experience during the POI because they stated that the actual usage rates of the foreign manufacturers of copper pipe and tube were not reasonably available. *See* Petitions, at 30. However, Petitioners also stated that their production process and cost structure is representative of the PRC copper pipe and tube producers because the act of converting copper raw material into copper pipe and tube is "fundamentally the same for all producers." *See* Supplement to the Petitions, dated October 13, 2009, at 18. Petitioners note that several methods to perform such a conversion exist in the marketplace indicating that no one method is superior to another for the production of copper pipe and tube. *Id.*

Given these facts, Petitioners assert that their experience “should be representative of other Chinese producers when allowance is made for different wage rates and energy costs.” *Id.*

Petitioners valued the factors of production based on reasonably available, public surrogate—country data, including Indian import statistics from the World Trade Atlas. *See* Petitions, at 30, and Exhibit 29. Petitioners excluded from these import statistics imports from countries previously determined by the Department to be NME countries, imports from Indonesia, the Republic of Korea, and Thailand as the Department has previously excluded prices from these countries because they maintain broadly available, non—industry-specific export subsidies, and imports labeled as being from “unspecified countries.” *See* Petitions, at Exhibit 29. In addition, Petitioners made currency conversions, where necessary, based on the POI—average rupee/U.S. dollar exchange rate, as reported on the Department’s website. *See* Petitions, at 31, and Exhibit 25. Petitioners determined labor costs using the labor consumption, in hours, derived from their own experience. *See* Petitions, at Exhibits 28 and 34. Petitioners valued labor costs using the Department’s NME Wage Rate for the PRC at <http://ia.ita.doc.gov/wages/05wages/05wages-051608.html>. *See* Petitions, at Exhibits 28 and 30. For purposes of initiation, the Department determines that the surrogate values used by Petitioners are reasonably available and, thus, acceptable for purposes of initiation.

Petitioners determined electricity costs using the electricity consumption, in kilowatt hours, derived from their own experience. *See* Petitions, at Exhibits 28 and 34. Petitioners valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India. *See* Petitions, at Exhibit 24 and, Supplement to the Petitions, dated October 13, 2009, at 17, and Exhibits I and J.

Petitioners determined natural gas costs using the natural gas consumption derived from their own experience. *See* Petitions, at Exhibits 28 and 34, and Supplement to the Petitions, dated October 13, 2009, at 17. Petitioners valued natural gas using the Indian rate reported by the Gas Authority of India, Ltd. *See* Petitions, at Exhibit 31.

Petitioners determined water costs using the water consumption derived from their own experience. *See* Petitions, at Exhibits 28 and 34. Petitioners valued water based on

information from the Maharashtra Industrial Development Corporation, which is contemporaneous with the POI. *See* Petitions, at Exhibit 24.

Petitioners based factory overhead, selling, general and administrative (“SG&A”), and profit on data from Multimetals Limited (“Multimetals”), a copper pipe and tube producer, for the fiscal year April 2008 through March 2009. *See* Petitions, at 31, and Exhibits 32 and 33, and Supplement to the Petitions, dated October 13, 2009, at 17, and Exhibit K. Petitioners state that Multimetals was an Indian producer of copper pipe and tube products during the fiscal year 2008–2009. *See* Petitions, at 31, and Exhibits 32 and 33, and Supplement to the Petition, dated October 13, 2009, at 17 and Exhibit K. Therefore, for purposes of the initiation, the Department finds Petitioners’ use of Multimetals’ financial ratios appropriate.

Mexico

Petitioners calculated NV for copper pipe and tube based on a price quote for a Type L copper tube offer from March 2009. *See* Petitions, at 32, and Supplement to the Petitions, dated October 13, 2009, at 24; *see also* Mexico Initiation Checklist. Petitioners substantiated the home market price quote with an affidavit and a declaration from persons who obtained the information. *See* Petitions, at 32, and Exhibit 20, and Supplement to the Petitions, dated October 13, 2009, at Exhibit N; *see also* Mexico Initiation Checklist.

Sales—Below-Cost Allegation

Petitioners have provided information demonstrating reasonable grounds to believe or suspect that sales of copper pipe and tube in the Mexican market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales—below-cost investigation. The Statement of Administrative Action (“SAA”), submitted to Congress in connection with the interpretation and application of the URAA, 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, at 833, states 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 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.*

Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (“COM”); SG&A expenses; financial expenses; and packing expenses. Petitioners calculated the quantity of each of the material inputs into COM based on the production experience of a U.S. producer of copper pipe and tube during the POI, multiplied by the value of inputs used to manufacture copper pipe and tube in Mexico using publicly available data. *See* Mexico Initiation Checklist at 8–9; *see also* Second Supplement to the Petitions, dated October 16, 2009, at 3–4 and Exhibits 55 and 56.² Petitioners calculated labor, energy, overhead and packing costs based on their own experience adjusted for known differences between costs in the United States and costs in Mexico. *Id.* To calculate the SG&A and financial expense rates, Petitioners relied on the fiscal year 2008 financial statements of a Mexican producer of welded steel pipe, products in the same general category of merchandise as copper pipe and tube. *Id.* at 8. Petitioners indicated that they calculated surrogate financial ratios using the financial statements of the most comparable company in Mexico during the most recent period for which data were available. *See* Petitions at 33, footnote 35. Specifically, Petitioners stated that the data sourced from this Mexican producer’s financial statements was the best available surrogate for estimating the SG&A and financial expense rates because, in addition to producing and selling circular welded non—alloy pipe, this Mexican producer was also involved in the sale and distribution of seamless refined copper tube in the Mexican market. *See* Petitions at 33, footnote 35;

² Petitioners excluded from these import statistics imports from countries previously determined by the Department to be NME countries, imports from Indonesia, the Republic of Korea, and Thailand as the Department has previously excluded prices from these countries because they maintain broadly available, non—industry-specific export subsidies, and imports labeled as being from “unspecified countries.”

see also Supplement to the Petitions, dated October 13, 2009, at 29.

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made 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 it alleged sales below cost, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioners calculated NV based on constructed value ("CV"). Petitioners calculated CV using the same COM, SG&A, financial expense and packing figures used to compute the COP. Petitioners then added a profit rate based on the fiscal year 2008 financial statements of a Mexican producer of welded steel pipe. *Id.*

Fair-Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of copper pipe and tube from the PRC and Mexico are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of EPs and NV calculated in accordance with section 773(c) of the Act, the estimated dumping margin for copper pipe and tube from the PRC is 60.5 percent. See PRC Initiation Checklist at 10; see also Supplement to the PRC Petition, dated October 15, 2009, at Exhibit W. Based on a comparison of EPs and CV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for copper pipe and tube from Mexico range from 76.5 percent to 85.7 percent. See Mexico Initiation Checklist at 10, Supplement to the Petitions, dated October 13, 2009, at 31 and Supplement to the Petitions, dated October 16, 2009 at 3-4, and Exhibits 55 and 56.

Initiation of Antidumping Investigations

Based upon the examination of the Petitions on copper pipe and tube from the PRC and Mexico, the Department finds that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of copper pipe and tube from the PRC and Mexico 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 determinations no later than 140 days after the date of these initiations.

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 either of these investigations 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 country-specific preliminary determination.

Respondent Selection

The PRC

For this investigation, the Department will request quantity and value information from all known exporters and producers identified with complete contact information in the Petitions, and Supplement to the Petitions, dated October 13, 2009, at 13-15. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). The Department will post the quantity and value questionnaire along with the filing instructions on the Import

Administration website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> and a response to the quantity and value questionnaire is due no later than November 10, 2009.

Mexico

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 7411.10.1030 and 7411.10.1090, the two HTSUS categories most specific to the subject merchandise, 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 ten 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>.

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) ("Separate Rates and Combination Rates Bulletin"), available on the Department's website at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. Based on our experience in processing the separate-rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See, e.g., *Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594-95 (August 6, 2007). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application

will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of the publication of this initiation notice in the **Federal Register**.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation. See Separate Rates and Combination Rates Bulletin, at 6 (emphasis added).

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 Petitions have been provided to the representatives of the Governments of the PRC and Mexico. Because of the

large number of producers/exporters identified in the Petitions, the Department considers the service of the public version of the Petitions to the foreign producers/exporters satisfied by the delivery of the public versions of the Petitions to the Governments of the PRC and Mexico, consistent with 19 CFR 351.203(c)(2).

ITC Notification

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

Preliminary Determinations by the ITC

The ITC will preliminarily determine, no later than November 16, 2009, whether there is a reasonable indication that imports of copper pipe and tube from the PRC and Mexico are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination with respect to any country will result in the investigation being terminated for that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

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

Dated: October 20, 2009.

Ronald K. Lorentzen,
Acting Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations

For the purpose of these investigations, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter ("OD"), regardless of wall thickness, bore (e.g., smooth, enhanced with inner grooves or ridges), manufacturing process (e.g., hot finished, cold-drawn, annealed), outer surface (e.g., plain or enhanced with grooves, ridges, fins, or gills), end finish (e.g., plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (e.g., plastic, paint), insulation, attachments (e.g., plain, capped, plugged, with compression or other fitting), or physical configuration (e.g., straight, coiled, bent, wound on spools).

The scope of these investigations covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials ("ASTM") ASTM-B42, ASTM-B68, ASTM-B75, ASTM-B88, ASTM-B88M, ASTM-B188, ASTM-B251, ASTM-B251M,

ASTM-B280, ASTM-B302, ASTM-B306, ASTM-359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of these investigations are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

"Refined copper" is defined as: (1) metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

ELEMENT	LIMITING CONTENT PERCENT BY WEIGHT
Ag - Silver	0.25
As - Arsenic	0.5
Cd - Cadmium	1.3
Cr - Chromium	1.4
Mg - Magnesium	0.8
Pb - Lead	1.5
S - Sulfur	0.7
Sn - Tin	0.8
Te - Tellurium	0.8
Zn - Zinc	1.0
Zr - Zirconium	0.3
Other elements (each) ..	0.3

Excluded from the scope of these investigations are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length.

The products subject to these investigations are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Products subject to these investigations may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. E9-25855 Filed 10-26-09; 8:45 am]

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APPENDIX B
CONFERENCE WITNESSES

CALENDAR OF THE PUBLIC CONFERENCE

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

Subject: Seamless Refined Copper Pipe and Tube from China and Mexico
Investigation Nos.: 731-TA-1174-1175 (Preliminary)
Date and Time: October 21, 2009 - 9:30 am

The conference was held in Room 101 (Main Hearing Room) of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

In Support of the Imposition of Antidumping Duties:

DLA Piper LLC
Washington, DC
on behalf of

Cerro Flow Products, Inc.
KobeWieland Copper Products, LLC
Mueller Copper Tube Products, Inc.
Mueller Copper Tube Company, Inc.

Steffen Sigloch, CEO, KobeWieland Copper Products, LLC
John Hansen, President-Manufacturing Operations, Mueller Industries, Inc.
Bart Arndt, Vice President/Industrial Business Unit Manager, Cerro Flow Products, Inc.
Dr. Richard Boyce, President, Econometrica International, Inc.

Jack Levy - OF COUNSEL

In Opposition to the Imposition of Antidumping Duties:

Hunton & Williams LLP
Washington, DC
on behalf of

Homewerks Worldwide, LLC
JMF Company
Dayco Industries, LLC
Marubeni America Corp.

Randy Altmann, Senior Vice President, Sourcing and Marketing, Homewerks
Worldwide
Vince Linden, Supply Chain Consultant, Homewerks Worldwide
Max Hansen, President and CEO, JMF Company
Jean-Philippe Krahmer, Sales Manager, Marubeni America Corp.

William Silverman
Douglas J. Heffner - OF COUNSEL
Richard Ferrin

Baker & McKenzie, LLP
Washington, DC
on behalf of

Golden Dragon Precise Copper Tube Group Inc.
GD Affiliates S. de R.L. de C.V.
GD Copper U.S.A.

Keith Weil, Executive Vice President, GD North America
Jianqing Yin, Vice President, GD Affiliates S. de R.L. de C.V.

Kevin O'Brien
Daniel O'Connor - OF COUNSEL
Diane MacDonald

Mayer Brown LLP
Washington, DC
on behalf of

Shanghai Hailiang Copper Company

Duane W. Layton - OF COUNSEL
Jeffery C. Lowe

In Opposition to the Imposition of Antidumping Duties:—*Continued*

Weil, Gotshal & Manges, LLP
Washington, DC
on behalf of

IUSA, S.A. de C.V.
Nacional de Cobre, S.A. de C.V.

Edward Kerins, Jr., Executive Vice President, Cambridge-Lee Industries LLC
Steven Kelly, President, Copper & Brass International Corp.

John Ryan
Joseph M. Johnson - OF COUNSEL
Matthew Simpson

APPENDIX C
SUMMARY DATA

Contains Business Proprietary Information

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

Item	(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)									
	Reported data					Period changes				
	2006	2007	2008	January-June		2006-08	2006-07	2007-08	Jan.-June	
			2008	2009				2008-09		
U.S. consumption quantity:										
Amount	1,134,532	1,000,438	867,776	485,415	370,226	-23.5	-11.8	-13.3	-23.7	
Producers' share (1)	77.0	76.0	71.5	71.8	72.0	-5.4	-1.0	-4.5	0.2	
Importers' share (1):										
China	8.0	9.1	12.8	13.3	13.3	4.8	1.0	3.7	0.1	
Mexico	7.0	7.5	8.2	8.3	8.5	1.2	0.5	0.7	0.2	
Subtotal	15.1	16.6	21.0	21.5	21.8	6.0	1.5	4.5	0.3	
Other sources	7.9	7.4	7.4	6.7	6.2	-0.5	-0.5	0.0	-0.5	
Total imports	23.0	24.0	28.5	28.2	28.0	5.4	1.0	4.5	-0.2	
U.S. consumption value:										
Amount	4,223,796	4,039,017	3,628,503	2,097,736	965,269	-14.1	-4.4	-10.2	-54.0	
Producers' share (1)	78.6	77.1	72.5	73.4	74.3	-6.1	-1.5	-4.6	0.9	
Importers' share (1):										
China	7.3	8.6	12.3	12.4	11.5	5.0	1.3	3.7	-0.9	
Mexico	6.6	7.0	7.8	7.7	8.2	1.2	0.4	0.7	0.5	
Subtotal	14.0	15.7	20.1	20.1	19.7	6.1	1.7	4.4	-0.4	
Other sources	7.4	7.2	7.4	6.5	5.9	-0.1	-0.2	0.2	-0.5	
Total imports	21.4	22.9	27.5	26.6	25.7	6.1	1.5	4.6	-0.9	
U.S. imports from:										
China:										
Quantity	91,113	90,624	111,126	64,439	49,388	22.0	-0.5	22.6	-23.4	
Value	309,873	348,772	446,282	259,591	110,981	44.0	12.6	28.0	-57.2	
Unit value	\$3.40	\$3.85	\$4.02	\$4.03	\$2.25	18.1	13.2	4.4	-44.2	
Ending inventory quantity	3,124	3,152	6,369	10,351	8,735	103.9	0.9	102.1	-15.6	
Mexico:										
Quantity	79,817	75,199	71,327	40,110	31,340	-10.6	-5.8	-5.1	-21.9	
Value	279,361	284,287	281,957	162,388	79,376	0.9	1.8	-0.8	-51.1	
Unit value	\$3.50	\$3.78	\$3.95	\$4.05	\$2.53	12.9	8.0	4.6	-37.4	
Ending inventory quantity	6,245	6,542	6,830	8,099	6,923	9.4	4.8	4.4	-14.5	
Subtotal:										
Quantity	170,930	165,823	182,453	104,549	80,728	6.7	-3.0	10.0	-22.8	
Value	589,233	633,059	728,238	421,979	190,357	23.6	7.4	15.0	-54.9	
Unit value	\$3.45	\$3.82	\$3.99	\$4.04	\$2.36	15.8	10.7	4.5	-41.6	
Ending inventory quantity	9,368	9,694	13,199	18,450	15,658	40.9	3.5	36.2	-15.1	
All other sources:										
Quantity	90,088	74,226	64,441	32,477	22,961	-28.5	-17.6	-13.2	-29.3	
Value	314,358	292,345	268,218	136,025	57,314	-14.7	-7.0	-8.3	-57.9	
Unit value	\$3.49	\$3.94	\$4.16	\$4.19	\$2.50	19.3	12.9	5.7	-40.4	
Ending inventory quantity	7,157	6,645	1,784	3,014	1,231	-75.1	-7.2	-73.2	-59.2	
All sources:										
Quantity	261,018	240,049	246,894	137,026	103,689	-5.4	-8.0	2.9	-24.3	
Value	903,592	925,404	996,456	558,004	247,671	10.3	2.4	7.7	-55.6	
Unit value	\$3.46	\$3.86	\$4.04	\$4.07	\$2.39	16.6	11.4	4.7	-41.3	
Ending inventory quantity	16,525	16,339	14,983	21,464	16,889	-9.3	-1.1	-8.3	-21.3	
U.S. producers:										
Average capacity quantity	1,221,065	1,209,136	1,091,428	545,627	526,855	-10.6	-1.0	-9.7	-3.4	
Production quantity	884,942	786,635	644,032	360,486	271,249	-27.2	-11.1	-18.1	-24.8	
Capacity utilization (1)	72.5	65.1	59.0	66.1	51.5	-13.5	-7.4	-6.0	-14.6	
U.S. shipments:										
Quantity	873,514	760,389	620,882	348,389	266,537	-28.9	-13.0	-18.3	-23.5	
Value	3,320,204	3,113,613	2,632,047	1,539,732	717,598	-20.7	-6.2	-15.5	-53.4	
Unit value	\$3.80	\$4.09	\$4.24	\$4.42	\$2.69	11.5	7.7	3.5	-39.1	
Export shipments:										
Quantity	32,331	31,064	29,239	16,746	12,212	-9.6	-3.9	-5.9	-27.1	
Value	121,983	126,476	125,222	74,030	32,906	2.7	3.7	-1.0	-55.6	
Unit value	\$3.77	\$4.07	\$4.28	\$4.42	\$2.69	13.5	7.9	5.2	-39.0	
Ending inventory quantity	55,351	52,864	47,828	48,841	41,008	-13.6	-4.5	-9.5	-16.0	
Inventories/total shipments (1)	6.1	6.7	7.4	6.7	7.4	1.2	0.6	0.7	0.7	
Production workers	3,913	3,628	3,166	3,280	2,730	-19.1	-7.3	-12.7	-16.8	
Hours worked (1,000s)	8,034	7,565	6,571	3,473	2,718	-18.2	-5.8	-13.1	-21.7	
Wages paid (\$1,000s)	148,451	148,136	129,242	69,495	54,963	-12.9	-0.2	-12.8	-20.9	
Hourly wages	\$18.48	\$19.58	\$19.67	\$20.01	\$20.22	6.4	6.0	0.4	1.1	
Productivity (pounds per hour)	108.4	102.2	96.2	102.0	98.5	-11.3	-5.7	-6.0	-3.4	
Unit labor costs	\$0.17	\$0.19	\$0.20	\$0.20	\$0.21	20.0	12.4	6.8	4.6	
Net sales:										
Quantity	902,149	778,614	652,123	361,851	278,630	-27.7	-13.7	-16.2	-23.0	
Value	3,352,765	3,172,202	2,787,044	1,596,519	748,672	-16.9	-5.4	-12.1	-53.1	
Unit value	\$3.72	\$4.07	\$4.27	\$4.41	\$2.69	15.0	9.6	4.9	-39.1	
Cost of goods sold (COGS)	2,984,580	2,876,789	2,549,697	1,480,169	697,925	-14.6	-3.6	-11.4	-52.8	
Gross profit or (loss)	368,185	295,413	237,347	116,350	50,747	-35.5	-19.8	-19.7	-56.4	
SG&A expenses	77,987	71,597	65,984	32,260	28,727	-15.4	-8.2	-7.8	-11.0	
Operating income or (loss)	290,198	223,816	171,363	84,090	22,020	-40.9	-22.9	-23.4	-73.8	
Capital expenditures	30,744	40,816	43,361	20,500	17,099	41.0	32.8	6.2	-16.6	
Unit COGS	\$3.31	\$3.69	\$3.91	\$4.09	\$2.50	18.2	11.7	5.8	-38.8	
Unit SG&A expenses	\$0.09	\$0.09	\$0.10	\$0.09	\$0.10	17.0	6.4	10.0	15.6	
Unit operating income or (loss)	\$0.32	\$0.29	\$0.26	\$0.23	\$0.08	-18.3	-10.6	-8.6	-66.0	
COGS/sales (1)	89.0	90.7	91.5	92.7	93.2	2.5	1.7	0.8	0.5	
Operating income or (loss)/ sales (1)	8.7	7.1	6.1	5.3	2.9	-2.5	-1.6	-0.9	-2.3	

(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.

Table C-2
Copper pipe and tube: Summary data concerning the U.S. market (excluding Wolverine from domestic industry), 2006-08, January-June 2008, and January-June 2009

* * * * *

APPENDIX D
TARIFF TREATMENT

Harmonized Tariff Schedule of the United States (2009) (Rev. 1)

Annotated for Statistical Reporting Purposes

XV
74-5

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
7404.00		Copper waste and scrap:				
7404.00.30		Spent anodes; waste and scrap with a copper content of less than 94 percent by weight		Free		6%
	20	Of refined copper	kg			
		Of copper alloys:				
	45	Of copper-zinc base alloys (brass):				
	55	Containing more than 0.3 percent of lead	kg			
	65	Other	kg			
	90	Of copper-tin base alloys (bronze)	kg			
7404.00.60		Other		Free		6%
	20	Of refined copper	kg			
		Of copper alloys:				
	45	Of copper-zinc base alloys (brass):				
	55	Containing more than 0.3 percent of lead	kg			
	65	Other	kg			
	90	Of copper-tin base alloys (bronze)	kg			
	90	Other	kg			
7405.00		Master alloys of copper:				
7405.00.10	00	Containing by weight 5 percent or more but not more than 15 percent of phosphorus	kg	Free		12%
7405.00.60		Other		Free		28%
	30	Beryllium copper master alloy	kg			
	50	Other	kg			
7406		Copper powders and flakes:				
7406.10.00	00	Powders of non-lamellar structure	kg	Free		49%
7406.20.00	00	Powders of lamellar structure; flakes	kg	Free		12%
7407		Copper bars, rods and profiles:				
7407.10		Of refined copper:				
		Profiles:				
7407.10.15	00	Hollow profiles	kg	3%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	48%
7407.10.30	00	Other	kg	3%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	48%
7407.10.50		Bars and rods		1%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	7%
	10	Having a rectangular cross section	kg			
	50	Other	kg			
		Of copper alloys:				
		Of copper-zinc base alloys (brass):				
		Profiles:				
7407.21.15	00	Hollow profiles	kg	2.2%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	17%
7407.21.30	00	Other	kg	2.2%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	17%
		Bars and rods:				
7407.21.50	00	Low fuming brazing rods	kg	2.2%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	9%
		Other:				
7407.21.70	00	Having a rectangular cross section	kg	1.9%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	9%
7407.21.90	00	Other	kg	2.2%	Free (A*,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM, P,PE,SG)	9%

Harmonized Tariff Schedule of the United States (2009) (Rev. 1)

Annotated for Statistical Reporting Purposes

XV
74-10

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
7410		Copper foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.15 mm:				
7410.11.00	00	Not backed: Of refined copper	kg	1%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	6.5%
7410.12.00		Of copper alloys		1%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	6.5%
	30	Of copper-zinc base alloys (brass)	kg			
	60	Other	kg			
7410.21		Backed:				
7410.21.30		Of refined copper: Copper clad laminates		3%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	80%
	20	Having a base wholly of plastics impregnated glass: Having copper on one side only	m ²			
	40	Having copper on both sides	kg			
	60	Other	m ²			
7410.21.60	00	Other	kg	1.5%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	6%
7410.22.00	00	Of copper alloys	kg	1.5%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	6%
7411		Copper tubes and pipes:				
7411.10		Of refined copper:				
7411.10.10		Seamless		1.5%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	13%
	30	Having an outside diameter of 6 mm or more but not exceeding 16 mm, in coils on spools	kg			
	90	Other	kg			
7411.10.50	00	Other	kg	3%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	47%
		Of copper alloys:				
7411.21		Of copper-zinc base alloys (brass):				
7411.21.10	00	Seamless	kg	1.4%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	10%
7411.21.50	00	Other	kg	3%	Free (A*,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM, P,PE,SG)	49%
7411.22.00	00	Of copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel-silver)	kg	3%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	47%
7411.29		Other:				
7411.29.10	00	Seamless	kg	1.4%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	10%
7411.29.50	00	Other	kg	3%	Free (A,AU,BH,CA,CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	49%

Harmonized Tariff Schedule of the United States (2009) (Rev. 1)

Annotated for Statistical Reporting Purposes

XV
74-14

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
7419		Other articles of copper:				
7419.10.00	00	Chain and parts thereof	kg	3%	Free (A,B,AU,BH, CA,CL,E,IL,J,JO, MA,MX,OM, P,PE,SG)	45%
7419.91.00		Other:				
		Cast, molded, stamped or forged, but not further worked		Free		46%
	10	Brass plumbing goods, not elsewhere specified or included	kg			
	50	Other	kg			
7419.99		Other:				
		Cloth (including endless bands), grill and netting, of copper wire; expanded metal of copper:				
		Cloth:				
7419.99.03	00	Fourdrinier wires, seamed or not seamed, suitable for use in paper- making machines, with 94 or more wires to the lineal centimeter	m ²	Free		75%
			kg			
7419.99.06		Other		3%	Free (A,AU,BH,CA, CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	43%
	60	Fourdrinier wires, seamed or not seamed, suitable for use in paper- making machines, with fewer than 94 or more wires to the lineal centimeter	m ²			
			kg			
	80	Other	m ²			
			kg			
7419.99.09	00	Other	kg	3%	Free (A,AU,B,BH, CA,CL,E,IL,J,JO, MA,MX,OM, P,PE,SG)	43%
7419.99.15	00	Containers of a kind normally carried on the person, in the pocket or in the handbag	doz.	3%	Free (AU,BH,CA,D, CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	110%
7419.99.16	00	Copper springs	kg	3%	Free (A,AU,B,BH, CA,CL,E,IL,J,JO, MA,MX,OM, P,PE,SG)	45%
7419.99.30	00	Other: Coated or plated with precious metal	kg	3%	Free (A,AU,BH,CA, CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	65%
7419.99.50		Other		Free		46%
	10	Brass plumbing goods not elsewhere specified or included	kg			
	50	Other	kg			

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Annotated for Statistical Reporting Purposes

XVI
84-20

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
8414 (con.)		Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof (con.):				
8414.90		Parts:				
8414.90.10		Of fans (including blowers) and ventilating or recycling hoods		4.7%	Free (A,AU,B,BH, C,CA,CL,E,IL,J, JO,MA,MX,OM,P, PE,SG)	35%
	40	Of fans of subheading 8414.51.00	X			
	80	Other	X			
8414.90.30	00	Of compressors: Stators and rotors of goods of subheading 8414.30	No.	Free		35%
8414.90.41		Other		Free		35%
		Of refrigerating and air conditioning compressors:				
	20	Compressor housings	No.			
	40	Other	X			
		Other:				
		Of compressors of subheading 8414.40:				
	45	Compressor housings	No.			
	55	Other	X			
		Other:				
	65	Compressor housings	No.			
	75	Other	X			
8414.90.90		Other		Free		35%
	40	Of vacuum pumps	X			
	80	Other	X			
8415		Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof:				
8415.10		Window or wall types, self-contained or "split-system":				
8415.10.30		Self-contained		Free		35%
	40	Less than 2.93 kW per hour	No.			
	60	2.93 kW per hour or greater but less than 4.98 kW per hour	No.			
	80	4.98 kW per hour or greater	No.			
8415.10.60	00	Other: Incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle (reversible heat pumps)	No.	1%	Free (A,AU,B,BH, C,CA,CL,E,IL,J, JO,MA,MX,OM,P, PE,SG)	35%
8415.10.90	00	Other	No.	2.2%	Free (A,AU,B,BH, C,CA,CL,E,IL,J, JO,MA,MX,OM,P, PE,SG)	35%
8415.20.00	00	Of a kind used for persons, in motor vehicles	No.	1.4%	Free (A,AU,B,BH, CA,CL,E,IL,J,JO, MA,MX,OM,P,PE, SG)	35%

Harmonized Tariff Schedule of the United States (2009) (Rev. 1)

Annotated for Statistical Reporting Purposes

XVI
84-21

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
8415 (con.)		Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof (con.):				
8415.81.01		Other, except parts: Incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle (reversible heat pumps)		1%	Free (A,AU,B,BH,C,CA,CL,E,IL,J,JO,MA,MX,OM,P,PE,SG)	35%
8415.82.01	10 20 30	Self-contained: Not exceeding 17.58 kW per hour Exceeding 17.58 kW per hour Other	No. No. No.			
8415.82.01		Other, incorporating a refrigerating unit		2.2%	Free (A,AU,B,BH,C,CA,CL,E,IL,J,JO,MA,MX,OM,P,PE,SG)	35%
8415.83.00	05 10 15 20 30 35 40 55 60 70	Self-contained machines and remote condenser type air conditioners other than year-round units: Not exceeding 17.58 kW per hour Exceeding 17.58 kW per hour Year-round units (heating and cooling): Not exceeding 17.58 kW per hour Exceeding 17.58 kW per hour Room or central station air conditioning units for use with water chillers: Room fan coil units Central station air handlers Other Dehumidifiers: With a rated water removal capacity of less than 35 liters over a 24 hour period ... Other	No. No. No. No. No. No. No. No. No. No. No.			
8415.83.00		Not incorporating a refrigerating unit		1.4%	Free (A,AU,B,BH,C,CA,CL,E,IL,J,JO,MA,MX,OM,P,PE,SG)	35%
8415.83.00	50 60 70 90	Heat exchangers including condensing units: Condensing units: Not exceeding 17.58 kW per hour Exceeding 17.58 kW per hour Other Other air conditioning machines not incorporating a refrigerating unit	No. No. No. No.			

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Annotated for Statistical Reporting Purposes

XVI
84-22

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
8415 (con.)		Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof (con.):				
8415.90		Parts:				
8415.90.40	00	Chassis, chassis bases and outer cabinets	No.	1.4%	Free (A,AU,B,BH, C,CA,CL,E,IL,J, JO,MA,MX,OM,P, PE,SG)	35%
8415.90.80		Other		1.4%	Free (A,AU,B,BH, C,CA,CL,E,IL,J, JO,MA,MX,OM,P, PE,SG)	35%
	25	Air conditioning evaporator coils	No.			
	45	Other:				
	65	Of automotive air conditioners	X			
	85	Of heat pumps	X			
		Other	X			
8416		Furnace burners for liquid fuel, for pulverized solid fuel or for gas; mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances; parts thereof:				
8416.10.00	00	Furnace burners for liquid fuel	No.	Free		27.5%
8416.20.00		Other furnace burners, including combination burners		Free		27.5%
	40	Gas burners	No.			
	80	Other	No.			
8416.30.00	00	Mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances	X	Free		27.5%
8416.90.00	00	Parts	X	Free		27.5%
8417		Industrial or laboratory furnaces and ovens, including incinerators, nonelectric, and parts thereof:				
8417.10.00	00	Furnaces and ovens for the roasting, melting or other heat treatment of ores, pyrites or of metals	No.	2.9%	Free (A,AU,BH,CA, CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	45%
8417.20.00	00	Bakery ovens, including biscuit ovens	No.	3.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	45%
8417.80.00	00	Other, except parts	No.	3.9%	Free (A,AU,BH,CA, CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	45%
8417.90.00	00	Parts	X	3.9%	Free (A,AU,BH,CA, CL,E,IL,J,JO,MA, MX,OM,P,PE,SG)	45%

APPENDIX E
NONSUBJECT COUNTRY PRICE DATA

One importer (***) reported price data for nonsubject country Malaysia for product 3; no other price data for nonsubject countries was reported. In comparing nonsubject country pricing data with U.S. producer pricing data, prices for product imported from nonsubject countries were lower than prices for U.S. produced product in five instances and higher in seven instances. In comparing nonsubject country pricing data with subject country pricing data, prices for product imported from nonsubject countries were lower than prices for product imported from subject countries in six instances and higher in 10 instances. Specifically, prices for product imported from nonsubject countries were lower than prices for product imported from China in five instances and higher in seven instances; and nonsubject prices were lower than prices for product imported from Mexico in one instance and higher in three instances. Price and quantity data for Malaysia as well as U.S. and subject sources are shown in figure E-1.

Figure D-1
SRC pipe and tube: Weighted-average f.o.b. prices and quantities of domestic and imported product, by quarters, January 2006-June 2009

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