

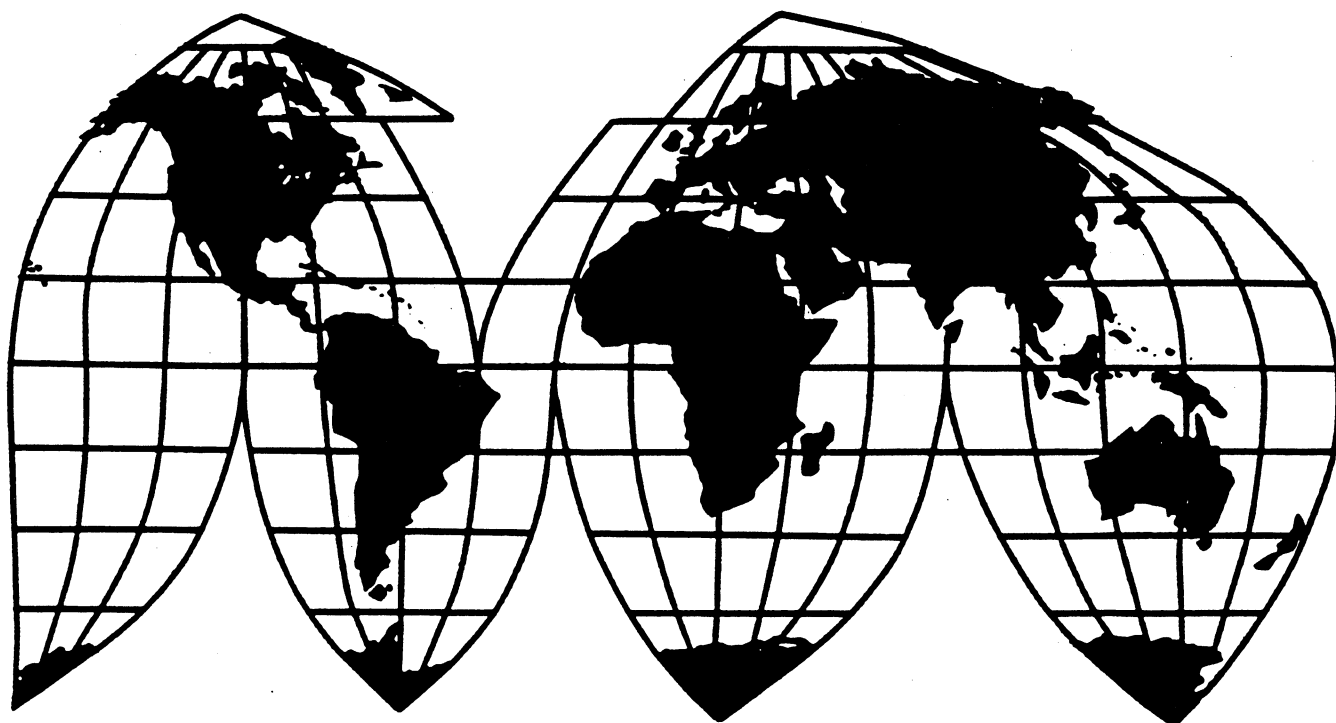
Light-Walled Rectangular Pipe and Tube from Mexico

Investigation No. 731-TA-730 (Preliminary)

Publication 2892

May 1995

U.S. International Trade Commission



U.S. International Trade Commission

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CONTENTS

	<u>Page</u>
Part I: Determination and views of the Commission	I-1
Determination	I-3
Views of the Commission	I-5
Part II: Information obtained in the investigation	II-1
Introduction	II-3
The product	II-3
Physical characteristics and Uses	II-3
Use of common manufacturing facilities and production employees	II-4
Interchangeability and producer and importer perceptions of the product	II-5
Channels of distribution	II-5
Price	II-5
The domestic market	II-5
Apparent consumption in the Texas region	II-5
U.S. producers	II-6
Southwestern	II-7
Dallas Tube	II-7
Other U.S. producers	II-7
U.S. importers	II-8
Consideration of the question of material injury to an industry in the United States	II-9
U.S. production, capacity, and capacity utilization	II-9
U.S. producers' shipments	II-9
U.S. producers' inventories	II-9
U.S. employment, wages, compensation, and productivity	II-10
Financial experience of the Texas producers	II-10
Texas region	II-10
Investment in productive facilities	II-11
Capital expenditures	II-11
Research and development expenses	II-11
Capital and investment	II-11
Actual negative effects	II-11
Anticipated negative effects	II-11
Influence of imports on capital investment	II-11
Consideration of the question of threat of material injury to an industry in the United States	II-12
U.S. importers' inventories	II-12
U.S. importers' current orders	II-13
Ability of foreign producers to generate exports and the availability of export markets other than the United States	II-13
Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury	II-15
U.S. imports	II-15
Market shares	II-15
Prices	II-17
Marketing considerations	II-17
Product comparisons	II-18

CONTENTS

Page

Information obtained in the investigation--Continued

Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury--Continued	
Prices--Continued	
Price trends	II-18
Sales of domestic product	II-19
Sales of imported product	II-20
Price comparisons	II-20
Exchange rates	II-20
Lost sales and lost revenues	II-21

Appendixes

A. Summary data	A-1
B. <i>Federal Register</i> notices	B-1
C. List of participants in the conference	C-1
D. Comments received from U.S. producers on the impact of imports of LWRPT from Mexico on their growth, investment, ability to raise capital, and/or existing development and production efforts	D-1

Figures

1a. LWRPT: Apparent Texas region consumption (quantity basis), by sources, 1992-94	II-6
1b. LWRPT: Apparent Texas region consumption (value basis), by sources, 1992-94	II-6
2. LWRPT: Locations of U.S. producers, 1994	II-8
3. Southwestern's income and loss on its LWRPT operations, fiscal years 1992-94	II-10
4. LWRPT: Weighted-average f.o.b. selling prices of U.S.-produced and imported product, by quarters, Jan. 1992-Mar. 1995	II-20
5. Nominal and real exchange rates of the Mexican peso, by quarters, Jan. 1992-Mar. 1995	II-21

Tables

1. LWRPT: Texas shipments of domestic product, Texas imports/shipments of imports, by sources, and apparent Texas region consumption, 1992-94	II-6
2. LWRPT: Texas region capacity, production, and capacity utilization, by firms, 1992-94	II-9
3. LWRPT: Texas producers' shipments, by types and by firms, 1992-94	II-9
4. LWRPT: End-of-period inventories of Texas region producers, by firms, 1992-94	II-9
5. Average number of total employees and PRWs in Southwestern's establishment wherein LWRPT is produced, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by products, 1992-94	II-10

CONTENTS

	<u>Page</u>
Tables--Continued	
6. Income-and-loss experience of Southwestern on its operations producing LWRPT, fiscal years 1992-94	II-10
7. Income-and-loss experience of Texas producers on the overall operations of their establishments wherein LWRPT is produced, by firms, fiscal years 1992-94	II-11
8. Value of assets and return on assets of Southwestern's establishment wherein LWRPT is produced, fiscal years 1992-94	II-11
9. Capital expenditures by and research and development expenses of Texas producers of LWRPT, by products and by firms, fiscal years 1992-94	II-11
10. LWRPT: End-of-period inventories of Texas importers, by sources, 1992-94	II-12
11. LWRPT: Mexican capacity, production, inventories, capacity utilization, and shipments, 1992-94 and projected 1995-96	II-14
12. LWRPT: U.S. imports, by regions and by sources, 1992-94	II-16
13. LWRPT: Apparent Texas consumption and market penetration, 1992-94	II-17
14. LWRPT: Weighted-average f.o.b. selling prices, total quantities, and margins of under/(over)selling of U.S.-produced and imported product 1, by quarters, Jan. 1992-Mar. 1995	II-19
15. LWRPT: Weighted-average f.o.b. selling prices, total quantities, and margins of under/(over)selling of U.S.-produced and imported product 2, by quarters, Jan. 1992-Mar. 1995	II-20
16. LWRPT: Weighted-average f.o.b. selling prices, total quantities, and margins of under/(over)selling of U.S.-produced and imported product 3, by quarters, Jan. 1992-Mar. 1995	II-20
17. Lost sales allegations concerning imports of LWRPT from Mexico, as reported by U.S. producers	II-21
A-1. LWRPT: Summary data concerning the Texas market, 1992-94	A-3
A-2. LWRPT: Summary data concerning the U.S. market, 1992-94	A-4
A-3. Income-and-loss experience of U.S. producers on their operations producing LWRPT, fiscal years 1992-94	A-6
A-4. Income-and-loss experience of U.S. producers on the overall operations of their establishments wherein LWRPT is produced, fiscal years 1992-94	A-7
A-5. Value of assets and return on assets of U.S. producers' establishments wherein LWRPT is produced, fiscal years 1992-94	A-8
A-6. Capital expenditures by and research and development expenses of U.S. producers of LWRPT, by products, fiscal years 1992-94	A-9

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

GLOSSARY OF ABBREVIATIONS
(In order of appearance in this report)

<u>Name/agency/phrase</u>	<u>Abbreviation</u>
Southwestern Pipe, Inc.	Southwestern
Less than fair value	LTFV
Light-walled rectangular pipe and tube	LWRPT
Harmonized Tariff Schedule of the United States	HTS
North American Free Trade Agreement	NAFTA
Federal Register	F.R.
Texas region	State of Texas
Tariff Act of 1930	The Act
American Society for Testing & Materials	ASTM
American Society of Mechanical Engineers	ASME
American Petroleum Institute	API
American Iron & Steel Institute	AISI
Electric resistance welding	ERW
° Fahrenheit	°F
Dallas Tube & Roll Form	Dallas Tube
***	***
***	***
Customs Net Import File	CNIF
***	***
Production and related workers	PRWs
First-in-first-out	FIFO
Last-in-first-out	LIFO
Nacional de Acera, S.A. de C.V..	NASA
HYLSA, S.A. de C..V.	HYLSA
Tuberia Nacional, S.A. de C.V.	TUNA
Perfiles y Herrajes L.M	Herrajes
Regiomontana de Perfiles y Tubos, S.A. de C.V.	Regiomontana
***	***

PART I
DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-730 (Preliminary)

CERTAIN LIGHT-WALLED RECTANGULAR PIPE AND TUBE FROM MEXICO

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of certain light-walled rectangular pipe and tube,² provided for in subheading 7306.60.50 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).

Background

On March 31, 1995, a petition was filed with the Commission and the Department of Commerce by Southwestern Pipe, Inc., Houston, TX. alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain light-walled rectangular pipe and tube from Mexico. Accordingly, effective March 31, 1995, the Commission instituted antidumping investigation No. 731-TA-730 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 11, 1995 (60 F.R. 18422). The conference was held in Washington, DC, on April 21, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² The subject products are welded pipes and tubes of nonalloy steel, having a wall thickness of less than 4 millimeters (0.156 inch), of rectangular (including square) cross section. These light-walled rectangular pipes and tubes are supplied with rectangular cross sections ranging from 0.375 x 0.625 inch to 2 x 6 inches or with square sections ranging from 0.375 to 4 inches.

VIEWS OF THE COMMISSION

Based on the record in this preliminary investigation, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of light-walled rectangular pipe and tube ("LWRPT") from Mexico that are allegedly sold in the United States at less than fair value ("LTFV").^{1 2}

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in preliminary antidumping investigations 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 by reason of the allegedly LTFV imports.³ 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."⁴

II. DEFINITION OF DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the "domestic like product" and the "industry."⁵ Section 771(4)(A) of the Act, defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."⁶ In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation. . . ."⁷ Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁸ The

¹ Whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

² This investigation is subject to the Uruguay Round Agreements Act ("URAA") amendments to the Tariff Act of 1930 ("the Act"). P.L. 103 - 465, approved Dec. 8, 1994, 108 Stat. 4809. 19 U.S.C. § 1671 et seq., as amended.

³ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. United States, 794 F.Supp. 377, 381 (Ct. Int'l Trade 1992).

⁴ American Lamb 785 F.2d at 1001. The statute calls for "a reasonable indication of injury, not a reasonable indication of need for further inquiry." Texas Crushed Stone Co. v. United States, 35 F.3rd 1535, 1543 (Fed. Cir. 1994)(Court affirmed Commission's preliminary negative determination involving regional industry investigation), quoting, American Lamb, 785 F.2d at 1001. In considering the likelihood that contrary evidence will arise in a final investigation, "[t]he Commission must analyze the 'best information available' contained in the record at the time of its determination and judge the likelihood that evidence contrary to that already gathered will arise in a final determination that would support an affirmative determination." Calabrian Corp. v. United States, 794 F. Supp. at 386. Thus, the mere fact that the Commission is likely to obtain additional information in a final investigation does not require an affirmative preliminary determination unless there is insufficient information in the preliminary record on a relevant issue, or there is reason to believe, based on the information in the preliminary record, that such additional information would be contrary to that already gathered and would support an affirmative determination.

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

⁸ See, e.g., 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'"). In analyzing like product issues, the Commission generally considers a

Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁹

The Department of Commerce ("Commerce") defined the subject merchandise in its initiation notice as:

certain light-walled welded non-alloy steel pipes and tubes, of rectangular (including square) cross section, having a wall thickness of less than 4mm ("LWR"), regardless of specification (ASTM, proprietary, or other). These LWR pipes and tubes are supplied with rectangular cross sections ranging from 0.375 x 0.625 inch to 2 x 6 inches or with square sections ranging from 0.375 to 4 inches.¹⁰

The subject merchandise, LWRPT, is a type of welded carbon steel pipe and tube commonly referred to as "ornamental" or "mechanical" tubing.¹¹ LWRPT is generally produced to ASTM specification A-513 or specification A-500, each of which requires that the product essentially displays the same chemical characteristics.¹²

B. Analysis of Domestic Like Product Issues

Both petitioner and respondents agree that for purposes of this preliminary investigation, there should be one domestic like product consisting of all LWRPT.¹³ Petitioner contends that such a finding would be consistent with past Commission practice.¹⁴

We find that all LWRPT is a single domestic like product for purposes of this preliminary investigation. LWRPT can be produced in a variety of sizes and is generally produced to meet one of two industry specifications. While A-513 LWRPT is used primarily for "mechanical" purposes, A-500 LWRPT is used primarily for "ornamental" purposes.¹⁵ The available evidence, however,

⁸(...continued)

number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Calabrian Corp. v. United States, 794 F. Supp. 377, 382 n.4 (Ct. Int'l Trade 1992); Torrington, 747 F. Supp. at 749. No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. E.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

⁹ Torrington, 747 F. Supp. at 748-49.

¹⁰ See Initiation of Antidumping Duty investigation: Light-Walled Rectangular Pipe and Tube from Mexico, 60 Fed. Reg. 20963 (April 28, 1995). Confidential Report ("CR") at B-3, Public Report ("PR") at B-3.

¹¹ Petition at 6.

¹² CR at I-5, PR at II-4; Petition at 6 & Ex. 3.

¹³ Counsel for respondents asserted at the staff conference that the proposed domestic like product category encompasses a variety of product types with varying end uses but added that respondents have no objection to treating all LWRPT as one like product for purposes of the preliminary investigation. Transcript ("TR.") at 40-41 and 51-52. See generally Respondents' Postconference Brief.

¹⁴ Petitioner's Postconference Brief at 2. In previous cases involving this product, the Commission has consistently defined light-walled rectangular welded carbon steel pipe and tube ("LWR") as one like product. E.g., Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 at 3 (March 1989); see also Light-Walled Rectangular Pipes and Tubes from Argentina and Taiwan, Inv. Nos. 731-TA-409-410 (Preliminary), USITC Pub. 2098 at 3-6 and n.6 (July 1988) (and cases cited therein). There are two minor differences between Commerce's definition of the products covered by the scope of this investigation and its scope definitions in prior LWR investigations. First, in this investigation the subject merchandise is described as "non-alloy steel" light-walled rectangular pipe and tube, whereas in prior cases, the covered merchandise has been defined as "carbon steel" light-walled rectangular pipe and tube. *Id.* The evidence indicates that the two terms have the same meaning. Second, unlike prior investigations, the definition of subject merchandise in this investigation is limited to LWRPT with specific sizes. None of the parties argued that the size of the products covered by the investigation was significant to our like product definition.

¹⁵ CR at I-5, PR at II-4.

suggests that the two grades are similar, can be used for similar end uses¹⁶ to a certain extent and, therefore, can be considered at least somewhat interchangeable.¹⁷ Also, all LWRPT share the same essential physical characteristics and a similar chemical composition.¹⁸

Moreover, since most sales of LWRPT are made to distributors with a small but significant portion being sold directly to end users, all LWRPT is sold through similar channels of distribution.¹⁹ The available evidence suggests that producers and importers consider LWRPT to be a single product category, regardless of specification or size.²⁰ Finally, all sizes and specifications of LWRPT can be and are generally produced using the same production processes, facilities and employees.²¹

For these reasons, we find one domestic like product in this preliminary investigation, encompassing all LWRPT.

C. Domestic Industry

1. Regional Industry Analysis

Petitioner had proposed that the Commission undertake a regional industry analysis.²² The proposed region was described in the petition as the State of Texas.²³

Section 771(4)(C) of the Tariff Act of 1930, as amended by the URAA, provides that: In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if--

- (i) the producers within such market sell all or almost all of their production of the like product in question in that market, and
- (ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of dumped imports or imports of merchandise benefitting from a countervailable subsidy into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the dumped imports or imports of merchandise benefitting

¹⁶ LWRPT is used in a variety of end uses, including fencing, window guards, cattle chutes, and railings for construction and agricultural applications. LWRPT is also used in more decorative (but also functional) items such as furniture parts, athletic equipment, bicycles, lawn and garden equipment, store shelving, towel racks, and similar items. CR at I-4 and I-5, PR at II-4. LWRPT is not used for the conveyance of liquid or gas. Petition at 6.

¹⁷ CR at I-41 and I-42, PR at II-19.

¹⁸ Petition at Ex. 3. LWRPT may be produced from a variety of flat-rolled steel including hot-rolled steel, hot-rolled pickled and oiled steel and cold-rolled steel. Petition at 6; CR at I-5, n. 6, PR at II-4, n.6.

¹⁹ CR at I-7, PR at II-5.

²⁰ CR at I-4, I-6, I-41 and I-42, PR at II-3-II-5 and II-19; TR. at 16, 25, and 51-52.

²¹ See generally CR at I-5 and I-6, PR at II-4; TR. at 21.

²² There are two producers of LWRPT in the State of Texas, Southwestern Pipe, Inc. of Houston, Texas ("Petitioner"), and Dallas Tube & Roll Form of Dallas, Texas ***. See CR at I-10 and I-11, PR at II-6 and II-7.

²³ Petition at 1 and 22. Petitioner proposed in the alternative that the Commission consider whether there is a reasonable indication that the domestic industry defined as the entire United States is threatened with material injury. Petitioner's Postconference Brief at 2 and 13.

from a countervailable subsidy. The term "regional industry" means the domestic producers within a region who are treated as a separate industry under this subparagraph.²⁴

The Commission has considered regional industry analysis as discretionary, based on the language "appropriate circumstances" and "may be treated" found in the statute.²⁵ The Commission has defined appropriate circumstances on several occasions, focusing on whether "[i]solated or separate geographic markets" exist.²⁶

The statute sets up three prerequisites which must be satisfied before the Commission can reach an affirmative determination under a regional industry analysis.²⁷ The Commission must determine that there is: (1) a regional market satisfying the requirements of the statute, (2) a concentration of dumped imports into the regional market, and (3) material injury or threat thereof to producers of all or almost all of the regional production, or material retardation to the establishment of an industry due to the subsidized or dumped imports. The Commission will move on to the next step only if each preceding step is satisfied.

2. Market Isolation Criteria²⁸

a. Sales of "all or almost all" within the region

Producers in the Texas region shipped over 90 percent of their LWRPT within the region throughout the period of investigation.²⁹ We find this satisfies the statutory isolation criterion for sales of "all or almost all" production in the region.³⁰

b. Demand in region supplied by U.S. producers outside region

No precise numerical standard applies to the second criteria regarding the percentage of consumption in the Texas region supplied by U.S. producers outside the region.³¹ The percentages in

²⁴ 19 U.S.C. § 1677(4)(C). The definition of "regional industry" in the last sentence was added and technical language changes were made by the URAA.

²⁵ 19 U.S.C. § 1677(4)(C). See, e.g., Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Final), USITC Pub. 2305 at 15 (August 1990) ("Mexico Cement"), aff'd, Cemex, S.A. v. United States, 790 F. Supp. 290 (Ct. Int'l Trade 1992), aff'd, 989 F.2d 1202 (Fed. Cir. 1993).

²⁶ S. Rep. No. 249, 96th Cong., 1st Sess. 82 (1979).

²⁷ Texas Crushed Stone, 822 F. Supp. at 777, aff'd, 35 F.3d 1535 (Fed. Cir. 1994), aff'g, Crushed Limestone from Mexico, Inv. No. 731-TA-562 (Preliminary), USITC Pub. 2533 (July 1992) ("Limestone").

²⁸ Petitioner alleged that the Commission previously has found a regional industry analysis proper for this subject product. Petitioner's Postconference Brief at 5. However, in the cited investigation, Certain Welded Carbon Steel Pipes and Tubes from the Philippines and Singapore, the Commission found that although "it appears that the first two criteria are met in this investigation. . . [a]s we have based our determination on threat of material injury to the national industry, we need not determine whether these concentrations and, more importantly, the apparent trends in the distribution of these imports, meet or do not meet the third criterion." Inv. Nos. 731-TA-293, 294, and 296 (Final), USITC Pub. 1907 at 6 and 7 (November 1986). See also Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-211 (Final), USITC Pub. 1799 at 4 and 5 (January 1986). Moreover, the fact that the Commission may or may not have found a regional industry analysis appropriate for a prior investigation of the subject product "cannot be regarded by the Commission as dispositive of the determination in a later investigation." Kern-Liebers v. United States, Slip Op. 95-9 at 25 (Ct. Int'l Trade, January 27, 1995).

²⁹ CR at I-10, PR at II-6. Texas producers' shipments in the region were *** in 1992, *** in 1993, and *** in 1994. Id. Respondent asserted that "[t]here is no evidence, however, demonstrating that the distributors that handle petitioner's product actually resell that product in Texas, and not in other states or other regions." Respondent's Postconference Brief at 5. We note that the statutory factor only requires that producers "sell all or almost all" of production in the region, not that the end-user be located in the region. See 19 U.S.C. § 1677(4)(C)(i).

³⁰ This is within the range the Commission previously has considered acceptable. See Texas Crushed Stone, 822 F. Supp. 773, aff'd, 35 F.3d 1535 (Fed. Cir. 1994); Cemex, S.A. v. United States, 790 F. Supp. at 292-294, aff'd, 989 F.2d 1202 (Fed. Cir. 1993).

³¹ See, e.g., Cut-to-Length Carbon Steel Plate from the Federal Republic of Germany, Inv. No. 731-TA-147 (Preliminary-Remand), USITC Pub. 1550 at 9, n. 11 (July 1984).

this investigation, however, do not fall into the range that the Commission has considered in the past to be sufficiently low to meet the second statutory criteria in determining whether a regional market is isolated. The share of the Texas region consumption supplied by U.S. producers outside the region was *** in 1992, *** in 1993, and *** in 1994.³² The Commission previously has found percentages in this range too large to be considered insubstantial.³³

Petitioner had argued that certain structural factors, *i.e.*, the relationship of transportation cost to value, should, in effect, substitute for this statutory factor, suggesting this structural factor makes the alleged regional case unusual.³⁴ We disagree and decline to disregard the statute's requirement that demand in a region not be supplied "to any substantial degree" from outside the region. Moreover, we do not find that transportation costs are in fact significant relative to value³⁵ and note that this relationship is present in most regional cases and, thus, does not distinguish this case from others raising regional industry issues.

We find that the proposed region fails to satisfy the statutory market isolation criteria and determine that no regional industry exists. We find, rather, that the industry in this investigation is a national industry³⁶ and that the domestic industry is comprised of all the domestic producers of LWRPT.

³² CR at I-10, PR at II-6.

³³ The Court of International Trade has suggested that 12 percent outside supply may be too high to be considered insubstantial "in the abstract," but nonetheless affirmed a Commission determination holding that market isolation criteria were satisfied when 12 percent of regional consumption was supplied by producers outside the region. Atlantic Sugar, Ltd. v. United States, 519 F. Supp. 916, 919-920 (Ct. Int'l Trade 1981). The Commission has found that an average of 10.5 percent was acceptable and on several occasions that percentages of outside supply of less than 10 percent were acceptable. See, e.g., Venezuela Cement, USITC Pub. 2400 at 8-10; Mexico Cement, USITC Pub. 2305 at 15 (between 8 and 8.5 percent acceptable); Sugars and Sirups Final, USITC Pub. at 4, 14 (5.5 percent acceptable); Portland Hydraulic Cement, USITC Pub. 1310 at 9 (less than 10 percent acceptable). It determined in one case that 30 percent was too large, and in a second that percentages that ranged between 25 and 50 percent were too large. See Frozen French Fried Potatoes from Canada, Inv. No. 731-TA-93 (Preliminary), USITC Pub. 1259 at 7 (June 1982) ("Frozen French Fried Potatoes"); 12-Volt Lead-Acid Type Automotive Storage Batteries from the Republic of Korea, Inv. No. 731-TA-261 (Preliminary), USITC Pub. 1710 at 8 (June 1985).

³⁴ One structural factor which isolates the large Texas region, according to petitioner, is that "LWR tubular goods are inherently low margin products" so that *** Petitioner's Postconference Brief at 6 and 7. Petitioner contends that "[d]omestic shipments with the greatest freight component will be particularly vulnerable to underselling by Mexican imports." *Id.* at 6. This statement, however, appears to support a finding that shipments from outside the region, rather than shipments within Texas, would be most vulnerable to the Mexican imports.

³⁵ Transportation costs for LWRPT vary from supplier to supplier, ranging from 1 to 7 percent within the Texas region and generally at the higher end of that range for shipments sold outside the region. CR at I-38 and I-39, PR at II-18 and II-19. Transportation costs, therefore, are not an important part of the final delivered price to customers.

³⁶ Respondents asserted that, if the Commission found that the Texas region did not qualify as a regional industry, the Commission should dismiss this case for lack of standing by the petitioner, because Commerce explicitly refused to consider whether the petition had the requisite level of support from the national industry. Respondents' Postconference Brief at 6, n. 10. For purposes of initiation, Commerce evaluated industry support for the petition based upon production in the alleged region. Initiation of Antidumping Duty Investigation: Light-Walled Rectangular Pipe and Tube from Mexico, 60 Fed. Reg. 20963, 20963 (April 28, 1995).

The URAA vests the Department of Commerce, and not the Commission, with the authority to determine whether a petition has the support of the domestic industry. See generally 19 U.S.C. §§ 1671a(c) and 1673a(c) (as amended by the URAA). Moreover, the URAA explicitly precludes Commerce from reconsidering its industry support determination after the investigation has been initiated. 19 U.S.C. §§ 1671a(c)(4)(E) and 1673a(c)(4)(E). See SAA at 193. Once Commerce has made its industry support determination and has decided to initiate the investigation, the Commission can not dismiss the investigation on the basis that Commerce did not poll the national industry. However, the Commission may consider any lack of support by the industry as an "other relevant factor." Suramerica de Aleaciones Laminadas, C.A. v. United States, Slip Ops. 93-1579 and 94-1021 at 9-11 (December 30, 1994).

III. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether there is a reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of allegedly LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.³⁷ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."³⁸

Since we have determined that the Texas market does not qualify as a regional industry in this investigation, we analyze the condition of the domestic industry on a national basis. In this preliminary investigation, the Commission requested information from all national producers of LWRPT in addition to the two regional producers.³⁹

We note certain conditions of competition pertinent to our analysis of the domestic LWRPT industry. First, demand for LWRPT is dependent on the demand for a variety of end-products, such as fencing, window guards, railings for the construction industry, furniture parts, athletic equipment, store shelving, agriculture equipment frames and parts.⁴⁰ Demand for LWRPT products increased substantially over the period of investigation as the overall economy improved.⁴¹

Apparent U.S. consumption of LWRPT increased during each year of the period of investigation, with the largest increase occurring from 1993 to 1994.⁴² The value of apparent U.S. consumption followed the same pattern, with the largest increase again occurring from 1993 to 1994.⁴³

Second, petitioner urged the Commission to find as a condition of competition that demand for LWRPT closely follows the business cycle of the construction industry.⁴⁴ Evidence on the record indicates that there have been substantial increases in demand for LWRPT, including petitioner's own acknowledgement that the Texas market has experienced a boom in demand since 1993.⁴⁵ Therefore, while we find no evidence of a complete cycle as such, it is apparent that if a cycle exists at all, the national market, which clearly is expanding, is in the upswing of such a cycle.

Finally, we note that the subject imports are largely imported into Texas, but comprise only a small share of national consumption.

³⁷ 19 U.S.C. § 1677(7)(C)(iii).

³⁸ 19 U.S.C. § 1677(7)(C)(iii).

³⁹ Respondents have incorrectly stated in their postconference brief that the Commission staff was unable to seek complete questionnaire responses from the national industry at the outset of this investigation. See Respondents' Postconference Brief at 2-4. All domestic producers were requested to provide trade and financial information; while the majority provided trade and production data, producers accounting for about half of the reported aggregate production in 1994 provided financial information. The Commission received useable trade data from 16 of the 20 national producers presently producing LWRPT and financial data from eight national producers, with limited information provided by two other domestic producers. Producer questionnaires were sent to five other firms believed to be producing LWRPT. Of those, three firms reported that they are not producing LWRPT, one firm is out of business, and the other firm is *** See CR at I-10 - I-14, PR at II-6 -II-8.

⁴⁰ CR at I-38, PR at II-17.

⁴¹ CR at I-38, PR at II-17.

⁴² Apparent U.S. consumption increased by 14.6 percent from 1992 to 1993 and by an additional 18.6 percent from 1993 to 1994, and had an overall increase during the period of 35.9 percent. Table A-2, CR at A-6, PR at A-4.

⁴³ Table A-2, CR at A-6, PR at A-4. The value of apparent U.S. consumption increased by 18.1 percent from 1992 to 1993, and by 25.3 percent from 1993 to 1994, and had an overall increase in value of 48.1 percent during the period of investigation.

⁴⁴ Petitioner's Postconference Brief at 8-9.

⁴⁵ Table A-2, CR at A-6, PR at A-4. Petitioner's Postconference Brief at 8-9 and 18. We note that apparent consumption in the Texas region by quantity increased by *** and by value increased by *** from 1992 to 1994. Table at A-1, CR at A-3, PR at A-3.

The domestic industry's U.S. shipments of LWRPT increased substantially during the period of investigation, with the largest part of the increase again occurring from 1993 to 1994.⁴⁶ While the total value of the domestic industry's U.S. shipments followed the same pattern, the increase in value outpaced the increase in volume during the 1992-1994 period.⁴⁷ Although the domestic industry's share of the national market for LWRPT declined slightly from 1992 to 1994,⁴⁸ the industry maintained a dominant share of the national LWRPT market.⁴⁹

U.S. producers' capacity to produce LWRPT fluctuated during the period of investigation.⁵⁰ However, both production volume and capacity utilization of the U.S. producers rose during the period of investigation, with the largest increases again occurring from 1993 to 1994.⁵¹ The year-end inventories held by domestic producers decreased from 1992 to 1993, with an increase for the 1993-1994 period; as a percentage of shipments, inventories declined steadily during the period.⁵²

The number of production workers, hours worked, total compensation, and productivity increased throughout the period of investigation.⁵³ Productivity and hourly total compensation also increased during the period of investigation.⁵⁴

The financial performance indicators for the domestic LWRPT industry were positive and most indicators increased steadily throughout the period of investigation. The domestic industry experienced increases in net sales by quantity and value from 1992 to 1994,⁵⁵ in line with the substantial increase in U.S. consumption for the same period. Gross profit and operating income of the domestic LWRPT industry increased moderately from 1992 to 1993, but increased substantially from 1993 to 1994;⁵⁶ the industry remained profitable during each year of the period.⁵⁷ Increases in

⁴⁶ Table A-2, CR at A-6, PR at A-4. Domestic producers' U.S. shipments by quantity increased by 10.2 percent from 1992 to 1993 and by 15.6 percent from 1993 to 1994, and had an overall increase of 27.4 percent during the period of investigation.

⁴⁷ Table A-2, CR at A-6, PR at A-4. The value of the domestic producers' U.S. shipments increased by 15.1 percent from 1992 to 1993 and by an additional 23.1 percent from 1993 to 1994, and had an overall increase in value of 41.7 percent during the period of investigation. The unit value of domestic industry shipments increased by 4.4 percent from 1992 to 1993 and by 6.5 percent from 1993 to 1994, and had an overall increase of 11.2 percent from 1992 to 1994.

⁴⁸ Table A-2, CR at A-6, PR at A-4. The domestic industry's share of the U.S. market by value declined by 2.4 percentage points from 1992 to 1993 and by 1.6 percentage points from 1993 to 1994, and by quantity declined by 3.4 percentage points and 2.2 percentage points, respectively.

⁴⁹ Table A-2, CR at A-6, PR at A-4. The domestic industry's share of total apparent consumption by value was 91.2 percent in 1992, 88.9 percent in 1993 and 87.3 percent in 1994, and by quantity was 90.4 percent in 1992, 87.0 percent in 1993 and 84.7 percent in 1994.

⁵⁰ Table A-2, CR at A-6, PR at A-4. LWRPT production capacity increased from 521,441 short tons in 1992 to 538,165 short tons in 1993 and then declined to 517,717 short tons in 1994.

⁵¹ Table A-2, CR at A-6, PR at A-4. Production volumes increased by 8.2 percent from 1992 to 1993 and by 16.9 percent from 1993 to 1994. Capacity utilization rose from 47.3 percent in 1992 to 57.4 percent in 1994.

⁵² Table A-2, CR at A-6, PR at A-4. Year-end inventories held by domestic producers decreased by 12.5 percent from 1992 to 1993 and increased by 0.8 percent from 1993 to 1994. Domestic inventories as a percentage of shipments declined from 9.5 percent in 1992 to 6.6 percent in 1994.

⁵³ Production workers increased from 595 in 1992 to 603 in 1993 and to 618 in 1994. Hours worked increased from 1.2 million hours in 1992 to 1.3 million hours in 1994. Total compensation increased consistently during the period of investigation, from \$21.5 million in 1992 to \$26.5 million in 1994, an increase of 23.2 percent over the period. Table A-2, CR at A-7, PR at A-5.

⁵⁴ Table A-2, CR at A-7, PR at A-5. Productivity increased by 8.0 percent during the period of investigation, while hourly total compensation increased by 8.9 percent during the period.

⁵⁵ The domestic industry's net sales by quantity increased by 8.1 percent from 1992 to 1993 and by 10.6 percent from 1993 to 1994, and had an overall increase of 19.5 percent for the period of investigation. Net sales by value outpaced quantity for an increase of 11.0 percent from 1992 to 1993 and 19.4 percent from 1993 to 1994, and had an overall increase for the period of 32.5 percent. Table A-2, CR at A-7, PR at A-5.

⁵⁶ Table A-2, CR at A-7, PR at A-5. The domestic industry's gross profits increased by 5.4 percent from 1992 to 1993 and by 37.0 percent from 1993 to 1994, for an overall increase of 44.4 percent during the period. The domestic industry's operating income increased by 12.5 percent from 1992 to 1993, and by 54.6 percent from 1993 to 1994, for an overall increase of 73.9 percent during the period of investigation.

⁵⁷ Gross profits for the domestic LWRPT industry as a share of net sales fluctuated between years and increased from 13.4 percent in 1992 to 14.6 percent in 1994. Moreover, operating income for this industry as a share of net sales rose from 6.2 percent in 1992 to 8.1 percent in 1994. Table A-3, CR at A-8, PR at A-6.

sales values outpaced increases in production and selling costs.⁵⁸ Moreover, an increase in the domestic industry's unit COGS was more than offset by an increase in the domestic industry's unit sales value and a slight decline in the industry's unit SG&A expenses during the period of investigation.⁵⁹

Capital expenditures by the domestic LWRPT industry fluctuated between years with a slight increase from 1992 to 1994.^{60 61}

IV. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS⁶²

In preliminary antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁶³ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.^{64 65}

Although the Commission may consider causes of injury to the industry other than the allegedly LTFV imports, it is not to weigh causes.^{66 67 68}

⁵⁸ Table A-3, CR at A-8, PR at A-6. Thus, as a share of net sales, the domestic industry's cost of goods sold (COGS) and selling, general, and administrative (SG&A) expenses declined from 1992 to 1994. The domestic industry's COGS as a share of net sales was 86.6 percent in 1992, 87.3 percent in 1993, and 85.4 percent in 1994. The domestic industry's SG&A expenses as a share of net sales was 7.2 percent in 1992, 6.4 percent in 1993, and 6.5 percent in 1994.

⁵⁹ Table A-2, CR at A-7, PR at A-5. The domestic industry's unit COGS increased by 9.4 percent from 1992 to 1994. The domestic industry's unit sales value increased by 10.9 percent from 1992 to 1994. The domestic industry's unit SG&A expenses decreased by 0.5 percent from 1992 to 1994.

⁶⁰ Table A-2, CR at A-7, PR at A-5. Capital expenditures declined by 33.9 percent from 1992 to 1993 and then increased by 56.2 percent from 1993 to 1994, for an overall increase of 3.2 percent from 1992 to 1994.

⁶¹ Based on examination of the relevant statutory factors, Commissioner Rohr and Commissioner Newquist conclude that the domestic LWRPT industry is not experiencing material injury. In particular, they note that the production, shipments, and financial performance indicators for the national industry have been increasing throughout the period of investigation. Thus, they proceed directly to a threat of material injury analysis.

Commissioner Newquist also notes that in applying the two elements of the American Lamb standard, he has acknowledged that this industry has been the subject of two recent Title VII investigations. Therefore, despite the somewhat incomplete financial data for the domestic industry, the Commission is already familiar with the conditions of trade and other relevant aspects of the industry's condition and performance.

⁶² Commissioner Rohr and Commissioner Newquist do not join in this section of the Commission's opinion.

⁶³ 19 U.S.C. § 1673b(a). The statute defines "material injury" as "harm which is not inconsequential, immaterial or unimportant." 19 U.S.C. § 1677(7)(A).

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

⁶⁵ As part of its consideration of the impact of imports, the statute as amended by the URAA now also specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA at 180.

The statute, 19 U.S.C. § 1677(35)(C), defines the "magnitude of the margin of dumping" to be used by the Commission in a preliminary determination as "the dumping margin or margins published by the administering authority [Commerce] in its notice of initiation of the investigation." The dumping margins identified by the Commerce Department in its notice initiating this investigation fall within the range of 14.08 to 23.38 percent. 60 Fed. Reg. 20964.

⁶⁶ See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following:

[T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

For the reasons discussed below, we find that there is no reasonable indication that the domestic LWRPT industry is materially injured by reason of allegedly LTFV imports from Mexico.

A. Volume of Imports

Although the volume and market share of subject imports increased throughout the period of investigation, their share of the increasing U.S. market remained small.⁶⁹ Subject imports never captured more than a 3.3 percent share of the U.S. market by quantity and 2.3 percent by value in any of the three years from 1992 to 1994.⁷⁰ Domestic producers held over 80 percent of the market in terms of quantity and value throughout the period of investigation,⁷¹ ⁷² while non-subject imports of LWRPT accounted for most of the remaining U.S. market share.⁷³

Based on the foregoing, we conclude that the volume of subject imports and their market share, as well as the increases in those imports are not significant.

B. Price Effects of Imports

Evidence on the record indicates that subject imports and the domestic like product are generally interchangeable and serve as good substitutes.⁷⁴ Producers and importers generally

⁶⁶(...continued)

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

⁶⁷ For Chairman Watson's interpretation of the statutory requirement regarding causation, see Certain Calcium Aluminate Cement Clinker from France, Inv. No. 731-TA-645 (Final), USITC Pub. 2772 at I-14 n.68 (May 1994).

⁶⁸ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of LTFV imports, not by reason of LTFV imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249, at 75. However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the LTFV imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249, at 74. Rather, it is to determine whether any injury "by reason of" the allegedly subsidized and LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added).

⁶⁹ Subject imports of LWRPT by quantity were 4,202 short tons in 1992, 8,902 short tons in 1993, and 19,447 short tons in 1994. Increases in subject imports of LWRPT by value followed a similar trend. Table A-2, CR at A-6, PR at A-4.

⁷⁰ The market share held by subject imports by quantity was: 1.0 percent in 1992; 1.8 percent in 1993; 3.3 percent in 1994. Market share by value for subject imports was: 0.8 percent in 1992; 1.4 percent in 1993; 2.3 percent in 1994. Table A-2, CR at A-6, PR at A-4.

⁷¹ The U.S. market share by quantity held by the domestic industry was: 90.4 percent in 1992; 87.0 percent in 1993; 84.7 percent in 1994. The domestic industry's market share by value was: 91.2 percent in 1992; 88.9 percent in 1993; 87.3 percent in 1994. Table A-2, CR at A-6, PR at A-4.

⁷² Chairman Watson and Vice Chairman Nuzum note that although U.S. producers' overall market shares declined somewhat over the period of investigation, the effect of such declines on U.S. producers' operations was minimized by the significant increase in overall U.S. demand and consequent increases in U.S. producers' shipments and sales.

⁷³ Non-subject imports also increased their share of the U.S. market from 1992 to 1994. The market share by quantity held by imports from other sources was: 8.6 percent in 1992; 11.3 percent in 1993; 12.0 percent in 1994. The other imports' market share by value was: 8.0 percent in 1992; 9.7 percent in 1993; 10.4 percent in 1994. Table A-2, CR at A-6, PR at A-4.

⁷⁴ CR at I-40 and I-41, PR at II-18.

considered the domestic product and the subject import to be comparable with regard to most factors, such as product quality, availability, and prompt delivery.⁷⁵

While the Mexican LWRPT consistently undersold the comparable domestic product during the period of investigation,⁷⁶ the evidence in the record does not support a finding of significant adverse effects on U.S. prices for the domestic like product by reason of the allegedly LTFV imports.⁷⁷ ⁷⁸ Prices of subject imports fluctuated, but generally rose slightly over the period of investigation.⁷⁹ Domestic LWRPT prices, however, *** and were *** than subject imports throughout the period of investigation.⁸⁰ This data does not suggest a relationship between the imported and domestic products leading to significant adverse price effects.⁸¹ ⁸²

The record also indicates that the domestic industry was able to raise prices commensurate with any increase in production costs during the period of investigation. Increases in unit sales values for domestic LWRPT outpaced increases in unit cost of goods sold for the 1992-1994 period.⁸³ Moreover, there appears to be no correlation between the steadily declining unit values for subject imports and the increasing domestic unit values throughout the period of investigation.⁸⁴

Thus, despite consistent underselling by subject imports as compared with the prices for the domestic product, the evidence of record does not support the conclusion that the prices of the subject imports have had a significant depressing or suppressing effect on the prices of the domestic LWRPT product.⁸⁵ ⁸⁶

⁷⁵ Petitioner and about half of the responding importers noted that the Mexican product was lower priced than the domestic product and inferior with regard to technical support and either sales service (petitioner) or quality consistency (importers). CR at I-40 and I-41, n.48, PR at II-18, n.48.

⁷⁶ Tables 14-16, CR at I-43 - I-45, PR at II-19 and II-20. The margins of underselling ranged between 3.2 percent and 26.0 percent. CR at I-47, PR at II-20.

⁷⁷ Commissioner Crawford rarely gives much weight to evidence of underselling since it usually reflects some combination of differences in quality, other nonprice factors, or fluctuations in the market during the period in which price comparisons were sought.

⁷⁸ Vice Chairman Nuzum notes that the margins of alleged dumping correspond closely to the range of underselling margins found. Although dumping may, therefore, account for some of the observed underselling, she finds that LTFV import prices did not have significant adverse effects on U.S. prices.

⁷⁹ Weighted-average prices for three types of LWRPT products imported from Mexico and sold in the Texas market were *** percent ***, respectively, in the first quarter of 1995 than in the first quarter of 1992. CR at I-42, PR at II-20.

⁸⁰ Weighted-average prices for the same three types of domestic LWRPT products sold in the Texas market were *** percent ***, respectively, in the first quarter of 1995 than in the first quarter of 1992. CR at I-42, PR at II-20.

⁸¹ Petitioner reported that the price of the Mexican product was lower than its price for what petitioner considered a comparable product, but that petitioner provided superior technical support and sales service. CR at I-6 and I-40, PR at II-5 and II-18.

⁸² In making our determination, the Commission considers the impact of the imports on the industry "as a whole." See, e.g., United Eng'g & Forging v. United States, 779 F. Supp. 1375, 1391 (Ct. Int'l Trade 1991). However, we are not prevented from focusing on appropriate market segments. See Iwatsu Elec. Co. v. United States, 758 F. Supp. 1506, 1511 n.7 (Ct. Int'l Trade 1991). We note that the price comparisons are for the Texas market, where the most direct competition of domestic products with subject imports occurs because 70 to 99 percent of the Mexican imports of LWRPT entered the United States through the State of Texas over the period of investigation. CR at I-10, PR at II-6. To the extent that the prices of subject imports would have an adverse effect on the prices of the domestic products, we would have expected the prices for domestic products in Texas to be most affected by subject imports.

⁸³ The domestic industry's unit sales value increased by 10.9 percent from 1992 to 1994, whereas the industry's unit cost of goods sold only increased by 9.4 percent for the same period. Table A-2, CR at A-7, PR at A-5.

⁸⁴ The subject imports' unit values decreased by 6.7 percent from 1992 to 1994, whereas the domestic industry's unit values increased by 11.2 percent for the same period. Table A-2, CR at A-6, PR at A-4.

⁸⁵ We were unable to confirm the allegations of lost sales to subject imports and, in fact, found evidence that petitioner may have lost sales to other U.S. producers rather than to importers. CR at I-48 and I-49, PR at II-21 and II-22.

⁸⁶ To evaluate the effects of the dumping on domestic prices, Commissioner Crawford compares domestic prices that existed when the imports allegedly were dumped with what domestic prices would have been if the imports had been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices

C. Impact of Imports on the Domestic Industry

Finally, we consider the impact of subject imports on the domestic industry producing LWRPT. In this case, we find that the small volume and market share of the subject imports have not had an adverse impact on the domestic industry. As discussed earlier, domestic producers of LWRPT continually held more than an 80 percent market share throughout the period of investigation, and subject imports never held a market share of more than 3.3 percent in any year examined by the Commission.

Increases in all key domestic industry factors represent further evidence that increases in the volume of subject imports had no adverse impact on the domestic industry. The increases in national demand for LWRPT are reflected in the significant increases in the domestic industry's U.S. shipments of LWRPT from 1992 to 1994.⁸⁷ The financial performance indicators for the industry were positive and improved substantially from 1992 to 1994.⁸⁸ Gross profit increased by 44.4

⁸⁶(...continued)

in the U.S. market would have increased. In this investigation, prices for the subject imports would have risen by a significant amount if they had been priced fairly. The ability of domestic producers to have raised prices under these circumstances depends on competitive conditions in the market for LWRPT involving both supply and demand side considerations.

A significant factor in determining what the effects of higher subject import prices would have been on domestic prices is the overall demand elasticity for LWRPT in the U.S. market. This elasticity is determined primarily by the share of downstream product cost that LWRPT represents and the availability of alternative products. While there do appear to be certain products that can be used in place of LWRPT in certain applications, the record in this preliminary investigation does not contain information regarding the share of downstream product cost that LWRPT represents. Consequently, Commissioner Crawford gives the petitioner the benefit of the doubt in this preliminary investigation and assumes that the LWRPT market is characterized by a low elasticity of demand. That is, purchasers will not change their consumption as rapidly, in response to changes in price. Even in a market characterized by low demand elasticity, however, the composition of overall demand can be sensitive to the relative prices of the alternative sources of the product, *i.e.*, subject imports, domestic product, and nonsubject imports. If subject imports had been fairly priced, they would have become more expensive relative to alternative sources. In such case, there would have been a shift in the composition of demand toward the relatively cheaper products. The magnitude of the shift depends on the substitutability of subject imports for products from alternative sources. As has been discussed, subject imports and the domestic product appear to be good substitutes. Also, the significant and increasing presence of nonsubject imports in the U.S. market, and the fact that substantially all LWRPT is made to industry specifications, suggest that nonsubject imports are good substitutes for the domestic product and subject imports. Because they are good substitutes, purchasers that were unwilling to pay a higher price for the subject imports would have sought to switch to the relatively less expensive domestic product and nonsubject imports.

The low demand elasticity and the change in the composition of demand discussed above suggest that domestic producers would have been able to increase prices if subject imports had been fairly priced. Whether domestic producers would have been able to increase prices if subject imports had been fairly priced is also affected by supply side considerations, including the amount of available domestic capacity and the level of competition in the market. The domestic industry operated at a low rate of capacity utilization over the period of investigation. It had more than ample unused capacity to fill the demand from all purchasers unwilling to pay higher prices for subject imports. The available data also show that the domestic industry consists of many producers that compete with each other to a significant extent. Moreover, further competitive discipline would have come from the significant and increasing presence of nonsubject imports. This competitive market, along with the substantial amount of unused capacity, would have prevented any member of the domestic industry from issuing a price increase and making it stick in response to an increase in the price of subject imports. Although the price data gathered in this preliminary investigation show that domestic prices *** over the period of investigation, Commissioner Crawford notes that the pricing data reflects a very small portion of domestic production and that the increase in the industry's unit sales value over the period of investigation substantially reflects the increase in the industry's unit cost of goods sold over the same period. Accordingly, Commissioner Crawford finds that subject imports did not have significant price effects on the domestic industry.

⁸⁷ Apparent U.S. consumption by quantity increased by 35.9 percent and by value increased by 48.1 percent from 1992 to 1994. Table A-2, CR at A-6, PR at A-4. The domestic industry's U.S. shipments by quantity increased by 27.4 percent and by value increased by 41.7 percent from 1992 to 1994. *Id.*

⁸⁸ Based on the information available, contained in the record, at the time of our determination, we find that there is no likelihood that contrary evidence will arise in the final investigation. The Commission requested information from all domestic producers and received useable trade data from about 85 percent of domestic

(continued...)

percent over the period of investigation,⁸⁹ while operating income increased by 73.9 percent over the same period. Considerable gains in both of these factors were obtained over the same period that imports from Mexico increased in both quantity and value. Moreover, there is no evidence that the consistent underselling by the subject imports has depressed or suppressed domestic prices to a significant degree, and domestic prices have steadily increased over the period of investigation.⁹⁰

We therefore determine that there is no reasonable indication that the U.S. industry producing LWRPT is materially injured by reason of the subject imports of LWRPT from Mexico.⁹¹

V. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

Section 771(7)(F) of the Act directs the Commission to consider whether the U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."⁹² The Commission may not make such a determination "on the basis of mere conjecture or supposition."⁹³ Further direction is provided by the amendment to the statute, 19 U.S.C. § 1677(7)(F)(ii), which adds to the prior provision that the Commission consider the threat factors "as a whole" in making its determination

⁸⁸(...continued)

production in 1994. While all domestic producers were requested to provide financial information, a number did not provide such data. Eight domestic producers accounting for 46.4 percent of reported aggregate production in 1994 provided the Commission with financial data. CR at I-21, PR at II-10. The financial information provided shows an industry experiencing positive and improving performance throughout the period of investigation. Moreover, the trade and production data provided by the majority of the domestic producers (including many of those that chose not to provide financial data) shows significant increases in shipments and other key industry factors. We therefore have considered that the financial data not provided would not support an affirmative determination in part due to the positive trends reported by the majority of the industry for their trade data.

⁸⁹ Data referred to in this paragraph are summarized in Table A-2, CR at A-6 and A-7, PR at A-4 and A-5.

⁹⁰ CR at I-42, PR at II-19 and II-20.

⁹¹ Commissioner Crawford does not join in any discussion that cites or suggests the improved performance of the domestic industry as a factor supporting a negative determination in this investigation. In her analysis of material injury by reason of subject imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when the imports allegedly were dumped with what the state of the industry would have been had imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development as required by 19 U.S.C. § 1677(C)(iii). These factors either encompass or reflect the volume and price effects of the allegedly dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices and sales is critical, because the impact on other industry indicators (e.g. employment, wages, etc.) is derived from this impact.

As she noted earlier, Commissioner Crawford finds that if the subject imports had been fairly priced, it is likely that a substantial portion, if not all, of the subject imports would not have been sold in the domestic market. The demand formerly supplied by subject imports would have been captured by domestic producers and nonsubject imports. The volume and market share held by subject imports is so small, however, that even if domestic producers captured all of the former sales of subject imports, domestic industry sales would not have increased significantly. As has been discussed, domestic producers also would not have been able to increase prices significantly if subject imports had been fairly priced. Without a significant increase in either price or quantity sold, the domestic industry would not have been able to significantly increase its revenues. Without such an increase in sales or prices, the domestic industry would not have been significantly better off if the subject imports had been fairly priced. Accordingly, Commissioner Crawford concludes that there is no reasonable indication of material injury to the domestic industry by reason of the allegedly LTFV imports from Mexico.

⁹² 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

⁹³ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallwerken Nederland B.V. v. U.S., 744 F.Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire, 8 CIT at 28, 590 F.Supp. at 1280. See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387 and 388(Ct. Int'l Trade 1992) (citing, H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984)).

"whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued. . . ." ⁹⁴

In making our determination, we have considered, in addition to other relevant economic factors, ⁹⁵ all statutory factors ⁹⁶ that are relevant to this investigation. ⁹⁷

We do not find that the information concerning Mexican production capacity and capacity utilization shows that a substantial increase in subject imports of LWRPT into the United States is likely. Although production capacity increased slightly from 1992-1993, it has not increased, and is not projected to increase further. ⁹⁸ In fact, capacity utilization levels in Mexico were high, and have increased. ⁹⁹ While the increased production directly corresponds to increases in exports to the United States and home-market shipments, capacity utilization has reached such high levels that substantial future increases in production and exports to the United States are not likely.

We also do not find evidence to indicate that there will be a major shift of Mexican home market shipments to the U.S. market, as argued by petitioner. ¹⁰⁰ We may not base a threat determination on mere conjecture or supposition. ¹⁰¹ The volume of Mexican shipments in its home market has been large and increasing over the period of investigation. ¹⁰² ¹⁰³ For these reasons, we find that there is limited additional capacity to produce LWRPT in Mexico and it is not likely to result in substantial increased exports of LWRPT to the United States.

While the volume of LWRPT imports from Mexico into the United States increased over the period of investigation, it has been small relative to the large and growing U.S. market. ¹⁰⁴ Market penetration by subject imports has not been significant, and there is no indication that it will be in the future. The most significant increase in market penetration by subject imports, which occurred in the 1993-1994 period, did not rise to higher than 3.3 percent of U.S. market share and as discussed

⁹⁴ While the language referring to imports being imminent (instead of "actual injury" being imminent and the threat being "real") is a change from the prior provision, the SAA indicates the "new language is fully consistent with the Commission's practice," the existing statutory language, "and judicial precedent interpreting the statute." SAA at 184.

⁹⁵ Suramerica de Aleaciones Laminadas, C.A. v. United States, Slip Ops. 93-1579 and 94-1021 (December 30, 1994). The Federal Circuit held that 19 U.S.C. § 1677(7)(F)(i) requires the Commission to consider "all relevant factors" that might tend to make the existence of a threat of material injury more probable or less probable. The Commission cannot limit its analysis to the enumerated statutory criteria when there is other pertinent information in the record. Moreover, the court appears to require consideration of the present condition of the industry as among the "relevant economic factors." *Id.* at 9-11 and 17.

⁹⁶ The statutory factors have been amended to track more closely the language concerning threat of material injury in the Antidumping and Subsidies Agreements, although "[n]o substantive change in Commission threat analysis is required." SAA at 185.

⁹⁷ 19 U.S.C. § 1677(7)(F)(i). Two statutory threat factors have no relevance to this investigation and need not be discussed. Because there are no subsidy allegations, factor I is not applicable. Factor VII regarding raw and processed agriculture products is also inapplicable to the products at issue. Moreover, there are no outstanding dumping findings in third countries which were relevant to the Commission's consideration in this investigation. See 19 U.S.C. § 1677(7)(F)(iii)(I).

⁹⁸ Table 11, CR at I-33, PR at II-14. Capacity to produce LWRPT in Mexico increased by 3.0 percent from 1992 to 1993, and remained at that level for the rest of the period of investigation. *Id.*

⁹⁹ Table 11, CR at I-33, PR at II-14. Capacity utilization levels for Mexican LWRPT production were: 70.8 percent in 1992, 70.4 percent in 1993, and 92.3 percent in 1994. *Id.* Mexican production increased by 34.4 percent from 1992 to 1994. CR at I-32, PR at II-14.

¹⁰⁰ Petitioner's Postconference Brief at 16.

¹⁰¹ See S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); Citrosuco Paulista v. United States, 704 F. Supp. 1075, 1095 (Ct. Int'l Trade 1988).

¹⁰² Mexican shipments to its home market have increased by *** from *** in 1994. Table 11, CR at I-33, PR at II-14. Mexican home market shipments accounted for *** in 1994 of total Mexican shipments by quantity. *Id.* There are virtually no Mexican shipments to other export markets. *Id.*

¹⁰³ Commissioner Rohr and Commissioner Newquist note that in some situations significant home and third market consumption often suggests that there is a considerable amount of product which may be directed to the United States. For this investigation, however, Commissioner Rohr and Commissioner Newquist do not find it likely such diversion is imminent.

¹⁰⁴ For example, the volume of subject imports of LWRPT was 19,447 short tons in 1994 compared with U.S. apparent consumption by quantity of 592,206 short tons in 1994. Table A-2, CR at A-6, PR at A-4.

above was found to have no adverse impact on the domestic industry.¹⁰⁵ There is no evidence to suggest an imminent change in these circumstances. We do not find that the increase in market penetration indicates a likelihood of substantially increased imports.¹⁰⁶

We also do not find that subject imports are entering the United States at prices that have a depressing or suppressing effect on domestic prices and that are likely to increase demand for further imports. As discussed above, the Commission found no significant price-depressing or -suppressing effects from subject imports during the period of investigation.¹⁰⁷ There appears to be virtually no correlation between prices for subject imports and for domestic LWRPT. Domestic prices in the market most directly in competition with the subject imports *** over the period of investigation, *** than subject imports.¹⁰⁸ There is no indication that these circumstances will change in the near future.¹⁰⁹

The record also does not support a finding that the inventories of subject merchandise either in the United States or in Mexico will have an adverse effect on the U.S. industry in light of our assessment of other threat factors. Although inventories of subject imports in the United States increased in volume from 1992 to 1994, they remained relatively stable as a share of subject imports from 1993 to 1994.¹¹⁰ Inventories of subject merchandise in Mexico also increased in volume, but remained at a constant share of Mexican production and of all Mexican shipments over the period of investigation.¹¹¹ Moreover, in this investigation subject import inventories in the United States as a share of apparent consumption in the U.S. LWRPT market were 0.2 percent in 1994, an amount too small to support a finding of threat of material injury to the domestic industry. There is no evidence in the record to suggest any likely increase in the future.

Petitioner alleged that there is the potential for Mexican LWRPT producers to shift production from standard pipe to LWR pipe and tube in response to an antidumping order issued in November 1992 covering standard pipe from Mexico.¹¹² We find that any product shifting resulting from the antidumping order issued two and a half years ago already would have occurred and any impact already would be reflected in the record.

We find no "other demonstrable adverse trends" that indicate that subject imports will be the cause of actual injury, or any "actual and potential negative effects on existing development and production efforts of the domestic industry."¹¹³ As discussed above, U.S. apparent consumption increased substantially over the period of investigation.¹¹⁴ This increase in national demand for LWRPT is reflected in the significant increases in all the domestic industry's indicators, with the industry's U.S. shipments increasing substantially and its financial performance indicators positive and improving from 1992 to 1994.¹¹⁵ There is no evidence to suggest an imminent change in these circumstances. We therefore determine there is no reasonable indication that the domestic industry producing LWRPT is threatened with material injury by reason of the subject imports from Mexico.¹¹⁶

¹⁰⁵ Table A-2, CR at A-6, PR at A-4.

¹⁰⁶ While there may be increased demand for subject imports reflecting the overall increase in U.S. consumption, no likelihood of substantial increases in Mexican supply exist.

¹⁰⁷ Although Commissioner Rohr and Commissioner Newquist do not join the discussion referred to, they adopt here, for purposes of their threat of material injury analysis, that discussion to the extent it demonstrates that the subject imports will not imminently depress or suppress domestic prices to a significant degree.

¹⁰⁸ See Tables 14-16, CR at I-42 - I-47, PR at II-19 and II-20.

¹⁰⁹ See 19 U.S.C. § 1677(7)(F)(i)(IV).

¹¹⁰ Table A-2, CR at A-6, PR at A-4.

¹¹¹ Table 11, CR at I-33, PR at II-14.

¹¹² Petitioner's Postconference Brief at 15. Southwestern claimed that "shifting production from standard pipe to LWR pipe and tube is simple and the cost is 'practically insignificant' . . . [t]hus, it is not surprising that exports of LWR pipe and tube from Mexico more than doubled in the year after the standard pipe antidumping duty order was issued." *Id.* at 16.

¹¹³ See 19 U.S.C. §§ 1677(7)(F)(i)(VII) and (X).

¹¹⁴ Apparent U.S. consumption by quantity increased by 35.9 percent and by value increased by 48.1 percent from 1992 to 1994. Table A-2, CR at A-6, PR at A-4.

¹¹⁵ Table A-2, CR at A-6, PR at A-4.

¹¹⁶ Commissioner Rohr and Commissioner Newquist have considered the present condition of the domestic industry as among the "relevant economic factors" in their threat analysis.

CONCLUSION

For the foregoing reasons, we determine there is no reasonable indication that the domestic LWRPT industry is materially injured or threatened with material injury by reason of allegedly LTFV imports from Mexico.



PART II
INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

This investigation results from a petition filed by Southwestern, Houston, TX, on March 31, 1995, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of LTFV imports of LWRPT¹ from Mexico.² Information relating to the background of the investigation is provided below.³

<i>Date</i>	<i>Action</i>
March 31, 1995	Petition filed with Commerce and the Commission; ⁴ institution of Commission investigation (60 F.R. 18422, April 11, 1995)
April 21, 1995	Commission's conference ⁵
April 20, 1995	Commerce's notice of initiation (60 F.R. 20963, April 28, 1995)
May 15, 1995	Date of the Commission's vote
May 15, 1995	Commission determination to Commerce
May 22, 1995	Commission views to Commerce

According to the petition, Southwestern produces and sells LWRPT within the State of Texas, representing a regional industry as defined by the Act and Commission practice. In furtherance of that argument, petitioner notes that (1) Southwestern sells "almost all" of its LWRPT within the Texas region; (2) the demand for LWRPT within Texas is not supplied "to any substantial degree" by other domestic producers; and (3) there is a "concentration of imports of Mexican pipe and tube in the Texas region." Given the regional industry argument, the text and tables in the main body of the report focus on the Texas region. As noted earlier, a summary of the data collected in this investigation, both for the Texas region and the national industry, is presented in appendix A.

THE PRODUCT

The LWRPT that is subject of this investigation is welded pipes and tubes of nonalloy steel, having a wall thickness of less than 4 millimeters (0.156 inch), of rectangular (including square) cross section. These LWRPT are supplied with rectangular cross sections ranging from 0.375 x 0.625 inch to 2 x 6 inches or with square sections ranging from 0.375 to 4 inches.

Physical Characteristics and Uses

For the most part, the terms "pipes," "tubes," and "tubular products" can be used interchangeably. In some industry publications, however, a distinction is made between pipes and tubes. According to these publications, pipes are produced in large quantities in a few standard sizes, whereas tubes are made to customers' specifications regarding dimension, finish, chemical composition, and mechanical properties. Pipes are normally used as conduits for liquids or gases,

¹ The subject products are welded pipes and tubes of nonalloy steel, having a wall thickness of less than 4 millimeters (0.156 inch), of rectangular (including square) cross section. These LWRPT are supplied with rectangular cross sections ranging from 0.375 x 0.625 inch to 2 x 6 inches or with square sections ranging from 0.375 to 4 inches. LWRPT is provided for in subheading 7306.60.50 of the HTS with a current general duty rate of 7.2 percent *ad valorem*, and a special tariff rate of 6.4 percent *ad valorem* applicable to eligible imports from Mexico pursuant to NAFTA. The column 1-general duty rate was 8.0 percent during 1992-93, prior to NAFTA. Pursuant to NAFTA, the special duty rate was 7.2 percent in 1994 and was reduced to its present rate in 1995; the special rate will be "free" as of Jan. 1, 2003.

² A summary of the data collected in the investigation is presented in app. A.

³ *Federal Register* notices cited in the tabulation are presented in app. B.

⁴ Based on a comparison of export prices to constructed value, the petition alleged LTFV margins (as recalculated by Commerce) ranging from 14.08 percent to 23.38 percent.

⁵ A list of witnesses appearing at the conference is presented in app. C.

whereas tubes are generally used for load-bearing or mechanical purposes. Nevertheless, in many cases, there is apparently no clear line of demarcation between pipes and tubes.

Steel pipes and tubes can be divided into two general categories according to the method of manufacture--welded or seamless. Each category can be further subdivided by grades of steel: carbon, heat-resistant, stainless, or other alloy. This method of distinguishing between steel pipe and tube product lines is one of several methods used by the industry. Pipes and tubes typically come in circular, square, or rectangular cross section.

Steel pipes and tubes are generally produced according to standards and specifications published by a number of organizations, including the ASTM, ASME, and the API. Comparable organizations in other countries have also developed standard specifications for steel pipes and tubes.

AISI distinguishes among the various types of pipes and tubes according to six end uses: standard pipe, line pipe, structural pipe and tubing, mechanical tubing (which includes LWRPT), pressure tubing, and oil country tubular goods.

LWRPT is employed in a variety of end uses not involving the conveyance of liquids or gases. Main uses include fencing, window guards, cattle chutes, railings for construction and agricultural applications, and more decorative (but also functional) items such as furniture parts, athletic equipment, bicycles, lawn and garden equipment, store shelving, towel racks, and similar items. The product is generally produced to ASTM specification A-513 or specification A-500 and is commonly referred to in the industry as mechanical (A-513) or ornamental (A-500) tubing.

While other, generally less expensive, products, including steel angles, bars, rods, and channels can be used in place of LWRPT in many applications, their inferior strength-to-weight ratio serves to limit their usage in many other instances.

Use of Common Manufacturing Facilities and Production Employees

The manufacture of LWRPT begins with coils of flat-rolled steel, known as skelp,⁶ which are cut by a slitting machine into strips of the precise width needed to produce a desired diameter of tubing. The slit coils are fed into the tube mills, which cold-form the flat ribbon of steel into a tubular cylinder by a series of tapered forming rolls. The product is then welded along the joint axis.

There are various ways to weld pipes and tubes. The ERW and the more efficient high-frequency weld are used in the manufacture of the subject products. In both welding processes, the joining edges are heated to approximately 2,600° F. Pressure exerted by rolls squeezes the heated edges together to form the weld. The high-frequency welding process is more costly than the ERW process, but it creates a stronger weld and can operate at twice the speed.

Immediately after welding, sizing rolls shape the tube to accurate diameter tolerances. It is at this point that the round tube is formed into a rectangle, square, or other desired shape by using forming rolls. This process can be carried out on the same manufacturing facilities, by the same employees, and requires little additional expense.⁷ The product is cooled and then cut at the end of the tube mill by a flying shear or saw. The standard lengths of the products are 20 and 24 feet. Some producers have special "offline" cutters that are capable of cutting the product into a number of different lengths without leaving the imperfection of a "dimple" on the ends as is produced by the flying shear. This special cutting is done to customer specifications.

***⁸

⁶ Skelp is a flat-rolled, intermediate product used as the raw material in the manufacture of pipes and tubes. It is typically an untrimmed band of hot- or cold-rolled sheet. Hot-rolled skelp is used in most (about 70-80 percent) LWRPT production. However, cold-rolled skelp, which is approximately 10-15 percent higher in price, is required for chrome-plating applications. Additionally, certain end uses such as patio furniture generally require galvanized LWRPT.

⁷ Other products of circular cross section, such as standard and mechanical pipes and tubes, are frequently produced on the same pipe mills as LWRPT; the principal difference in the manufacturing processes is the use of additional forming rolls in the production of noncircular pipes and tubes.

⁸ ***

Interchangeability and Producer and Importer Perceptions of the Product

Both the petitioner and most of the responding importers reported that domestic LWRPT and that imported from Mexico are generally used interchangeably. Southwestern reported that it believed that its product was comparable to the imports from Mexico with regard to product quality, quality consistency, availability, packaging, and payment/credit terms. Southwestern reported that the price of the Mexican product was lower than its price, but that Southwestern was able to provide superior technical support and sales service. Most responding importers reported that domestic LWRPT is comparable to that imported from Mexico with regard to product quality, prompt delivery, availability, packaging, and payment/credit terms and one-half felt they were comparable for price, quality consistency, technical support, and sales service.

Channels of Distribution

LWRPT sold in the United States by U.S. and foreign producers is generally sold either to unrelated distributors or end-users. The following tabulation presents a summary of the channels of distribution used by producers in the Texas region and by importers of LWRPT from Mexico in 1994, according to questionnaire responses (in percent):

	<u>Distributors</u>	<u>End users</u>
Producer shipments in Texas region made to . .	***	***
Producer shipments outside region made to . . .	***	***
Importer shipments in Texas region made to . .	80.0	20.0
Importer shipments outside region made to . . .	74.8	25.2

Price

The petitioner reported that it typically quotes prices on an f.o.b. mill/warehouse basis but that it generally arranges for the transportation for its sales both inside and outside the Texas region. About one half of the responding importers reported quoting prices on an f.o.b. basis, while the others reported selling on a delivered basis. Most sales are made on a spot basis and are not based on a published price list by suppliers of the domestic or imported product. As a result, prices are generally negotiated and determined by the availability of product and the volume being purchased.

THE DOMESTIC MARKET

Apparent Consumption in the Texas Region

Data on apparent consumption in the Texas region is based on shipments by the two Texas producers,⁹ shipments into the Texas region by U.S. producers located outside the market,¹⁰ and from numbers on imports derived from official statistics of the U.S. Department of Commerce (table 1 and figure 1).¹¹

⁹ Compiled from data submitted in response to Commission questionnaires.

¹⁰ Id.

¹¹ From 1992 to 1994, all LWRPT imports from Mexico into the Texas region entered through the Laredo, TX, customs district. The only other customs district receiving LWRPT from Mexico during that period was San Juan, Puerto Rico. In 1994, 99.7 percent of all LWRPT imports from Mexico entered the United States through Laredo. The Commission received questionnaire responses from importers accounting for more than 85 percent of imports into the region from Mexico in 1994. Those respondents sent 76.6 percent of their 1994 shipments into the Texas region and 23.4 percent outside the region. Those percentages were applied to

(continued...)

Table 1

LWRPT: Texas shipments of domestic product, Texas imports/shipments of imports, by sources, and apparent Texas region consumption, 1992-94

* * * * *

Figure 1a

LWRPT: Apparent Texas region consumption (quantity basis), by sources, 1992-94

* * * * *

Figure 1b

LWRPT: Apparent Texas region consumption (value basis), by sources, 1992-94

* * * * *

Information on the statutory criteria set for regional analysis are shown in the following tabulation (in percent, based on quantity of LWRPT):

<u>Item</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>
<u>Texas region:</u>			
Share of:			
Texas producers' shipments within region . . .	***	***	***
Regional consumption supplied by producers outside region	52.9	45.6	34.4
Imports from Mexico	70.7	89.7	99.7
Ratio of imports from Mexico to consumption:			
Within region	***	***	***
Outside of region	0.6	0.8	0.9

U.S. Producers

Two firms, Southwestern and Dallas Tube, comprise the industry producing LWRPT within the Texas region. As noted above, these firms accounted for *** percent of sales in the Texas region in 1994 with regional sales of *** in 1994. Southwestern is the larger of the two producers, having accounted for ***, ***, and *** percent of production in the Texas region during 1992, 1993, and 1994, respectively.

¹¹ (...continued)
official statistics to arrive at imports consumed in the Texas region and outside the region for 1994. Similar calculations were made for 1992 and 1993. With respect to imports from all other countries, all product entered the Texas region through the Houston-Galveston customs district. The Commission received questionnaire responses from importers accounting for ***. Total apparent U.S. consumption as presented in app. A is based on shipments by all U.S. producers responding to Commission questionnaires plus official import statistics. To the extent questionnaires have not been received from all U.S. producers, total U.S. consumption figures are slightly understated.

Southwestern

Southwestern was founded in 1950 as a subsidiary of the engineering construction firm of Brown & Root. In 1984, Southwestern was spun off by Halliburton (Brown & Root's successor) and was purchased by SPAX, Inc., a holding company formed to purchase the assets of Southwestern and Alamo Explosives from Halliburton. Today, Southwestern is privately held by eight shareholders.

Southwestern operates a tube mill in Houston which consists of three welded tube mills manufacturing round tubing from 1/2-inch to 4-1/2 inches in diameter, as well as rectangular tubing up to 4 inches. Other divisions of Southwestern manufacture coated tubing, fence tubing, sprinkler tubing and products such as a proprietary coiled tubing for the oil field industry.¹²

According to Philip Lewis, President of Southwestern, the varied product mix has permitted his firm to "survive this attack by the Mexican tube mills in the light-walled rectangular product category."¹³ As noted earlier, Southwestern produces other mechanical tubing, structural squares and rectangles, and structural pipe in addition to LWRPT. In 1994, LWRPT sales accounted for *** percent of Southwestern's total net sales.

Dallas Tube

Dallas Tube,¹⁴ with its production facility in Dallas, originally operated as ***. In the late 1980s, ***, which became Dallas Tube. In addition to LWRPT, which accounted for *** percent of its total net sales in 1994, Dallas Tube also produces heavy-walled pipe and tube.

Larry Hedrick, President of Dallas Tube, said that Mexican imports are ***¹⁵ and that the ***.¹⁶ Hedrick further commented that while ***.¹⁷

Other U.S. producers

In addition to the two Texas producers, questionnaires were sent to the 23 other U.S. producers known or believed to be producing LWRPT. Most of the producers are small, nonintegrated or partially integrated producers. Nonintegrated producers buy sheet steel to produce the subject product, whereas a partially integrated producer buy slabs, heats them, and then rolls the slabs into sheet. An integrated producer melts steel to make slabs. The other producers who provided useable information, along with their plant locations, participation in the Texas market in 1994, and position on the petition, are presented in the tabulation on the following page (also see figure 2).

¹² Conference TR, p. 13.

¹³ *Id.*, p. 14.

¹⁴ Dallas Tube ***.

¹⁵ ***.

¹⁶ ***.

¹⁷ *Id.*

<u>Firm</u>	<u>Plant location</u>	<u>Texas market</u>	<u>Position on the petition</u>
American Tube	Phoenix, AZ	***	***
Bull Moose	St. Louis, MO	***	***
	Atlanta, GA		
California Steel and Tube	City of Industry, CA	***	***
Copperweld	Piqua, OH	***	***
Ex-L-Tube	N. Kansas City, MO	***	***
Hanna Steel Corp.	Fairfield, AL	***	***
Hannibal Industries	Los Angeles, CA	***	***
Lock-Joint Tube Co.	South Bend, IN	***	***
LTV Steel Corp.-LTV Tubular Products	Cleveland, OH	***	***
Maruichi Corp.	Santa Fe Springs, CA	***	***
Searing Industries	Rancho Cucamonga, CA	***	***
Southland Tube	Birmingham, AL	***	*** ¹⁸
J.M. Tull, Inc.	Norcross, GA	***	***
UNR-Leavitt	Madison, MS	***	*** ¹⁹
Valmont Industries	Valley, NE	***	***
Western Tube and Conduit	Long Beach, CA	***	*** ²⁰

Three firms, ***, ***, and ***, reported they did not produce LWRPT during 1992-94; one, ***, is out of business; and one, ***. Of the firms participating in the Texas market, ***,²¹ ²² The shipments of ***, ***, and *** into the Texas region generally were less than *** short tons each while *** peak shipments into Texas amounted to *** short tons in 1994. ***, ***, ***, ***, and *** accounted for the vast majority of U.S. producer shipments into Texas from outside the region.

Figure 2
LWRPT: Locations of U.S. producers, 1994

* * * * *

U.S. Importers

Importer questionnaires were sent to 17 firms listed in the CNIF as having accounted for nearly all imports of LWRPT from Mexico during 1992-94. Fourteen firms, accounting for more than 85 percent of imports from Mexico, provided useable responses. All but one of the firms was located in the Texas region, with the largest importer, ***.

¹⁸ ***.

¹⁹ In its comments regarding the petition, ***.

²⁰ In its comments regarding the petition, ***.

²¹ ***.

²² ***.

**CONSIDERATION OF THE QUESTION OF MATERIAL INJURY
TO AN INDUSTRY IN THE UNITED STATES**

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 and pricing of imports of the subject merchandise is presented in the section entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury." Information on the other factors specified is presented in this section and (except as noted) is based on the questionnaire responses of 2 firms that accounted for 100 percent of production of LWRPT in the Texas region during 1994.

U.S. Production, Capacity, and Capacity Utilization

Data regarding Texas region capacity, production, and capacity utilization are presented in table 2. Southwestern's capacity is based on operating *** while Dallas Tube's is based on ***. Dallas Tube's production *** from 1992 to 1994 while Southwestern's *** over the same period.

Table 2
LWRPT: Texas region capacity, production, and capacity utilization, by firms, 1992-94

* * * * *

U.S. Producers' Shipments

Data concerning Southwestern's and Dallas Tube's shipments are presented in table 3. As noted earlier, both firms shipped primarily in the Texas region, with *** percent of Southwestern's shipments going to that market during 1992-94 and *** percent of Dallas Tube's shipments going there over the same period. Dallas Tube's regional shipments *** while Southwestern's regional sales ***. Average unit values of regional shipments *** from 1992 to 1994.

Table 3
LWRPT: Texas producers' shipments, by types and by firms, 1992-94

* * * * *

U.S. Producers' Inventories

U.S. producers' end-of-period inventories of LWRPT are presented in table 4. For both producers, inventories as a share of production, and shipments ***. By 1994, ***.

Table 4
LWRPT: End-of-period inventories of Texas region producers, by firms, 1992-94

* * * * *

U.S. Employment, Wages, Compensation, and Productivity

Southwestern's employment and productivity data are presented in table 5. Dallas Tube provided no employment data other than reporting its ***. ***.

Table 5

Average number of total employees and PRWs in Southwestern's establishment wherein LWRPT is produced, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by products, 1992-94

* * * * *

Financial Experience of the Texas Producers

Southwestern, the petitioner, accounting for *** percent of reported capacity for producing LWRPT and *** percent of Texas producer shipments in the Texas region in 1994, supplied income-and-loss data on LWRPT and on overall establishment operations. Seven other U.S. producers located outside the Texas region, ***, ***, ***, ***, ***, ***, and *** -- also provided such data. Dallas Tube, the other U.S. producer in the Texas region, did not provide income-and-loss data on the subject product.²³ The income-and-loss experience of Southwestern is discussed in this section whereas the national income-and-loss experience of the responding eight U.S. producers (including Southwestern), accounting for 46.4 percent of reported aggregate U.S. production of LWRPT in 1994, are presented in appendix A.

Texas Region

Income-and-loss data of Southwestern on its LWRPT operations are presented in table 6 and figure 3. ***, ***.

Southwestern stated in its petition that the ***.²⁴ ***.²⁵

LWRPT net sales accounted for about *** percent of Southwestern's overall establishment net sales in 1992 and 1993 and *** percent in 1994. LWRPT shipment values accounted for an average of *** percent of Dallas Tube's overall establishment net sales during 1992-94. Income-and-loss data on overall establishment operations, by firms, are presented in table 7.

Table 6

Income-and-loss experience of Southwestern on its operations producing LWRPT, fiscal years 1992-94

* * * * *

Figure 3

Southwestern's income and loss on its LWRPT operations, fiscal years 1992-94

* * * * *

²³ Dallas Tube provided income-and-loss data on its overall establishment operations, which are presented in table 7.

²⁴ Petition, p. 28.

²⁵ Staff conversation with Mr. Philip Lewis, President of Southwestern, Apr. 28, 1995.

Table 7

Income-and-loss experience of Texas producers on the overall operations of their establishments wherein LWRPT is produced, by firms, fiscal years 1992-94

* * * * *

Investment in Productive Facilities

Southwestern's investment in property, plant, and equipment and its return on investment are shown in table 8.

Table 8

Value of assets and return on assets of Southwestern's establishment wherein LWRPT is produced, fiscal years 1992-94

* * * * *

Capital Expenditures

Capital expenditures by Southwestern and Dallas Tube are presented in table 9.

Table 9

Capital expenditures by and research and development expenses of Texas producers of LWRPT, by products and by firms, fiscal years 1992-94

* * * * *

Research and Development Expenses

Southwestern reported *** research and development expenses on its LWRPT operations *** (table 9).

Capital and Investment

The Commission requested U.S. producers to describe and explain the actual and potential negative effects of imports of LWRPT from Mexico on their growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of subject pipe and tube). Southwestern's response is as follows.

Actual negative effects

Anticipated negative effects

Influence of imports on capital investment

**CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY
TO AN INDUSTRY IN THE UNITED STATES**

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(i)). Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise is presented in the section of this report entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury." Information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in the section entitled "Consideration of the Question of Material Injury to an Industry in the United States." Available information on U.S. inventories of the subject products; foreign producers' operations, including the potential for "product-shifting;" and any other threat indicators, if applicable; follows.

U.S. Importers' Inventories

U.S. importers' inventories of LWRPT from Mexico (table 10) rose from zero in 1992 to 1,389 short tons in 1994. Over the same period, imports from Mexico reported by questionnaire respondents rose from 1,643 short tons to 16,752 short tons. During 1994, inventories represented 8.3 percent of total imports from Mexico and 8.7 percent of total import shipments.

Table 10
LWRPT: End-of-period inventories of Texas importers, by sources, 1992-94

Item	1992	1993	1994
<i>Quantity (short tons)</i>			
Mexico	0	683	1,389
Other sources	0	138	81
Total	0	821	1,470
<i>Ratio to imports (percent)</i>			
Mexico	0	13.3	8.3
Other sources	0	2.1	.8
Average	0	7.0	5.5
<i>Ratio to U.S. shipments of imports (percent)</i>			
Mexico	0	13.9	8.7
Other sources	0	2.1	.8
Average	0	7.2	5.7
<i>Ratio to total shipments of imports (percent)</i>			
Mexico	0	13.9	8.7
Other sources	0	2.1	.8
Average	0	7.2	5.7

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. Importers' Current Orders

Nine importers reported orders of LWRPT set for delivery after December 31, 1994. These orders amounted to *** short tons. Additionally, ***.²⁶

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets other than the United States

In this investigation, the Commission received foreign producers' questionnaires from four producers accounting for 91.5 percent of LWRPT shipments from Mexico to the United States during 1994 (table 11).²⁷ The four, NASA, HYLSA, TUNA, and Herrajes, are all located in Monterrey, Nuevo Leon.²⁸ Of the four firms, *** was by far the largest exporter to the Texas region, accounting for ***, ***, and *** percent of reported exports for 1992, 1993, and 1994, respectively.

*** did not export to the Texas region in 1992 but accounted for *** percent and *** percent of reported exports in 1993 and 1994, respectively. Neither *** or *** exported to the Texas region during 1992 and 1993, but during 1994 they accounted for *** percent and *** percent of reported exports, respectively.

According to their submissions, all four producers produce products other than LWRPT on the same equipment and machinery used to produce LWRPT. As a share of total sales in their most recent fiscal year, LWRPT accounted for ***.²⁹

Capacity for the four producers increased by 3.0 percent from 1992 to 1993, remained at that level in 1994, and is not projected to increase during 1995 and 1996. With a 34.4 percent increase in production from 1992 to 1994, capacity utilization rose from 70.8 percent to 92.3 percent and is projected to climb to 95.5 percent in 1996. Home market sales increased from 1992 to 1994 and, while projected to decline in 1995, are expected to climb again in 1996. As a portion of total sales, however, the share going to the home market declined from *** percent in 1992 to *** percent in 1994 and is projected to drop still lower in 1995 and 1996. Over the same period the share of shipments going to the Texas region rose from *** percent to 12.1 percent and is projected to climb to 13.7 percent in 1995. Shipments to third country markets have been virtually nonexistent during the period of investigation, but are projected to increase through 1996.

Counsel for the petitioner argues that the Commission, in the absence of finding material injury, should find that "the record provides a reasonable indication that the LTFV imports from Mexico of LWR pipe and tube threaten the U.S. industry whether defined on a regional or a national basis."³⁰ In support of this argument, petitioner cites a rapid increase in market penetration,³¹ a probability of depressing or suppressing effect on domestic prices, and increased or underutilized foreign capacity and the potential for product shifting from standard pipe subject to an outstanding antidumping duty order.³² With regard to the potential for product shifting petitioner argues:

²⁶ ***.

²⁷ A fifth firm, Regiomontana, located in Monterrey, Nuevo Leon, is also an exporter to the United States. Regiomontana did not supply the requested information, although it advised the American Consul in Monterrey that it would attempt to do so. The Consul notes that Regiomontana is believed to employ only 15 people. State Department cablegram 00635.

²⁸ ***.

²⁹ ***.

³⁰ Petitioner's postconference brief, p. 18.

³¹ Petitioner notes that Department of Commerce IM-145 import statistics "indicate that approximately 3,000 tons entered Texas in January of 1995." Projecting that number to predict total 1995 imports from Mexico by using both a linear and exponential regression analysis, petitioner predicts imports of 32,000 tons and 42,000 tons, respectively. Petitioner's postconference brief, p. 12.

³² *Circular Welded Non-alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela*, Inv. Nos. 731-TA-532 through 537 (Final), USITC Pub. 2564, Oct. 1992.

Table 11
LWRPT: Mexican capacity, production, inventories, capacity utilization, and shipments, 1992-94 and projected 1995-96

Item	1992	1993	1994	Projected--	
				1995	1996
<u>Quantity (short tons)</u>					
Capacity	135,327	139,435	139,435	139,435	139,435
Production	95,782	98,202	128,739	124,364	133,192
End-of-period inventories	8,312	6,029	10,636	9,856	9,366
Shipments:					
Home market	***	***	***	***	***
Exports to--					
The United States:					
Texas	***	***	15,018	16,959	16,382
Other U.S. markets	***	***	2,687	4,946	5,119
Subtotal	***	***	17,705	21,905	21,501
All other markets	***	***	***	***	***
Total exports	***	***	***	***	***
Total shipments	94,504	100,310	123,874	123,408	133,682
<u>Ratios and shares (percent)</u>					
Capacity utilization	70.8	70.4	92.3	89.2	95.5
Inventories to production	8.7	6.1	8.3	7.9	7.0
Inventories to all shipments	8.8	6.0	8.6	8.0	7.0
Share of total quantity of shipments:					
Home market	***	***	***	***	***
Exports to--					
The United States:					
Texas	***	***	12.1	13.7	12.2
Other U.S. markets	***	***	2.1	4.0	3.8
Subtotal	***	***	14.3	17.8	16.1
All other markets	***	***	***	***	***

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

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

"In terms of the production facilities, a producer simply adds two or three extra sets of rollers to the production line for circular pipe in order to obtain a square or rectangle. Thus, it is not surprising that exports of LWR pipe and pipe [sic] from Mexico more than doubled in the year after the standard pipe antidumping duty order was issued."^{33 34}

Counsel for the respondents counters this argument by noting that HYLSA and TUNA, the two largest exporters of standard pipe from Mexico in 1991, "have not been the major exporters of this product (LWRPT)."³⁵ Further, the respondents argue:

"And this is not a case where you have a company that was closed off from the U.S. market by a dumping order shifting, you know, sort of the repeat offender problem. In fact, this is a different product with different producers, different players and different market conditions."

"And the fact that there is a dumping order on standard pipe hasn't, you know, has no effect on the producers who weren't exporting standard pipe before. And that's really what's happening here. People who weren't producing standard pipe before are the people who are exporting light-walled rectangular pipe."³⁶

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports

U.S. imports of LWRPT as reported in official statistics are presented in table 12. Imports from all sources increased by 116.1 percent from 1992 to 1994. Canada was the largest source of product imported during that time frame.

Market Shares

Market shares in the Texas region based on U.S. producers' (both in the Texas region and outside) shipments and official import statistics are presented in table 13.

³³ Petitioner's postconference brief, p. 16.

³⁴ HYLSA was the largest exporter of standard pipe from Mexico and the only company examined by Commerce in the standard pipe case.

³⁵ Conference TR, p. 46.

³⁶ *Id.*, pp. 46-47.

Table 12
LWRPT: U.S. imports, by regions and by sources, 1992-94

Item	1992	1993	1994
	<i>Quantity (short tons)</i>		
Texas region:			
Mexico	2,974	7,989	19,383
Other sources	2,013	5,678	12,039
Total	4,986	13,666	31,422
Outside-of-Texas region:			
Mexico	1,229	914	64
Other sources	35,662	50,503	59,008
Total	36,890	51,417	59,072
Total United States:			
Mexico	4,202	8,902	19,447
Other sources	37,674	56,181	71,047
Total	41,877	65,083	90,494
	<i>Value (1,000 dollars)</i>		
Texas region:			
Mexico	1,275	3,472	8,529
Other sources	1,025	2,828	5,883
Total	2,300	6,300	14,412
Outside-of-Texas region:			
Mexico	710	621	43
Other sources	18,780	25,730	32,335
Total	19,490	26,351	32,378
Total United States:			
Mexico	1,985	4,094	8,572
Other sources	19,805	28,558	38,218
Total	21,790	32,652	46,790
	<i>Unit value (per short ton)</i>		
Texas region:			
Mexico	\$428.82	\$434.68	\$440.03
Other sources	509.33	498.11	488.66
Average	461.32	461.03	458.66
Outside-of-Texas region:			
Mexico	577.68	680.10	677.00
Other sources	526.63	509.47	547.98
Average	528.33	512.50	548.12
Total United States:			
Mexico	472.35	459.86	440.81
Other sources	525.70	508.32	537.92
Average	520.35	501.69	517.05

Note.--Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 13

LWRPT: Apparent Texas consumption and market penetration, 1992-94

* * * * *

Prices

Marketing Characteristics

LWRPT is used in a variety of applications, including fencing, window guards, railings for the construction industry, furniture parts, athletic equipment, store shelving, agricultural equipment frames and parts, etc. Therefore, the demand for LWRPT depends on the demand for these products. The petitioner and several importers reported that the demand for these pipe and tube products increased in 1994, as the overall economy improved.³⁷

LWRPT is sold to both distributors and end users, with the majority being sold to distributors. Most sales of LWRPT are made on a spot basis. Southwestern stated that sales of LWRPT are made on an "inquire, order, and ship basis." As such, distributors call and give a list of products that they are looking to purchase. The supplier then quotes a price and delivery times are determined.

Many suppliers, of both domestic and imported product, reported that they do not publish price lists. The petitioner reported that it has internal price lists that are not published or sent to its customers but are used to determine transaction prices. One importer reported that it does publish price lists about once a quarter because it feels that sending a price list to its customers "keeps its name in front of the customer." Due to the lack of published price lists, prices are generally negotiated and determined by the availability of product and the volume being purchased.

Both producers and importers reported giving discounts to customers of LWRPT, with the majority being volume discounts.³⁸ Southwestern reported that it gives a *** percent discount off the internal list price for a minimum order of *** pounds, and an additional *** percent discount for orders of at least *** pounds.³⁹ Discounts reported by importers ranged from 1 to 5 percent depending on the quantity of LWRPT purchased.⁴⁰ Furthermore, the petitioner reported that it gives discounts based on ***. For example, Southwestern reported that customers in the Texas region purchasing ***.⁴¹

LWRPT is priced per hundred feet and sold on either an f.o.b. or a delivered basis. The petitioner reported that it typically quotes prices on an f.o.b. mill/warehouse basis but that it generally arranges for the transportation for its sales both inside and outside the Texas region. In some cases, Southwestern will pay the freight for the customer. About one half of the responding importers reported quoting prices on an f.o.b. basis, while the others reported selling on a delivered basis. LWRPT is shipped via truck from mills or warehouses; neither the petitioner nor the importers reported using regional storage facilities for their shipments of LWRPT.

Shipments of LWRPT in the Texas region generally occur within 500 miles of the plant and/or warehouse.⁴² Transportation costs for LWRPT vary from supplier to supplier, ranging from 1

³⁷ Importers reported that the demand for LWRPT increased both within the region of Texas and outside of that region.

³⁸ Payment terms for LWRPT varied from supplier to supplier. While the petitioner reported that its terms are net 30 days, several importers reported that some of their business is done on a cash-on-delivery (COD) basis. Two importers reported giving discounts of between 1 and 2 percent for payment on delivery or within 10 days.

³⁹ *** reported that its discount policy for sales outside the Texas region is the same as that for sales within that region.

⁴⁰ One importer, ***.

⁴¹ ***.

⁴² For shipments outside the Texas region, most suppliers reported that the majority of their shipments were to customers located more than 500 miles from their plant and/or warehouse.

to 7 percent within the Texas region.⁴³ *** reported that its freight costs ranged from 1 to 4 percent depending on the distance traveled. *** reported that *** percent of its shipments of LWRPT within Texas were to customers located between 100 and 500 miles from its plant; transportation costs for these sales accounted for about 3 percent of the total cost of the product.⁴⁴ Importers also reported that most of their shipments within Texas were made to customers located within 100 and 500 miles of their warehouse.

Product Comparisons

Producers and importers were requested to discuss any differences between domestic and imported LWRPT that would explain price differences and purchasing patterns. Both product and marketing considerations were considered in responding. Comments by these firms are discussed below.

Producers and importers discussed the importance of price and non-price factors in their customers' decisions from whom to purchase LWRPT. In general, producers and importers were consistent in their beliefs of the importance of certain factors. Distributors of LWRPT consider factors such as price, prompt delivery, and availability as very important factors. According to the reporting suppliers, distributors believe that quality, packaging, and sales service are somewhat important. The reporting producer and importers stated that end users who purchase LWRPT from them often rank quality, delivery, and availability before price.⁴⁵

Both the petitioner and most of the responding importers reported that domestic LWRPT and product imported from Mexico are generally used interchangeably.⁴⁶ With regard to comparisons between the domestic and imported product, Southwestern reported that it believed that its product was comparable to the imports from Mexico with regard to product quality, quality consistency, availability, packaging, and payment/credit terms. Southwestern reported that the price of the Mexican product was lower than its price, but that the technical support and sales service that it provided was superior to that available from importers of Mexican product.⁴⁷ Most responding importers reported that domestic LWRPT is comparable to that imported from Mexico with regard to product quality, prompt delivery, availability, packaging, and payment/credit terms. Responding importers were split over the comparability of price, quality consistency, technical support, and sales service. About one half of responding importers believed that the two were comparable with respect to these four factors, while the remaining firms believed that differences existed.⁴⁸ Two importers reported that there are occasional quality problems with the LWRPT imported from Mexico; these firms reported that the Mexican product was sometimes rusty and had some split seams.

Price Trends

The Commission requested price and quantity data from U.S. producers and importers for their sales of certain LWRPT to distributors in the Texas region during the period January 1992-March 1995.⁴⁹ Product specifications for which pricing data were requested are as follows:

⁴³ Transportation costs for shipments of LWRPT sold outside the region were generally within the same range; however, they were more likely to be at the upper end of the reported range.

³⁴ For sales outside Texas, *** reported that approximately *** percent went to customers located over 500 miles from the plant; transportation costs for these sales were estimated to be *** percent.

⁴⁵ *** reported that end-user customers rank price as somewhat important. Some importers, on the other hand, reported that these customers rank price as very important.

⁴⁶ Interchangeability refers to the ability to physically be used in the same applications and yield acceptable performance.

⁴⁷ Producers and importers were asked to compare the domestic and imported products as they competed in the Texas region and outside the Texas region. There were no significant differences between the responses for sales within the region and those outside the region.

⁴⁸ Importers reported that the Mexican product was lower-priced and inferior with regard to quality consistency and technical support.

⁴⁹ Pricing data were requested for sales of LWRPT within the Texas region. ***.

- Product 1:** ASTM A-513 carbon welded, not pickled and oiled, 1.5-inch square, 0.83-inch wall thickness (14 gauge), 20- or 24-foot lengths
- Product 2:** ASTM A-513 carbon welded, not pickled and oiled, 2-inch square, 0.83-inch wall thickness (14 gauge), 20- or 24-foot lengths
- Product 3:** ASTM A-513 carbon welded, not pickled and oiled, 2-inch square, 0.120-inch wall thickness (11 gauge), 20- or 24-foot lengths

Pricing data were reported by the petitioner, Southwestern, and 5 importers. The products for which pricing data were reported accounted for approximately *** percent of U.S. shipments and about *** percent of shipments of imports from Mexico in 1994.

Counsel for respondents has argued that Mexican producers of LWRPT only manufacture grade A-500 and do not produce the requested grade, A-513.⁵⁰ According to counsel for the respondents, the A-500 product is produced to looser tolerances and is typically sold for a lower price than the A-513.⁵¹ Therefore, counsel for respondents argues that price comparisons are of limited use due to differences in the products produced by Southwestern and those imported from Mexico. One importer, ***, reported that it only imported and sold the A-500. Other importers reported that the product that they sold was identified as "commercial grade;" in general, these firms were not able to report whether the product met the specifications of A-500 or A-513. In response to staff questions regarding the differences between A-500 and A-513, the petitioner reported that, in most cases, there is little, if any, difference between the two, both from a quality standpoint or a price standpoint.⁵² Southwestern stated that the primary differences between A-500 and A-513 are the size and application. Southwestern reported that in some applications (e.g., as a structural part of a building), the customer wants to know the strength of the material and wants certification of the strength testing. Southwestern reported that most of the tubing produced under 3 inches is produced to the specifications of A-513; in fact, Southwestern reported that if it received an order for A-500 specification, it would simply perform its tensile test and certification of testing to qualify the material. It appears that the two products (A-500 and A-513) are similar and compete in the marketplace; therefore, price comparisons are made between the domestic and Mexican products.

Sales of domestic product

F.o.b. prices for domestic LWRPT sold in the Texas market generally *** during the period January 1992-March 1995 (tables 14-16 and figure 4).⁵³ For two of the products for which pricing data were requested (i.e., products 2 and 3), f.o.b. prices *** throughout the period, *** percent, respectively. Prices for the third product *** in 1992-94, but then *** in the first quarter of 1995; overall, prices were *** percent *** in the first quarter of 1995 as compared with the same quarter of 1992.

Table 14

LWRPT: Weighted-average f.o.b. selling prices, total quantities, and margins of under/(over)selling of U.S.-produced and imported product 1, by quarters, Jan. 1992-Mar. 1995

* * * * *

⁵⁰ Conference TR, p. 42, and respondents' postconference brief, pp. 20-21.

⁵¹ Conference TR, p. 42.

⁵² Southwestern letter to Commission staff, Apr. 27, 1995.

⁵³ Prices for sales of domestic LWRPT in the Texas region were reported by ***.

Table 15

LWRPT: Weighted-average f.o.b. selling prices, total quantities, and margins of under/(over)selling of U.S.-produced and imported product 2, by quarters, Jan. 1992-Mar. 1995

* * * * *

Table 16

LWRPT: Weighted-average f.o.b. selling prices, total quantities, and margins of under/(over)selling of U.S.-produced and imported product 3, by quarters, Jan. 1992-Mar. 1995

* * * * *

Figure 4

LWRPT: Weighted-average f.o.b. selling prices of U.S.-produced and imported product, by quarters, Jan. 1992-Mar. 1995

* * * * *

Sales of imported product

Weighted-average f.o.b. prices for LWRPT imported from Mexico and sold in the Texas market *** during the period for which data were reported. Prices for products 1, 2, and 3 were ***, ***, and *** percent higher, respectively, in the first quarter of 1995 than they were in the same quarter of 1992.

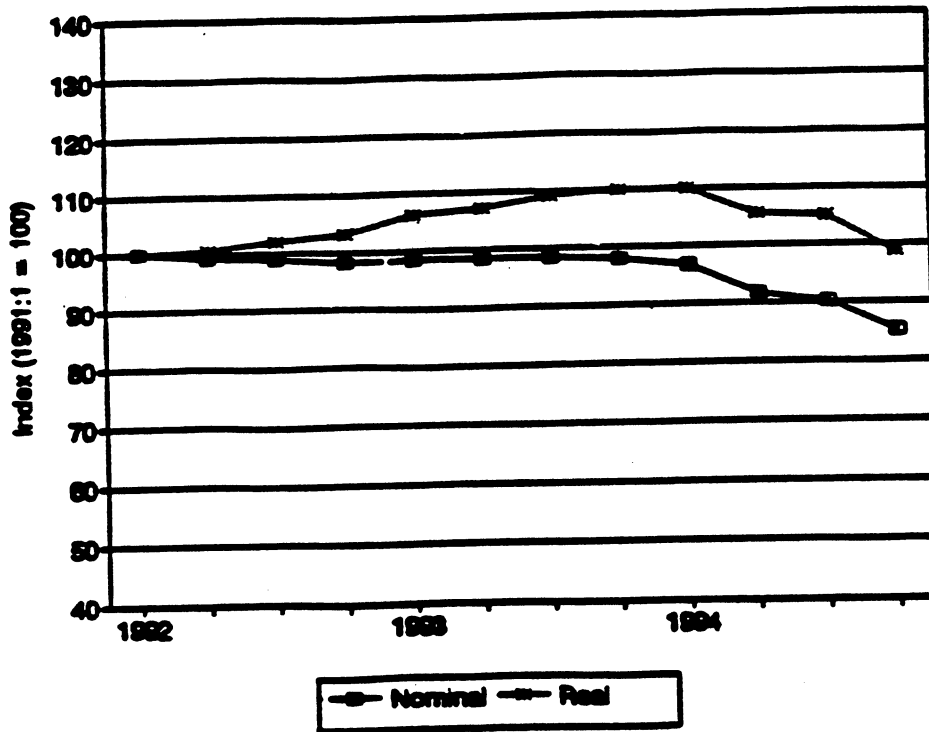
Price Comparisons

There were 39 instances where comparisons between prices for U.S. and Mexican products were possible (tables 14-16). In all of these instances, the Mexican product was priced below the domestic product, with margins ranging from 3.2 to 26.0 percent.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Mexican peso depreciated 44.4 percent relative to the U.S. dollar from January-March 1992 to the same quarter of 1995 (figure 5). Accounting for changes in the producer price indexes in the United States and Mexico, the real exchange rate of the Mexican peso depreciated 1.2 percent from the first quarter of 1992 to the fourth quarter of 1994, the most recent period for which data are available.

Figure 5
Nominal and real exchange rates of the Mexican peso, by quarters, Jan. 1992-Mar. 1995



Source: International Monetary Fund, International Financial Statistics, March 1995.

Lost Sales and Lost Revenues

The Commission received *** lost sales allegations from ***, however, ***. The *** lost sale allegations totaled *** and involved *** feet of LWRPT.⁵⁴ Table 17 summarizes the lost sale allegations submitted by U.S. producers. Staff contacted *** of the *** purchasers and a summary of the information follows.

Table 17
Lost sales allegations concerning imports of LWRPT from Mexico, as reported by U.S. producers

* * * * *

*** was cited in *** lost sales allegations. *** could not recall the specific allegations but he did state that he may have shifted some sales of LWRPT because of price.⁵⁵ *** stated that *** is a distributor of LWRPT and the company purchases material from both *** and *** sources. According to ***, there are some differences between the products from domestic sources and those imported from

⁵⁴ ***.

⁵⁵ *** also reported that it allegedly lost sales to *** on *** other occasions, but *** could not provide detailed information.

Mexico. In particular, *** reported that the quality control in the LWRPT industry in Mexico is deficient. *** stated, however, that quality control is not a particularly important consideration in this industry; price is the most important factor. *** also added that domestic producers sometimes have better prices than the Mexican suppliers.

*** was named in a lost sales allegation.⁵⁶ *** did not recall the specific allegation. *** stated that *** probably has shifted some purchases of LWRPT due to pricing; however, the shift may not necessarily have been to imports. According to ***, *** lost a lot of business to another domestic producer. *** also reported that while imports are usually lower-priced, *** will buy the domestic product if the price is within 5 to 10 percent of the price of the imported product. With regard to quality, *** reported that the domestic and Mexican products are comparable. Furthermore, *** also commented that there is no difference between LWRPT that meets A-500 specifications and product that meets the A-513 specifications.

*** was named in one lost sales allegation. *** could not recall the specific incident but did state that he has shifted purchases from domestic sources to Mexican sources. *** reported that *** has had to buy the Mexican product in order to be able to compete with other firms who buy the lower-priced Mexican product. According to ***, there are some quality differences between the domestic and Mexican products. While some customers view these quality differences as significant and they will not purchase the product, others find the quality to be acceptable. With regard to the difference between LWRPT meeting the A-513 specifications and those that meet the A-500, *** stated that the A-513 product has tighter tolerances and is a higher quality product. *** added that the cost of the A-513 has been higher than that of the A-500 in the past.

APPENDIX A
SUMMARY DATA

Table A-1
LWRPT: Summary data concerning the Texas market, 1992-94

* * * * *

Table A-2
LWRPT: Summary data concerning the U.S. market, 1992-94

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

Item	Reported data			Period changes		
	1992	1993	1994	1992-94	1992-93	1993-94
U.S. consumption quantity:						
Amount	435,645	499,212	592,206	+35.9	+14.6	+18.6
Producers' share ¹	90.4	87.0	84.7	-5.7	-3.4	-2.2
Importers' share: ¹						
Mexico	1.0	1.8	3.3	+2.3	+0.8	+1.5
Other sources	8.6	11.3	12.0	+3.3	+2.6	+0.7
Total	9.6	13.0	15.3	+5.7	+3.4	+2.2
U.S. consumption value:						
Amount	248,625	293,694	368,116	+48.1	+18.1	+25.3
Producers' share ¹	91.2	88.9	87.3	-3.9	-2.4	-1.6
Importers' share: ¹						
Mexico	0.8	1.4	2.3	+1.5	+0.6	+0.9
Other sources	8.0	9.7	10.4	+2.4	+1.8	+0.7
Total	8.8	11.1	12.7	+3.9	+2.4	+1.6
U.S. imports/shipments ² from--						
Mexico:						
Imports quantity	4,202	8,902	19,447	+362.8	+111.9	+118.5
Imports value	1,985	4,094	8,572	+331.8	+106.2	+109.4
Unit value	\$472.35	\$459.86	\$440.81	-6.7	-2.6	-4.1
Ending inventory quantity	0	683	1,389	(3)	(3)	+103.4
Other sources:						
Imports quantity	37,674	56,181	71,047	+88.6	+49.1	+26.5
Imports value	19,805	28,558	38,218	+93.0	+44.2	+33.8
Unit value	\$525.70	\$508.32	\$537.92	+2.3	-3.3	+5.8
Ending inventory quantity	8	138	81	+912.5	(4)	-41.3
All sources:						
Imports quantity	41,877	65,083	90,494	+116.1	+55.4	+39.0
Imports value	21,790	32,652	46,790	+114.7	+49.8	+43.3
Unit value	\$520.35	\$501.69	\$517.05	-0.6	-3.6	+3.1
U.S. producers ² --						
Average capacity quantity	521,441	538,165	517,717	-0.7	+3.2	-3.8
Production quantity	397,094	429,776	502,245	+26.5	+8.2	+16.9
Capacity utilization ¹	47.3	48.7	57.4	+10.2	+1.5	+8.7
U.S. shipments:						
Quantity	393,768	434,129	501,712	+27.4	+10.2	+15.6
Value	226,835	261,042	321,326	+41.7	+15.1	+23.1
Unit value	\$576.06	\$601.30	\$640.46	+11.2	+4.4	+6.5
Export shipments:						
Quantity	405	257	193	-52.3	-36.5	-24.9
Exports/shipments ¹	0.1	0.1	(5)	-0.1	(6)	(6)
Value	274	173	161	-41.2	-36.9	-6.9
Unit value	\$676.54	\$673.15	\$834.20	+23.3	-0.5	+23.9
Ending inventory quantity	37,436	32,756	33,032	-11.8	-12.5	+0.8
Inventory/shipments ¹	9.5	7.5	6.6	-2.9	-2.0	-1.0

Table continued on next page.

Table A-2--Continued

LWRPT: Summary data concerning the U.S. market, 1992-94

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

Item	Reported data			Period changes		
	1992	1993	1994	1992-94	1992-93	1993-94
Production workers	595	603	618	+3.9	+1.3	+2.5
Hours worked (<i>1,000s</i>)	1,202	1,273	1,312	+9.2	+5.9	+3.1
Total compensation (<i>\$1,000</i>)	21,498	23,605	26,488	+23.2	+9.8	+12.2
Hourly total compensation	\$17.89	\$18.54	\$20.19	+12.9	+3.7	+8.9
Productivity (<i>short tons per 1,000 hours</i>)	87.2	89.8	94.2	+8.0	+2.9	+4.9
Unit labor costs	\$204.99	\$206.60	\$214.35	+4.6	+0.8	+3.8
Net sales--						
Quantity	194,566	210,275	232,502	+19.5	+8.1	+10.6
Value	123,008	136,547	163,012	+32.5	+11.0	+19.4
Unit sales value	\$632.22	\$649.37	\$701.12	+10.9	+2.7	+8.0
Cost of goods sold (COGS)	106,518	119,173	139,203	+30.7	+11.9	+16.8
Gross profit (loss)	16,490	17,374	23,809	+44.4	+5.4	+37.0
SG&A expenses	8,858	8,790	10,536	+18.9	-0.8	+19.9
Operating income or (loss)	7,632	8,584	13,273	+73.9	+12.5	+54.6
Capital expenditures	2,567	1,696	2,649	+3.2	-33.9	+56.2
Unit COGS	\$547.46	\$566.75	\$598.72	+9.4	+3.5	+5.6
Unit SG&A expenses	\$45.53	\$41.80	\$45.32	-0.5	-8.2	+8.4
Unit operating income or (loss)	\$39.23	\$40.82	\$57.09	+45.5	+4.1	+39.8
COGS/sales ¹	86.6	87.3	85.4	-1.2	+0.7	-1.9
Operating income or (loss)/sales ¹	6.2	6.3	8.1	+1.9	+0.1	+1.9

¹ "Reported data" are in percent and "period changes" are in percentage points.² Imports listed below are derived from official Department of Commerce statistics.³ Not applicable.⁴ An increase of 1,000 percent or more.⁵ Positive figure, but less than significant digits displayed.⁶ A decrease of less than 0.05 percentage points.

Note.--Period changes are derived from the unrounded data. Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the Department of Commerce

Table A-3
Income-and-loss experience of U.S. producers on their operations producing LWRPT, fiscal years
1992-94¹

Item	1992	1993	1994
<i>Quantity (short tons)</i>			
Trade sales	192,290	207,790	229,756
Company transfers	2,276	2,485	2,746
Total	194,566	210,275	232,502
<i>Value (1,000 dollars)</i>			
Net sales:			
Trade sales	122,041	135,429	161,708
Company transfers	967	1,118	1,304
Total	123,008	136,547	163,012
Cost of goods sold	106,518	119,173	139,203
Gross profit	16,490	17,374	23,809
Selling, general, and administrative expenses	8,858	8,790	10,536
Operating income	7,632	8,584	13,273
Interest expense	2,356	2,022	1,885
Other expense items	550	134	232
Other income items	24	276	212
Net income before income taxes	4,750	6,704	11,368
Depreciation and amortization	2,638	2,741	2,985
Cash flow ²	7,388	9,445	14,353
<i>Ratio to net sales (percent)</i>			
Cost of goods sold	86.6	87.3	85.4
Gross profit	13.4	12.7	14.6
Selling, general, and administrative expenses	7.2	6.4	6.5
Operating income	6.2	6.3	8.1
Net income before income taxes	3.9	4.9	7.0
<i>Value (per short ton)</i>			
Net sales:			
Trade sales	\$634.67	\$651.76	\$703.82
Company transfers	424.87	449.90	474.87
Average	632.22	649.37	701.12
Cost of goods sold	547.46	566.75	598.72
Gross profit	84.75	82.63	102.40
Selling, general, and administrative expenses	45.53	41.80	45.32
Operating income	39.23	40.82	57.09
Other expense, net	14.81	8.94	8.19
Net income before income taxes	24.41	31.88	48.89
<i>Number of firms reporting</i>			
Operating losses	0	0	0
Net losses	0	0	0
Data	8	8	8

¹ The producers and their respective fiscal years are ***.

² Cash flow is defined as net income or loss plus depreciation and amortization.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table A-4
Income-and-loss experience of U.S. producers on the overall operations of their establishments wherein LWRPT is produced, fiscal years 1992-94¹

Item	1992	1993	1994
	<i>Value (1,000 dollars)</i>		
Net sales:			
Trade sales	392,308	457,049	540,316
Company transfers	14,071	15,379	16,378
Total	406,379	472,428	556,694
Cost of goods sold	333,544	391,297	447,272
Gross profit	72,835	81,131	109,422
Selling, general, and administrative expenses	42,096	43,710	51,128
Operating income	30,739	37,421	58,294
Interest expense	6,118	5,670	5,762
Other expense items	1,613	377	591
Other income items	51	495	399
Net income before income taxes	23,059	31,869	52,340
Depreciation and amortization	8,518	8,583	10,498
Cash flow ²	31,577	40,452	62,838
	<i>Ratio to net sales (percent)</i>		
Cost of goods sold	82.1	82.8	80.3
Gross profit	17.9	17.2	19.7
Selling, general, and administrative expenses	10.4	9.3	9.2
Operating income	7.6	7.9	10.5
Net income before income taxes	5.7	6.7	9.4
	<i>Number of firms reporting</i>		
Operating losses	0	0	0
Net losses	0	0	0
Data	9	9	9

¹ The producers and their respective fiscal years are ***.

² Cash flow is defined as net income or loss plus depreciation and amortization.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table A-5
Value of assets and return on assets of U.S. producers' establishments wherein LWRPT is produced,
fiscal years 1992-94

Item	1992	1993	1994
	<i>Value (1,000 dollars)</i>		
All products:			
Fixed assets:			
Original cost	87,121	101,062	114,921
Book value	39,616	48,385	55,489
Total assets ¹	127,692	153,579	185,221
LWRPT:			
Fixed assets:			
Original cost	14,480	17,433	19,249
Book value	8,373	9,823	10,478
Total assets ²	26,495	30,897	32,508
	<i>Return on book value of fixed assets (percent)³</i>		
All products:			
Operating return ⁴	65.8	62.0	87.2
Net return ⁵	53.3	53.7	78.9
LWRPT:			
Operating return ⁴	44.3	37.7	62.7
Net return ⁵	29.8	28.3	52.4
	<i>Return on total assets (percent)³</i>		
All products:			
Operating return ⁴	20.4	19.5	26.1
Net return ⁵	16.5	16.9	23.6
LWRPT:			
Operating return ⁴	14.0	12.0	20.2
Net return ⁵	9.4	9.0	16.9

¹ Defined as book value of fixed assets plus current and noncurrent assets.

² Total establishment assets are apportioned, by firm, to product groups on the basis of the ratio of the respective book values of fixed assets.

³ Defined as operating income or loss divided by asset value.

⁴ Defined as net income or loss divided by asset value.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table A-6
 Capital expenditures by and research and development expenses of U.S. producers of LWRPT, by products, fiscal years 1992-94¹

(In 1,000 dollars)

Item	1992	1993	1994
All products:			
Capital expenditures	4,844	4,225	6,483
Research and development expenses	25	25	25
LWRPT:			
Capital expenditures	2,567	1,696	2,649
Research and development expenses	12	12	12

¹ The producers and their respective fiscal years are ***.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

APPENDIX B
FEDERAL REGISTER NOTICES

**INTERNATIONAL TRADE
COMMISSION**

Investigation No. 731-TA-730 (Preliminary)

**Certain Light-Walled Rectangular Pipe
and Tube From Mexico**

AGENCY: International Trade
Commission.

ACTION: Institution and scheduling of a
preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-730 (Preliminary) under section 733(a) of the Tariff Act of 1930, as amended by Section 212(b) of the Uruguay Round Agreements Act (URAA), Pub. L. 103-465, 106 Stat. 4809 (1994) (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of certain light-walled rectangular pipe and tube,¹ provided for in subheading 7306.50.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 15, 1995. The Commission's views are due at the Department of Commerce within 5 business days thereafter, or by May 22, 1995.

For further information concerning the conduct of this investigation and

¹ The subject products are welded pipes and tubes of nonalloy steel, having a wall thickness of less than 4 millimeters, of rectangular (including square) cross section.

rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-205-3191), 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. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-206-1995 (N.A.1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on March 31, 1995, by Southwestern Pipe, Inc., Houston, TX.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

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

Pursuant to §§ 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on April 21, 1995, at the U.S. International Trade Commission Building, 500 E-Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-205-3191) not later than April 18, 1995, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 26, 1995, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BFI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

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

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: April 6, 1995.

By order of the Commission.

Donna R. Koslaka,

Secretary.

[FR Doc. 95-8941 Filed 4-10-95; 8:45 am]

CALLING CODE 7000-02-0

INITIATION OF INVESTIGATION:**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Statute by the Uruguay Round Agreements Act (URAA).

The Petition

On March 31, 1995, the Department of Commerce (the Department) received a petition filed in proper form by Southwestern Pipe, Inc. (the petitioner), one of two regional producers of light-walled rectangular ("LWR") pipe and tube in Texas. A supplement to the petition was filed on April 13, 1995.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of LWR pipe and tube from Mexico are being, or are likely to be, sold in the United States in the region of Texas 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, the regional industry in Texas.

Since petitioner is an interested party as defined under section 771(9)(C) of the Act, petitioner has standing to file a petition for the imposition of antidumping duties.

On April 17, 1995, a Mexican producer of subject merchandise named in the petition, Hylsa S.A. de C.V. ("HYLSA"), submitted a request that the Department poll all domestic producers of subject merchandise in the United States. According to HYLSA, the relevant industry for purposes of determining petitioner's standing should be defined as the national industry producing the subject merchandise (see following Section for details on this issue).

Determination of Industry Support for the Petition

The petition contains an adequate allegation that Texas is a regional industry for the domestic like product; this allegation includes data on both factors required by section 771(4)(C) of the Act. Under section 732(c)(4)(C), if the petitioner properly alleges that the industry is a regional industry, the Department shall determine whether the petition has been filed by or on behalf of the industry by applying the requirements set forth in the Act on the basis of the production in the region. Therefore, the Department has evaluated industry support for the petition based upon production in the region.

Section 732(c)(4)(A) of the Act requires that the Department's industry

support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets the minimum requirements if (1) domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product; and (2) those domestic producers or workers expressing support account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

The petitioner, one of two known regional producers of the domestic like product, accounts for more than 50 percent of the total production of the domestic like product in the region as defined in the petition. The other known producer in the region has informed the Department that it supports this antidumping petition. Accordingly, the Department determines that this petition is supported by the regional industry in Texas.

Scope of the Investigation

The merchandise subject to this investigation is certain light-walled welded non-alloy steel pipes and tubes, of rectangular (including square) cross section, having a wall thickness of less than 4mm ("LWR"), regardless of specification (ASTM, proprietary, or other). These LWR pipes and tubes are supplied with rectangular cross sections ranging from 0.375x0.625 inch to 2x6 inches or with square sections ranging from 0.375 to 4 inches.

The LWR pipe and tube that are the subject of this petition are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) heading 7306.60.50.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Export Price and Normal Value

Export price was based on fourth quarter 1994 (1) average c.i.f. unit value of U.S. imports from Mexico, and (2) prices from a salesman's call sheets recording sales lost to Mexican competitors. The unit values based on U.S. imports from Mexico were reduced for foreign inland freight to derive ex-factory prices. The prices based on "lost" sales were reduced for the following costs: exporter's mark-up costs, broker commissions, U.S. import

[A-201-819]

Initiation of Antidumping Duty Investigation: Light-Walled Rectangular Pipe and Tube From Mexico

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

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Dorothy Tomaszewski or Erik Warga at (202) 482-0631 or (202) 482-0922, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

duties, foreign inland freight and U.S. freight.

The home market price was based on tax-inclusive price quotations from Mexican producers to a home market customer in December 1994. The petitioner adjusted the FOB warehouse prices for Mexico's value added tax.

The petitioner based the normal value on constructed value ("CV") in accordance with section 773(a)(4) because it asserts that the Mexican home market price provided in the petition represented sales that were made below the cost of production ("COP") and, therefore, was not an appropriate basis for calculating normal value.

The components of COP are cost of manufacture ("COM") and selling, general and administrative expenses ("SG&A"). The petitioner calculated COM based on its own production experience, adjusted for known differences between costs incurred to produce LWR pipe and tube in the United States and production costs incurred for the merchandise in Mexico. To calculate SG&A expenses, including interest expense, the petitioner relied on data from the 1993 financial statement of a Mexican pipe and tube producer not named as a respondent in the petition. Petitioner maintained in its allegation that Mexican producers named as respondents in the petition did not publish financial statements and that the financial statements used to calculate SG&A expense provided the only available data for this expense.

The allegation that the Mexican producers are selling the foreign like product in their home market at prices below COP is based upon a comparison of the adjusted home market price with the calculated COP. Based on this information, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below COP in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, the Department will initiate a cost of production investigation.

Therefore, for the purposes of this initiation, we are accepting the petitioner's estimate of CV, as adjusted by the Department for profit, as the appropriate basis for Mexican normal value. The petitioner based CV on its COP methodology, described above, adding an amount for profit to arrive at a total CV. Rather than use the Mexican pipe and tube producer's 1993 financial statements to compute profit, the petitioner calculated profit on the basis of public financial data for a Mexican steel producer. It did so because the Mexican pipe producer had incurred a loss in that year. Consistent with section

773(e) of the Act, the Department revised the profit figure included in the CV to be zero, the actual profit for the one Mexican company whose operations were limited to the production of the foreign-like product.

Based on comparisons of export prices to CV, the recalculated dumping margins range from 14.06 to 23.38 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of LWR pipe and tube from Mexico are being, or likely to be, sold at less than fair value. If it becomes necessary at a later date to consider the petition as a source of facts available under section 776 of the Act, we may further review the calculations.

Initiation of Investigation

We have examined the petition on LWR pipe and tube and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of material injury or threat of material injury to a regional industry in a domestic-like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating an antidumping duty investigation to determine whether imports of LWR pipe and tube from Mexico are being, or are likely to be, sold at less than fair value on a regional basis. Unless extended, we will make our preliminary determination by September 7, 1995.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, copies of the public version of the petition have been provided to the representatives of the government of Mexico. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition.

ITC Notification

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

Preliminary Determination by the ITC

The ITC will determine by May 15, 1995, whether there is a reasonable indication that imports of LWR pipe and tube from Mexico are causing material injury, or threaten to cause material injury to the regional industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: April 20, 1995.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 95-10324 Filed 4-27-95; 8:45 am]
BILLING CODE 3510-02-01

APPENDIX C
LIST OF PARTICIPANTS IN THE CONFERENCE

CALENDAR OF THE PUBLIC CONFERENCE

Subject: CERTAIN LIGHT-WALLED RECTANGULAR PIPE AND
TUBE FROM MEXICO, Investigation No.731-TA-730
(Preliminary)

Time and Date: April 21, 1995 - 9:30 a.m.

Those listed below appeared at the conference held in connection with this investigation in Courtroom A of the United States International Trade Commission, 500 E Street, SW, Washington, DC.

In Support of the Imposition of Antidumping Duties:

Schagrin and Associates
Washington, DC
On behalf of

Southwestern Pipe, Inc.

Philip E. Lewis, President

Roger B. Schagrin, Esq.)
Brian E. McGill, Esq.)--OF COUNSEL

In Opposition to the Imposition of Antidumping Duties:

Shearman and Sterling
Washington, DC
On behalf of

Hylsa, S.A. de C.V.

Jeffrey M. Winton)--OF COUNSEL

APPENDIX D

**COMMENTS RECEIVED FROM U.S. PRODUCERS
ON THE IMPACT OF IMPORTS OF LWRPT
FROM MEXICO ON THEIR
GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL,
AND/OR EXISTING DEVELOPMENT AND PRODUCTION EFFORTS**

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

The Commission requested U.S. producers to describe any actual or anticipated negative effects of imports of LWRPT from Mexico on their growth, investment, ability to raise capital, or existing development and production efforts, including efforts to develop a derivative or more advanced version of the product. The Commission also asked U.S. producers to report the influence of such imports on their scale of capital investments undertaken. The responses are as follows:

Actual Negative Effects

* * * * *

Anticipated Negative Effects

* * * * *

Influence of Imports on Capital Investment

* * * * *

