

CERTAIN STEEL PAILS FROM MEXICO

Determination of the Commission in
Investigation No. 731-TA-435
(Preliminary) Under the Tariff Act
of 1930, Together With
the Information Obtained
in the Investigation

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**United States International Trade Commission
Washington, DC 20436**



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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-435 (Preliminary)

CERTAIN STEEL PAILS FROM MEXICO

Determination

On the basis of the record ¹ developed in the subject investigation, the Commission determines, ² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Mexico of certain steel pails, ³ provided for in subheadings 7310.21.00 and 7310.29.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 640.30 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 31, 1989, a petition was filed with the Commission and the Department of Commerce by counsel for the Pail Producers' Committee of the Steel Shipping Container Institute, Union, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain steel pails from Mexico. Accordingly, effective May 31, 1989, the Commission instituted preliminary antidumping investigation No. 731-TA-435 (Preliminary).

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

² Vice Chairman Cass and Commissioner Lodwick dissenting.

³ For purposes of this investigation, certain steel pails are defined as cylindrical containers of steel of 1 to 7 gallons (3.8 to 26.6 liters) in volume (capacity), with a diameter of 11½ inches (279 millimeters) or greater and a wall thickness of 29-22 gauge steel (.292 -.683 millimeters), presented empty.

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 June 9, 1989 (54 F.R. 24764). The conference was held in Washington, DC, on June 20, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF CHAIRMAN BRUNSDALE, COMMISSIONERS ECKES, ROHR AND NEWQUIST

We determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain steel pails from Mexico that are alleged to be sold at less than fair value (LTFV). 1/

The Legal Standard in Preliminary Investigations

The legal standard in preliminary antidumping investigations is set forth in section 733(a) of the Tariff Act of 1930, as amended. 2/ That section requires the Commission to determine whether, based on the best information available at the time of the preliminary determination, there is reasonable indication of material injury to a domestic industry, or threat thereof, or material retardation of establishment of an industry, by reason of the imports under investigation. 3/ In preliminary investigations, an affirmative determination is based on a "reasonable indication" of material injury, as opposed to the actual finding of material injury or threat required in a final determination. 4/

In American Lamb v. United States, 5/ the United States Court of Appeals for the Federal Circuit addressed the standard for preliminary determinations. The Court held that the reasonable indication standard requires more than a finding that there is a possibility of material

1/ Material retardation of the establishment of an industry is not an issue in this investigation and will not be discussed further.

2/ 19 U.S.C. § 1673b(a).

3/ Maverick Tube Corp. v. United States, 12 CIT ___, 687 F. Supp. 1569, 1573 (1988).

4/ Compare 19 U.S.C. § 1673b(a) with 19 U.S.C. § 1673d(b)(1).

5/ 785 F.2d 994 (Fed. Cir. 1986).

injury, and the Commission is to determine if the evidence obtained demonstrates that a reasonable indication exists. The Commission may render a negative preliminary determination only if "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of material injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation." 6/

In reaching a preliminary injury determination, the Commission is required to consider the evidence for both an affirmative and negative determination, and make its determination in light of the evidence on the record as a whole. 7/ The Commission should take account of the likelihood that gaps in the evidentiary record for the preliminary investigation would be resolved favorably to the petitioner in a final investigation. 8/

Like Product and Domestic Injury

In determining whether there is a reasonable indication of material injury or threat thereof to a domestic industry, the Commission must make threshold factual determinations with respect to "like product" and "domestic industry." Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that

6/ Id. at 1001.

7/ See Yuasa-General Battery Corp. v. United States, 688 F.Supp. 1551. 1553-54 (CIT 1988).

8/ American Lamb, 785 F.2d at 1001-1004.

product. . . ." 9/ "Like product" is defined 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" 10/

The Department of Commerce (Commerce) defines the imported merchandise that is subject to the investigation, and the Commission determines the domestic products "like" the imports. The articles subject to this investigation are certain steel pails from Mexico, defined by Commerce as follows:

The scope of this investigation includes certain steel pails from Mexico which are cylindrical containers of steel, with a volume (capacity) of 1 through 7 gallons, an outside diameter of 11-1/4 inches or greater, and a wall thickness of 29-22 gauge steel, presented empty. The merchandise includes openhead, tighthead, and dome top steel pails. 11/

The Commission's decision regarding the appropriate like product or products in an investigation is essentially a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. 12/ In analyzing like product issues, the Commission generally considers a number of factors including: (1) physical characteristics; (2) end uses; (3) interchangeability of the products; (4) channels of distribution; (5) production processes; (6) customer or producer perceptions of the products; (7) the use of common manufacturing facilities and production employees;

9/ 19 U.S.C. § 1677(4)(A).

10/ 19 U.S.C. § 1677(10).

11/ 54 Fed. Reg. 26825 (June 26, 1989).

12/ Asociacion Columbiana de Exportadores de Flores, et al. v. United States ("ASOCOFLORES"), 693 F.Supp. 1165, 1169 (CIT 1988).

and (8) price. The Commission has found minor product variations to be an insufficient basis for a separate like product analysis, and instead, has looked for clear dividing lines among products. 13/ 14/ 15/

Petitioners assert that the like product should be defined to include only steel pails. 16/ Respondent, on the other hand, argues that the like product should be broadened to include plastic pails as well as steel pails. 17/

We find for purposes of this preliminary determination that the like product consists of steel pails, and does not include plastic pails. First, steel and plastic are two entirely different materials. There are certain physical characteristics distinctive to each type of pail.

13/ See, e.g., ASOCOFLORES, 693 F.Supp. at 1168-69; S. Rep. No. 249, 96th Cong., 1st Sess, 90-91 (1978); Operators for Jalousie and Awning Windows from El Salvador, Inv. Nos. 701-TA-272 and 731-TA-319 (Final), USITC Pub. No. 1934 January 1987) at 4, n.4.

14/ Chairman Brunsdale notes that the purpose of the "like product" and "domestic industry" provisions is to define relevant markets and not relevant products. She therefore believes that references to "product variations" not grounded in the context of the markets in which those products are produced and sold are irrelevant. See Industrial Belts from Israel, etc., Inv. No. 701-TA-293 (Final), USITC Pub. 2194 (May 1989) (Views of Chairman Brunsdale).

15/ Commissioner Rohr notes that the statute, at § 771(10), provides a specific definition for the "like product," which in turn, is used in the definition of the "domestic industry," at § 771(4). The § 771(4) domestic industry provision establishes the group of domestic producers the condition of whose operations will be examined, and against whose operations the impact of imports will be assessed, in the course of the Commission's investigation. The definitions are not market-based, but rather are based on statutory criteria, and any product variations relating to these criteria may be relevant. The factors traditionally used by the Commission, which relate to the characteristics and uses of the product, as opposed to the market, have been approved on numerous occasions by the Commission's reviewing courts. See, e.g., ASOCOFLORES.

16/ Petitioners' postconference brief at 4-9.

17/ Respondent's postconference brief at 5-13.

Compared with steel pails, plastic pails are easier to open and reclose, and less likely to dent. However, steel pails are stronger, can be stacked higher, are less subject to distortion from hot or cold products, and can withstand internal pressure changes better than plastic pails. 18/

Plastic pail production entails a process completely different from that employed in producing steel pails. Steel pails are produced by slitting, rolling, and welding cold-rolled carbon steel sheets into a shell; the shell is then shaped, after which the pail bottom is seamed to the pail body. 19/ In contrast, plastic pails are produced through an injection-molding process. 20/

The record further indicates that the largest producers of plastic pails do not produce steel pails. 21/ To the extent steel pails and plastic pails are produced by the same companies, they are produced on entirely different equipment by different workers, and generally in different facilities. 22/

The factors concerning interchangeability and customer perception are closely related in this instance, since the actual degree of interchangeability between steel pails and plastic pails depends largely on customer perceptions of the differences between the two types of pails. The record is unclear as to the exact degree to which steel pails and plastic pails actually are substitutable for each other. There are certain

18/ Report to the Commission (Report) at A-5.

19/ Report at A-3.

20/ Id. at A-4.

21/ Transcript of the staff conference (Tr.) at 51.

22/ Id.

products for which only steel pails can be used, e.g. oil-based products, hazardous chemicals, flammable or combustible products, and asphalt. 23/ The number of products which can be contained only in plastic is smaller, although for water-based products, e.g., latex paint, steel pails can be used only if they are first lined with a rust inhibitor. 24/

With regard to customer perception, customers often prefer plastic pails for the products that can be packaged either in steel or plastic, due to their appearance, ease in handling, and resistance to denting. 25/

It is not clear, however, to what extent factors such as customer preference, weight considerations, and customer investments in handling machinery place a practical limit on the degree of interchangeability. Based upon the record in this preliminary investigation, it appears that customers generally have committed either to plastic pails or steel pails. However, there is a small segment of the user group who will switch between the two types of pails given sufficient price incentive. 26/

Although plastic pails and steel pails do not directly track each other in pricing, they tend to increase or decrease in price at the same time. However, relative price relationships between steel pails and plastic pails usually have depended upon the price and availability of the raw materials (steel or polyethylene) needed to make the particular type of pail. 27/

23/ Id. at A-39-40.

24/ Id. at A-5, A-40.

25/ Report at A-9, 39; Tr. 22, 50, 52, 117.

26/ Tr. 124-25. Petitioners estimated this segment to represent 10-15 percent of the total pail market. Petitioners' postconference brief at 7-9.

27/ Report at A-40.

In sum, several factors i.e., the dissimilarity in production processes, lack of common manufacturing facilities, difference in physical characteristics, and at least to some extent, customer perceptions, favor limiting the like product to steel pails. On balance, particularly given the uncertainty about the degree to which users actually substitute plastic pails for steel pails, we define the like product to be steel pails. 28/ Concomitantly, we define the domestic industry to be the domestic producers of steel pails.

Condition of the Domestic Industry

In assessing the condition of the domestic industry, the Commission considers, among other factors, domestic consumption, production, capacity, capacity utilization, shipments, inventories, employment, financial performance. 29/ The Commission has evaluated these factors within the context of the business cycle and conditions of competition that are distinctive to the affected industry. 30/ For the purposes of this investigation, the Commission collected data bearing on the condition of the domestic industry for the period 1986 through 1988. The Commission

28/ In any final investigation, we will attempt to obtain further information about actual interchangeability and customer perceptions and will revisit the like product question at that time.

29/ 19 U.S.C. § 1677(7)(C)(iii). The statute further provides for the Commission to consider, if relevant, the effects on the existing and development and production efforts of the domestic industry. Id. This factor is not relevant to the instant investigation, and therefore will not be discussed further.

30/ See id.

also collected data for the first quarter of 1988 and the first quarter of 1989 (interim periods). 31/

The precise figures for apparent domestic consumption are business proprietary, and therefore may only be discussed in general terms. 32/ However, we note that, after a decrease in the quantity of steel pails consumed from 1986 to 1987, there was a 10 percent increase from 1987 to 1988 in the apparent domestic consumption. By value, apparent domestic consumption increased 17 percent during the 1986-1988 period. 33/

The capacity of U.S. producers to produce steel pails first increased from 107 million pails in 1986 to 110 million pails in 1987, and then dropped to 104 million pails in 1988. 34/ The trend in steel pail production demonstrated an inverse relationship to that of capacity, first decreasing from 1986 to 1987, and then rising by 8 percent in 1988. Capacity utilization for producers of steel pails declined from 59.2 percent in 1986 to 56.0 percent in 1987, and then increased in 1988 to 64.3 percent. 35/

Inventories, both in absolute terms and as a share of domestic shipments rose slightly during the period of investigation. However, the ratio of

31/ Commissioner Rohr notes that there is a major difference between the operating performance of this industry in 1986-1987 and 1988. A question that must be resolved in any final investigation is which figures are a better indicator of what is happening in this industry.

32/ Report at A-7.

33/ Id.

34/ Id. at A-15, Table 4. We note that the decrease in capacity may be partially attributable to the closing of one steel pail plant in 1987 and the closing of another plant in 1988.

35/ Id.

inventories to shipments is not particularly probative in this investigation. Because most pails are made to order, inventory levels are relatively low. 36/

Because U.S. producers of steel pails generally do not keep large inventories, domestic shipments largely paralleled domestic production. 37/ Domestic shipments decreased slightly, from 63 million pails in 1986 to 62 million pails in 1987, then rose to 67 million pails in 1988, for an overall increase of 6 percent. 38/

Employment indicators for the domestic industry were generally unfavorable. The number of workers employed in the production of steel pails increased by less than 1 percent from 1,008 in 1986 to 1,011 in 1987 before declining by 5 percent, to 959 workers, in 1988. 39/ The number of hours worked by these employees followed a similar trend, rising slightly from 1986 to 1987 and then dropping off by 4 percent in 1988. Wages and total compensation fell steadily throughout the period of investigation, as hourly compensation declined from \$12.36 in 1986 to \$12.07 in 1988. 40/ Labor productivity fluctuated throughout the period, first declining from 1986 to 1987 and then rebounding in 1988. Unit labor costs exhibited a declining trend throughout the period. 41/

36/ Id. at A-19.

37/ Id. at A-16.

38/ Id.

39/ Id. at A-21-22, Table 7.

40/ Id.

41/ Id.

The financial information in this preliminary investigation is inconclusive. For the first two years of the investigation period, domestic steel pail producers experienced operating losses. 42/ Operating losses in 1986 were \$1.2 million, representing 0.8 percent of net sales. In 1987, there was a slight improvement, but a continued overall operating loss amounting to \$649,000, or 0.5 percent of net sales. The industry rebounded in 1988, showing aggregate operating profits of \$7.2 million, or 4.4 percent of net sales.

The improvement in operating profits appears to be related to improved sales and lower costs as a percent of sales. The lower overall costs may reflect reduced labor costs. On a per unit basis, prices increased from 1986 to 1988 by 17 cents a unit while costs increased by 7 cents a unit, resulting in a net gain of 10 cents. 43/

Overall, the domestic steel pail industry exhibited erratic patterns concerning the relevant performance indicators. Employment indicators steadily declined throughout the period of investigation. In terms of financial data, production, and shipments, the industry experienced two years of poor performance, followed by one year of improved performance. 44/ Based upon the record in this preliminary investigation,

42/ Id. at A-26, Table 9.

43/ Id. at A-27. We note that the unit prices reflect a mix of lined as well as unlined steel pails. We will examine in any final investigation whether the alleged switch in 1988 from plastic pails to steel pails led to increased sales of the higher value lined pails.

44/ Petitioners claim that the improvement in 1988 resulted from a one time chance confluence of factors, marked primarily by a surge in the price of plastic as the result of an explosion at a major ethylene plant. Petitioners' postconference brief at 15. In any final investigation, we will explore further this contention.

we cannot conclude that the record contains "clear and convincing evidence" of no material injury. 45/ 46/ In any final investigation, we will attempt to gather additional information, such as plant-by-plant financial data, that will aid in our scrutiny of the condition of the domestic steel pail industry. 47/

Reasonable Indication of Material Injury by Reason of Allegedly LTFV Imports of Steel Pails from Mexico

In making preliminary determinations in antidumping investigations, the Commission must ascertain whether there is a reasonable indication of material injury "by reason of" the imports under investigation. 48/ In making this determination, the Commission considers the volume of imports, their effect on prices for the like product, and their impact on domestic producers. 49/ In this regard, the Commission assesses whether import volumes or increases in volume are significant, whether there has been

45/ American Lamb, 785 F.2d at 1001.

46/ Chairman Brunsdale does not reach a separate legal conclusion based on the condition of the domestic industry. She believes that the discussion of the domestic industry is accurate and relevant to her determination regarding a reasonable indication by reason of the allegedly LTFV imports. See Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989) (Views of Chairman Brunsdale and Vice-Chairman Cass).

47/ In this regard, we note that the total industry data was skewed largely by the data submitted by one company. A plant-by-plant analysis might pinpoint the factors that led to this result.

48/ 19 U.S.C. § 1673b(a).

49/ 19 U.S.C. § 1677(7)(B)(i)(I),(II),(III). The Commission may in its discretion consider other relevant economic factors. 19 U.S.C. § 1677(7)(B)(ii).

significant underselling by imports, and whether imports significantly depress or suppress prices. 50/

The Commission may consider alternative causes of injury, but is not to weigh causes. 51/ Rather, the Commission is to determine whether there is a reasonable indication that the imports contribute to material injury. 52/

The precise data concerning steel pails imported from Mexico are business proprietary. They do, however, demonstrate a marked increase in imports during the period of investigation, both in terms of quantity and value. There was some decline in the volume of imports for the first quarter of 1989 as compared with the same period in 1988. We note, however, that a three-month period is not necessarily indicative of a trend or reversal of a trend.

Market penetration by Mexican steel pails likewise increased significantly during the period of investigation. 53/ This applies with respect to both value and quantity, although market penetration ratios in value terms were consistently lower than in quantity terms. 54/

50/ 19 U.S.C. § 1677(7)(C).

51/ Citrosuco Paulista v. United States, 12 CIT ____, 704 F. Supp. 1075, 1101 (1988). See S. Rep. No. 249, 96th Cong., 1st Sess. 58 (1979).

52/ LMI-La Metalli Industrial, S.p.A. v. United States, 13 CIT ____, Slip op. 89-46 (April 11, 1989), at 31.

53/ Id. at A-37, Table 15.

54/ Id. at A-36.

Prices for most domestic steel pails decreased from 1986 to 1987, and then rose in 1988 in the face of increased demand. 55/

The price information in the record indicates a consistent pattern of underselling by the imports from Mexico. Of the four products for which price comparisons are available, three showed consistently lower prices for Mexican pails as compared with domestic pails. 56/. For the fourth product, domestic prices and Mexican prices were close, and alternated as to which was higher during a particular quarter. 57/ 58/

The record also contains evidence of domestic producers losing sales and revenues because of the lower prices of Mexican pails. 59/ Given the evidence of underselling, lost sales and lost revenues, coupled with the

55/ Id. at A-37, 42.

56/ Id. at A-42, Table 17.

57/ Id.

58/ Chairman Brunsdale notes evidence in the record suggesting that the imported pails are identical to and sold on similar terms as the domestic like product, which, particularly in light of the high dumping margins alleged, establishes a reasonable indication that the imports may have had a suppressive or depressive effect on the domestic industry. She will examine closely this and other relevant characteristics of the steel pail market in any final investigation.

59/ See Report at A-44-48.

increased market penetration by Mexican pails, we find a reasonable indication that the domestic steel pail producers are experiencing material injury "by reason of" the allegedly LTFV imports. 60/ 61/

60/ There are numerous open questions that we may wish to explore in any final investigation. These include a breakdown of prices and other data by geographic region. As noted supra, data submitted in this format would enable us to assess better the condition of the domestic industry. It would also provide guidance as to whether a regional industry analysis is appropriate. See 19 U.S.C. § 1677(4)(C). In addition, such information would enable us to test petitioners' allegation that, while the allegedly LTFV imports directly affected domestic producers competing in the same regions in which the Mexican pails are primarily sold, there has been a "ripple effect" caused by efforts of those producers to expand their markets elsewhere in the United States in order to maintain sales volume. See petitioners' postconference brief at 24.

We also intend to consider further, largely through purchasers' questionnaires, the geographic proximity of end users of steel pails to the producers or distributors from whom they purchase. In any final investigation, we will also reexamine respondents' contention that any injury to the domestic industry was caused not by Mexican imports, but rather by a move by pail users towards plastic pails. See respondent's postconference brief at 13. Here again, we expect that purchasers' questionnaires will provide more probative information.

61/ Because we have found a reasonable indication of present material injury, we do not reach the issue of threat.

DISSENTING VIEWS OF VICE CHAIRMAN RONALD A. CASS

Certain Steel Pails from Mexico
Inv. No. 731-TA-435 (Preliminary)

I must respectfully dissent from the conclusions reached by my colleagues in this investigation. There is, in my view, no reasonable indication that an industry in the United States has been materially injured by reason of imports of steel pails from Mexico. Nor do I find that there is any reasonable indication that an industry in the United States is threatened with material injury by reason of such imports or that the establishment of an industry in the United States has been materially retarded by reason of such imports.

I. The Legal Standard in Preliminary Investigations

The legal standard in preliminary antidumping investigations, as set forth in section 733(a) of the Tariff Act of 1930 (as amended), requires that the Commission determine, on the best information available, whether there exists a reasonable indication that a domestic industry has been materially injured, or is threatened with material injury, or has been materially retarded in its establishment, by reason of dumped imports. That standard implies a lower level of proof to sustain an affirmative determination than would be required in a final investigation.^{1/} That is because, as our

^{1/} See, e.g., New Steel Rails from Canada, Inv. No. 701-TA-297, USITC Pub. 2135 (November 1988) (Additional Views of Commissioner Cass).

reviewing courts have noted, Congress intended to "weight the scales in favor of affirmative and against negative determinations."^{2/}

Nevertheless, it is plain that the "reasonable indication" standard requires evidence that suggests the existence or threat of material injury. Although this evidence may provide less support than would be necessary in a final investigation, Congress did not intend to so lower the evidentiary requirement as effectively to preclude any possibility of negative determinations in preliminary investigations.^{3/} As the Court of Appeals made clear in its decision in American Lamb, Congress sought to balance two competing concerns. Congress did not want meritorious petitions rejected, and hence provided that investigations often should continue past the preliminary stage even when the evidence of record would not be sufficient to support an affirmative determination in a final investigation. The very reason for providing for preliminary investigations, however, was that the high cost of final investigations, along with their disruptive effects on trade, should not be incurred unless there were sufficient injury to a domestic industry at stake to justify the cost. Thus, the evidence arising from the preliminary investigation taken as a whole must satisfy the Commission that there is "at least a colorable basis" for an affirmative determination.^{4/}

In making this determination, the Commission must assess all the information before it. Moreover, while ambiguous or incomplete information

^{2/} American Lamb v. United States, 785 F.2d 994, 1001 (Fed. Cir. 1986); see also Yuasa-General Battery Corp. v. United States, slip op, 88-89 (Ct. Int'l. Trade, July 12, 1988), at 5.

^{3/} See S. Rep. No. 96-249, 96th Cong., 1st Sess. 49, 66 (1979).

^{4/} Electrical Manganese Dioxide from Japan, Ireland, and Greece, Inv. Nos. 731-TA-406-408 (Preliminary), USITC Pub. 2097 (July 1988) (Additional Views of Vice Chairman Brunsdale and Commissioners Liebler and Cass) at 23-24.

will not necessarily preclude an affirmative disposition of a preliminary investigation, it also will not always be grounds for such a determination. The Commission must ask whether the information available in a final investigation is reasonably likely to be sufficient to sustain an affirmative final determination. The Commission may reach an affirmative determination when evidence, although not conclusively showing material injury, appears reasonably likely upon more intensive examination to support an affirmative final investigation. However, the mere absence of some potentially useful information cannot by itself support an affirmative preliminary determination if the evidence of record indicates that, even if ambiguous or missing information is obtained and is favorable to petitioner, there is still no reasonable likelihood that the evidence overall would reveal the requisite level of material injury or threat of material injury to sustain an affirmative finding in a final investigation, or if there is no plausible basis for belief that additional evidence will be forthcoming or will be favorable to petitioner. In either event, the evidence would then show that a negative determination would be reached in any final investigation. On such a record, a negative preliminary determination serves the goal articulated by Congress and noted by the Court of Appeals in American Lamb to avoid uselessly incurring burdensome investigative costs.

I believe that in the present investigation sufficient evidence exists to justify the Commission in reaching a negative determination. Several facts, considered in isolation, might suggest that allegedly LTFV sales of steel pails could have injured a domestic industry. Moreover, doubtless, additional evidence may be gathered in a final investigation on several issues, and existing ambiguities in some of the present evidence may be

resolved in favor of Petitioner. Nevertheless, evidence already on the record makes clear that if this investigation were to proceed to the final stages there would be no reasonable prospect for an affirmative determination to be based on the evidence we would have at that time.

II. Like Product

Under Title VII of the Tariff Act, the Commission must assess the effects of less than fair value ("LTFV") imports on the industry in the United States comprised of "the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."^{5/} The term "like product," in turn, is defined 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."^{6/} In revising Title VII, Congress has indicated satisfaction with the Commission's interpretation of these terms.

In defining a like product, the Commission has examined information about the following: (1) product characteristics and uses, (2) interchangeability of products, (3) channels of distribution, (4) customer or producer perceptions of the relevant articles, (5) the similarity (or disparity) of prices for imports and potential like domestic products,^{7/} and

^{5/} 19 U.S.C. § 1677(4).

^{6/} 19 U.S.C. § 1677(10).

^{7/} See, e.g., *Asociacion Colombiana de Exportadores de Flores v. United States*, 12 Ct. Int'l. Trade ___, 693 F. Supp. 1165, 1170 n.8 (citing use of comparative pricing data as a suitable factor in analyzing like product issues).

(6) presence or absence of common manufacturing equipment, facilities, and production employees.^{8/} These factors provide the Commission with information about the similarity or dissimilarity of the markets in which imports and arguably "like" domestic products compete.^{9/} The last factor also indicates the degree to which production of arguably "unlike" products is actually integrated into a single industry. These appear to be appropriate criteria for defining "like" products, but the various factors have not been ordered by the Commission in any definite manner and need not move toward similar like product determinations. In particular, information about end-products may suggest a quite different line than would be drawn by relying on information about production processes. When these factors are in conflict, I believe that the industry definition under Title VII is to be informed mainly by a focus on the nature of the markets for the product of the industry rather than on the nature of the inputs to the industry's production.^{10/} For reasons set forth at greater length recently, I find such emphasis more consistent with the text and history of Title VII and with the purposes apparent in the statute's structure.^{11/}

In this investigation, these factors reveal exactly this difference in the scope of the "like" products they suggest. Petitioner in the instant

^{8/} See, e.g., Fabric and Expanded Neoprene Laminate from Taiwan, USITC Pub. 2032, Inv. No. 731-TA-371 (Final) at 4 and n. 5 (Nov. 1987).

^{9/} Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), at 64 (March 1989) (Concurring and Dissenting Views of Commissioner Cass).

^{10/} For an explanation of this position, see Antifriction Bearings and Parts Thereof, Inv. Nos. 303-TA-19-20 and 731-TA-391-399 (Final), at 95 (Concurring and Dissenting Views of Vice Chairman Ronald A. Cass).

^{11/} See *id.* at 95-96.

investigation seeks a like product definition that includes certain steel pails but excludes all plastic pails, arguing that differences in production facilities and process and physical characteristics distinguish the two.^{12/} Respondent argues that plastic pails should be included in the definition of the domestic industry because plastic and steel pails can be used interchangeably in a wide variety of applications and in fact consumer substitution between them in some areas of application is routine.^{13/}

Petitioner notes that the steel pail production process is completely different from the production process for plastic pails and that they share no common manufacturing facilities. Petitioner appears correct in asserting that the production processes of steel and plastic pails differ. Steel and plastic pails are made of different raw materials, a fact which requires different production processes and different processing equipment.^{14/}

Petitioner further notes that steel and plastic pails have different physical characteristics, and that some customers regard those physical differences as significant in choosing between steel and plastic pails. Steel and plastic have different chemical compositions, for example, and one may thus be preferable to the other depending on the chemistry of the intended contents; in addition, steel pails are stronger than plastic pails, which makes steel pails particularly well adapted for certain uses; and the lighter weight and the insusceptibility to dents and noise which characterizes plastic makes it the preferred material for some pail users.^{15/}

^{12/} Petitioner's Post-Conference Brief at 4.

^{13/} Respondent's Post-Conference Br. at 6-11.

^{14/} Report at A-5.

^{15/} Id. at A-4.

While Petitioner stresses production differences, Respondent emphasizes product similarities. Respondent argues that there is little difference between steel and plastic pails in the perceptions of consumers and that the two types of pails can easily be substituted for each other in a wide variety of uses. Respondent states that plastic pails have the same intrinsic qualities and characteristics as steel pails and are interchangeable for the vast majority of applications.^{16/} For example, Respondent notes that all products in the joint compound and textures industry, which purchases a large number of pails every year, use plastic and steel pails interchangeably.^{17/} Respondent declares that purchasers in fact regularly substitute steel and plastic pails depending on the relative prices of these pails.^{18/} Finally, Respondent urges that steel and plastic pails are marketed to users through identical channels of distribution, further evidence that users are likely to regard steel and plastic pails as close enough substitutes to constitute a single like product.^{19/}

Petitioner concedes that steel and plastic pails are interchangeable for a large number of uses,^{20/} and indeed are nearly entirely interchangeable regardless of the use for which the pail is intended if the proper lining is used with a given pail.^{21/} However, Petitioner argues that much of this

^{16/} Post-Conference Brief on behalf of Envases de Plastico, S.A. de C.V. (hereinafter "Respondent's Post-Conference Br.") at 6.

^{17/} Respondent's Post-Conference Br. at 7.

^{18/} Id. at 10.

^{19/} Id. at 12.

^{20/} Tr. at 50 (testimony of Mr. Stirrup).

^{21/} Tr. at 76 (testimony of Mr. Del Bianco).

substitutability is only "theoretical," in the sense that customers in fact do very little shifting back and forth between steel and plastic pails, for reasons which principally are related to physical characteristics of the two and only somewhat related to the relative prices of steel and plastic pails.22/

The evidence overall suggests that actual substitution is more limited than Respondent asserts but that steel and plastic pails indeed are largely substitutable. Although plastic pails often have been less expensive for a wide variety of applications than are the lined steel pails with which they would compete for those applications,23/ for many consumers, a shift from steel to plastic pails is likely to occur when the relative price changes between them, even if the speed and extent of that substitution is limited to some extent by investments made by pail consumers in equipment for material handling, head-closing, and labeling, which is designed to process a specific type of pail.24/

Furthermore, it appears from the record that a not insignificant amount of substitution does occur between these two products. A number of large consumers of plastic pails switched to steel pails in the period from mid-1988 to early 1989, when the price of polyethylene rose by about 50%.25/ About 10% of the market for steel pails routinely substitutes plastic pails for steel as the prices of the two fluctuate.26/ Finally, it is clear that

22/ Petitioner's Post Conference Br. at 7.

23/ Report at A-5.

24/ Report at A-5.

25/ Report at A-40.

26/ Report at A-39.

substantial substitution between steel and plastic pails has occurred over the last decade; Petitioner argues that much of that substitution took place in the late 1970's and is unlikely to be reversed.^{27/} Nevertheless, it is clear that steel pails once performed the functions now performed by plastic pails, and there is a substantial possibility that trend would reverse if the relative prices of steel and plastic were to change appropriately.

Although petitioner clearly is correct that steel and plastic pails are made of different materials by different production processes, and that evidence clearly weighs in favor of excluding plastic pails from the like product definition, the competition between steel and plastic pails is so great that the two functionally constitute a single product. On this score, Petitioner essentially argues that for the large majority of uses of pails, plastic is a technically superior and generally more cost-effective competitor. That does not, however, indicate the absence of close competition between plastic and steel pails. On balance, I am persuaded that the evidence of record more strongly supports the conclusion that steel and plastic pails constitute a single like product, though the question is a close one which should surely be clarified in any final investigation. Plastic pails, however, constitute a much larger total volume of sales than do steel pails.^{28/} If plastic pails were included in the same like product category as steel pails, the portion of the market which would be held by the subject imports of steel pails from Mexico would for that reason be a very small part of the total United States market, and it would be extremely

^{27/} Petitioner's Post-Conference Br. at 24.

^{28/} Industry sources estimate that plastic pails currently have about 75% of the market for all five-gallon pails. Report at A-40.

difficult for Petitioner to argue that the subject imports could be sufficient to cause material injury. For that reason, it appears that the Commission's decision on the like product question could determine the outcome of the investigation. I believe that it would be inappropriate to terminate an investigation at this preliminary stage merely on the basis of the like product determination. Therefore I am at this time prepared to give the Petitioner the benefit of the doubt on the like product issue, and proceed to analyze the magnitude of injury from the subject imports on the basis of Petitioner's preferred like product definition.

III. Reasonable Indication of Material Injury by Reason of Allegedly LTFV Imports

To determine whether there is a reasonable indication that the domestic industry has suffered material injury by reason of the subject imports, I have carried out the three-part inquiry suggested by the statute that governs Title VII investigations.^{29/} This inquiry into the existence of material injury compares the conditions experienced by the domestic industry to the conditions that would have existed had there been no unfairly traded imports. This comparison entails three subsidiary questions. First, we must examine the volume of the imports allegedly sold at LTFV; given the causal requirement of the statute, special attention in this inquiry is paid to the extent to which the volume of the subject imports, and correlatively their prices, were affected by the alleged unfair trade practices. Second, the effect of these apparent changes in the market for the subject imports on

^{29/} See, e.g., 3.5" Microdisks and Media Therefor from Japan, Inv. No 731-TA-389 (Preliminary) USITC Pub. 2076 (April 1988) (Additional Views of Commissioner Cass), at 70-74.

prices, and, concomitantly, on sales, of the domestic like product must be assessed. Finally, the impact of these changes in prices and sales of the domestic like product on employment and investment in the domestic industry must be considered. The Commission must evaluate whether these effects on the domestic industry are "material" within the meaning of the statute.

Furthermore, the recently-enacted Omnibus Trade and Competitiveness Act of 1988 has directed that the Commission explicitly consider and state its conclusions on the factors that form the basis for each of these inquiries, and give attention to the particular market conditions obtaining at this time in the affected industry. Considered together, I believe the evidence on these factors requires a negative determination.

A. Volumes and Prices of LTFV Imports

During the period in which LTFV sales allegedly occurred, the imported steel pails under investigation accounted for a small, but not trivial, volume of steel pails sold in the United States. In the first three months of 1989, all of which fell within that period, [* *] steel pails were imported from Mexico. A slightly larger number of steel pails from Mexico (including some already on inventory in the United States) were shipped for U.S. consumption during the first quarter of 1989, amounting to [* *] pails. The comparable figures a year earlier were [* * *] imports and [* * *] shipments for U.S. consumption. Shipments of Mexican imports accounted for only [*]% of U.S. steel pail consumption in the first quarter of 1989. The comparable figure a year earlier was more than half again as great, though still not a very large share of U.S. consumption. By value, shipments of Mexican steel pails accounted for only [*]% of U.S. consumption during the first quarter of 1989. U.S. producers accounted for the remaining [*]%

of the market, with other importers going from just under [*] percent by value a year earlier to [*].

The volume of Mexican imports and their share of U.S. consumption were greater in 1988 as a whole than in 1989, having risen from 1986 to 1988. Only the final month of 1988, however, will be included within the period in which the Department of Commerce will assess whether sales took place at LTFV, and the volume and value of the imports relative to the U.S. market for steel pails appears to have peaked in early 1988, well outside the time for which we will have information about LTFV sales.

Although import volumes and sales of the subject imports declined during the period in which they allegedly were sold at LTFV, that does not indicate that allegedly LTFV pricing reduced import volumes. Drawing such conclusions from raw data on trends is not advisable; indeed, such data do not contain information that is readily usable in assessing injury from LTFV imports. A better mean of evaluating the effect of LTFV sales on import volumes and sales would begin by examining the evidence respecting the pricing of the subject imports. The volumes of the LTFV imports are closely related to the prices at which those imports are sold.^{30/} The Petitioner in this investigation has alleged an LTFV margin of some 89.2%, a dumping margin allegedly calculated by the comparison of actual sales prices.^{31/} Where, as

^{30/} Digital Readout Systems and Subassemblies Thereof from Japan, USITC Pub 2150, Inv. No. 731-TA-390 (Final), at 25-26 (Jan. 1989) (Concurring and Dissenting Views of Commissioner Cass).

^{31/} Report at A-6. As I have suggested elsewhere, Petitioner's alleged LTFV margins are in general the best available evidence of the true dumping margin until the Department of Commerce has made a determination as to the true margin. 12-Volt Motorcycle Batteries from the Republic of Korea, Inv. No. 731-TA-434 (Preliminary), USITC Pub. 2203 (July 1989) (Additional Views of Vice Chairman Cass) at 40-43. The Commission, however, need not accept the alleged margins if they are inherently implausible or are contradicted by

here, the alleged dumping margin is based on actual price comparisons, dumping generally causes a decrease in the price of the dumped product by a fraction of the dumping margin roughly comparable to the share of the sales at issue that are made in the foreign producer's home market.^{32/}

Information gathered by the Commission indicates that Respondent is the only Mexican firm that exported the subject steel pails to the United States during the period in which dumping of the Mexican imports is alleged to have occurred.^{33/} The evidence available at this time indicates that Respondent sold approximately forty percent of the value of its combined home-market and U.S. export sales in its home market.^{34/} Thus the record evidence suggests that dumping of the magnitude alleged by Petitioner would have had a significant effect on the price of Mexican imports, but that the dumping caused the price of the subject Mexican imports to decline by substantially less than the full percentage amount of the alleged dumping margin. Indeed, the evidence suggests that LTFV sales reduced the prices of imported steel pails from Mexico by less than half the percentage indicated by the alleged dumping margins. This further suggests that, despite the decline in the absolute volume of imports from Mexico and of their share of the U.S. market for steel pails, LTFV pricing, if that occurred, could have accounted for a substantial part of the imports' sales.

clear record evidence.

^{32/} See, e.g., Certain All-Terrain Vehicles from Japan, USITC Pub. 2163, Inv. No. 731-TA-388 (Final) 58-60 (March 1989) (Additional Views of Commissioner Cass); Memorandum from Office of Economics, U.S. International Trade Commission, "Assessing the Effects on the Domestic Industry of Price Dumping," Parts I and II (May 1988).

^{33/} Report at A-12.

^{34/} Report at A-34.

B. Prices and Sales of the Domestic Like Product

The effect of the imports on prices and sales of U.S. domestic products cannot be inferred from this information alone. Substantial alleged margins, while relevant, are not by themselves determinative of changes in import volumes and prices, and those changes do not alone answer the question whether material injury has been caused to a domestic industry by LTFV imports. In this case, evidence is persuasive that the dumping alleged to have occurred could not have caused material injury to the domestic industry.

Among the factors that determine this effect are the volumes of the subject imports, relative to the size of the market as a whole, the degree to which subject imports are substitutable for domestic products and for other imports, and the degree to which consumers change their purchasing on the basis of the prices of these products as a class. In this investigation, as noted above, the imports account for a small volume of U.S. sales of steel pails, less than [*] percent by value in first quarter 1989. Even under assumptions about the domestic steel pail market that are most generous to Petitioner, it is unlikely that this small sales volume would have caused an injury of an appreciable magnitude to the domestic steel pail market.^{35/} Petitioner suggests that the maximum revenue lost to domestic producers as a result of the subject imports would constitute some 6.4 percent of the domestic industry's estimated 1988 sales of \$204.75 million,^{36/} an amount Petitioner asserts to have produced material injury to the industry.

However, there are several reasons to believe that this asserted revenue loss may overestimate the actual losses to domestic steel pail producers from

^{35/} Report at A-37.

^{36/} Petition for the Imposition of Antidumping Duties ("Petition") at 18.

the asserted unfair trade practice. First, contrary to Petitioner's assumption that every pail sold by a Mexican exporter to the United States replaced a sale of a domestic steel pail,^{37/} it seems plain that at least some of the sales of low-priced (allegedly LTFV) imports did not replace sales of U.S.-made steel pails. For one thing, plastic pails are, as Petitioner concedes, good substitutes for steel pails in a variety of applications. Thus, had the alleged dumping of Mexican steel pails not occurred and Mexican steel pails been much higher priced, it is likely that at least some of the sales captured by the Mexican producer would instead have gone to plastic pails. This is particularly true since plastic pails of many types have been less expensive than U.S.-made steel pails of comparable size and qualities for much of the period of investigation^{38/}; significant increases in the price of Mexican steel pails might well have induced additional users to substitute plastic pails rather than pay the higher price for steel pails.

Additionally, Petitioner has assumed in reaching its injury estimate that other importers would have captured none of the sales that the Mexican producers would have been unable to make in the absence of dumping. Yet Petitioner notes that almost all pails are manufactured to conform with standards promulgated by the Department of Transportation for containers used to transport hazardous materials, and that, so long as those standards are met, differences in quality are rarely an issue.^{39/} If that is true, then other producers of steel pails for the United States market, in particular

^{37/} Petition at 18.

^{38/} Report at A-42.

^{39/} Petition at 12.

Korean producers which from 1986 to 1988 captured a growing share of the domestic market,^{40/} may well have captured an even greater segment of that market and would not have lost market share in 1989, essentially being eliminated from the U.S. market in the first quarter of this year. Even if Petitioner is correct in assuming that the Mexican producer would have retained none of the U.S. market in the absence of its alleged dumping,^{41/} there is substantial likelihood that some of the sales would have gone to other imports.

Moreover, the assumption that all of the imports' sales depend on their pricing at LTFV is contradicted by clear and convincing evidence. The record plainly establishes that, despite substantial physical similarity, consumers do not regard U.S. and Mexican steel pails as fungible. The statements compiled from purchasers show that Mexican and U.S. pails compete very imperfectly principally because they differ in delivery schedules, which are of critical importance given the general use of these pails as containers for much higher-value products. The Mexican steel pails also serve a geographic market that is far from coextensive with that served by makers of U.S. steel pails; the high cost of transporting steel pails relative to their value severely restricts the geographic range within which the pails are sold. Some purchasers also reported quality differences between U.S. and Mexican pails. It is noteworthy that users of steel pails are relatively insensitive to price, as pails generally represent a critical input to their products, but a trivial share of the end-product's value.

^{40/} Report at A-35.

^{41/} Petition at 18.

Further reason to be skeptical of Petitioner's maximum injury calculations is implicit in the fact that much of the lost revenue claimed by Petitioner could not be verified when Petitioner's lost sales and lost revenue claims were examined by the Commission's staff. Nearly all of these lost sales or lost revenue allegations turned out, for one of several reasons, to be inaccurate. For example, one customer observed that the number of pails which he is alleged to have bought in a single transaction from Respondent instead of Petitioner was five times greater than his annual consumption of pails^{42/}; another stated that the alleged lost sales constituted twice the potential business available.^{43/} Another customer noted that his company does not purchase the five-gallon pails indicated in Petitioner's allegations.^{44/} Yet another allegedly "lost" customer claims that it has never purchased or sold Respondent's pails.^{45/}

In addition, several of these lost sales allegations have turned out, upon investigation, to consist of situations in which one domestic producer (rather than an importer) was simply substituted for another by a customer as its source of supply. Indeed, in some cases the domestic producer which gained the sale lost by another domestic producer is before us today as a member of the organization which has presented the instant Petition to us.^{46/} Such examples illustrate one of the reasons why anecdotal evidence such as this constitutes such a slender reed on which to rest an allegation of

^{42/} Report at A-47.

^{43/} Report at A-47.

^{44/} Report at A-47.

^{45/} Report at A-46.

^{46/} See, for example, Report at A-45.

material injury to the domestic industry.^{47/} The Commission staff's efforts to safeguard against problems such as double-counting (where two domestic producers both claim the same sale was "lost" by them) or mistaken identity (where a sale was lost to a domestic firm rather than an importer) undoubtedly are effective in many cases. But there can be no assurance that a purchaser will recall or be able to identify the supplier from which it bought the merchandise alleged by an individual supplier to constitute a lost sale. There is continuing reason to be skeptical of lost sale information as a basis for concluding that injury has -- or has not -- occurred. Moreover, even where sales actually are lost to imports, there is no reason to believe that this is a result of the allegedly LTFV pricing: customers change among suppliers with some frequency in almost all business; they do so for many reasons; and the process is not unidirectional -- imports as well as domestic products "lose sales." Indeed, in the aggregate, many more sales were lost from imports to U.S.-made products than vice versa during the period to be examined for LTFV sales: that is the reason imports fell relative to domestic products' market share. That is also why aggregate data are more useful than anecdotes on this subject.^{48/}

The anecdotal information is more useful in suggesting why purchasers buy one or another product. Here, too, the record does not support an

^{47/} See "Title VII Lost Sales, Underselling, and Causation and Injury," USITC Memo EC-J-010 (January 7, 1986), at 3.

^{48/} Petitioner's argument on the "ripple effect" of import competition implicitly makes the same point. Petitioner argues that imports have effects beyond the limited geographical area in which they compete directly with U.S. producers, as the displaced products will be sold in other markets and displace other U.S. products which in turn will be sold in other markets with effects on yet other U.S. producers. See Petitioners Postconference Brief at 18. As the U.S. industry cannot be thought to lose many sales each time one import is sold, this argument demands attention to aggregate industry data.

affirmative determination. Petitioner has asserted that Mexican steel pails substitute directly and easily for domestically produced steel pails.^{49/} Yet when quality and service characteristics of the suppliers are considered as part of the package which a purchaser desires when it makes its purchasing decisions, it appears that domestic and Mexican suppliers are not in all cases completely comparable. The anecdotal information embodied in the lost sales and lost revenues allegations investigated by Commission staff indicates that in a number of instances the Mexican Respondent provided superior service or quality or both. For example, one customer reported that Respondent was able to provide overnight service from its Houston warehouse, a service for which it was willing to pay a premium in price over domestically supplied steel pails.^{50/} On the basis of this evidence, Petitioner's assertion that Mexican and domestic steel pails are excellent substitutes -- and the importance of that assumption in the injury allegations made by Petitioner -- cannot be credited fully.

Overall, the evidence gathered in this investigation suggests that very few purchasers shifted from domestic steel pails to Mexican imports because of the allegedly LTFV pricing of those imports. Many specific allegations of lost revenue appear inaccurate, and these specific instances of lost revenue constitute an important portion of the total revenue alleged to have been lost by domestic producers to the Mexican competitor.^{51/} While it would be

^{49/} Petition at 19.

^{50/} Report at A-47.

^{51/} Total injury alleged by Petitioner is some \$13.19 million. Petition at 18. Specific lost revenue allegations investigated by Commission staff total \$1.09 million, or some eight percent of the total allegations. Report at A-44.

inappropriate to conclude from this examination that domestic producers have not lost revenue or sales to Respondent because of Respondent's alleged unfair trade practices, it is clear that Petitioner's total lost revenue allegations presented in the petition cannot be accepted as a basis for an affirmative decision. Moreover, many of Petitioner's lost sales or lost revenue allegations occurred outside the time period to be investigated for the existence of dumping. The Department of Commerce normally investigates the existence of dumping for a period beginning six months prior to the filing of the Petition; in this investigation the Petition was filed with the Department of Commerce on May 31, 1989.^{52/} Normally, then, the Department of Commerce would investigate a period beginning December 1, 1988. Yet virtually all of the alleged lost sales occurred prior to that date.^{53/} Of the instances for which dates are presented in the Commission's report, only one "verified lost sale" fell within the period for which we will have a determination as to whether dumping in fact occurred. The same pattern largely emerges with respect to Petitioner's lost revenue claims. This is not sufficient reason to reject the assertion that allegedly LTFV sales affected both the prices and sales of domestic steel pails, for the failure of anecdotal assertions does not provide a satisfactory basis for decision anymore than those assertions, if true, would. But the data of record do indicate that the imports do not compete with domestic steel pails

^{52/} See Letter from Assistant Secretary for Import Administration Eric I. Garfinkel to Chairman Anne E. Brunsdale, USITC, dated June 23, 1989, supplementary page 2.

^{53/} See report at A-44-A-48. Lost sales are alleged to have occurred in May 1988, May 1986, December 1985, January 1989, February 1986, February 1987, the first quarter of 1989, April 1988, October 1988, February 1986, February 1987, November 1987, July 1988, and November 1985.

principally on price, that price competition from imports is of trivial importance in this market, which is almost entirely the province of domestic producers, and that significantly less than the small share of sales by the subject imports were made during the period at issue. In short, all of the evidence suggests that the allegedly LTFV imports had only very slight effect on prices and sales of the domestic like product.

C. Effects of Imports on Employment and Investment

The investment and employment data compiled by the Commission for the domestic industry producing steel pails are consistent with, but do not provide strong independent support for, the conclusion that there is no reasonable indication that the subject imports from Mexico had a material adverse impact on that industry. Though there is little doubt that the industry has not prospered over the last several years, there is little in the data which indicates that its difficulties have been attributable to the alleged unfair trade practices of the Respondents in this investigation.

Particularly suggestive in this regard is the fact that industry indicators have been reasonably strong during the period for which the existence of LTFV sales will be investigated. Though, for example, the domestic pail industry yielded a net loss on its steel pail operations for the period prior to 1988, those losses ended well prior to the period for which the existence of LTFV sales might be found to exist. In 1988 the industry yielded a substantial net profit on its steel pail operations, and that experience has continued into the interim period of 1989.^{54/}

Equally suggestive of industry health has been the behavior of domestic producers in investing in their pail production facilities. Though investment

^{54/} Report at A-26.

has continued in steel pails, there appears to have been a substantial diminution of that investment in the interim period of 1989 as compared to the comparable period of 1988.^{55/} At the same time, however, that diminution of investment extended into the plastic pail operations of domestic producers; between interim 1988 and interim 1989, domestic investment in steel pail operations fell by some [*]%, while over the same period investment in plastic pail operations fell by some [*]%.^{56/} Petitioner itself has argued that plastic and steel pails are not good substitutes, and that plastic pails do not significantly compete with Mexican steel pail imports.^{57/} Yet investment in both operations has declined over the relevant period. If Petitioner's own views of the relationship between plastic and steel pails is taken as valid, this strongly suggests that some autonomous and independent factor is affecting the pail market generally, and the reduction in investment cannot be attributed solely to the Mexican imports.

Similar considerations apply to employment factors. Employment of production and related workers has fallen by approximately equal percentage amounts in both domestic steel and plastic pail production. Indeed, hours worked by, and wages paid to, production and related workers in the production of steel pails has grown over the interim periods, while hours worked and wages paid in plastic pail production has fallen over the same period.^{58/}

^{55/} Report at A-30.

^{56/} Report at A-30.

^{57/} Petitioner's Post-Conference Br. at 4.

^{58/} Report at A-21.

In short, all of the investment and employment data are consistent with the conclusion otherwise suggested by the record evidence before us: that there is no reasonable indication that the subject Mexican imports caused material injury to the domestic industry.

Even those who rely principally on trends in industry indicators should find no reasonable indication of material injury from the allegedly LTFV imports. Production of steel pails has grown steadily over the period of investigation, including the first half of 1989^{59/}; capacity utilization,^{60/} industry shipments,^{61/} and industry sales^{62/} have all done likewise. The assertions of my colleagues to the contrary notwithstanding, there is no reasonable basis to believe that information will develop in any final investigation which will demonstrate material injury from these imports, however assessed.

IV. Reasonable Indication of Threat of Material Injury by Reason of Allegedly LTFV Imports

The record evidence also provides no reasonable basis for concluding that a threat of material injury from the allegedly LTFV imports exists or that a reasonable likelihood exists that such a finding could be made in a final investigation. The basis for our determination of this issue is set out

^{59/} Report at A-14-15.

^{60/} Id.

^{61/} Id. at A-16.

^{62/} Id. at A-24.

in Title VII.^{63/} The statutory factors must be considered in the context of assessment of the effects of imports; the question in a "threat" determination is whether the evidence respecting these factors, considered together with the information respecting actual effects of imports, provides a basis for belief that imminent material injury from the allegedly LTFV imports is a probability.^{64/} There is no basis here for finding a reasonable indication of such a threat other than conjecture unsupported by evidence.

I will summarize the evidence briefly. First, there is no evidence of an increase in Mexican production capacity. Capacity utilization is relatively high,^{65/} and no evidence of an intent to increase production destined for the U.S. market has been offered. Petitioner's assertion of such an intent was denied by Respondent, and information from a third party provided no support for the assertion. Second, although market penetration increased from 1986 to early 1988, it has declined since then and presents no support for a finding of imminent threatened material injury.^{66/} Third, there is no information suggesting that prices of Mexican imports will decline. To the contrary, they generally have been rising since late 1987 or early 1988.^{67/} No increased pressure on domestic producers' prices due to changed Mexican prices, hence,

^{63/} See 19 U.S.C. § 1677(F)(i), which lists ten factors to be considered, eight of which are applicable to this investigation. See also 19 U.S.C. § 1677(F).

^{64/} See 12-Volt Motorcycle Batteries from the Republic of Korea, Inv. No. 731-TA-434, USITC Pub. 2203 (July 1989) (Additional Views of Commissioner Cass) at 57. In preliminary investigations, of course, there is a lower evidentiary threshold for the determination of threat than there is for actual material injury from allegedly LTFV imports.

^{65/} Report at A-34.

^{66/} Report at A-35.

^{67/} Report at A-42.

can be expected. Fourth, while inventories of the subject imports in the U.S. increased fairly steadily, as a share of shipments of those imports they stood at almost exactly the same level in the first quarter of 1989 as they did in 1986.^{68/} Fifth, there is no evidence of "underutilized capacity" for production of steel pails in Mexico. Sixth, the other information on trends in the industry does not suggest increased vulnerability to Mexican imports. Seventh, no information regarding any potential for product shifting has been offered. Eighth, as noted elsewhere, there does not appear to be any link between these imports and development and production efforts of the U.S. industry. Finally, there is no evidence that antidumping actions are being taken against Mexican steel pails in any third country. In sum, there is no basis for finding a reasonable indication of a threat of material injury from allegedly LTFV steel pails from Mexico.

Conclusion

For the foregoing reasons, I find that there is not a reasonable indication that the domestic industry has been materially injured, or is threatened with such injury, by reason of the imports that are the subject of this investigation.

^{68/} Report at A-34.

Dissenting Views of Commissioner Seeley G. Lodwick

Investigation No. 731-TA-435 (Preliminary)
Certain Steel Pails from Mexico

I find that there is no reasonable indication of material injury or threat to a domestic industry by reason of allegedly less than fair value imports of certain steel pails from Mexico.¹

I. Legal Standard in a Preliminary Investigation.

I concur with the majority's discussion of the legal standard in preliminary investigations. I consider the record to be void of any evidentiary gaps that could reasonably lead me to a different conclusion in the event of a final investigation.

II. Like Product and Domestic Industry.

I concur with the majority's finding as it pertains to the definition of the like product and the domestic industry. I define the like product to be steel pails and the domestic industry to be the domestic producers of steel pails.

¹ Material retardation is not an issue in this case.

III. No Reasonable Indication of Material Injury by Reason of LTFV Imports.

In determining the condition of the domestic industry, the Commission considers, among other factors, domestic production, capacity, capacity utilization, domestic consumption, shipments, inventories, employment, and financial performance.² No single factor is determinative. In each investigation the Commission must consider the particular nature of the relevant industry in making its determination. Examination of these factors reveals that the condition of the steel pails industry has improved significantly over the period of this investigation.

The Omnibus Trade and Competitiveness Act of 1988 instructs the Commission to evaluate all relevant economic indicators which have a bearing on the domestic industry (but not limited to) the "actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product." The Commission must consider these factors in the context of the normal business cycle and conditions of competition that are distinctive to the domestic industry.³

The financial condition of the U.S. industry improved considerably over the period of investigation, as the industry achieved large gains in net sales and operating profits.⁴ Cash flows increased substantially, making

² 19 U.S.C. 1677 (7) (C) (iii).

³ See 771(C)(iii)(IV) of the statute, to be codified at 19 U.S.C. 1677(7)(C)(iii)(IV).

⁴ Staff Report of the Commission at A-26, Table 9.

investment in plant and equipment more feasible.⁵ As a percent of sales, the industry's operating profits of 4.4 percent in 1988 and 5.6 percent in the interim 1989 period reflect the industry's ability to enhance productivity and control costs, while obtaining higher prices.⁶ In 1988, the industry's profits peaked at the same time the Mexican import's market share peaked.⁷

Over the past ten years, demand for steel pails declined in favor of plastic pails. The respondent estimates that the ratio of plastic pail to steel pail consumption is on the order of three to one.⁸ The respondent noted a study that estimated that between 1980 and 1986, sales of steel pails decreased by some 41%, while sales of plastic pails increased by 114%.⁹ In keeping with the recent trade bill's instruction to consider the factors in the context of the "conditions of competition that are distinctive to the domestic industry,"¹⁰ it is relevant that this industry has faced a long period of adverse competitive conditions, caused by the substitution of plastic for steel pails. It is in this context that I consider the financial

⁵ Id.

⁶ Id.

⁷ Id. and at A-37, Table 15.

⁸ See Post Conference Brief on Behalf of Envases De Plastico at 14.

⁹ Id. See National Paint & Coatings Association, The U.S. Industry: Technology Trends, Markets, Raw Materials (1988). Although the study is part of the official record, I have noted it because it supports other elements of the record and testimony by all parties which recognizes the decline of steel pail sales in favor of plastic pails over the past ten years.

¹⁰ Supra at 2.

condition of this industry to lack signs of material injury.¹¹

The marked improvement in cash flow¹² should enable the industry to invest in product improvements. The fact that the industry spent less in capital expenditures in 1988, than in 1986 or 1987, does not indicate a lesser ability to invest given the availability of the improved cash flow.¹³

The record shows that prices rose both for the domestic product and subject imports throughout the period of investigation.¹⁴ The record regarding underselling by imports is mixed.¹⁵ Since the costs of goods sold as a percentage of sales decreased, while prices increased, there is little evidence of price suppression.¹⁶

U.S. consumption of steel pails increased both from 1986 to 1988 and from the interim 1988 to interim 1989 periods.¹⁷ U.S. domestic shipments increased in quantity terms by 5.4 percent from 1986 to 1988 and by 12.1 percent over the interim periods.¹⁸ Shipments in value terms increased by

¹¹ I do not place much weight on the petitioner's claim that the improvement in the industry's condition is a temporary or one time phenomenon, due to a temporary rise in plastic pail prices that has resulted in increases in the sales of steel pails. The interim 1989 data for steel pails shows both continued improvement and a decrease in the import's market share. To the extent there is overlap between uses of steel and plastic pails, these products compete. The relative prices of these two substitutes will vary over time.

¹² Staff Report at A-26, Table 9.

¹³ Id. at A-30, Table 12.

¹⁴ Id. at A-42, Table 17.

¹⁵ Id. at A-42, Table 18.

¹⁶ Id. at A-26, Table 9.

¹⁷ Id. at A-7, Table 1.

¹⁸ Id.

larger percentages than did shipments in quantity terms, reflecting the higher prices obtained by the domestic producers.¹⁹

The capacity utilization of the domestic industry increased by 8 percent over the period of investigation, while capacity decreased slightly.²⁰ Productivity increased significantly with substantially higher output and a slight decrease in the number of workers.²¹ I also note a very small decrease in hourly wages.²²

I note that the record for this industry is rather complete, particularly for a preliminary investigation. With regard to the industry producing steel pails, the Commission received responses from producers representing 87 percent of 1988 U.S. shipments.²³ Based on the evidence of greatly improved profitability, and increasing shipments, sales, capacity utilization, cash flows, and productivity, I find that there is no reasonable indication of material injury. Since I do not consider this industry to be showing signs of material injury, I do not address the issue of causation.

IV. No Reasonable Indication of Threat of Material Injury.

In assessing the threat of material injury, the primary factors considered are the trends in market penetration of the subject imports, the

¹⁹ Id.

²⁰ Id. at A-15, Table 4.

²¹ Id. at A-21, Table 7.

²² Id.

²³ See Staff Report at A-13.

probable effects those import prices have on domestic prices, the changes in the foreign industry's capacity and capacity utilization, the potential for product shifting, and other adverse trends indicating the probability of actual injury. ²⁴ Threat must be real and material injury imminent; conjecture or supposition are not sufficient. ²⁵ ²⁶

The domestic industry's share of the U.S. market decreased slightly, although it maintained a dominant position in the U.S. market. ²⁷ The subject import share increased from 1986 to 1988, but decreased in the interim periods. ²⁸ I do not consider this increased penetration to be near the point of causing material injury and see no reason on the record for a potential surge to an injurious level.

There appears to be some correlation between the recent increase in shipments by the domestic industry and the penetration of the subject imports from Mexico. The petitioner's arguments contend that the current relative health of the domestic industry is a temporary phenomenon, based on a switch from plastic to steel pails caused by the higher prices of plastic pails in 1988. ²⁹ Therefore, the domestic industry is still vulnerable. Following

²⁴ 19 U.S.C. 1677(7)(F).

²⁵ 19 U.S.C. § 1677(7)(F)(ii). See also, Alberta Gas Chemicals, Inc. v. United States, 1 CIT 312, 515 F. Supp. 780, 791.

²⁶ The Commission is required to take into account any evidence of existing anti-dumping or countervailing duty orders involving the subject imports. See 1677 (7)(F)(iii). There is no evidence of such orders on the record.

²⁷ Staff Report at A-37, Table 15.

²⁸ Id.

²⁹ See Petitioner's Post-hearing Brief at 12-15. I am however, unpersuaded by the argument that the switch from plastics to steel only occurred in the 4 1/2 gallon pail size, a size in which the Mexican producer has not yet sold in
(continued...)

this same reasoning and recognizing that the subject imports and domestic steel pails are close substitutes,³⁰ the surge in imports must also be considered a temporary phenomenon. It could be argued that both the surge of subject imports and increased sales of domestic pails occurred because they were marginally more affordable than plastic pails in 1988. Should a drop in the price of plastic pails result in reduced demand for the domestic product, it should also be the case for the subject imports.

Over the period of this investigation, capacity to produce the subject imports remained flat, while capacity utilization increased substantially.³¹ The excess capacity at this time poses little threat to the domestic industry.

The record does not present any evidence of potential product shifting to steel pail production. Further, the U.S. importers inventories of the subject imports represent an almost negligible share of domestic shipments.³² The United States is Mexico's only export market, so there is no potential for a significant increase in imports from shifting exports from other countries to the U.S.³³ Further decreased demand in Mexico may provide incentives to

²⁹(...continued)

the United States. I am more persuaded by the arguments of the respondent, supported by testimony of steel and plastic pail purchasers, that demand between steel and plastic pails fluctuates over time according to changes in the prices of raw materials among the classes of steel and plastic pails. See Post-Conference Brief on behalf of Envases, pages 10-11.

³⁰ See Petitioner's Post-Hearing Brief at 27. The Petitioner recognizes "that there is a very high cross-elasticity of demand between domestic pails and imports," which by definition means that the subject imports are highly substitutable for the domestic product.

³¹ Id. at A-34, Table 13.

³² Id. at A-47 and A-22.

³³ Id. at A-34.

increase exports to the U.S. market. However, given the alleged higher prices in Mexico ³⁴ and the lack of a basis in the record, it would be speculative to predict a further shift of home market sales to the U.S. market.

As mentioned, given the increase in domestic prices in spite of decreasing costs in relation to sales and the mixed data regarding underselling, ³⁵ I do not consider the imports to have a price suppressive effect and find no reason for price suppression to occur as a result of the subject imports in the foreseeable future. ³⁶

Given the improved condition of the domestic industry, the low level of import penetration, the lack of threatening excess capacity, or evidence of potential price suppression, product shifting, or a shifting of home market or third country sales to the U.S. market, I do not consider there to be a reasonable indication that this industry may be threatened with material injury by allegedly LTFV imports from Mexico.

I find that there is no reasonable indication of material injury or threat thereof to a domestic industry producing certain steel pails by reason of allegedly less than fair value imports from Mexico.

³⁴ See Petitioner's Petition at 8, where large dumping margins of 89.2% are alleged.

³⁵ Staff Report at A-42, Tables 17 and 18.

³⁶ The respondent points out that decisions to purchase the subject pails are often the result of perceptions regarding quality, service and delivery requirements. See Respondent's Post-Conference at 13-14. The letters to the Commission by the representatives of Ameron, Packaging Service Co., Inc., Southwestern Petroleum Corporation, and the Carboline Company, as well as reports of lost sales support this claim.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On May 31, 1989, petitions were filed with the U.S. International Trade Commission (Commission) and the U.S. Department of Commerce (Commerce) by counsel for the Pail Producers' Committee of the Steel Shipping Container Institute ("SSCI"),¹ alleging that an industry in the United States is materially injured by reason of imports from Mexico of certain steel pails² that are alleged to be sold in the United States at less than fair value (LTFV). Accordingly, effective May 31, 1989, the Commission instituted antidumping investigation No. 731-TA-435 (Preliminary) under section 733 of the Tariff Act of 1930, to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.

The statute directs the Commission to make its preliminary determination within 45 days after receipt of the petition or, in this investigation, by July 17, 1989. Notice of the institution of this investigation 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 June 9, 1989 (54 F.R. 24764). Commerce published its notice of initiation in the Federal Register of June 26, 1989 (54 F.R. 26825).³ The Commission held a public conference in Washington, DC, on June 20, 1989, at which time all interested parties were allowed to present information and data for consideration by the Commission.⁴ The Commission voted on this investigation on July 12, 1989.

The Commission has not conducted previous and/or related investigations of the subject product.

¹ The SSCI, headquartered in Union, NJ, is a nonprofit trade association of firms producing various types of steel containers. The Pail Producers' Committee is the subset of this organization comprising those members who produce steel pails. In this investigation, the petitioner consists of the 10 members of the Pail Producers' Committee and 2 nonmember companies.

² For purposes of this investigation, "certain steel pails" are cylindrical containers of steel (excluding stainless steel) of 1 to 7 gallons (3.8 to 26.6 liters) in volume, with a diameter of 11 inches (279 millimeters) or greater and a wall thickness of 29- to 22-gauge steel (0.292 - 0.683 millimeters), presented empty, provided for in subheadings 7310.21.00 and 7310.29.00 of the Harmonized Tariff Schedule of the United States (HTS) (item 640.3020 of the Tariff Schedules of the United States Annotated (TSUSA)).

³ Copies of the Commission's and Commerce's Federal Register notices are presented in app. A.

⁴ A list of the participants in the conference is presented in app. B.

The Product

Description

Steel pails are watertight cylindrical steel containers having the following characteristics:

- 1) a volume of 1 to 7 gallons (80 to 95 percent of U.S. steel pail production is of the 5-gallon size ⁵);
- 2) an outside diameter of 11 inches or greater; and
- 3) a wall thickness ranging from 29-gauge steel (a relatively lightweight steel) to 22-gauge steel (a very heavy steel).

Both U.S. and foreign-produced pails conform to the above definition. ⁶

The steel pails subject to investigation are typically made in one of three configurations: openhead, tighthead, and dome top. Openhead pails have a removable lid that covers the entire top of the pail. They may be either straight-sided (i.e., fully cylindrical) or nesting (i.e., with a top slightly larger than the bottom so that the empty pails fit inside one another for ease of storage and shipping). Tighthead pails are usually fully cylindrical, with a top that is double-seamed (crimped) to the body. The top ⁷ is fitted with a threaded metal or plastic plug or cap. ⁸

Other steel pail design features include: closures, e.g., the lug cover (for openhead pails), the bolt ring, the lever lock, and the ring seal; the fittings, e.g., a range of opening sizes, pouring spouts, caps, and tamper-proof seals; and the accessories, e.g., carry handles, special compartments, inserts, gaskets, and custom fittings. ⁹ Steel pails are often decorated by silk screening, lithography, painting, or decorative sleeves. For hazardous or other hard-to-handle materials, steel pails may also be lined with protective coatings and special treatments to prevent corrosion. ¹⁰

Most steel pails (domestic and imported) must comply with certain performance and construction criteria for shipping containers. These criteria are imposed by a number of private organizations and governmental agencies, including the Office of Hazardous Materials of the U.S. Department of Transportation (DOT). Established standards, which vary according to container end uses, relate to minimum construction gauge, maximum shipping weights, container headroom, physical performance testing, materials, and other matters concerning health and safety. These stringent requirements have apparently discouraged any move toward thinner, lighter gauge steel pails,

⁵ Transcript of the conference in investigation No. 731-TA-435 (Preliminary) ("Transcript"), p. 55.

⁶ Transcript, p. 90.

⁷ Petition, p. 4.

⁸ Dome-top pails, which have a domed top to provide air space for liquids, represent a relatively small share of the domestic pail market. Petitioners stated that they are not aware of any imports of dome-top pails from Mexico (petition, p. 4).

⁹ A Buyer's Guide to Steel Pails, Steel Shipping Container Institute.

¹⁰ Petition, p. 4.

because the pails must have the integrity to hold safely various hazardous materials during warehousing and transportation.

For the most part, U.S.- and Mexican-produced pails are perceived as being of equal quality.¹¹ Testimony presented at the conference noted that Mexican pails were initially perceived as being of better quality because they were constructed of a heavier gauge steel (e.g., 26-gauge) although the purchaser's order may have specified only 28- or 29-gauge steel.¹² More recently, Mexican pails appear to be made of the lighter gauge steels when such gauges are specified.¹³

Manufacturing processes

Although the order of the manufacturing process described in the following section may vary slightly from company to company, the production process in the United States is fundamentally the same as that in Mexico.¹⁴ To produce an openhead, tapered (nesting) pail, cold-rolled carbon steel sheets are slit, rolled, and welded along the sideseam to form a shell. A continuous weld, which best conforms with DOT requirements, apparently provides the best mating of the steel and is considered state-of-the-art production. The tops of the shells are then shaped to conform with the closure design (i.e., the top edge is beaded, curled, and flanged on a die curl), after which the ears (to which the handles are fastened) are welded onto the sides of the pail. The bottom of the pail is then seamed (using a 10-3/4 inch bottom seamer) to the pail body, and the pail is tested for leaks. The lining, if required, is sprayed inside the pail, which is then oven-cured.¹⁵ Next, the pail may then be painted on the outside, and is again oven-cured. All pails are then baled and palletized for shipment. Covers can be placed on pails, or placed in the shipping carton.¹⁶

Tighthead (closed head) pails, similar to openhead pails, are produced from slit sheets that are rolled and welded along the sideseam. The resulting shell is expanded and the bottom is seamed in an 11 1/4-inch bottom seamer. Pails are tested for leaks, then processed in a Hi-Bake booth where their interiors are sprayed with lacquer or lining. Heads (covers) are then permanently seamed onto the pails at a joint called the "chime," which

¹¹ Transcript, p. 55. Witnesses for Envases and Yorktown remarked at several junctures that their pails had developed a reputation for better quality. See, e.g., transcript, p. 136.

¹² Transcript, pp. 56, 70.

¹³ Transcript, p. 71.

¹⁴ Transcript, p. 92.

¹⁵ Linings are used for protection against water, acids, alkalies, and some organic chemicals. Clear lacquer and rust inhibitor are used to provide protection against oxidation from air or water. Phenolics provide protection against certain acids, and epoxies offer protection against alkalies. Linings consisting of varying percentages of epoxy and phenolic materials are most commonly used today. In some instances, the needed protection is supplied by a flexible or semirigid polyethylene liner insert.

Both one- and two-coat lining systems are used. Generally a two-coat system provides a better lining as it reduces the possibility of pinholes. The total thickness of the lining is approximately 0.1 millimeter (1/254th of an inch). (Petitioner's postconference brief, June 22, 1989, exhibit 3).

¹⁶ Petitioner's postconference brief, exhibit 1.

constitutes an interlocking seal. Finally, the pails are painted, baked, and palletized for shipment.¹⁷

Lithography and decoration on steel pails (except plain painting) is done prior to formation of the container and is frequently subcontracted out. Plain sheet is returned with often elaborate printing and decoration.¹⁸ As noted earlier, steel pails range in wall thickness from 29-gauge to 22-gauge steel. According to an industry official, the shifting of production between the various gauges merely requires changing the dies in the cutting equipment.¹⁹

Uses

Pails are used to transport and sell (in domestic and overseas markets) a wide variety of powders and liquids, including foodstuffs, paint, chemicals, adhesives, petroleum products, coating materials, cement, and joint compounds.²⁰ In particular, tighthed pails are primarily used for liquids, or for products for which leakage is a concern. The end uses for imported and domestically produced products are essentially the same.

Substitute products

For certain applications, steel pails are interchangeable with plastic pails, making plastic pails a potential substitute for steel pails. The petitioners have argued that steel pail producers constitute the industry manufacturing the product most "like" steel pails imported from Mexico. Petitioners' arguments in favor of excluding plastic pails from the "like" product analysis include a discussion of the following areas of distinction between steel and plastic pails:²¹

- 1) differences in production processes;
- 2) differences in physical characteristics;
- 3) differences in performance standards.

The steel pail production process, described above, is markedly different from the production process for plastic pails, which is primarily an injection molding operation.²² The petitioners further stated that steel and plastic pails are produced on different equipment, and that they share no common manufacturing facilities.²³

Respondents in the investigation hold a different view of the like product issue, stating that plastic pails have the same intrinsic qualities, essential characteristics, and uses as steel pails imported from Mexico.²⁴ They noted that steel and plastic pails are interchangeable for most

¹⁷ Ibid.

¹⁸ Field visit with Brockway Standard, June 12-13, 1989.

¹⁹ Ibid.

²⁰ Petition, p. 4.

²¹ Petitioner's postconference brief, pp. 4-9.

²² Information obtained from fieldwork reveals that limitations inherent in the injection molding process preclude the production of tighthed plastic pails.

²³ Transcript, p. 51.

²⁴ Respondents' postconference brief, p. 6.

applications and are marketed through the same channels of distribution. For these reasons, respondents argue that steel and plastic pails are like products and each constitutes part of one domestic industry. ²⁵

Steel and plastic pails also have certain distinct physical characteristics. Steel is stronger in that it has high compression strength and can be stacked higher (to save floor space) for longer periods of time. It has greater rigidity (its shape is not distorted by hot or cold products), and it withstands internal pressure changes (no "cover popping"). ²⁶ On the other hand, plastic pails do not dent, are quieter, and are easier to open and re-close. For these reasons, consumers in certain industries prefer plastic pails. ²⁷ Nevertheless, there are a number of applications that require steel pails, including the transportation of certain hazardous chemicals and the packaging of greases and lubricants used in coal mines. ²⁸

Although steel and plastic pails differ markedly in particular aspects, there is at least some overlap between the end uses and the channels of distribution for the products. ²⁹ A shift from steel to plastic pails is most likely to occur when the price of either steel or plastic changes significantly. For example, an increase in the price of resin (the main component in the production of plastic) could most likely lead to a shift from the use of plastic pails to the use of steel pails where buyers are capable of making such a switch. ³⁰ For certain applications, lined and unlined steel and plastic pails are substitutable, although lined steel pails are more expensive than plastic pails for many uses. ³¹ Product substitution is somewhat limited, however, by investments made by pail consumers in equipment for material handling, head-closing, and labeling, which is designed to process a specific type of pail. ³²

With respect to stainless steel and aluminum pails, neither petitioners nor respondents were aware of any uses for such pails, principally because these materials are prohibitively high priced and lack important performance characteristics, such as strength. ³³

²⁵ Respondents' postconference brief, p. 12.

²⁶ A Buyer's Guide to Steel Pails, Steel Shipping Container Institute.

²⁷ Transcript, pp. 22, 52.

²⁸ Transcript, pp. 68, 125.

²⁹ Transcript, pp. 49, 76.

³⁰ Transcript, p. 26. Petitioners' witnesses testified that approximately 10 to 15 percent of the market for pails shifted back and forth between steel and plastic pails, and that this segment consisted of only a few customers in the joint compound and latex paint industries. (Transcript, pp. 22-23). Respondents, however, stated that steel and plastic pails are interchangeable for the majority of products for which plastic and steel pails are used. (Transcript, p. 118).

³¹ Petitioners' postconference brief, p. 7.

³² Transcript, p. 68.

³³ Transcript, pp. 52, 124.

U.S. tariff treatment

The Harmonized Tariff Schedule of the United States (HTS), which replaced the Tariff Schedules of the United States (TSUS), became effective January 1, 1989.³⁴ Steel pails are provided for in subheadings 7310.21.00 and 7310.29.00 of the HTS, which include a variety of containers in addition to pails (such as tanks, drums, boxes), all having a capacity of less than 50 liters. The column 1-general rate of duty for both HTS subheadings, for products of countries entitled to most-favored-nation (MFN) treatment (including Mexico), is free.³⁵ Prior to 1989, steel pails were reported under item 640.3020 of the TSUSA. Item 640.3020 covered steel pails exclusively.

Nature and Extent of the Alleged Sales at LTFV

In order to obtain the estimated dumping margin for steel pails imported from Mexico, the petitioner compared the United States price of the pails to their foreign market value. The petitioner based foreign market value on the delivered home-market price in Mexico for a 5-gallon, 26 gauge openhead steel pail. In turn, the United States price was calculated based on a transaction in October 1988 involving a 5-gallon, 26 gauge tighthead steel pail. In order to make this pail comparable with the openhead pail sold in Mexico, the petitioner increased the f.o.b. price of this pail by 10 cents.³⁶

After deriving the U.S. dollar equivalent of the price of the Mexican pail, the petitioner calculated an estimated dumping margin of 89.2 percent. Because the petitioner made no adjustments for costs included in the price of the pail when sold in Mexico, it indicated that the actual dumping margin would most likely be even higher.

³⁴ Serving as the basis for the HTS, the Harmonized Commodity Description and Coding System, known as the Harmonized System or HS, is intended to serve as the single modern product nomenclature for use in classifying products for customs tariff, statistical, and transport documentation purposes. Based on the Customs Cooperation Council Nomenclature, the HS is a detailed classification structure containing approximately 5,000 headings and subheadings describing articles in trade. The provisions are organized in 96 chapters arranged in 20 sections that, along with the interpretation rules and the legal notes to the chapters and sections, form the legal text of the system. Parties to the HS convention agree to base their customs tariffs and statistical programs upon the HS nomenclature.

³⁵ The rates of duty in column 1-general of the HTS are MFN rates and, in general, represent the final stage of the reductions granted in the Tokyo Round of the Multilateral Trade Negotiations. Col. 1-general duty rates are applicable to imported products from all countries except those Communist countries and areas enumerated in general note 3(b) to the HTS, whose products are dutied at the rates set forth in col. 2; the People's Republic of China, Hungary, Poland, and Yugoslavia are the only Communist countries eligible for MFN treatment.

³⁶ Commerce subsequently revised petitioner's calculation by subtracting the 10 cent amount from the foreign market value, rather than adding it to the United States price. Because of this recalculation, the estimated dumping margin was computed to be 93.91 percent.

The U.S. Market

Apparent U.S. consumption

Data on apparent U.S. consumption of steel and plastic pails were compiled from information submitted in response to questionnaires of the U.S. International Trade Commission. These data, as presented in tables 1 to 3, consist of reported domestic shipments of U.S.-produced steel and plastic pails and reported shipments of imports of steel and plastic pails from Mexico and other sources. ³⁷

In terms of quantity, apparent U.S. consumption of steel pails dipped slightly in 1987, by 1 percent compared with that in 1986, before registering a strong increase in 1988, rising to * * * pails, for an overall increase of 10 percent (table 1). Consumption also rose in the interim periods, from * * * pails during January-March 1988 to * * * pails in the corresponding period of 1989. By contrast, when movements in apparent consumption are viewed in terms of value, the increase was continuous throughout the period of investigation; apparent consumption of steel pails grew from * * * in 1986 to * * * in 1988, representing a 17-percent increase.

Table 1

Steel pails: U.S. producers' domestic shipments, shipments of imports, and apparent U.S. consumption, 1986-88, January-March 1988, and January-March 1989

	January-March--				
Item	1986	1987	1988	1988	1989
Quantity (1,000 units)					
U.S.-produced					
domestic shipments.....	63,073	61,853	66,661	14,972	17,036
Shipments of imports.....	***	***	***	***	***
Apparent U.S. consumption.....	***	***	***	***	***
Value (1,000 dollars)					
U.S.-produced					
domestic shipments.....	137,477	138,842	156,591	30,203	35,873
Shipments of imports.....	***	***	***	***	***
Apparent U.S. consumption.....	***	***	***	***	***

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

³⁷ The Commission received no information on imports of plastic pails from countries other than Mexico. As noted below, coverage is estimated to be * * * percent for steel pails and * * * percent for plastic pails.

With regard to apparent consumption of plastic pails, the overall trend throughout the period of investigation, both in terms of quantity and in terms of value, was consistently upward (table 2). The trend in value, however, was far more marked, with apparent consumption climbing 54 percent between 1986 and 1988, whereas in terms of quantity, the total increased just 16 percent in the same period. Value-based apparent consumption totals also increased more rapidly than quantity-based totals when the interim periods are compared.

Table 2

Plastic pails: U.S.-produced domestic shipments, shipments of imports, and apparent U.S. consumption, 1986-88, January-March 1988, and January-March 1989

	January-March--				
Item	1986	1987	1988	1988	1989
	Quantity (1,000 units)				
U.S.-produced					
domestic shipments.....	32,688	34,728	37,574	9,059	9,335
Shipments of imports.....	***	***	***	***	***
Apparent U.S. consumption.....	***	***	***	***	***
	Value (1,000 dollars)				
U.S.-produced					
domestic shipments.....	54,917	61,371	84,240	18,738	21,792
Shipments of imports.....	***	***	***	***	***
Apparent U.S. consumption.....	***	***	***	***	***

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

Combined apparent consumption of steel and plastic pails, as seen in terms of quantity, demonstrated a slow but steady climb throughout the period of investigation (table 3). As with consumption of plastic pails, value-based figures grew faster than quantity-based figures, reaching a figure of more than * * * in 1988, representing an increase of 27 percent compared with that in 1986.

Table 3

Steel and plastic pails: U.S.-produced domestic shipments, shipments of imports, and apparent U.S. consumption, 1986-88, January-March 1988, and January-March 1989

	January-March--				
Item	1986	1987	1988	1988	1989
Quantity (1,000 units)					
U.S.-produced domestic shipments.....	95,761	96,581	104,235	24,031	26,371
Shipments of imports.....	***	***	***	***	***
Apparent U.S. consumption.....	***	***	***	***	***
Value (1,000 dollars)					
U.S.-produced domestic shipments.....	192,394	200,213	240,831	48,941	57,665
Shipments of imports.....	***	***	***	***	***
Apparent U.S. consumption.....	***	***	***	***	***

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

Parties generally characterize the long-term trend in apparent consumption of steel pails as fairly flat.³⁸ In the 1970s there was a significant shift among users of pails from steel to plastic partly because of the increase in environmental awareness among consumers of solvent-based chemical products. Witnesses for both the petitioner and the respondent characterized plastic pails as the current preferred choice of the majority of their customers.³⁹

Public data on apparent U.S. consumption of plastic pails describe a market that is two to three times the size of that for steel pails.⁴⁰ Opinions differ, however, concerning the dynamism of the market. Respondent's chief witness, a former large purchaser of plastic pails, stated at the conference that the move from steel to plastic pails is continuing.⁴¹ On the other hand, an official of a plastic pail producer commented that the current plastic pail market is small and rather static.⁴²

The petition calculated apparent consumption of steel pails based on the U.S. Department of Commerce, Bureau of Census Industry Survey estimates of yearly shipments of 11½-inch diameter steel pails, 29 gauge and heavier, and on official statistics of imports from all sources. Shipment estimates are presented in appendix C. Based on these figures, data collected through

³⁸ Transcript, p. 81.

³⁹ Transcript, pp. 50, 117.

⁴⁰ Respondent's postconference brief, Exhibit 11.

⁴¹ Transcript, p. 120.

⁴² Conversation with * * *, June 12, 1989.

responses to Commission questionnaires constitute * * * percent, by quantity, of 1988 apparent U.S. consumption of steel pails.⁴³

U.S. producers

There are over 100 producers of various types of metal and plastic shipping containers in the United States. Of this number, however, the 12 petitioning firms are believed to comprise virtually the entire group of firms producing steel pails as defined by the petition.⁴⁴ Steel pail producers are generally small- to medium-size companies, with no one company exceeding \$50 million in net sales annually. Producers are generally well dispersed throughout the country, except in the Plains and Rocky Mountain States. Except for a few firms with multiple plants, most firms are only able to operate in limited geographical areas, depending on the location of their plant.⁴⁵ Typically, a plant's market radius does not extend beyond 300 to 400 miles.⁴⁶ Some firms competing in the Southwestern United States have expanded their markets somewhat.⁴⁷

Of the over 80 questionnaires sent to various suspected producers of steel, stainless steel, aluminum, or plastic pails, the Commission received data from 14 companies, 9 of whom are petitioners. Of these 14, 9 reported production of steel pails, 7 reported production of plastic pails, 3 reported production of both steel and plastic pails, and 1 reported production of stainless steel pails.⁴⁸ Of producers reporting data, 10 supported the petition, 3 (all of whom are plastic pail producers) did not take a position, and 1 failed to respond to the question.

Steel pails.--Brockway Standard, Inc. ("Brockway"), is the largest domestic producer of steel pails, accounting for * * * percent, by value, of reported 1988 domestic shipments. Brockway, headquartered in Atlanta, GA, has steel pail producing facilities in Homerville, GA; Birmingham, AL; and

⁴³ By contrast, questionnaire data on plastic pails are believed to constitute only * * * percent, by quantity, of estimated 1988 apparent U.S. consumption of plastic pails. Estimates of plastic pail consumption are based on respondent's postconference brief, exhibit 11.

⁴⁴ Of the 12 firms, 10 belong to the Pail Producers' Committee of the Steel Shipping Container Institute; 2 do not.

⁴⁵ Only four of the nine steel pail producers reporting information indicated that they had more than one plant; one of these producers, * * *, limited its production to the California market.

⁴⁶ Mr. Warren Wackman, president of Southline Metal Products Co., stated at the conference, however, that 10 percent of his shipments can go 1,000 to 2,000 miles from his one plant. This possibility was discounted by respondent's witnesses, who testified that expanding a plant's service range beyond that which could be served by trucks was impractical, due to the unreliability of rail transport. Transcript, pp. 59, 134.

⁴⁷ Transcript, p. 19.

⁴⁸ The Commission received no information on production of aluminum pails. Parties, when queried at the conference and at various stages of the investigation, could not identify any domestic producers of this merchandise.

Brockway Standard, Inc., until 1987 produced plastic and steel pails in its Homerville, GA, plant. Since then, the plastic pail operation has been moved to a different facility in Morrow, GA. There are no other producers manufacturing both steel and plastic pails in the same facility.

Dallas, TX, and produces plastic pails in Morrow, GA. In addition to steel pails, which account for about * * * of its overall operations, Brockway also manufactures steel drums, paint and coffee cans, and decorative tins, and is the world's leading manufacturer of 30- and 50-caliber ammunition boxes.⁴⁹ Brockway employs * * * in production, sales, and administrative capacities.⁵⁰ In 1988, Brockway was purchased by Owens-Illinois in a leveraged buyout.⁵¹

Van Leer Containers, Inc., a * * *, is the * * * producer of steel pails in the United States, accounting for a * * *-percent share, by value, of reported 1988 domestic shipments. Van Leer currently has plants in Chicago, IL (where it is based); Greenville, OH; and Canton, MS. A plant in Jersey City, NJ, closed in November 1987, allegedly caused by lack of business, and the machinery and other equipment were redistributed among Van Leer's other production facilities.⁵² Unlike Brockway, Van Leer does not produce plastic pails, but produces other steel containers such as drums. Steel pails make up * * * percent of Van Leer's total sales.

Other significant domestic producers of steel pails include Pacific Rim Packaging Corp. ("Pacific Rim"), Richmond, CA; Fein Container Corp., Saddle Brook, NJ; Prospect Industries Corp., North Brunswick, NJ; and Southline Metal Products Co. ("Southline"), Houston, TX. Pacific Rim is wholly owned by * * *.⁵³ Southline, the closest U.S. company to Mexico, is a somewhat smaller company, employing * * * workers in the production of steel pails and drums.⁵⁴

Two firms, both listed as petitioners, left the steel pail market during the period of investigation. Chicago Pail Manufacturing Co., Chicago, IL, reportedly closed its plant in 1988, and that facility is currently still for sale. Since the filing of the petition, Central Can Co., also of Chicago, also announced plans to offer itself for sale, and has withdrawn as a petitioner.⁵⁵ As mentioned above, Van Leer, in an apparent consolidating move, closed its New Jersey plant in 1987 and redistributed the plant's capital stock among its other facilities.

There have not been any notable advances in production technology in the steel pail business during the period of investigation. Indeed, Brockway officials commented to staff during field visits that the basic technology for producing steel pails has not changed since the early 1960s. Nor did any U.S. producers indicate plans either to install new equipment or to expand their manufacturing facilities. The majority of the equipment used in steel pail manufacturing is produced by Carando Industries, a California manufacturer.

⁴⁹ Transcript, p. 14.

⁵⁰ Transcript, p. 40.

⁵¹ Transcript, pp. 40, 64.

⁵² Transcript, p. 62.

⁵³ * * *.

⁵⁴ Mr. Wackman, vice president of Southline, testified at the conference that prior to the full-scale entry of Mexico into the market, Southline entered into negotiations with the Mexican exporter to set up a joint venture that would produce and distribute steel pails for the U.S. market. These negotiations were broken off for unspecified reasons. Transcript, pp. 16-18.

⁵⁵ See letter from Mark DelBianco to Kenneth R. Mason, June 23, 1989. It is not known whether Central Can plans to discontinue steel pail production.

Plastic pails.-- As stated above, several U.S. producers of steel pails also produce the plastic variety, namely Brockway; Bennett Industries, Peotone, IL; and B.W. Norton Manufacturing Co., Hayward, CA. Of these, Bennett Industries is by far the largest, accounting for an estimated * * * percent, by value, of reported 1988 domestic shipments.⁵⁶ There are, however, other companies that may be significantly larger producers of plastic pails. For example, Latica, Inc., located in Rochester, MI, failed to respond to the Commission's producer questionnaire. In addition, subsequent to the conference, staff learned of the existence of another large plastic pail manufacturer, Ropak Corp. of Fullerton, CA, with over * * * in net sales annually, the majority of which is accounted for by plastic shipping containers.⁵⁷ With the exception of Brockway, firms that produce both products concentrate on plastic pails as their main line.

U.S. importers

In order to collect data on U.S. imports from all sources of steel, stainless steel, aluminum, and plastic pails, the Commission sent questionnaires to 30 companies importing under TSUSA items 640.3020 (steel pails), 640.2000 (stainless steel pails), 640.2500 and 640.3050 (aluminum pails), and 772.2500 (plastic pails). Nineteen companies responded, only two of which reported usable data on imports of steel pails, as defined in the petition, or plastic pails from Mexico: Yorktown Associates ("Yorktown"), Houston, TX, and U.S. Container Corp. ("U.S. Container"), Vernon, CA.⁵⁸ A third concern, Hector Farias, Jr., a customs broker, reported acting as importer of record for * * *. * * * submitted a response covering these imports, but it was untimely. Eleven companies did not respond to the Commission's questionnaire.⁵⁹ The Commission received no information on imports of aluminum or stainless steel pails. Notwithstanding the fact that responses to the Commission's importers' questionnaire were limited to those from Yorktown and U.S. Container, reported imports account for * * * percent, by value, of official U.S. import statistics for steel pails from Mexico and * * * percent, by value, of such statistics for plastic pails from Mexico.⁶⁰

Yorktown is, and has been since 1985, the exclusive agent for U.S. imports from the sole Mexican exporter of steel and plastic pails, Envases de Plastico, S.A. ("Envases"), of Mexico City. Although Envases began production of plastic pails before commencing production of the steel variety (hence its name), Yorktown was initially retained to handle, and has continued to concentrate on, the U.S. marketing of steel pails. Yorktown currently handles nearly * * * times as many steel as plastic pails. Yorktown's responsibilities, for which it receives a commission, are primarily to obtain

⁵⁶ Such shipments, however, make up less than * * * percent of total 1988 domestic shipments of plastic pails, as estimated in exhibit 11, respondent's postconference brief.

⁵⁷ Respondent's postconference brief, Exhibit 3.

⁵⁸ The petition identified, in addition to Yorktown, three other alleged importers of steel pails from Mexico. Staff subsequently learned, however, that these companies were * * *, and did not import for their own account during the period of investigation.

⁵⁹ Most companies not responding were importers of pails from countries other than Mexico.

⁶⁰ This latter figure is understated because TSUSA item 772.2500 also includes rubber pails.

customers and ensure prompt and reliable service; Envases acts as its own importer on shipments handled by Yorktown. Around * * * percent of Yorktown's sales are made to end users; it also sells significant quantities of pails to three distributors, located in the South and Midwest. During the period of investigation, Yorktown maintained warehouse facilities in Houston and Laredo, TX, and employs * * * full-time workers.

During the period of investigation, Envases also sold steel and plastic pails to U.S. Container, shipments for which the latter firm was identified as the importer of record.⁶¹ Envases' shipments to U.S. Container declined steadily during the period of investigation, finally ceasing in mid-1988.⁶² At their 1986 peak, shipments to U.S. Container comprised nearly * * * percent of total imports of steel pails from Mexico. Since ceasing importation from Envases, U.S. Container has primarily been a distributor of pails manufactured by * * *. U.S. Container sells all its pails to * * *.

Channels of distribution

Steel and plastic pails are sold both to distributors and directly to end users who use the pails to package their products. Distributors and producers market both standard pails and products with custom designs or decorations. Many end users report a growing need for "just-in-time" delivery service from their suppliers, whereas most domestic pail manufacturers endeavor to produce on a per-order basis, maintaining a minimal level of inventory.⁶³

U.S. producers and importers were requested to report the share of steel and plastic pails that were shipped to distributors and directly to end users. In 1988, between 70 and 100 percent of the pails sold by domestic producers went directly to end users. Questionnaire responses of the two Mexican pail importers indicated the use of similar channels of distribution; specifically, * * * percent of shipments by the major importer, Yorktown, were direct to end users.

Consideration of Alleged Injury to an Industry in the United States

The information in this section of the report is based on data received from responses to Commission questionnaires. With regard to U.S. production and shipments of steel pails, the Commission received responses from 9 of the 12 known producers of this product (all petitioners), accounting for 87 percent, by quantity, of 1988 shipments.⁶⁴ With regard to U.S. production and shipments of stainless steel, aluminum, and plastic pails, the Commission originally sent questionnaires to 85 firms that it had reason to believe may have produced one or more of these products during the period of

⁶¹ * * *.

⁶² Since then, Envases has apparently been successful in establishing a customer relationship with a new company, TCR Industries, in order to service the California market. See letter from A. S. Rumfola to Kenneth R. Mason, June 21, 1989. This firm intends to sell primarily plastic pails.

⁶³ Yorktown's warehouse capacity was widely cited by pail purchasers as giving the Mexican importer a crucial advantage over regional domestic producers in pail distribution.

⁶⁴ Based on Census Industry Survey; see petition, exhibit 1.

investigation.⁶⁵ Of these firms, 43 responded that they did not produce steel, stainless steel, aluminum, or plastic pails corresponding to the definitions in the Commission's questionnaire. Twenty-eight firms did not respond to the Commission's questionnaire. Of this group, other than Cleveland Steel Container, Central Can Co., and Chicago Pail Manufacturing Co. (three of the petitioners), and Latica, Inc. (a large plastic container manufacturer), there is no indication on the record that any of these firms produce products for which data were requested in this investigation. Accordingly, the Commission received information from 14 companies⁶⁶ producing either steel, plastic, or stainless steel pails.⁶⁷

U.S. production, capacity, and capacity utilization

U.S. capacity to produce steel pails first increased from 107 million pails in 1986 to 110 million pails in 1987, but then dropped off to 104 million pails in 1988 (table 4).⁶⁸ Capacity remained virtually flat in the interim periods. Capacity to produce plastic pails increased slightly during the period of investigation, remaining constant in 1987, but edging up in 1988. The total for the combined products was influenced by the movements in steel pail capacity, with capacity figures lower in 1988 than they had been in 1986.

The trend in steel pail production demonstrated an inverse relationship to that of capacity, first falling in 1987, then rising strongly, by 8 percent, in 1988. Production also rose markedly in the interim periods, increasing to 17.0 million pails in January-March 1989 from 15.2 million in the corresponding period of 1988. Plastic pail production rose steadily from 1986 to 1988, growing 15 percent, but declined a bit in January-March 1989, by 1 percent, when compared with that of January-March 1988. Overall, steel and plastic pail production showed steady increases throughout the period of investigation, reaching 104 million pails in 1988.

⁶⁵ Commission staff gathered information on these products because of the possibility that the Commission may want to include them in its definition of the domestic industry.

⁶⁶ Of this group, nine reported production of steel pails, seven of plastic, and one, The Vollrath Co., of stainless steel pails. Information on this latter firm is presented in app. D.

An additional firm, * * *, could not be located and may have ceased operations.

⁶⁷ Of the 12 companies who are petitioners in this investigation, the Commission received usable data from 9 firms. Of the three nonresponding petitioners, two are in unique circumstances: both Central Can Co. and Chicago Pail Manufacturing Co. have been, or are in the process of being, sold, and historical records were reportedly not readily available to these concerns. Counsel for petitioner submitted an untimely response on behalf of Central Can Co. Cleveland Steel Container submitted an untimely response.

⁶⁸ Much of the decline in 1988 can be accounted for by Van Leer's closing of its Jersey City, NJ, plant in November 1987.

Table 4

Certain pails: U.S. capacity, production, and capacity utilization, by products, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	January-March--	
				1988	1989
<hr/>					
End-of-period capacity (1,000 units)					
<hr/>					
Steel pails.....	106,550	110,300	103,850	25,825	26,025
Plastic pails.....	50,030	50,030	50,630	12,660	12,765
Total.....	156,580	160,330	154,480	38,485	38,790
<hr/>					
Production (1,000 units)					
<hr/>					
Steel pails.....	63,093	61,805	66,819	15,154	17,034
Plastic pails.....	32,513	34,277	37,531	9,265	9,210
Total.....	95,606	96,082	104,350	24,419	26,244
<hr/>					
Capacity utilization (percent)					
<hr/>					
Steel pails.....	59.2	56.0	64.3	58.7	65.5
Plastic pails.....	65.0	68.5	74.1	73.2	72.2
Average.....	61.1	59.9	67.5	63.5	67.7

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

After a decline of over 3 percentage points from 1986 to 1987, capacity utilization figures for steel pails increased significantly during 1987-88, and moved up noticeably in the interim periods, reaching 66 percent in January-March 1989.⁶⁹ Capacity utilization of facilities producing plastic pails demonstrated a strong increase during 1986-88, rising over 9 percentage points, before declining a bit in the interim periods. The overall trend for steel and plastic pails was identical to that for steel pails.

Capacity was reported on bases ranging anywhere from 40 hours to 168 hours per week (i.e., continuous operation) and from 50 to 52 weeks a year. This wide range of operation is explained by the fact that plastic pail facilities tended to operate virtually continuously, whereas steel pail plants often operated as few as 40 hours per week. Generally, steel pail producers operated only one 8- or 10-hour shift, although it is unclear if there is any technical barrier to multiple-shift operation. Indeed, steel pail producers interviewed contended that additional shifts could be handled if business conditions warranted that step.⁷⁰

There appear to be no constraints on production other than physical capacity. In particular, none of the steel pail producers contacted indicated any problems with attracting and keeping workers. Moreover, capital stock availability is ample, particularly in light of recent plant closings; one producer's used equipment can easily be retooled to fit another producer's

⁶⁹ Again, any increase in capacity utilization in 1988 in facilities producing steel pails may have been affected by the closing of Van Leer's plant.

⁷⁰ Interview with Bill Meadows, Brockway Standard, June 12, 1989.

line. With regard to availability of raw materials, the temporary tightness in the world steel market that occurred in late 1988 and early 1989 is now easing, according to domestic industry officials.⁷¹ As for polyethylene resin, the component of plastic pails, 1988 resin price increases, partially triggered by an explosion at a major ethylene plant, have now reversed themselves, and substantial increases in resin capacity are expected to occur in the next 6 months.⁷² According to the petitioner, resin price increases in 1988 were sharp enough to cause some plastic pail users to convert to using steel pails; this accounts, at least in part, for the increase in capacity utilization of facilities producing steel pails, as seen in table 4.⁷³

Capacity utilization figures for steel pails may be somewhat understated because some producers tend to run their plants only to fill special orders and are left with idle capacity the remainder of the time. For instance, Container Products, Inc., Southfield, MI, allegedly dropped out of the general market during the period of investigation in order to concentrate exclusively on special orders.⁷⁴

An event that may have had a limited effect on overall production was an autumn 1986 wildcat strike at the production operations of Fein Container. Other than this, however, and the above-mentioned closing of Van Leer's New Jersey plant in 1987, there were no unusual occurrences affecting capacity or production during the period of investigation.

U.S. producers' domestic and export shipments

Because U.S. producers generally do not keep large inventories, company shipments closely parallel production levels. Moreover, with regard to steel and plastic pails, all shipments reported were arm's-length domestic shipments; i.e., no company transfers were reported. Two producers of plastic pails, * * *, reported small quantities of export shipments, specifically to * * *.

Producers of steel pails normally ship more than 75 percent of their production as openhead, rather than tighthead, pails. Only * * * reported more than one-third of its shipments as tighthead pails and one company, * * *, shipped exclusively openhead pails.

Steel pails.--Nine producers reported data on domestic shipments of steel pails during the period of investigation. Total domestic shipments of steel pails by U.S. producers decreased slightly from 63 million pails in 1986 to 62 million pails in 1987 before rebounding to 67 million pails in 1988, representing an overall increase of 6 percent (table 5). Domestic shipments also increased noticeably during January-March 1989, rising by 14 percent

⁷¹ Transcript, p. 34. Respondent alleged that one of the petitioners, Southline, was unable to service its customers in 1988 due to a shortage of steel; Southline officials explained that the temporary interruption was due to a fire at one of * * * 's plants; * * * was Southline's major supplier at that time.

⁷² Transcript, p. 24.

⁷³ Transcript, pp. 9, 22.

⁷⁴ Petitioner's postconference brief, p. 10. As a result, Container Products' apparent capacity utilization is less than * * * percent.

Table 5

Certain pails: Domestic and export shipments of U.S. producers, by types and by products, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	January-March--	
				1988	1989

1/ Computed from firms providing data on both quantity and value of shipments.

2/ Not available.

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

compared with those in the corresponding period of 1988. The total value of U.S. producers' domestic shipments of steel pails increased throughout the period of investigation, most notably in 1988, when shipment value increased 13 percent over that of 1987. Unit values rose throughout 1986-88, but declined slightly during interim 1989 compared with interim 1988.

Plastic pails.--Seven producers reported domestic shipments of plastic pails, and two producers reported export shipments of such pails. From 1986 to 1988, both the quantity and value of domestic shipments of plastic pails showed considerable increases, with value-based figures climbing 37 percent from 1987 to 1988. Such increases continued in the interim periods. Unit values also increased, by over one-third in 1988 compared with those in 1986.

As for export shipments, the producers that reported such shipments of plastic pails saw the value of their shipments * * * between 1986 and 1988. Unit values of these shipments, consistently * * * than those for domestic shipments, also * * *.

Steel and plastic pails.--When viewed as a whole, the quantity and value of domestic shipments of steel and plastic pails both rose steadily during the period of investigation, first slowly in 1987, then increasing more sharply in 1988. The rise in shipments, by quantity, of plastic pails between 1986 and 1987 outweighed the slight fall in numbers of steel pails shipped during that period. Unit values also climbed during the investigation period, most sharply in 1988 over those in 1987.

U.S. producers' inventories

Inventory data were provided by 7 of the 13 firms reporting production of steel or plastic pails during the period of investigation (table 6). U.S. producers' end-of-period inventories of steel pails decreased by 13 percent from 331,000 pails in 1986 to 287,000 pails in 1987 before increasing sharply, by 48 percent, to 425,000 pails in 1988. End-of-period inventories also grew during the interim periods. Movements in end-of-period inventory totals were precisely contrary with regard to plastic pails, first rising by 13 percent from 1986 to 1987, then dropping off by 9 percent from 1987 to 1988.

Because inventory levels for plastic pails were higher than those for steel pails, the increasing trend in plastic pails in 1987 outweighed that of steel pails, leading to an increase in end-of-period inventories in that year for the two products when viewed together. End-of-period inventories for steel and plastic pails continued to increase in 1988, however, because the increase in steel pail inventories was far stronger than the decline in inventories of plastic pails.

Table 6

Certain pails: U.S. producers' inventories, by products, as of Dec. 31 of 1986-88, and as of Mar. 31 of 1988 and 1989

Item	1986	1987	1988	January-March--	
				1988	1989
<u>End-of-period inventories (1,000 units)</u>					
Steel pails.....	331	287	425	405	604
Plastic pails.....	940	1,062	970	1,345	1,245
Total.....	1,271	1,349	1,395	1,750	1,849
<u>Share of domestic shipments (percent) 1/</u>					
Steel pails.....	1.1	1.0	1.3	1.4 2/	1.7 2/
Plastic pails.....	2.9	3.1	2.6	3.7 2/	3.3 2/
Average.....	2.1	2.1	2.0	2.7 2/	2.5 2/

1/ Ratios are based on data supplied by firms that reported both inventory and shipments information.

2/ Based on annualized shipments.

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

As a share of domestic shipments, end-of-period inventories of steel and plastic pails, either when viewed separately or together, were very small during the investigation period. According to industry officials, ratios of inventories to shipments tend to be small because most pails, whether of steel or plastic, are made to order.⁷⁵ For these orders, a turnaround time of one week is the norm, but many customers permit longer leadtimes; this holds true even for relatively small orders.⁷⁶ Nevertheless, for standard, undecorated or minimally decorated pails, domestic industry officials testified that maintenance of inventory makes it possible to respond to orders in a matter of hours.⁷⁷

⁷⁵ Transcript, p. 82.

⁷⁶ Transcript, p. 88. Brockway noted that their average turnaround time was less than one week. Field visit with Brockway Standard, June 13, 1989.

⁷⁷ Transcript, pp. 32, 58.

U.S. employment, wages, and productivity

Steel pails.--Nine producers, accounting for 100 percent of 1988 reported production, reported data on the number of production and related workers engaged in steel pail production, the total hours worked by such workers, and the wages and total compensation paid to such workers during the period of investigation. The number of workers employed in the production of steel pails increased by less than 1 percent from 1,008 in 1986 to 1,011 in 1987 before declining to 959 workers, representing a drop of 5 percent, in 1988 (table 7). The number of hours worked by these employees also increased slightly in 1987 before declining by a larger percentage (4 percent) in 1988. Wages and total compensation paid to these workers fell steadily during 1986-88, by 5 percent overall in the case of wages. Hourly compensation dropped off from \$12.36 in 1986 to \$12.07 in 1988, and continued to drop during the interim periods. Hours worked and total wages and compensation paid all rose in January-March 1989 compared with those in January-March 1988, but the number of workers continued to fall.

Labor productivity, as measured by pails produced per hour, fluctuated erratically, first declining to 27.8 pails per hour in 1987, then rebounding to 31.2 pails per hour in 1988, a level higher than that of 1986. Productivity increased again in interim 1989 compared with that in interim 1988. U.S. producers' unit labor costs exhibited a declining trend throughout the period.

Plastic pails.--Of the seven firms providing data on production of plastic pails, six provided data on employment in facilities producing that product. According to these data, both the number of workers employed in plastic pail production, and the hours worked by those workers, declined steadily during 1986-88, with a particularly sharp decline from 1987 to 1988 in the case of hours worked (11 percent). Both indicators continued to drop off in the interim periods. Wages and total compensation paid to workers producing plastic pails, however, first rose markedly from 1986 to 1987, then fell back in 1988 to a level above that of 1986. These indicators, however, also declined in the interim periods.

The productivity of workers producing plastic pails exhibited a steady increase between 1986 and 1988, climbing 31 percent over the 3-year period, and continued to grow in January-March 1989 compared with that in the corresponding period of 1988. Unit labor costs declined somewhat.

Table 7

Total establishment employment and average number of production and related workers producing certain pails, hours worked, 1/ wages and total compensation 2/ paid to such employees, and labor productivity, hourly compensation, and unit labor production costs, 1986-88, January-March 1988, and January-March 1989 3/

Item	1986	1987	1988	January-March--	
				1988	1989
Total number of employees in establishments.....	4,221	4,041	3,983	3,852	3,853
<u>Number of production and related workers (PRWs)</u>					
All products of establishments.....	2,956	2,836	2,793	2,660	2,656
Steel pails.....	1,008	1,011	959	927	910
Plastic pails.....	441	426	391	383	367
Total.....	1,449	1,437	1,350	1,310	1,277
<u>Hours worked by PRWs (thousands)</u>					
All products of establishments.....	7,051	6,878	6,784	1,713	1,714
Steel pails.....	2,213	2,222	2,142	496	511
Plastic pails.....	966	962	853	287	275
Total.....	3,179	3,184	2,995	783	786
<u>Wages paid to PRWs (1,000 dollars)</u>					
All products of establishments.....	65,414	62,923	64,695	15,059	15,603
Steel pails.....	20,957	20,173	19,921	4,511	4,634
Plastic pails.....	7,044	7,425	7,141	1,762	1,697
Total.....	28,001	27,598	27,062	6,273	6,331
<u>Total compensation paid to PRWs (1,000 dollars)</u>					
All products of establishments.....	83,631	81,088	82,842	19,385	19,914
Steel pails.....	27,324	26,512	25,833	5,951	5,997
Plastic pails.....	8,663	9,086	8,963	2,359	2,225
Total.....	35,987	35,598	34,796	8,310	8,222

See footnotes at end of table.

Table 7--Continued

Total establishment employment and average number of production and related workers producing certain pails, hours worked, 1/ wages and total compensation 2/ paid to such employees, and labor productivity, hourly compensation, and unit labor production costs, 1986-88, January-March 1988, and January-March 1989 3/

Item	1986	1987	1988	January-March--	
				1988	1989
<hr/>					
Hourly wages paid to PRWs 4/					
<hr/>					
All products of establishments.....	\$9.28	\$9.15	\$9.54	\$8.79	\$9.10
Steel pails.....	9.48	9.09	9.30	9.09	9.07
Plastic pails.....	7.29	7.72	8.37	6.14	6.17
Average.....	8.82	8.67	9.04	8.01	8.05
<hr/>					
Hourly total compensation paid to PRWs 5/					
<hr/>					
All products of establishments.....	\$11.86	\$11.79	\$12.21	\$11.32	\$11.62
Steel pails.....	12.36	11.94	12.07	12.00	11.74
Plastic pails.....	8.97	9.44	10.51	8.22	8.09
Average.....	11.33	11.19	11.62	10.61	10.46
<hr/>					
Productivity (units per hour) 6/					
<hr/>					
Steel pails.....	28.5	27.8	31.2	30.5	33.3
Plastic pails.....	33.7	35.6	44.0	32.3	33.5
Average.....	30.1	30.2	34.8	31.1	33.4
<hr/>					
Unit labor costs (per unit) 7/					
<hr/>					
Steel pails.....	\$0.43	\$0.43	\$0.39	\$0.39	\$0.35
Plastic pails.....	.27	.27	.24	.25	.24
Average.....	.38	.37	.33	.34	.31

1/ Includes hours worked plus hours of paid leave time.

2/ Includes wages and contributions to Social Security and other employee benefits.

3/ Firms providing employment data account for more than 99 percent of reported total quantity of shipments in 1988.

4/ Calculated using data from firms that provided information on both wages paid and hours worked.

5/ Calculated using data from firms that provided information on both total compensation paid and hours worked.

6/ Calculated using data from firms that provided information on hours worked and production.

7/ On the basis of total compensation paid. Calculated using data from firms that provided information on total compensation paid and production.

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

Steel and plastic pails.--Of the 13 firms producing either steel or plastic pails (or both products), 12 provided employment data. The trend in the total number of production and related workers employed in the production of steel and plastic pails mirrored that for plastic pail-producing facilities when viewed separately; i.e., a slight decline from 1986 to 1987, then a more serious drop in 1988, followed by continued erosion during the interim periods. Hours worked by those employees, however, inched upward in 1987, before falling, by 6 percent, in 1988, then remaining virtually constant in January-March 1989 compared with those in the corresponding period of 1988. Wages and total compensation both declined steadily during 1986-88; on an hourly basis, however, these indicators showed no particular trend. Labor productivity increased during the period of investigation, to a level of 35 pails per hour in 1988, and unit labor costs drifted downward.

The overall employment levels for producers of steel pails tended to fall throughout the period of investigation, as seen in table 7. At the conference, Brockway officials noted that its overall employment levels contracted by 400 workers from 1986 to early 1989, representing a decline of nearly 30 percent.⁷⁸ Accordingly, in Brockway's experience, and for steel and plastic pail-producing firms as a whole, productivity showed a sharp rise toward the end of the period because the same production levels were being maintained with fewer workers.

Several of the firms reporting employment data to the Commission have workforces that are represented by unions. Those firms, and the unions involved, are listed in the following tabulation:

<u>Company</u>	<u>Union</u>
Stylette Plastics	United Steel Workers
Van Leer	United Steel Workers
Fein Container	Int'l Brotherhood of Teamsters
Container Products	United Steel Workers
B. W. Norton	United Steel Workers
The Vollrath Co. 1/	United Auto Workers
Pacific Rim	Int'l Association of Machinists
Bennett Industries	Int'l Chemical Workers
	Int'l Leather Goods, Plastics, and
	Novelty Workers Union, AFL-CIO and
	its Southern Joint Board
Prospect Industries	AFL-CIO, Local 409

1/ Produces stainless steel pails.

In its questionnaire, the Commission requested U.S. producers to provide detailed information concerning reductions in the number of production and related workers producing steel and/or plastic pails, if such reductions involved at least 5 percent of the workforce, or 50 workers. * * * reported such layoffs. * * *'s layoff, concerning a facility producing plastic pails, was attributed to * * *. * * *'s reduction in force was connected to the * * *. The reported layoffs are shown in the following tabulation:

⁷⁸ Transcript, pp. 33, 63. Brockway estimated that 15 percent of the overall reduction occurred in steel pail production. The workforce reductions were undertaken, according to Brockway, in order to decrease overhead expenses.

<u>Firm</u>	<u>Product</u>	<u>Date</u>	<u>Number of Workers</u>	<u>Duration</u>	<u>Reason</u>
*	*	*	*	*	*

Financial experience of U.S. producers

Ten producers provided usable income-and-loss data on the overall operations of their establishments within which pails are produced, and separate income-and-loss data on their certain steel and plastic pail operations. Two producers, * * *, provided product financial data but none for overall establishment operations. The 12 producers accounted for 100 percent of reported U.S. production of certain steel pails in 1988.

Overall establishment operations.--On the basis of sales value in 1988, steel pail operations were 27.1 percent and plastic pail operations were 21.7 percent of overall establishment operations for the 10 producers providing both overall establishment and product data. Products produced in the establishments in addition to steel and plastic pails not under investigation are primarily steel drums for the steel pail producers and plastic bowls for the producers of the plastic pails.

Sales of the establishment operations showed continuing improvement throughout the period of investigation, from \$265.6 million in 1986 to \$285.3 million in 1987 and to \$346.3 million in 1988, or an increase of 30.4 percent during 1986-88 (table 8). The sales results of the interim periods also show an improvement, but at a lesser rate than during the 1986-88 period. Sales increased from \$93.3 million in interim 1988 to \$107.2 million in interim 1989, or by 14.9 percent compared with the 21.4-percent increase of annual sales from 1987 to 1988.

Operating income also showed substantial improvement during 1986-88 and during the interim periods. The increase in operating income during these years rose from \$2.6 million to \$21.1 million, with an increase from \$3.7 million in interim 1988 to \$5.4 million in interim 1989. Operating income as a percent of net sales was 1.0 percent, 2.7 percent, 6.1 percent, 4.0 percent, and 5.1 percent for 1986, 1987, 1988, interim 1988, and interim 1989, respectively.

Steel pail operations.--Sales, after a slight increase from \$142 million in 1986 to \$143.3 million in 1987, improved significantly to \$162.6 million in 1988, for an increase of 14.5 percent compared with that in 1986 (table 9). Interim sales showed a similar increase, with an improvement of 15 percent from \$38.6 million in interim 1988 to \$44.4 million in interim 1989. The improvement in 1988 and in the interim periods allowed the producers to move in the aggregate from operating losses in 1986 and 1987 to operating profits in the latter periods.

Table 8

Income-and-loss experience of U.S. producers ^{1/} on the overall operations of their establishments within which steel and plastic pails are produced, accounting years 1986-88 and interim periods ended Mar. 31, 1988, and Mar. 31, 1989

Item	1986	1987	1988	Interim period ended Mar. 31--	
				1988	1989
Value (1,000 dollars)					
Net sales.....	265,572	285,279	346,324	93,340	107,206
Cost of goods sold.....	233,744	247,121	291,997	79,106	90,128
Gross profit.....	31,828	38,158	54,327	14,234	17,078
General, selling, and administrative expenses....	29,240	30,451	33,228	10,502	11,655
Operating income or (loss)...	2,588	7,707	21,099	3,732	5,423
Shutdown expenses.....	***	***	***	***	***
Interest expense.....	***	***	***	***	***
Other income or (loss), net..	***	***	***	***	***
Net income or (loss) before income taxes.....	(1,672)	2,560	17,428	2,755	3,874
Depreciation and amorti- zation included above.....	6,620	7,525	7,926	2,401	2,661
Cash flow 2/.....	4,948	10,085	25,354	5,156	6,535
Share of net sales (percent)					
Cost of goods sold.....	88.0	86.6	84.3	84.8	84.1
Gross profit.....	12.0	13.4	15.7	15.2	15.9
General, selling, and administrative expenses....	11.0	10.7	9.6	11.3	10.9
Operating income.....	1.0	2.7	6.1	4.0	5.1
Net income or (loss) before income taxes.....	(0.6)	0.9	5.0	3.0	3.6
Number of firms reporting					
Operating losses.....	4	1	0	1	1
Net losses.....	4	1	1	2	1
Data.....	9	10	10	9	9

^{1/} * * *:

^{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 9

Income-and-loss experience of U.S. producers ^{1/} on their steel pail operations accounting years 1986-88 and interim periods ended Mar. 31, 1988, and Mar. 31, 1989

Item	1986	1987	1988	Interim period ended Mar. 31--	
				1988	1989
Value (1,000 dollars)					
Net sales.....	142,028	143,344	162,591	38,598	44,372
Cost of goods sold.....	128,447	129,014	140,808	33,239	37,758
Gross profit.....	13,581	14,330	21,783	5,359	6,614
General, selling, and administrative expenses....	14,777	14,979	14,604	3,926	4,077
Operating income or (loss)...	(1,196)	(649)	7,179	1,433	2,537
Shutdown expenses.....	***	***	***	***	***
Interest expense.....	***	***	***	***	***
Other income or (loss), net..	***	***	***	***	***
Net income or (loss) before income taxes.....	(3,590)	(3,394)	5,198	930	1,786
Depreciation and amorti- zation included above.....	2,184	2,389	2,033	634	543
Cash-flow 2/.....	(1,406)	(1,005)	7,231	1,564	2,329
Share of net sales (percent)					
Cost of goods sold.....	90.4	90.0	86.6	86.1	85.1
Gross profit.....	9.6	10.0	13.4	13.9	14.9
General, selling, and administrative expenses....	10.4	10.4	9.0	10.2	9.2
Operating income.....	(0.8)	(0.5)	4.4	3.7	5.7
Net income or (loss) before income taxes.....	(2.5)	(2.4)	3.2	2.4	4.0
Number of firms reporting					
Operating losses.....	4	4	4	3	1
Net losses.....	4	4	4	3	1
Data.....	9	9	9	8	8

^{1/} * * *.

^{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.

Operating losses, as a percent of net sales, were 0.8 and 0.5 in 1986 and 1987, respectively, with losses of \$1.2 million in 1986 and \$649,000 in 1987. The improvement in sales and the reduction of cost of goods sold as a percentage of sales allowed the producers to show aggregate operating profits of \$7.2 million, \$1.4 million, and \$2.5 million in 1988, interim 1988, and interim 1989, respectively. Because there was a moderate increase in quantity sold in 1988 compared with that in 1986, the substantial improvement in operating profits is primarily related to increases in sales prices, or increased sales of higher priced items, that offset the slight increase in unit costs. On a per-unit basis during 1986-88, sales prices increased by \$0.17/unit and costs increased by \$0.07/unit, for a net gain of \$0.10/unit.

Plastic pail operations.--Net sales of plastic pails showed a substantial improvement during 1986-88 and during the interim periods (table 10). An increase of 48.7 percent in plastic pail sales was experienced from \$56.2 million in 1986 to \$83.5 million in 1988. Similarly, a 25.5-percent increase was experienced from \$25.4 million in interim 1988 to \$31.8 million in interim 1989. Although the quantity of steel pails sold during 1986-88 increased moderately at 6.5 percent, the plastic pail market rose significantly during the period at a 16.9-percent rate. Valid comparisons regarding the plastic pail market vis-a-vis the steel pail market are difficult because of the apparent limited response of plastic pail producers. The quantity sold and key financial ratios of each of the product categories are shown in table 11.

Value of plant, property, and equipment.--The data provided by the U.S. producers on the end-of-period investment in productive facilities in which steel and plastic pails are produced are shown in the following tabulation (in thousands of dollars):

				Interim period <u>ended Mar. 31- 1/</u>	
<u>Item</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1988</u>	<u>1989</u>
Establishment:					
Original cost.....	104,193	115,570	127,746	67,198	77,161
Book value.....	64,225	67,506	75,160	33,756	42,062
Steel pails:					
Original cost.....	22,536	22,044	21,900	9,870	10,674
Book value.....	12,196	11,696	11,550	5,593	5,889
Plastic pails:					
Original cost.....	27,273	29,105	29,929	***	***
Book value.....	11,318	12,227	11,972	***	***

1/ There are 3 fewer firms reporting in overall establishment, and 2 fewer firms reporting in each of the product segments than in full-year 1988.

Table 10

Income-and-loss experience of U.S. producers ^{1/} on their plastic pail operations, accounting years 1986-88 and interim periods ended Mar. 31, 1988, and Mar. 31, 1989

Item	1986	1987	1988	Interim period ended Mar. 31--	
				1988	1989
Value (1,000 dollars)					
Net sales.....	56,161	63,974	83,504	25,364	31,831
Cost of goods sold.....	47,926	56,334	72,942	22,029	27,393
Gross profit.....	8,235	7,640	10,562	3,335	4,438
General, selling, and administrative expenses....	6,642	6,898	7,844	3,064	3,447
Operating income or (loss)...	1,593	742	2,718	271	991
Interest expense.....	***	***	***	***	***
Other income or (loss), net..	***	***	***	***	***
Net income or (loss) before income taxes.....	1,701	614	2,379	105	748
Depreciation and amorti- zation included above.....	2,449	3,117	3,692	1,149	1,190
Cash-flow <u>2/</u>	4,150	3,731	6,071	1,254	1,938
Share of net sales (percent)					
Cost of goods sold.....	85.3	88.1	87.4	86.9	86.1
Gross profit.....	14.7	11.9	12.6	13.1	13.9
General, selling, and administrative expenses....	11.8	10.8	9.4	12.1	10.8
Operating income.....	2.8	1.2	3.3	1.1	3.1
Net income or (loss) before income taxes.....	3.0	1.0	2.8	0.4	2.3
Number of firms reporting					
Operating losses.....	1	2	2	2	2
Net losses.....	1	2	4	3	2
Data.....	5	6	6	5	5

^{1/} * * *.

^{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 11

Certain pails: Net sales and key financial ratios for steel and plastic pails, accounting years 1986-88 and interim periods ended Mar. 31, 1988, and Mar. 31, 1989

Item	1986	1987	1988	Interim period ended Mar. 31--	
				1988	1989
Quantity (1,000 units)					
Net sales: 1/					
Plastic.....	31,820	35,244	37,188	12,673	13,518
Steel.....	62,765	61,770	66,824	13,688	15,985
Total.....	94,585	97,014	104,012	26,361	29,503
Value (1,000 dollars)					
Net sales:					
Plastic.....	56,161	63,974	83,504	25,364	31,831
Steel.....	142,028	143,344	162,591	38,598	44,372
Total.....	198,189	207,318	246,095	63,962	76,203
Operating income or (loss):					
Plastic.....	1,593	742	2,718	271	991
Steel.....	(1,196)	(649)	7,179	1,433	2,537
Total.....	397	93	9,897	1,704	3,528
Share of net sales (percent)					
Operating income or (loss):					
Plastic.....	2.8	1.2	3.3	1.1	3.1
Steel.....	(.8)	(.5)	4.4	3.7	5.7
Weighted-average.....	0.2	2/	4.0	2.6	4.6
Per unit 3/					
Net sales:					
Plastic.....	\$1.65	\$1.69	\$2.09	\$2.00	\$2.35
Steel.....	2.25	2.31	2.42	2.81	2.77
Operating income or (loss):					
Plastic.....	.04	.01	.07	.02	.07
Steel.....	(.01)	(.01)	.10	.10	.15

1/ One firm in each product category did not provide quantities sold with its income-and-loss data.

2/ Less than 0.05 percent.

3/ Values are determined by dividing total dollar amounts by units sold; therefore, apparent changes in per-unit values may be the result of changes in product mix rather than across-the-board unit increases or decreases. Firms not supplying quantities sold were not used in the comparisons.

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

Capital expenditures.--The data provided by U.S. producers relative to their capital expenditures for land, buildings, and machinery and equipment used in the manufacture of steel and plastic pails are shown in table 12.

Table 12

Certain pails: Capital expenditures by U.S. producers, accounting years 1986-88 and interim periods ended Mar. 31, 1988, and Mar. 31, 1989

Item	1986	1987	1988	Interim period ended Mar. 31--	
				1988	1989
Establishment:					
Land and land improvements..	***	***	***	***	***
Building or leasehold improvements.....	***	***	***	***	***
Machinery, equipment, and fixtures.....	14,479	10,114	11,678	***	***
Total.....	18,678	11,732	14,466	***	***
Steel pails:					
Land and land improvements..	0	0	0	***	***
Building or leasehold improvements.....	143	86	85	***	***
Machinery, equipment, and fixtures.....	1,570	1,800	953	***	***
Total.....	1,713	1,886	1,038	***	***
Plastic pails:					
Land and land improvements..	***	***	***	***	***
Building or leasehold improvements.....	***	***	***	***	***
Machinery, equipment, and fixtures.....	4,663	***	2,104	***	***
Total.....	4,878	***	2,239	***	***

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

Research and development expenses.--Research and development expenses by U.S. producers relating to steel and plastic pails are shown in the following tabulation (in thousands of dollars):

Item	1986	1987	1988	Interim period ended Mar. 31--	
				1988	1989
All products.....	***	***	***	***	***
Steel pails.....	0	0	0	0	0
Plastic pails.....	0	0	0	0	0

Rate of return on total assets.--There was a disproportionate response rate between profitable and nonprofitable firms supplying both asset and income-and-loss information; therefore, the rate of return on total assets computation is not indicative of actual industry experience, and, accordingly, is not presented.

Capital and investment.--The Commission requested U.S. producers to describe any actual or potential negative effects of imports of certain steel pails from Mexico on their growth, investment, development, and production efforts, and ability to raise capital. Their responses are shown in appendix E.

Consideration of the Question of Threat of Material Injury

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors ⁷⁹--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

⁷⁹ Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.⁸⁰

The available data on foreign producers' operations (items (II) and (VI), above) are presented in the section entitled "Ability of foreign producers to generate exports and availability of export markets other than the United States," and information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV), above) is presented in the section entitled "Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury." Item I, regarding subsidies, and item IX, regarding agricultural products, are not relevant in this case. The potential for "product-shifting" (item (VIII)) is not an issue in this investigation because there are no known producers subject to investigation or to final orders that use production facilities that can be shifted to produce steel pails. Parties and staff are unaware of any dumping findings in third countries concerning steel pails from Mexico. Available data on U.S. inventories of the subject product (item (V)) follow.

⁸⁰ Section 771(7)(F)(iii) of the act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

U.S. importers' inventories

Both Yorktown and U.S. Container reported information on their end-of-period inventories during the period of investigation. From 1986 to 1988, end-of-period inventories of steel pails from Mexico climbed sharply, rising more than * * * times as high as those of 1986. End-of-period inventories also rose, by * * * percent, in January-March 1989 compared with those in the corresponding period of 1988. The ratio of end-of-period inventories to reported shipments of imports from Mexico increased from * * * percent in 1986 to * * * percent in 1987 before falling to * * * percent in 1988. Between January-March 1988 and the corresponding quarter in 1989, this ratio rose markedly from * * * percent to * * * percent, as shown in the following tabulation:

* * * * * *

By comparing the tabulation above with table 6, it can be seen that inventories of imports as a percentage of shipments of such imports are substantially higher in absolute terms than U.S. producers' ratios, ranging from * * * to * * * percent of shipments, whereas U.S. producers' ratios seldom rose above 2 percent during the period of investigation. This differential reflects Yorktown's lower average turnaround time, among other factors. At the conference, Mr. Joseph Rensch, president of Yorktown, stated that, on average, his turnaround time on order is 1 to 2 days from his Houston warehouse.⁸¹ This contrasts with the one-week turnaround time commonly reported by U.S. manufacturers.

Ability of foreign producers to generate exports and availability of export markets other than the United States

Envases de Plastico, S.A. de C.V. ("Envases"), is the only exporter of steel and plastic pails from Mexico to the United States.⁸² Along with steel and plastic pails, it produces 55 gallon steel drums in a single plant in Mexico City, Mexico. Envases has been producing steel pails since 1982 and has been exporting such pails to the United States since 1985. It commenced production of plastic pails in 1977.⁸³ Envases is a member of the Zapata Group, a collection of related companies under the control of the Zapata family, all producing products used in the packaging industry, such as food containers, bottle caps, and various enclosures.⁸⁴ Data provided by Envases concerning its capacity, production, shipments, and end-of-period inventories during the period of investigation are shown in table 13.

⁸¹ Transcript, p. 136.

⁸² There are apparently other unidentified firms producing these products in Mexico, but they serve only the domestic market.

⁸³ Respondent commented at the conference that because Envases' previous experiences with exporting plastic pails had been disastrous, it has been cautious in re-entering the export market for plastic pails. Accordingly, export levels of plastic pails, although increasing, are still only * * * those of steel pails.

⁸⁴ Transcript, p. 132.

Table 13

Certain steel pails: Envases' production, capacity, capacity utilization, home market sales, end-of-period inventories, and exports to the United States, 1986-88, January-March 1988, and January-March 1989

* * * * * *

Envases' production of steel pails grew consistently from 1986 to 1988, accelerating a bit between 1987 and 1988, to a level of * * * pails. Production fell slightly, however, in January-March 1989 compared with that in the corresponding period of 1988. Envases' capacity to produce steel pails * * * throughout the period of investigation. Thus, capacity utilization increased between 1986 and 1988, reaching a level of * * * percent in the latter year, and dropped off from interim 1988 to interim 1989. Capacity utilization reached a peak of * * * percent in the interim 1988 period.⁸⁵ End-of-period inventories increased * * *, by * * * percent, between 1987 and 1988, but never made up more than * * * percent of production during the period.

Envases' home-market sales fluctuated erratically, but generally exhibited a downward trend during 1986-88. At their height, home-market sales reached * * * pails in 1987, but by 1988 had been * * * by sales to the United States. Export sales to the United States grew by * * * percent between 1986 and 1988, then fell back in interim 1989 compared with those in interim 1988. As a share of production, exports to the United States steadily increased from 1986 to 1988, until they constituted * * * Envases' total production. Envases exported no steel pails to third countries during the period covered by the investigation.

Envases obtains the steel used in its production of steel pails from various suppliers, * * * at the present time. In the past, Envases obtained steel from sources such as * * *. It does procure steel domestically, but respondent commented at the conference that quantities of Mexican steel are currently insufficient for Envases' needs, nor is it always of the right gauge. Thus, Envases is required to source offshore for a considerable portion of its supply.⁸⁶

Currently, Envases has no plans to establish production facilities in the United States. Petitioner alleged, however, that Envases does have plans to establish an additional Mexican plant in Baja California, so as to serve better the California market.⁸⁷ Envases has recently concluded an agreement with a U.S. firm, TCR Industries, to act as its distributor in California, but has denied that it plans to expand capacity by constructing an additional

⁸⁵ Envases provided no projections for the remainder of 1989 regarding capacity, production, or shipments.

⁸⁶ It is important to note, however, that Envases has a competitive advantage against U.S. steel pail producers in procuring foreign steel, inasmuch as current U.S. import restrictions against some of the countries from which Envases obtains steel result in Envases' ability to buy steel from those countries at a lower price than that facing U.S. steel pail producers. Petitioner's witnesses estimated that Envases has up to a \$20/ton cost advantage in this regard. Transcript, p. 72.

⁸⁷ Transcript, p. 19.

plant.⁸⁸ With regard to TCR Industries, this firm has indicated that it intends to market primarily plastic pails.⁸⁹

Consideration of the Causal Relationship Between Imports
of the Subject Merchandise and the Alleged Material Injury

U.S. imports

Data on U.S. imports of steel and plastic pails are shown in table 14. The data presented in the table were compiled from responses to the Commission's questionnaire by two U.S. importers, Yorktown and U.S. Container, which accounted for all imports of such pails during the period of investigation.

Table 14

Certain pails: U.S. imports for consumption, by products and by sources, 1986-88, January-March 1988, and January-March 1989

* * * * *

Steel pails.--Imports of steel pails from Mexico increased from * * * pails in 1986 to * * * pails in 1988, or by * * * percent. Such imports, however, declined during January-March 1989, by * * * percent, compared with those in the corresponding period of 1988. In terms of value, the rise between 1986 and 1988 was even more marked, with imports increasing by * * * percent from * * * to * * *. Accordingly, unit values moved upward throughout the period of investigation, from * * * per pail in 1986 to * * * per pail in 1988, topping out at * * * per pail during the interim 1989 period.

* * * reported a small amount of imports of steel pails from Korea during the period of investigation. These imports increased in volume from 1986 to 1988, but were never more than * * * percent of the total imported from Mexico during that period. Unit values were consistently below those of the Mexican pails.

Plastic pails.--Plastic pail imports from Mexico were minimal in comparison with steel pail imports; however, they did demonstrate an increasing trend during 1986-88. Unlike imports of steel pails, plastic pail imports continued to increase, both in terms of quantity and in terms of value, in interim 1989 compared with those in interim 1988. In comparison with steel pail imports, unit values of plastic pail imports were higher at the start of the period, plummeted to * * * per pail in 1987, then gradually climbed back over the * * * per pail level, ending up, in interim 1989, at a higher level than steel pails.

⁸⁸ Transcript, p. 75.

⁸⁹ See letter from A. S. Rumfola to Kenneth R. Mason, June 21, 1989.

Steel and plastic pails.--When viewed in their entirety, imports of steel and plastic pails demonstrated the same trends, in terms of quantity and value, as did imports of steel pails when viewed separately, as steel pail imports far outweighed those of plastic. As with steel pails, unit values moved consistently upward during the period of investigation.

U.S. market penetration by imports

Questionnaire data were used to calculate penetration ratios for imports of steel pails into the domestic market for steel pails and the market for steel and plastic pails combined. Reported imports from Mexico account for * * * percent of the quantity of total 1988 imports from Mexico of steel pails entered under TSUSA item 640.3020, according to official statistics. In turn, reported U.S. producers' domestic shipments of steel pails, as defined in the petition, are believed to constitute nearly 90 percent, by quantity, of actual 1988 domestic shipments of such pails. Reported domestic shipments of plastic pails, however, constituted less than 20 percent, by quantity, of estimated 1988 domestic shipments of plastic pails.⁹⁰ Consequently, import penetration of the subject merchandise into the market for steel and plastic pails combined is substantially overstated.

Market penetration ratios are presented both in terms of quantity and in terms of value. Inasmuch as Yorktown Associates, the major importer of steel and plastic pails from Mexico, sold a larger percentage of its shipments to the distributor level of trade than did domestic producers, possibly resulting in an understatement of import penetration when viewed in terms of value, market penetration by imports in terms of quantity may be a more reliable indicator.

Steel pails.--U.S. market penetration by shipments of imports (in terms of quantity) of steel pails from Mexico increased from * * * percent in 1986 to * * * percent in 1988 (table 15). The ratio declined from * * * percent in January-March 1988 to * * * percent in the corresponding period of 1989. Market penetration ratios, in terms of value, for shipments of imports from Mexico were consistently lower than they were in terms of quantity; they increased from * * * percent in 1986 to * * * percent in 1988. Shipments of imports of steel pails from other countries were a minor factor in the U.S. market throughout the period of investigation.

Steel and plastic pails.--In terms of quantity, when the U.S. market for plastic and steel pails is viewed in its entirety, U.S. producers can be seen to have lost approximately * * * percentage points of market share between 1986 and 1988; such producers held around * * * percent of the market in 1988 (table 16). The largest penetration of the market by imports of steel pails from Mexico occurred in January-March 1988, when Mexico captured a * * *-percent share. Value-based shares of shipments of imports from Mexico were similar in direction, but smaller in magnitude.

⁹⁰ As estimated in respondent's postconference brief, exhibit 11.

Table 15

Steel pails: U.S. producers' domestic shipments, shipments of imports from Mexico and all other countries, and apparent consumption, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	January-March--	
				1988	1989
	Quantity (1,000 units)				
U.S. producers' shipments.....	63,073	61,853	66,661	14,972	17,036
Shipments of imports from--					
Mexico.....	***	***	***	***	***
All other countries 1/.....	***	***	***	***	***
Total.....	***	***	***	***	***
U.S. consumption.....	***	***	***	***	***
	Share of consumption quantity (percent)				
U.S. producers' shipments.....	***	***	***	***	***
Shipments of imports from--					
Mexico.....	***	***	***	***	***
All other countries.....	***	***	***	***	***
Total imports 2/.....	***	***	***	***	***
Total.....	100.0	100.0	100.0	100.0	100.0
	Value (1,000 dollars) 3/				
U.S. producers' shipments.....	137,477	138,842	156,591	30,203	35,873
Shipments of imports from--					
Mexico.....	***	***	***	***	***
All other countries 1/.....	***	***	***	***	***
Total.....	***	***	***	***	***
U.S. consumption.....	***	***	***	***	***
	Share of consumption value (percent)				
U.S. producers' shipments.....	***	***	***	***	***
Shipments of imports from--					
Mexico.....	***	***	***	***	***
All other countries.....	***	***	***	***	***
Total imports 2/.....	***	***	***	***	***
Total.....	100.0	100.0	100.0	100.0	100.0

1/ Republic of Korea.

2/ Because of rounding, shares may not add to the totals shown.

3/ F.o.b. U.S. point-of-shipment.

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

Table 16

Steel and plastic pails: U.S. producers' domestic shipments, shipments of imports, and apparent consumption, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	January-March--	
				1988	1989
	Quantity (1,000 units)				
U.S. producers' shipments.....	95,761	96,581	104,235	24,031	26,371
U.S. shipments of imports of steel pails from Mexico.....	***	***	***	***	***
U.S. shipments of non-subject imports 1/.....	***	***	***	***	***
Subtotal.....	***	***	***	***	***
U.S. consumption.....	***	***	***	***	***
	Share of consumption quantity (percent)				
U.S. producers' shipments.....	***	***	***	***	***
U.S. shipments of imports of steel pails from Mexico 2/..	***	***	***	***	***
U.S. shipments of non-subject imports 1/.....	***	***	***	***	***
Total 3/.....	100.0	100.0	100.0	100.0	100.0
	Value (1,000 dollars) 4/				
U.S. producers' shipments.....	192,394	200,213	240,831	48,941	57,665
U.S. shipments of imports of steel pails from Mexico.....	***	***	***	***	***
U.S. shipments of non-subject imports 1/.....	***	***	***	***	***
Subtotal.....	***	***	***	***	***
U.S. consumption.....	***	***	***	***	***
	Share of consumption value (percent)				
U.S. producers' shipments.....	***	***	***	***	***
U.S. shipments of imports of steel pails from Mexico 2/..	***	***	***	***	***
U.S. shipments of non-subject imports 1/.....	***	***	***	***	***
Total 3/.....	100.0	100.0	100.0	100.0	100.0

1/ Includes imports of steel pails from the Republic of Korea and imports of plastic pails from Mexico.

2/ Because reported domestic shipments of plastic pails constituted less than 20 percent, by quantity, of estimated 1988 domestic shipments of plastic pails, import penetration of the subject merchandise into the market for steel and plastic pails combined is substantially overstated.

3/ Because of rounding, shares may not add to the totals shown.

4/ F.o.b. U.S. point-of-shipment.

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

Prices

The demand for steel pails is derived from the demand for a large number of end-use and intermediate-use items such as paints, solvents, joint compounds, asphalt coatings and sealants, agricultural chemicals, and oils and greases, which may be stored, transported, and dispensed from pails. Because several of these intermediate-use products are inputs for the residential and commercial construction industries, the demand for steel pails is in part seasonal.

Steel pails are sold on a single-unit basis, most often in truckload quantities. The price of a pail is determined by its capacity, design (open- or tighthead), the thickness of the steel used in fabricating the side walls, top and bottom, and any special stampings or fittings incorporated into the pail.⁹¹ A second set of product features that may add substantially to the price of a pail are linings or surface treatments of the steel and external decoration (lithography, offset or screen printing, or painting) as dictated by individual customer order.

Plastic pails are substitutes for steel pails as containers of substances that are compatible with both materials.⁹² For products such as water-reducible paints and coatings and joint compound, injection-molded high-density polyethylene pails are generally substitutable with steel pails that have been treated with clear lacquer or a rust-inhibiting lining.⁹³

Although steel and plastic pails theoretically may serve as alternatives, often consumer preference, tradition, filling and handling machinery, and weight considerations limit substitution or simultaneous use of steel and plastic pails by an individual customer. Moreover, discrete market segments also exist for both steel and plastic pails that are not subject to cost-induced substitution. Strong solvents, class B poisons, highly flammable⁹⁴ or combustible products, overseas shipments and containers requiring great compressive strength, freedom from static, or the ability to be directly

⁹¹ Petitioners state that Yorktown frequently provided pails made entirely of 26-gauge steel in sales for which customers ordered and were quoted a price for lighter 28/26- or even 29-gauge pails, and that this practice constituted another form of unfair pricing. Transcript, pp. 145-146 and petitioners' postconference brief, p. 23. Several customers of both imported and domestic pails contacted by staff confirmed the use of heavier-than-rated steel in the Mexican pails. These customers had mixed opinions about whether this imparted an advantage, disadvantage, or made no difference.

⁹² A film bag contained in a corrugated box is another potential substitute product but is not widely used in applications similar to those for which pails are used.

⁹³ * * *, plant manager for * * *, revealed that the most representative and substitutable product is a 5-gallon polyethylene pail with a 90 millimeter wall thickness. Heavier 100 and 120 millimeter products are sold in lesser quantities to customers in the paint industry, and the "short 5," which actually has a capacity of 4.5 gallons, is favored by producers of joint compound and textures. It is not possible to produce injection-molded plastic tighthead pails.

⁹⁴ Currently only one domestic manufacturer of plastic pails, * * *, maintains a valid exemption from the DOT regulations on flammability for nonsteel packaging.

heated are examples of steel-only markets.⁹⁵ Although plastic packaging enjoys a number of advantages over steel in appearance, ease of handling, and resistance to denting, the number of products that can be contained **only** in plastic is more narrow.

During the 1970s a large number of industries switched from using steel to using plastic pails. Industry sources estimate that plastic pails currently have about 75 percent of the market for all 5 gallon and "5 gallon-short" pails.⁹⁶ Petitioners and respondents differ strongly on the potential for continued conversion from steel to plastic and, hence, the degree to which the relative costs of steel and polyethylene are determinative of the demand for steel pails.⁹⁷ A number of large consumers of plastic pails switched to steel in the period from mid-1988 to early 1989, according to representatives of both petitioners and respondent, when the price of polyethylene surged by about 50 percent.⁹⁸ Two factors cited at the conference indicating that plastics will continue to undercut future demand for steel pails are a growing consumer preference for plastic and the trend toward water-reducible materials (which due to the susceptibility of steel to rust are better contained in plastic) brought on by environmental and user clean-up concerns.⁹⁹

Both the imported and domestic products are sold either directly to firms that use the pails to package their products or to distributors.¹⁰⁰ A representative of the petitioners stated at the conference that distributors of the domestic pails have reported facing price competition from the Mexican pails at least as stiff as that alleged by the petitioning pail producers themselves.¹⁰¹ Supply arrangements in the form of contracts or letters of intent are typically entered into with major pail-consuming manufacturers, frequently following a request for quotations, though spot sales are also common. Where pail producers use price lists, discounts are almost always given. Prices to pail purchasers are typically guaranteed for a fixed period ranging from 30 days to 6 months.

⁹⁵ Mr. Joseph Rench, president of Yorktown, estimated during the conference that the market for steel pails for which plastic pails cannot compete is no more than 30 to 40 percent of the steel pail market. Transcript, p. 126. Counsel for petitioner stated that no more than 5 percent of the plastic pail market crossed over into steel pail sales in 1988, and that an additional 5 percent of the steel market could readily switch to plastic at prevailing prices. Transcript, p. 26.

⁹⁶ Respondent's post-conference brief, Exhibit 11.

⁹⁷ Petitioners' postconference brief, p. 7; respondent's postconference brief, pp. 6-7.

⁹⁸ The price rise for polyethylene during 1988 was attributed by the petitioners and respondents at the conference to a confluence of unique events, including a shortage in the supply of ethylene in the United States caused by an explosion at a major ethylene plant. Transcript, pp. 22, 115.

⁹⁹ Transcript, pp. 108-109.

¹⁰⁰ For Yorktown, the volume of sales accounted for by sales to distributors exceeded * * * percent; for six of the petitioners, the volume of sales to distributors was * * * percent or less.

¹⁰¹ Transcript, p. 84.

Questionnaire price data.--The Commission requested U.S. producers and importers to provide quarterly price data between January 1986 and March 1989 for seven pail products, six steel and one plastic. For each product listed below, price data for sales to the largest customer, and total sales to all customers, were requested for each quarter:

PRODUCT 1.--28/26-gauge 5-gallon openhead steel pail

PRODUCT 2.--28/26-gauge 5-gallon tighthhead steel pail

PRODUCT 3.--29-gauge 5-gallon openhead steel pail

PRODUCT 4.--29-gauge 5-gallon tighthhead steel pail

PRODUCT 5.--26-gauge 5-gallon openhead steel pail

PRODUCT 6.--26-gauge 5-gallon tighthhead steel pail

PRODUCT 7.--90mm 5-gallon polyethylene pail

Seven U.S. producers and two U.S. importers reported price data for the period covered by the investigation, although not for all periods or for each product requested.¹⁰² The responding U.S. petitioners accounted for about 83 percent, by quantity, of total reported domestic shipments of steel pails in 1988.¹⁰³ The responding U.S. importers accounted for 100 percent of total U.S. imports of steel pails from Mexico.¹⁰⁴

Price trends.--Quarterly weighted-average net delivered selling prices for U.S. producers' shipments of the six steel pail products fluctuated during the period of investigation (table 17). Prices held steady or fell 1 to 2 percent for all of the products in 1986, then moved downward for three of the products in 1987, and have mostly risen since the first quarter of 1988. The prices for products 1, 4, 5, and 6 declined during 1987 and generally increased during 1988-89. The prices for these products finished the period up 3 percent, 6 percent, 33 percent, and 12 percent, respectively. Product 2,

¹⁰² Of the 12 firms listed in support of the petition, 3 did not submit any price data, and 2 others did not provide data sufficient for analysis. A thirteenth U.S. producer, a non-petitioning manufacturer of plastic pails, provided partial price data on product 7. The number of U.S. producer firms reporting for individual products were as follows: product 1 - 7 firms, product 2 - 5 firms, product 3 - 7 firms, product 4 - 2 firms, product 5 - 6 firms, product 6 - 6 firms, and product 7 - 3 firms. Both U.S. importers reported usable price data for products 1, 3, 5, and 6.

¹⁰³ The three responding firms that produce plastic pails (one of which was a nonpetitioning plastic-only producer) account for roughly 12 percent of total domestic shipments of plastic pails in the United States for 1988. Products 1-6 accounted for 54 percent of the seven responding domestic producers' steel pail production for 1988.

¹⁰⁴ Yorktown has sold in the United States small quantities of Mexican-produced plastic pails that are not covered by the petition. TCR Industries, a California firm recently established as a customer, will be importing primarily plastic pails. Transcript, pp. 129, 153; also see letter from A. S. Rumfola to Kenneth R. Mason, June 21, 1989.

Table 17

Steel and plastic pails: Weighted-average net delivered prices of steel pail products 1-6 and plastic pail product 7 reported by U.S. producers and importers of Mexican steel pails, by products and by quarters, January 1986-March 1989

(Per hundred pails)														
Period	Product 1		Product 2		Product 3		Product 4		Product 5		Product 6		Product 7	
	U.S.	Mexico	U.S.		U.S.	Mexico	U.S.		U.S.	Mexico	U.S.	Mexico	U.S.	
1986:														
Jan.-Mar.....	\$208.19	***	\$244.10		***	***	\$241.00		\$242.99	***	\$255.73	***	***	
Apr.-June....	208.50	***	244.17		***	***	241.00		241.08	***	251.84	***	***	
Jul.-Sept....	208.85	***	245.52		***	***	241.00		241.40	***	251.69	***	***	
Oct.-Dec.....	203.55	***	246.99		***	***	241.00		241.39	***	253.60	***	***	
1987:														
Jan.-Mar.....	194.52	***	254.95		***	***	245.00		242.16	***	241.84	***	***	
Apr.-June....	202.25	***	256.23		***	***	213.07		234.16	***	242.02	***	***	
Jul.-Sept....	201.37	***	205.96		***	***	213.07		231.59	***	243.06	***	***	
Oct.-Dec.....	202.81	***	206.94		***	***	205.17		229.69	***	235.95	***	***	
1988:														
Jan.-Mar.....	207.92	***	265.26		***	***	204.65		276.91	***	261.25	***	***	
Apr.-June....	208.32	***	213.83		***	***	204.65		278.42	***	259.92	***	***	
Jul.-Sept....	210.10	***	218.85		***	***	239.65		294.46	***	278.55	***	***	
Oct.-Dec.....	212.80	***	222.66		***	***	239.65		295.28	***	278.72	***	***	
1989:														
Jan.-Mar.....	215.27	***	226.48		***	***	256.65		322.89	***	286.72	***	***	

1/ No data reported.

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

the only product to decline in price over the period, showed steady prices in 1986, and then fluctuated widely over the next year before ending 7 percent down in the final year. The prices for product 3 rose relatively more steadily than those for products 1, 4, 5, and 6, increasing by 14 percent. Quarterly net delivered selling prices for U.S. producers' shipments of the one plastic pail product increased throughout the period of investigation.¹⁰⁵

Quarterly weighted-average net selling prices for U.S. importers' shipments of steel pail products 1, 3, 5, and 6 fluctuated during the period of investigation. Prices evidenced no pattern across the four products for 1986, were generally steady or down for 1987, and generally steady or up for 1988. The prices for these products finished the period up 12 percent, 1 percent, 16 percent, and 18 percent, respectively.

Price comparisons.--Price comparisons were possible for four of the seven products covered in essentially all of the 13 quarters. Mexican prices for product 1 were below domestic prices in all 13 quarters, with margins ranging from 1 to 12 percent (table 18). For product 3 the Mexican prices were higher than the domestic prices in 8 quarters by between 1 and 6 percent, and lower in 4 quarters by between 1 and 8 percent. Price comparisons between Mexican and domestic pails for product 5 show that the Mexican product was priced consistently lower, with margins ranging from 8 to 31 percent. Product 6 compared similarly, with the Mexican price lower by 7 to 28 percent in all quarters.

Table 18

Steel pails: Average margins of underselling (overselling) by the subject imports from Mexico, by products and by quarters, January 1986-March 1989

* * * * *

¹⁰⁵ Only one producer reported prices for the plastic pail product.

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during the period January 1986 through March 1989 the Mexican peso declined sharply by 81.8 percent against the U.S. dollar in nominal terms (table 19). ¹⁰⁶ Adjusted for relative movements in producer price indexes in the United States and Mexico, the real value of the Mexican currency declined moderately against the dollar through 1986 and January-March 1987, before registering an overall real appreciation of 18.7 percent by the fourth quarter of 1988, the last period for which official price index data were available.

Table 19

U.S.-Mexican exchange rates: 1/ Indexes of the nominal and real exchange rate equivalents of the Mexican peso, and producer price indexes, 2/ by quarters, January 1986-March 1989

	(January-March 1986=100)			
	Nominal exchange- rate index	Real exchange- rate index	U.S. Producer Price index	Mexican Producer Price index
1986:				
Jan-Mar.....	100.0	100.0	100.0	100.0
Apr-Jun.....	81.1	95.8	98.2	115.9
Jul-Sep.....	63.6	92.3	97.7	141.7
Oct-Dec.....	50.7	88.9	98.1	172.0
1987:				
Jan-Mar.....	41.3	86.5	99.2	207.7
Apr-Jun.....	34.1	90.8	100.8	268.2
Jul-Sep.....	29.0	97.7	101.9	343.3
Oct-Dec.....	23.7	99.4	102.3	428.5
1988:				
Jan-Mar.....	18.8	109.4	102.9	597.8
Apr-Jun.....	18.6	114.3	104.8	644.8
Jul-Sep.....	18.6	117.0	106.2	668.9
Oct-Dec.....	18.6	118.7	106.7	681.7
1989:				
Jan-Mar.....	18.2	<u>3/</u>	109.0	<u>3/</u>

1/ Exchange rates expressed in U.S. dollars per unit of foreign currency.

2/ The real exchange rate index is derived from the nominal exchange rates adjusted by the producer price indexes of both countries. These indexes are derived from line 63 of the International Financial Statistics.

3/ No information available.

Source: International Monetary Fund, International Financial Statistics, June 1989.

¹⁰⁶ International Financial Statistics, June 1989.

Lost sales and revenues

Five firms reported 48 allegations of lost sales involving 24 customers and 18 allegations of lost revenue involving 17 customers. ¹⁰⁷ Allegations of lost sales involved 9,685,000 pails over the period of investigation with a declared net value of \$18,895,534. The same five firms claimed to have lost \$5,037,925 on sales retained by them. ¹⁰⁸ Staff contacted the 14 customers listed below to verify 34 allegations, representing \$12,548,560 in alleged lost sales and \$1,093,060 in alleged lost revenues.

* * * was cited by * * * for a sale lost in * * * of * * * pails with a net value of * * *, and by * * * for a lost sale of * * * and a revenue loss of * * * in March 1989. * * *, purchasing manager for the * * * plant of * * *, with responsibility for procuring almost * * * steel pails annually, was contacted. * * * stated that * * * does not rely upon a formal bid solicitation cycle, and he has dealt with seven steel manufacturers, including * * *, over a number of years. ¹⁰⁹ Currently * * * buys * * * percent of its steel pails from Yorktown, with the remainder of its business split equally between two domestic producers. * * * stated that, for this reason, the * * * unit lost sales claim by * * * for * * * exceeded the volume of potential business available from his firm at that time.

* * * reported that, in general, Yorktown's prices are competitive, but in line with the domestic producers'. Prices for the imported pails have been approximately * * * cents lower per pail for the lighter gauges, but as much as * * * for heavier gauge pails, according to * * *. He listed accommodation with just-in-time work schedules, availability, and quality as the factors he considers ahead of price when making procurement decisions. By keeping * * * pails in stock in its * * * warehouse, Yorktown has been able to guarantee * * * a * * * turnaround. * * * provides * * * days delivery, and * * * requires * * * days to deliver its product. ¹¹⁰

* * * further stated, in regard to the lost revenue claim of * * * per pail made by * * * for * * *, that he believed two domestic manufacturers, * * *, were below * * *'s initial high bid in addition to Yorktown. On the lost sale allegation by * * *, * * * felt that the alleged value of the accepted offer estimated at * * * per pail was far below any price * * * managed to get. ¹¹¹ * * * also stated that * * * had 10 quality complaints on * * *'s products over the 3-year investigation period that were significant factors in his determination not to award business to that company.

¹⁰⁷ Two firms, * * *, indicated lost sales and revenues, but did not provide sufficient information to allow staff to investigate their claims. * * * included in its allegations one sale worth * * * on a product which, though correctly identified, was not covered in either the petition or questionnaire. Similarly, * * * alleged lost revenues of * * * and * * * of * * * on * * * sales of products not covered.

¹⁰⁸ * * * reported revenues lost on sales that were reduced from their initial quotation in both price and volume because of the Mexican imports.

¹⁰⁹ * * * made a written submission to the Commission in opposition to the petition.

¹¹⁰ * * * stated that he approached several pail suppliers in late 1986 about maintaining inventory of pails for * * * and that only * * * was willing to do so.

¹¹¹ * * * had failed to date its price quotation, making it difficult for * * * to identify the specific sale.

***, a producer of marine and industrial coatings, was cited for a lost sale of *** pails worth *** in *** by ***, a lost sale of *** pails worth *** in *** by ***, and two losses in ***, resulting from the reduction of orders by *** units worth *** by ***.

***, who annually purchases about *** steel pails for ***'s plant, stated that quality and delivery time ranked equally in importance in his procurement decision, and that Envases' pails rated higher than the domestic products on both counts. ¹¹² *** would not confirm the individual allegations, but offered that ***'s annual bid process results in two suppliers being selected and that *** probably had lost its potential sales in *** to *** and not, as alleged, to Yorktown.

*** was named by *** for a lost sale of *** pails worth *** in *** and by *** for a sale of *** units worth *** in ***. The same company was cited by *** for lost revenues on a sale of *** pails in ***. *** at the *** plant in ***, stated that although the current company policy is to maintain two suppliers for steel pails and one for plastic, *** has purchased from as many as four steel pail producers in some periods. Accordingly, *** challenged the *** claim of lost sales to his firm in 1985 as excessive. As an operator in the "low-end" of the steel pail market, the representative for this *** producer reported that any quality advantage of the Mexican imported pail was of secondary importance to ***, but asserted that the superior turnaround service his firm has received from Yorktown has been valuable.

*** alleged a lost sale to *** of *** pails worth *** occurring in ***. *** claimed a lost sale in each of the 3 years covered totaling *** pails with a net worth of *** and an undated revenue loss on *** units of ***. *** of *** stated that a record of both superior performance and service gave Yorktown an edge in competing for his business. *** confirmed that ***'s claims of lost sales and revenue in *** probably did reflect bids or actual sales by Yorktown. For 1988, however, other domestic producers may have taken potential business from ***.

*** listed *** under a lost sales allegation of *** pails worth *** in ***, as did *** for a loss of *** units worth *** in ***. *** cited *** for both lost sales of *** pails worth *** over three occasions in 1988 and a revenue loss of *** on a *** sale of *** pails. ***, *** for ***, stated that when soliciting annual bids from three to four companies to supply approximately *** steel pails, he considers the quality of the pail and service provided of greater importance than a relatively lower price. On this basis Yorktown has gained its current position as primary supplier with about *** percent of ***'s pail business. *** reports that over the last few years Yorktown's prices have been marginally lower than those of the domestic competition. He has also purchased 24-gauge pails from Yorktown at a higher price than those quoted by domestic firms, either for the service advantage or because domestic sources did not supply the pails to him consistently or in sufficient quantities.

On the lost revenue allegation made by *** for ***, *** stated that *** offered the lowest overall bid, and that *** may also have come in below ***. Similarly, *** thought that ***'s lost sales claim for *** may, in part, represent a loss to *** rather than Yorktown. *** also

pointed out in connection with * * * 's lost sales estimate for * * * that the three claims, each citing a sales potential of * * * pails, are overstated. * * * lost sales in * * * because * * * understood that * * * was unable to obtain the necessary steel for a period of several months. Finally, at one period * * * was removed from consideration as a supplier because of a quality problem.

* * *, a petitioner, listed * * * in an allegation of both lost sales and lost revenue of an unquantified amount. * * * co-owner * * * stated that, in fact, * * * has never purchased or sold Envases' pails, but instead continues to serve as a distributor solely of * * * pails. * * * added that his company has fought hard to preserve its distribution relationship with * * * in the face of vastly lower prices for the Mexican product partly out of respect for a longstanding business relationship and partly to prop up what * * * considers to be the last remaining viable regional producer willing to supply distributors such as * * *.

* * *, a roofing and driveway sealant manufacturer that purchases several million pails annually for its half-dozen plants, was named by * * * in a lost revenue allegation of * * * on a quotation originally involving * * * pails, and by * * * for a lost sale of * * * pails worth * * *. * * * of * * * did not recall either sale, but believed that both amounts far exceeded the amount his * * * location would purchase in any given order, and probably in any year. * * * does not buy in large, annually contracted amounts.

* * * purchases imported Mexican pails only for the * * * plant, its smallest, and only as a secondary or tertiary supply. * * * stated that he is not aware that Mexican prices have been significantly lower than domestic producers' prices. He added that the heavier gauge steel used frequently in the Mexican pails creates some problems in filling and transporting * * * 's products.

* * * was named in a lost sale allegation of * * * pails worth * * * in the first quarter of * * * by * * *, and in a lost sale allegation of * * * units worth * * * in * * * by * * *. * * * of * * * purchases about * * * annually from two main and one secondary pail producer in order to bid on government contracts with * * * for the transport of paint, solvents, oils, and hazardous materials.

* * * stated that the unit price of * * * cited in the * * * allegation was a quote from * * *, and that Yorktown was quoting * * * at that time for pails meeting the same DOT specification.¹¹³ The alleged order volume of * * * would represent, according to * * *, potential business over several months resulting from a particular bid to the government by * * *, and would seldom go to a single firm. Currently, * * * is buying almost * * * percent of its pails from Yorktown, with a similar amount coming from * * *, and the remainder from * * *. * * * stated that * * * 's allegation of an accepted Mexican quote of * * * -- * * * cents below * * * 's quote -- was probably inaccurate. He does not recall purchasing a Mexican pail for less than * * *

¹¹³ * * * cited a purchase from * * * from a * * * invoice for * * * tighthead * * * pails at a unit price of * * *. * * * orders by relevant * * * rather than conventional industry product definitions.

during the 2 years he has done business with Yorktown.¹¹⁴ Again, * * * stated that * * * pails was probably twice the potential business available to any pail producer in the period indicated in the allegation.

* * * emphasized that the restrictions and exacting performance requirements inherent in government contracting, including penalties for "leakers," late deliveries, and the failure to document cost minimization, require him to consider quality, service, and price equally when making procurement decisions. On all criteria * * * rated the imported product as equal or superior to the domestic product. Yorktown initially approached * * * with a price about * * * percent below the domestic producers, and has kept its prices in a range of * * * percent above or below the price of the lower priced of the two domestic regional producers ever since. * * * stated that based on his appraisal of the imported product and Yorktown's service, he would be willing to pay a premium of between * * * percent for the Mexican product over the pails currently available from domestic producers.

* * * of * * * was named by * * * in a lost revenue allegation of * * * on * * * pails sold in * * *. * * * of * * * confirmed the accuracy of the allegation. Although he does not believe the * * * plant will ever purchase pails from Yorktown because of the substantial transportation costs involved and concerns over potential availability, damage, and quality problems, * * * had been discussing a possible purchase from Yorktown in 1988 and received the alleged price quote.

* * * alleged to have lost a sale in * * * of * * * pails worth * * * to * * *, a roof coatings manufacturer in * * *. When contacted by staff, * * * of * * * did not recall having purchased an imported pail at any time in the past. He stated that the number of pails involved in the sale alleged by * * *, his main supplier, was * * * times greater than his annual consumption of pails.

* * * alleged to have lost * * * in revenue on a quotation made initially on * * * pails in * * * to * * *, an * * * manufacturer in * * *. * * * alleged to have lost a sale to the same company in * * * for * * * pails worth * * *. * * * of * * * did not recall either sale, the former being made before he joined the firm. He noted that his firm does not purchase * * * pails, as indicated in * * *'s allegation, but only * * * ones. * * * stated that the price differentials alleged, * * * and * * *, respectively, were far in excess of what he has witnessed in the market. * * * stated that prices for the imported pails are approximately * * * lower than those for the domestic product.

* * * is currently buying about * * * percent of its * * * pails per year from Yorktown, with the remaining share alternating among three domestic producers according to price and availability. * * * does not perceive any substantial differences in quality among the domestic and imported pails, but stated that his company appreciates the * * * service it gets from Yorktown's Houston warehouse, and would be willing to pay a few cents per pail more than the lowest priced domestic pail in order to receive it.

* * * cited one lost sale in * * * of * * * pails worth * * *, and two instances of lost revenue in * * * and * * * totaling * * * on sales of * * *

¹¹⁴ * * * also reported that he informed * * * that its prices were above not only * * *'s but also at least one other domestic manufacturer's when * * *.

pails to * * * of * * *. * * * of * * * confirmed the likely accuracy of all three allegations. * * * stated that the consistently lower prices offered by Yorktown have earned it * * * percent of * * * 's business, with the remainder split between two domestic manufacturers. * * * believes that the domestic pails are superior in construction and lithography, and would favor them over the imported product at the same price.

* * * cited a lost sale in * * * of * * * pails worth * * * to * * * of * * *. * * *, who purchases about * * * custom-painted steel pails monthly for * * *, stated that * * * 's claim to have lost that sale to Mexican imports was false because his firm has not purchased any imported pails beyond * * *. * * *.

* * * believes that Yorktown's presence in the market has caused pail prices in the region surrounding * * * to be lower than they would be otherwise. He stated that the imported pails consistently undersell the domestic ones, but then added that the Mexican product might sometimes be more expensive, because Yorktown often offers a heavier 26-gauge pail priced and marketed to compete with the domestic 28/26.

* * * cited a lost sale in * * * of * * * pails worth * * * to * * * of * * *. * * *, who coordinates annual purchases of * * * steel pails on behalf of * * *, was contacted by staff. * * * confirmed that * * * first began buying Mexican pails in the period of the allegation, and that * * *, as a principal supplier, lost some of its business with * * *, though not necessarily the entire account represented by the * * * figure. * * * stated that the * * *-cent price differential alleged seemed greater than any * * * remembered, but did not rule it out. Yorktown's Houston warehousing capability has been a benefit from * * * 's perspective, but the Mexican and domestic products match up equally on other criteria, such as quality and availability. ¹¹⁵

* * * stated that, all other factors equal, * * * prefers to do business with firms that manufacture domestically. * * * has not purchased any Mexican pails within the past * * * because they are not competitive at their current price of * * * above that of the domestic pails.

¹¹⁵ * * * mentioned that there is one domestic producer that * * * firm has tried and rejected on quality grounds, but that the various domestic producers * * * now uses at its several plants all provide good quality.

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APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-435
(Preliminary)]

Certain Steel Pails From Mexico; Import Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-435 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in 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 steel pails,¹ provided for in subheadings 7310.21.00 and 7310.29.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 640.30 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete a preliminary antidumping investigation in 45 days, or in this case by July 17, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and

Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: May 31, 1989.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-252-1177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on May 31, 1989, by the Pail Producers' Committee of the Steel Shipping Container Institute, Union, NJ, the individual members of that committee, and two non-member steel pail producers.

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a 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. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that

the application be made not later than (7) days after publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on June 20, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202-252-1177) not later than June 16, 1989 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 collectively be allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before June 22, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than June 26, 1989. Such additional comments must be

¹ For purposes of this investigation, steel pails are defined as cylindrical containers of steel (excluding stainless steel) of 1 to 7 gallons (3.8 to 26.8 liters) in volume (capacity), with a diameter of 11 inches (279 millimeters) or greater and a wall thickness of .29-.22 gauge steel (.292-.683 millimeters), presented empty.

limited to comments on business
proprietary information received on or
after the written briefs.

Authority: This investigation is being
conducted under authority of the Tariff Act of
1930, title VII. This notice is published
pursuant to § 207.12 of the Commission's
rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: June 5, 1989.

[FR Doc. 89-13688 Filed 6-8-89; 8:45 am]

BILLING CODE 7020-02-M

investigation proceeds normally, the ITC will make its preliminary determination on or before July 17, 1989. If that determination is affirmative, we will make a preliminary determination on or before November 7, 1989.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4087 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On May 31, 1989, we received a petition filed in proper form by the Pail Producers' Committee of the Steel Shipping Container Institute ("SSCI"), the individual members of the Committee and two non-member steel pail producers. In compliance with the filing requirements of section 353.12 of the Department's regulations (54 FR 12772, March 28, 1989), petitioner alleges that imports of certain steel pails from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition, because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Commerce officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's revised regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's regulations (54 FR 12773, March 28, 1989).

United States Price and Foreign Market Value

Petitioner bases United States price (USP) for tighthead steel pails on two

invoices from a U.S. distributor of imported steel pails from Mexico. Petitioner's foreign market value (FMV) for openhead steel pails is based on a price quote made by the manufacturer of steel pails in Mexico. Petitioner has added ten cents to the USP for tighthead steel pails in order to adjust for physical differences between tighthead and openhead steel pails. Based on a comparison of FMV to USP, petitioner alleges a dumping margin of 89.37 percent.

However, the Department recalculated the prices by subtracting ten cents from the FMV to adjust for physical differences between openhead and tighthead steel pails. Based on a comparison of FMV to USP as estimated by the Department, the petition alleges a dumping margin of 93.91 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain steel pails from Mexico and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain steel pails from Mexico are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by November 7, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouses, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Prior to January 1, 1989, certain steel pails were classified under item 640.3030 of the *Tariff Schedules of the United*

[A-201-801]

Initiation of Antidumping Duty Investigation; Certain Steel Pails From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of certain steel pails from Mexico are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of certain steel pails materially injure, or threaten material injury to, a U.S. industry. If this

States Annotated (TSUSA), this merchandise is currently classifiable under HTS items 7310.21.0000 and 7310.29.0000.

The scope of this investigation includes certain steel pails from Mexico which are cylindrical containers of steel, with a volume (capacity) of 1 through 7 gallons, an outside diameter of 11¼ inches or greater, and a wall thickness of 29-22 guage steel, presented empty. This merchandise includes openhead, tighthead, and dome top steel pails.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 17, 1989, whether there is a reasonable indication that imports of certain steel pails from Mexico materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

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

Eric I. Garfinkel,
*Assistant Secretary for Import
Administration.*

June 20, 1989.

[FR Doc. 89-15070 Filed 6-23-89; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

LIST OF PARTICIPANTS IN THE PUBLIC CONFERENCE
IN THE INVESTIGATION

LIST OF PARTICIPANTS IN THE PUBLIC CONFERENCE

Investigation No. 731-TA-435 (Preliminary)

CERTAIN STEEL PAILS FROM MEXICO

Those listed below appeared at the United States International Trade Commission's conference held in connection with the subject investigation on June 20, 1989, in the Hearing Room of the USITC Building, 500 E Street, S.W., Washington, DC.

In support of the imposition of antidumping duties

Schagrin Associates--Counsel
Washington, DC
on behalf of--

Pail Producers' Committee, Steel Shipping Container Institute

Mr. John Stirrup, President, Brockway Standard, Inc.
Mr. Warren Wackman, Jr., Vice President, Southline Metal
Products Co.

Roger B. Schagrin, Esq.--OF COUNSEL
Mark C. DelBianco, Esq.--OF COUNSEL

In opposition to the imposition of antidumping duties

Dow, Lohnes, & Albertson--Counsel
Washington, DC
on behalf of--

Envases de Plastico, S.A. de C.V.

Mr. Joseph E. Rensch, President, Yorktown Associates, Inc.
Mr. Duane Millbrandt

Carrie A. Simon, Esq.--OF COUNSEL
Douglas J. Heffner, Esq.--OF COUNSEL

APPENDIX C

PUBLIC DATA REGARDING U.S. SHIPMENTS OF STEEL PAILS

TABLE 1

STEEL DRUMS AND PAILS
ANNUAL SHIPMENTS *

(in thousands of units)

YEAR	DRUM TOTALS	DRUMS			PAILS
		22½" Dia. 55 Gal. 20 q. & Heavier	14" Dia. Over 12 Gal.	Others Less than 20 q.	29 q. & Heavier 11½" Dia.
1975	34,384	25,170	4,002	5,212	98,373
1976	38,578	27,294	4,370	7,014	101,299
1977	41,261	30,410	4,758	6,093	124,977
1978	42,702	32,265	4,543	5,894	125,354
1979	47,674	36,719	4,288	6,667	111,158
1980	41,080	31,082	3,789	6,209	97,425
1981	39,014	30,151	3,444	5,419	93,531
1982	32,738	25,484	2,956	4,298	79,691
1983	34,148	26,125	3,436	4,587	77,836
1984	37,455	28,357	4,043	5,055	72,965
1985	35,412	27,275	3,248	4,889	80,601
1986	35,800	28,554	3,110	4,136	80,171
1987	35,906	29,135	2,725	4,046	78,887
1988					76,852 **

* U.S. Dept. of Commerce, Bureau of Census Industry Survey

** Last two quarters estimated

Note: These totals reflect data obtained from survey of container manufacturers and may be low.

APPENDIX D

TRADE AND EMPLOYMENT DATA FOR STAINLESS STEEL PAILS

Table D-1

Stainless steel pails: Certain salient data, 1986-88, January-March 1988, and
January-March 1989

* * * * *

APPENDIX E

IMPACT OF IMPORTS ON U.S. PRODUCERS' EXISTING DEVELOPMENT AND
PRODUCTION EFFORTS (INCLUDING EFFORTS TO DEVELOP A
DERIVATIVE OR MORE ADVANCED VERSION OF THE LIKE PRODUCT),
GROWTH, INVESTMENTS, AND ABILITY TO RAISE CAPITAL

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of certain steel pails from Mexico on their growth, investment, development, and production efforts, and ability to raise capital. Their responses are shown below.

In support of the petition.

* * * * *

No position taken on the petition.

* * * * *