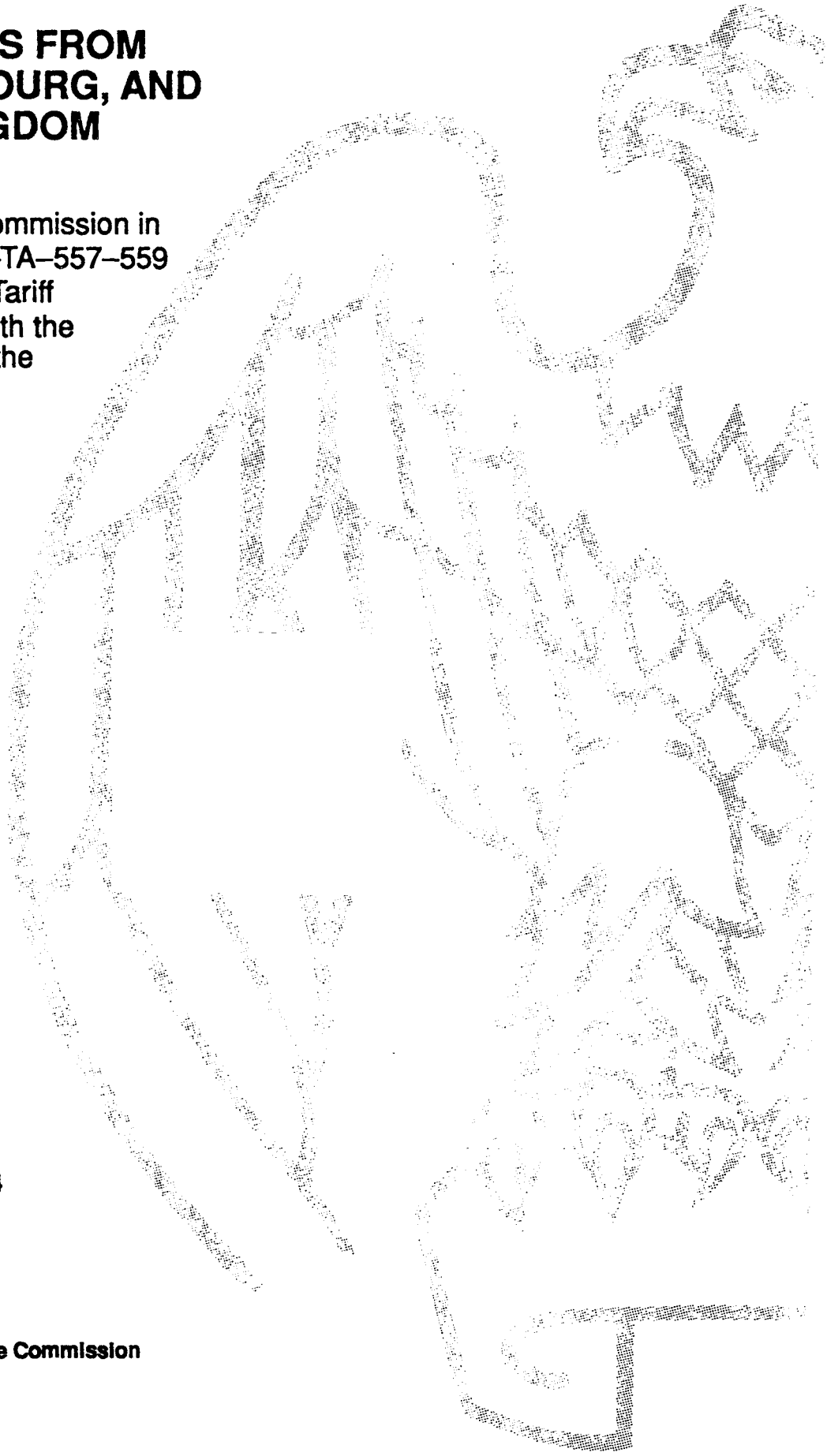
NEW STEEL RAILS FROM JAPAN, LUXEMBOURG, AND THE UNITED KINGDOM

Determinations of the Commission in Investigations Nos. 731–TA–557–559 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations



USITC PUBLICATION 2524

JUNE 1992

ates International Trade Commission
on, DC 20436

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-557-559 (Preliminary)

NEW STEEL RAILS FROM JAPAN, LUXEMBOURG, AND THE UNITED KINGDOM

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines, 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 threatened with material injury[2] by reason of imports from the United Kingdom of new steel rails,[3] provided for in subheadings 7302.10.10 and 8548.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Further, the Commission determines,[4] pursuant to section 733(a) of the Tariff Act of 1930, that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially

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

[2] Chairman Newquist and Vice Chairman Brunsdale determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the United Kingdom.

[3] For purposes of these investigations, the product covered is new steel rail, except light rail and girder rail, of other than alloy steel, and over 30 kilograms per meter. New steel rail includes standard T rail, crane rail and contact rail (electrical rail). Standard T rails are both heat-treated and not heat-treated. The heat-treated T rails are generally regarded as a "premium" standard T rail.

[4] Chairman Newquist and Vice Chairman Brunsdale determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan and Luxembourg.

retarded, by reason of imports from Japan and Luxembourg of new steel rails that are alleged to be sold in the United States at LTFV.

Background

On May 1, 1992, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of Steelton Rail Products & Pipe Division, Bethlehem Steel Corp., Steelton, PA, and CF&I Steel Corp., Pueblo, CO, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of new steel rails from Japan, Luxembourg, and the United Kingdom. Accordingly, effective May 1, 1992, the Commission instituted antidumping investigations Nos. 731-TA-557-559 (Preliminary). Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 8, 1992 (57 F.R. 19931). The conference was held in Washington, DC, on May 22, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF COMMISSIONERS ROHR, CRAWFORD, NUZUM, AND WATSON

Based on the record in these preliminary investigations, we determine that there is a no reasonable indication that an industry in the United States is materially injured by reason of imports of new steel rails from Japan, Luxembourg, and the United Kingdom that are alleged to be sold at less than fair value (LTFV). We further determine that there is no reasonable indication of threat of material injury to a domestic industry by allegedly LTFV imports from either Japan or Luxembourg. We find, however, that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly LTFV imports from the United Kingdom.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in preliminary antidumping investigations requires the Commission to determine whether, based on the best information available at the time of the preliminary determination, there is a reasonable indication of material injury or threat thereof to a domestic industry by reason of the subject imports.[1] In these investigations, the Commission considered whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[2] The U.S. Court of Appeals for the Federal Circuit has held that this interpretation of the standard "accords with clearly discernible legislative intent and is

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[1] 19 U.S.C. § 1673b(a). American Lamb Co. v. United States, 785 F.2d 994, 1001 (Fed. Cir. 1986); Calabrian Corporation v. United States International Trade Commission, Slip Op. 92-69 (Ct. Int'l Trade 1991) (citing American Lamb). Whether the establishment of an industry in the United States is materially retarded is not an issue in these investigations.

[2] American Lamb, 785 F.2d at 1001.

sufficiently reasonable."[3]

II. LIKE PRODUCT AND DOMESTIC INDUSTRY

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant 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 product . . . ."[4] In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[5]

A. Background

The Department of Commerce (Commerce) has defined the class or kind of merchandise subject to these investigations as follows:

> new steel rail, except light rail and girder rail, of other than alloy steel, and over 30 kilograms per meter. New steel rail includes standard T rail, crane rail and contact rail (electrical rail). Standard T rails are both heat-treated and not heat-treated. The heat-treated T rails are generally regarded as a

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[3] Id. at 1004.

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(10). The Commission's determination of what is the appropriate like product or products in an investigation is a factual determination, to which we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. In defining the like product, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and where appropriate, (6) price.

"premium" standard T rail.[6]

New steel rails (rails) are used primarily to form a continuous track for carrying and moving wheel loads (for example, railroad tracks). All rails come in an assortment of hardnesses and weights per yard; harder, heavier rails are sturdier and more expensive.[7] Most rails produced in the United States are made from carbon steel, although CF&I Steel Corp. (CF&I) produces a small quantity of alloy rail.[8] New steel rails come in four different shapes: T, crane, contact and girder.[9] T rails comprise the vast majority of new steel rail production in the United States.[10]

Several issues regarding the definition like product arise in these investigations. Petitioners argue that the Commission should adopt the same like product adopted in the Commission's previous Canadian rails investigation, namely all new steel rails.[11] By contrast, respondents argue two different approaches: (1) that T rails, crane rails, and contact rails are separate like products; and (2) that standard T rails and premium T rails are separate like products. In addition, these investigations present questions as to whether girder rails[12] and alloy rail form part of the like

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[6] Letter from Francis J. Sailor, Deputy Assistant Secretary for Investigations, Import Administration, Department of Commerce, to Don E. Newquist, Chairman, United States International Trade Commission, (June 9, 1992). We note that our use of the term "standard" differs from Commerce's in that our usage excludes premium rail.

[7] Final Report at I-4-I-8.

[8] Alloy steel is defined in the HTS as steel containing, in various proportions, one or more of a number of different elements including aluminum, boron, chromium, cobalt, copper, lead, manganese, molybdenum, nickel, niobium, silicon, titanium, tungsten, vanadium, zirconium, and other elements. HTS Chapter 72, Note 1(f), at 72-2.

[9] Report at I-6.

[10] Report at I-25.

[11] Petition at 61. See, New Steel Rails from Canada, Invs. Nos. 701-TA-297 & 731-TA-522 (Final) USITC Pub. 2217 (September 1989) at 10.

[12] Girder rail is a type of new steel rail designed to be imbedded in pavement, and on which trolley cars run. See Report at I-5.

product. We address each of these issues in turn.

B. All shapes of steel rails are a single like product.

The Commission is not persuaded that it should distinguish among the different shapes of rails as respondents argue. First, the different shapes of rails produced by the domestic industry generally have the same characteristics and uses. All shapes have the characteristic head, web, and base, with variations as to width and height.[13] Further, the vast majority of rails of each shapes is made of the same basic compound: carbon steel; although CF&I continues to produce a small (but diminishing) quantity of alloy rails.[14] Finally, all shapes of formed steel rails are used in the conveyance of tracked vehicles, with variations depending on the type of vehicle to be rolled.

We recognize that the different shapes of the new steel rails subject to investigation nearly prohibit their interchangeability.[15] Nevertheless, as the Commission has previously found, the "[l]ack of interchangeability does not preclude a finding of one like product."[16]

The record in these investigations provides evidence of overlapping channels of distribution. The vast majority of T rails is sold directly to end users, primarily Class I railroads.[17] A small quantity of T rails, along with crane and contact rail, are sold through distributors.[18] Accordingly, there are substantial overlapping channels of distribution among all rails.

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[13] See Report at I-6.
[14] Tr. at 16.
[15] There is a possibility that a very light crane could be run on the strongest T rail; but, for commercial purposes, there is no interchangeability.
[16] High-Information Content Flat Panel Displays and Subassemblies Thereof from Japan, Inv. No. 731-TA-469 (Final), USITC Pub. 2413 (August 1991) at 10, n.26.
[17] Report at I-20-I-22.
[18] Id.

Evidence on the various differences in end use and lack of interchangeability suggests that customers perceive T, crane, and contact rail as different products.[19] Customer perceptions, however, are not dispositive to our like product analysis.

In finding a single like product in these investigations, the commonality of manufacturing facilities, equipment, and employees is particularly significant. All shapes of new steel rails are manufactured in common facilities, on the same equipment and by the same employees.[20] The initial steps of rail production are common to the production of all shapes of rails.[21] It is only when the semi-finished steel reaches the rolling mills that part of the machinery (the rolls) needs to be changed to produce the desired shape of rail.[22]

Notwithstanding the lack of interchangeability and different customer perceptions of the various rail shapes, on the basis of common characteristics and uses, overlapping channels of distribution, and nearly identical production processes, we conclude that all shapes of rail constitute a single like product.

C. Different quality rails are a single like product.

T rails, which represent the majority of domestic rail production, can be divided into "standard" and "premium" quality T rail.[23] Standard rail is non-heat-treated carbon steel rail with a medium hardness. Premium rail is

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[19] Report at I-22-I-23; MMRA Brief at 5.
[20] Petition at 64.
[21] Report at I-8-I-11.
[22] Indeed, petitioner argues that changing the rolls is "routine," and is necessary even when changing the size of the T rails to be produced. Petitioners' Brief at 8.
[23] Respondent MMRA notes in its brief that crane rail can also be heat-treated to increase durability. MMRA Brief at 3, n. 3.

"hardened" rail produced from heat-treated carbon steel or from alloy steel.[24] The evidence of record does not persuade us that we should divide the like product along quality lines.

Premium T rail has the same general physical appearances and a similar metallurgical composition as standard T rail.[25] The primary difference is the "hardness" level. The degree of hardness is measured by a Brinell Hardness Number, a standard established by the American Railroad Engineering Association.[26] The Commission has not normally divided the like product by grades of a product based solely on industry classifications.[27] Whereas industry specifications may be helpful in establishing where the lines between like products should be drawn, the Commission has generally relied on other factors for establishing separate like products.

Both grades of rail are used by Class I railroads on their mainline track sections. Representatives of Class I railroads appearing in support of the respondents testified that the two grades of T rails are not interchangeable.[28] They described a process in which the engineering department informs the purchasing department of its requirements for premium and standard T rails for the upcoming year. They asserted that the purchasing department does not have the authority to substitute premium T rails for standard T rails or standard T rails for premium T rails.[29] However, evidence on the record indicates that the railroads undertake a cost/benefit analysis

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[24] Report at I-11. Heat treating, whether head-hardening or through-hardening, results in a harder rail with a longer wear life.
[25] Petition at 63.
[26] Report at I-7, n. 19.
[27] See e.g., Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan, Invs. Nos. 731-TA-540 & 541 (Preliminary) USITC Pub. 2474 (January 1992).
[28] E.g., Tr. at 106, 111.
[29] Tr. at 111.

to determine whether standard T rails or premium T rail are the most cost-effective product to lay at any particular location on the track.[30] Thus, although the railroads' purchasing departments may not have authority to substitute standard for premium T rails, the engineering department determines which grade of rail is more appropriate to use based on a cost/benefit analysis. The record indicates that either premium or standard T rails could be used at some points on the tracks.[31]

It is undisputed that premium and standard T rails have the same channels of distribution. However, evidence on the record indicates that customers and producers perceive a difference between standard and premium T rails. Testimony of witnesses from the railroads which purchase T rails indicates that customers perceive premium and standard T rails as differentiated products. Indeed, a representative of the Union Pacific Railroad described standard and premium rail as "distinct products."[32] Because heat-treated premium rail requires additional processing, it does command a higher price from customers. Furthermore, petitioners have focused their capital expansion plans on increasing capacity to produce premium T rail.[33]

Both standard and premium T rails undergo the same production process up to a point;[34] premium T rails are simply standard rail that are heat-treated.[35] The heat treatment is done on separate equipment but in the same facilities and by the same employees.[36] Although the production of premium T rails

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[30] Report at I-22; Petitioners' Brief at 6 & Exhibit 1.
[31] Report at I-22.
[32] Tr. at 118.
[33] Petitioners' Brief at 20.
[34] Tr. at 22.
[35] Report at I-11.
[36] Tr. at 11 & 19.

requires heat-treating processes which add value, the bulk of the premium T rails manufacturing process is accounted for by the production of the standard T rail product.

Prices for premium and standard T rail are different.[37] This factor, however, in conjunction with different customer perceptions, does not persuade us to find separate the grades into two like products.[38]

In sum, premium and standard T rail have nearly identical characteristics and uses; are interchangeable at least in part; are sold through the same channels of distribution; and are produced in the same facilities, on much of the same equipment and by the same employees. Accordingly, we find that premium and standard T rail are not separate like products.

D. Inclusion of girder rail in the like product.

Unlike in previous investigations, Commerce has defined the scope of these investigations to exclude imported girder rails.[39] The Commission's like product determination, however, is not identical to Commerce's scope of the investigation. Although the Commission accepts the class or kind determination of Commerce as to what imported products are subject to investigation, the Commission determines which domestic products are like the subject imports within Commerce's scope of investigation.[40]

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[37] Id.

[38] See, Dynamic Random Access Memories of One Megabit and above from Korea, Inv. No. 731-TA-556 (Preliminary) USITC Pub. 2519 (June 1992); Minivans from Japan, Inv. No. 731-TA-522 (Preliminary) USITC Pub. 2402 (July 1991).

[39] 57 Fed. Reg. 22457 (May 28, 1992); Report at I-5-I-7.

[40] Algoma Steel Corp., Ltd. v. United States, 688 F. Supp. 639 (Ct. Int'l Trade 1988), aff'd 865 F.2d 240 (Fed. Cir. 1988), cert. denied, 109 S.Ct. 3244 (1989); American NTN Bearing Mfg. Corp. v. United States, 739 F. Supp. 1555, 1560 (Ct. Int'l Trade 1990); Bulk Ibuprofen from India, Invs. Nos. 701-TA-308 and 731-TA-526 (Preliminary), USITC Pub. 2428 (September 1991) at 4.

The evidence on this record does not provide sufficiently clear dividing lines to support excluding girder rails from the like product. Girder rails have a metallurgical makeup similar to crane rails and T rails. Although girder rails have a slightly different appearance, (i.e., an arm extruding from the side) they have the same end use--as track for the conveyance of tracked vehicles. The manufacturing processes, facilities, and employees for all rails are the same up to the point where rollers are changed to produce girder, crane, contact, or T rails.[41] In light of our finding that crane, contact and T rails constitute a single like product, we also find that each of those shapes are as similar to each other as they are to girder rail. We therefore include girder rail in the like product.[42]

E. Inclusion of alloy rail in the like product.

Imports of alloy rail also are not included in Commerce's scope of investigation.[43] Petitioners, however, argue that alloy rails should be included in the like product.[44]

Due to the introduction of alloying elements, the metallurgical makeup of alloy rails is slightly different from that of heat-treated carbon steel rails. Alloy rail, like heat-treated carbon steel rail is premium rail. The appearance and degree of hardness of alloy rails are virtually the same as those of heat-treated carbon steel rail. Alloy T rails are interchangeable with heat-treated carbon steel T rails and the channels of distribution are

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[41] Report at I-7-I-8.
[42] We note that, even if we were to exclude girder rails, their production is so minimal a part of the U.S. industry that the outcome of these investigations, would not change.
[43] Letter from Francis J. Sailor, Deputy Assistant Secretary for Investigations, Import Administration, Department of Commerce, to Don E. Newquist, Chairman, United States International Trade Commission, (June 91, 1992).
[44] Tr. at 70.

the same. Producers may perceive a difference between alloy and heat-treated carbon rail because of the difference in the production process. Customers generally prefer the heat-treated rail, notwithstanding the higher price, because the heat-treated carbon steel performs better and lasts longer.[45] Alloy rails are made by the same manufacturing processes as non-alloy steel rails; the only difference is the addition of certain alloying elements when the steel is being melted.[46]

Based on the similarities in physical characteristics and uses between alloy rails and heat treated carbon steel rails, their interchangeability, identical channels of distribution, and common production facilities and employees, we include alloy rails in the same like product with all new steel rails.

F. Domestic industry

On the basis of our finding a single like product, we determine that the domestic industry consists of the two domestic producers of new steel rails, Steelton Rail Products & Pipe Division of Bethlehem Steel Corp. (Bethlehem) and CF&I.

III. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether there is a reasonable indication of material injury to a domestic industry by reason of allegedly dumped imports, the Commission is instructed to consider "all relevant economic factors which have a bearing on the state of the industry in the United States . . . ."[47] In undertaking that assessment, we consider, among other relevant factors, U.S. consumption,

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[45] Tr. at 64.
[46] Report at I-8. Only CF&I produces alloy steel rails, and only in very small amounts.
[47] 19 U.S.C. § 1677(7)(C)(iii).

production, capacity utilization, shipments, employment, wages, financial performance, capital investment, and research and development expenses.[48] In each investigation, the Commission also considers the particular nature of the industry under investigation[49] in the "context of the business cycle and conditions of competition that are distinctive to the affected industry."[50] No single factor is dispositive in our evaluation of the condition of the industry. We note that much of the information on which we base our decision is confidential. Therefore, our discussion of the condition of the industry must be in general terms.

Domestic consumption of all rails, in terms of quantity, fluctuated over the period of investigation, falling from 1989 to 1990 and then rising in 1991 to a level below that for 1989.[51] Consumption rose in the first three months of 1992 (interim 1992) as compared with the first three months of 1991 (interim 1991).[52] Domestic production steadily declined from 1989 to 1991, but increased in interim 1992 compared with interim 1991.[53] The domestic industry's capacity to produce rails increased steadily over the period of investigation.[54] Reflecting the divergent trends in capacity and production, capacity utilization declined steadily from 1989 to 1991, but increased from interim 1991 compared with interim 1992.[55]

U.S. shipments of new steel rails declined irregularly from 1989 to

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[48] See 19 U.S.C. § 1677(7)(C)(iii).
[49] See 19 U.S.C. § 1677(7)(C)(iii). See also H.R. Rep. No. 317, 96th Cong., 1st Sess. 36; S. Rep. No. 249, 96th Cong., 1st Sess. 88.
[50] 19 U.S.C. § 1677(7)(C)(iii).
[51] Report at I-17.
[52] Report at I-17. We do not rely heavily on interim data as a basis for our determinations because we do not find data for a single quarter to be particularly representative.
[53] Report at I-25.
[54] Report at I-25.
[55] Report at I-25.

1991, but increased during interim 1992 compared with interim 1991. Because the domestic steel producers generally produce to order, they maintain minimal or no inventories of finished rails.[56]

The number of production and related workers employed in the production of rails rose from 1989 to 1990 and then fell in 1991 to fewer worker than in 1989; the number of workers in interim 1992 was higher than that in interim 1991.[57] The hours worked, however, fell steadily from 1989 to 1991, but then rose in interim 1992 compared with interim 1991.[58] Wages paid to workers rose from 1989 to 1990 and fell slightly in 1991 but remained above the wages paid in 1989.[59] Wages were higher in interim 1992 than in the same period of the previous year.[60] Total workers' compensation declined steadily from 1989 to 1991, and increased in the first quarter of 1992 compared with the first quarter of 1991.[61]

The financial data for this industry reveal declining net sales from 1989 to 1991, but an increase in interim 1992 compared with interim 1991.[62] The industry showed an operating loss in each full year under investigation. The operating loss increased from 1989 to 1990, but then decreased from 1990 to 1991.[63] Operating income increased from interim 1991 to interim 1992.[64]

Operating income as a percentage of net sales was negative from 1989 through 1991.[65] The percentage worsened from 1989 to 1990. Although the

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[56] Report at I-26.
[57] Report at I-27.
[58] Report at I-27.
[59] Report at I-27.
[60] Report at I-27.
[61] Report at I-27.
[62] Report at I-29.
[63] Report at I-29.
[64] Report at I-29.
[65] Report at I-29.

margin improved in 1990 from the previous year, it remained negative and below that for 1989.[66] The operating income margin was positive, however, for both interim periods, and increased from interim 1991 to interim 1992.[67] The cost of goods sold as a percentage of net sales increased from 1989 to 1990, and then returned to almost the same level in 1991.[68]

Capital investment in this industry fell from 1989 to 1990, rose in 1991, and was lower from interim 1991 than in interim 1992.[69] Research and development expenditures rose from 1989 to 1990, fell in 1991 to a level below 1989, and then continued to fall in interim 1992 compared to the same period in the previous year.[70] Net return on total assets declined in 1990 but returned in 1991 to approximately the 1989 level.[71] [72]

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

A. Cumulation

In its determination of whether there is a reasonable indication of present material injury, the Commission is required to assess cumulatively the volume and effect of subject imports from two or more countries "if such imports compete with one another and with the like products of the domestic industry in the United States market."[73] The Commission has cumulated the volume and effect of imports from more than one country in cases in which

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[66] Report at I-29.
[67] Report at I-29.
[68] Report at I-29.
[69] Report at I-30.
[70] Report at I-30.
[71] Report at I-30. Interim data was not available for this factor.
[72] Based on the declines in production, shipments, employment, and financial performance, Commissioner Rohr finds that there is a reasonable indication that the U.S. industry producing new steel rails is experiencing material injury.
[73] 19 U.S.C. § 1677(7)(C)(iv).

imports satisfy the following three criteria: (1) they compete with other subject imports and with the domestic like product; (2) they are marketed within a reasonably coincident period; and (3) they are subject to investigation.[74] The Commission is not required to cumulate imports from a particular country that it determines are negligible and have no discernible adverse impact on the domestic industry.[75] In these investigations, we find that imports from none of the three countries are negligible. We therefore decline to apply the negligible imports exception to any country's imports.

Subject imports consist of premium T rails from Japan, premium and standard T rails and other rail shapes from Luxembourg, and standard and premium T rails from the United Kingdom. The evidence indicates that there is a "reasonable overlap" of competition between subject imports and between the subject imports and the domestic product.

The record demonstrates that both Japan and Luxembourg export premium T rails to the United States.[76] The record also reveals competing quotes, during the period of investigation, from the Japanese producers, the Luxembourgian producer, and the domestic producers.[77] These data establish

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[74] See e.g., Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden and the United Kingdom, Invs. Nos. 731-TA-486-494 (Preliminary), USITC Pub. 2389 (February 1991), at 28-39.

[75] 19 U.S.C. § 1677(7)(C)(v). In determining whether imports are negligible, the Commission considers all relevant economic factors regarding the imports, including, but not limited to, whether:

(I) the volume and market share of the imports are negligible,

(II) sales transactions involving the imports are isolated and sporadic, and

(III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.

See H.R. Rep. No. 40, Part 1, 100th Cong., 1st Sess. 141 (1987); H.R. Rep. No. 576, 100th Cong., 2d Sess. (1988) at 621. See also The Torrington Company v. United States, Slip Op. 92-49 (Ct. Int'l Trade, April 3, 1992) at 19-20.

[76] Report at I-43, table 23.

[77] E.g., Report at I-47, table 25.

that the subject products from Japan and Luxembourg compete with each other and with the domestic like product.

British Steel Plc (BSC) argues that its shipments of premium T rails should not be cumulated with those of Japan because the imports from the United Kingdom were just for trial purposes and therefore did not compete with other products.[78] In fact, the record indicates otherwise.[79] Likewise, the record shows imports of standard T rail from both the United Kingdom and from Luxembourg.[80] We are not persuaded, simply by the lack of evidence on bids, that standard T rails from Luxembourg and the United Kingdom do not compete.

We therefore conclude that the record establishes a "reasonable overlap" of competition.[81] This record also establishes that the imports compete with the domestic product both in the same geographical market and at the same time.[82] Based on this evidence, we have cumulatively assessed the volume and price effects of allegedly unfairly traded import from all three countries under investigation.

B. No Reasonable Indication of Material Injury by Reason of Allegedly LTFV Imports

In determining whether there is a reasonable indication that the domestic industry is materially injured by reason of the imports under

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[78] BSC Brief at 5.
[79] Report at I-48, n.160 & I-49.
[80] Report at I-43, table 23.
[81] See e.g., Wieland Werke, AG v. United States, 718 F.Supp. 50, 52 (Ct. Int'l Trade 1989) ("Completely overlapping markets are not required."); Granges Metallverken AB v. United States, 716 F.Supp. 17, 21, 22 (Ct. Int'l Trade 1989) ("The Commission need not track each sale of individual sub-products and their counterparts to show that all imports compete with all other imports and all domestic like products . . . the Commission need only find evidence of reasonable overlap in competition"); Florex v. United States, 705 F.Supp. 582, 592 (Ct. Int'l Trade 1989) ("[c]ompletely overlapping markets is [sic] not required.").
[82] Report at I-47-I-48.

investigation, the statute directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
>
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
>
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States.[83]

In making this determination, the Commission may consider "such other economic factors as are relevant to the determination . . . ."[84] Although we may consider information that indicates that injury to the industry is caused by factors other than the LTFV imports, we do not weigh causes.[85] Finally, the Commission is directed to "evaluate all relevant factors . . . within the context of the . . . conditions of competition that are distinctive to the affected industry."[86] We again note that due to the confidential nature of the data, this discussion must be in general terms.

A significant condition of competition distinctive to this industry is the shift in demand from standard T rails to premium T rails, driven by the increased demand by the railroads for premium T rails.[87] From 1989 to 1991, the consumption of premium T rails increased while the consumption of standard T rails declined.[88] We therefore undertake our analysis of the domestic

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[83] 19 U.S.C. § 1677(7)(B)(i).
[84] 19 U.S.C. § 1677(7)(B)(ii).
[85] Commissioners Rohr and Nuzum further note that the Commission need not determine that imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249, 96th Cong., 1st Sess. 57 and 74 (1979). Rather, a finding that imports are a cause of material injury is sufficient. See, e.g., Metallverken Nederland, B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).
[86] 19 U.S.C. § 1677(7)(C).
[87] Tr. at 52.
[88] Report at I-17, table 1.

industry in light of the changing demand patterns in the industry. Domestic producers' capacity utilization for producing premium T rails remained extremely high while demand for that product continued to rise.[89] Domestic producers were unable to supply enough premium T rails to meet demand in 1989, much less the increase in demand that occurred thereafter.

We also note that, within our definition of the industry, there are segments where particular shapes of rails and particular grades of T rails compete directly with each other in their respective segments of the market. These market segments may be affected in different ways by various factors, including imports.[90] In our analysis, we have therefore considered the impact of imports on the domestic industry, in the context of the dynamics of these market segments.

The volume of cumulated subject imports increased from 1989 to 1991, but declined in interim 1992 compared with interim 1991.[91] Similarly, the U.S. market share of the subject imports likewise rose steadily from 1989 to 1991, but then fell in the first quarter of 1991 compared with the first quarter of 1992.[92]

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[89] Tr. at 33-34.

[90] We note that neither the statute nor the legislative history require the Commission to adopt any particular analysis when the market consists of several segments. Copperweld Corp. v. United States, 682 F. Supp. 552, 566 (Ct. Int'l Trade 1988). Thus, the Commission has in the past evaluated a variety of segmented markets in light of the particular features of the industry. E.g., Mechanical Transfer Presses from Japan, Inv. No. 731-TA-429 (Final) USITC Pub. 2257 (February 1990), at 26 n. 26 (Market consisting of two segments, one for presses with a 1,000-1,500 ton capacity and a second for 3,000 ton presses); Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Invs. No. 731-TA-426 & 428 (Final) USITC Pub. 2237 (November 1989) at 39-40 ("the total market for SBTS and competitive services can be subdivided into several interrelated markets).

[91] Report at I-41. We do not rely heavily on interim import data as such data may not be representative.

[92] Report at I-42-I-43, table 23.

Imports of both premium and standard T rails each rose steadily from 1989 to 1991, but both then declined in interim 1992 compared with interim 1991.[93] Imports of crane and contact rails fluctuated, but generally decreased over the period of investigation.[94]

The vast majority of the subject imports were premium T rails from Japan.[95] The domestic industry is unable to supply the domestic market even though its premium T rails production facilities were producing at nearly full capacity.[96] Domestic producers' sales of premium T rails are constrained by the existing levels of domestic capacity, not by rising import levels.

The standard T rail market, by contrast, did not experience the expansion of the premium T rail market. Both production and shipments declined from 1989 to 1991.[97] These trends parallel the decline in consumption during the same period.[98] We further note that, notwithstanding the increase in import penetration, the domestic producers continue to supply a large part of the domestic industry for standard T rails.[99] In the markets for other rails, domestic producers experienced a substantial increase in market share.[100]

The domestic industry is unable to supply the current demand for premium T rails, and therefore an overwhelming majority of the subject imports are clearly not displacing the domestic product. The significance of the share of imports relative to consumption must be viewed in the context of these

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[93] Report at I-43, table 23.
[94] Report at I-43, table 23.
[95] Report at I-43, table 23.
[96] Tr. at 52 & 110; see also, Petitioners' Brief at 21.
[97] Report at I-25, table 2 & I-26, table 3.
[98] Report at I-17, table 1.
[99] Report at I-43, table 23.
[100] Report at I-42-I-43, table 23.

conditions of competition.[101]

The Commission obtained comprehensive pricing information on the products that constitute the vast majority of rail consumers, namely standard T rails and premium T rails sold directly to Class I railroads.[102] Typically, the Class I railroads determine their rail requirements for the year and then solicit quotes from qualified rail producers.[103] Having established their premium and standard T rails requirements for the year, they request separate quotes for standard T rails and for premium T rails.[104] The lowest quote, however, does not always win the contract. Class I railroads also consider such non-price factors as geographical proximity, delivery schedules, quality differences, and alternative sourcing.[105] At least one railroad articulated a company policy sourcing domestically when possible.[106] Indeed, the sales data show that some railroads buy exclusively from the domestic industry, while others will purchase from a domestic supplier even if it is not the lowest bidder.[107] Railroad representatives also testified that the domestic industry was sometimes unable to deliver enough product, or meet its delivery requirements.[108] One purchaser indicated that foreign-produced premium T

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[101] Commissioner Rohr concurs with his colleagues that these factors lessen the significance of the market share indicators in these particular investigations. He also notes that regardless of its significance, market share is only one aspect of his causation analysis and is not, on its own, determinative of the issue.

[102] Seventy percent of all sales in this industry are of T rails to the Class I railroads. Report at I-42. The Commission also gathered pricing information for T rails sold through distributors. Report at I-49.

[103] A representative of the Union Pacific railroad testified that neither of the domestic producers are qualified to supply non-alloy premium rail to them. Tr. at 116.

[104] Tr. at 111.

[105] Tr. at 102.

[106] Tr. at 102.

[107] Report at I-47-I-48.

[108] E.g., Tr. at 103 & 104.

rails are of a higher quality than domestically produced premium T rails.[109] Consequently, some purchasers choose foreign sources of supply for reasons other than price.

Because most sales result from negotiations between the railroads and the suppliers, the Commission considered quotes for premium T rails independently from quotes for standard T rails. The record for the industry as a whole shows a general increase in prices for both standard and premium T rail.[110]

In addition to rising prices, the record reveals infrequent and insignificant underselling.[111] Not a single initial quote from a Japanese supplier was lower than the lowest initial quote from a U.S. producer in any of the bids for which prices were reported.[112] Two initial quotes for premium rails from the Luxembourg producer were lower than the lowest quote from a U.S. producer, but only one quote resulted in an award. The final quote for this award was barely below the lowest quote from a domestic supplier, an insignificant margin of underselling for this product.[113]

Although BSC quoted standard T rails at prices below both domestic producers, imports of standard T rails constituted only a small part of the

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[109] Report at I-48. Union Pacific railroad has not qualified either domestic producer. Tr. at 116.

[110] See Report at I-47-I-48; Tr. at 125. Because price depression by definition requires declining prices, we find no evidence of price depression in this market.

[111] Commissioner Crawford notes that the mere existence of underselling is not probative. Underselling may reflect difference in quality and other non-price factors between the domestic products and subject imports. Accordingly, an analysis of price underselling is only meaningful within the context of the relative value between the domestic product and subject imports.

[112] Because of the ability of Class I railroads to negotiate with suppliers, the initial quotes illustrate the true point of competition between suppliers.

[113] Report at I-48.

market for all rails.[114] The record also contains quotes from BSC for premium rail which are lower than quotes from either domestic producer. However, the majority of these quotes were for trial purposes because BSC is not qualified to supply premium T rails to any of the domestic Class I railroads.[115]

The evidence shows that declines between initial quotes and final quotes were not consistently smaller when the domestic producers competed solely against each other than when they competed with the subject imports.[116] Indeed, the railroads were able to negotiate lower final quotes from suppliers even in the absence of any competition.[117] Moreover, the railroads, through their decisions whether and when to purchase, can limit the price increases by the domestic industry.[118] In addition, the possibility that one major purchaser might build its own heat-treating facility may have acted to restrain domestic rail prices.[119] Another indication of an absence of price suppression is the relationship of cost of goods sold and net sales.[120] Although cost of goods sold as a share of net sales increased from 1989 to 1990, it receded in 1991 to 1989 levels. In interim 1992, the percentage declined compared with interim 1991.[121] Accordingly, because the record contains substantial evidence that demonstrates a lack of price suppression by the subject imports, we find no discernible price effect of the subject imports.

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[114] Report at I-43, table, 23; see also, Tr. at 126.
[115] Tr. at 134.
[116] Report at I-47-I-48.
[117] Report at I-48, table 32.
[118] Tr. at 98; Railroads' budget revenues, as well as the availability of used rails, are factors in the decision of purchase new rails. Accordingly, the price of new rails may affect the timing and amount of new rails purchased. Report at I-16-I-17.
[119] Tr. at 109.
[120] Report at I-29, table 6.
[121] Id.

Based on the changing patterns of demand, the domestic producers' inability to supply the increasing demand for premium T rails, and our evaluation of the volume of subject imports and the effect of subject imports on prices, we conclude that the impact of the subject imports on the domestic industry demonstrates that there is no reasonable indication of material injury by reason of the allegedly LTFV imports. In these preliminary investigations, we have obtained information from a substantial segment of purchasers, and the data supplied by both domestic producers and foreign producers are comprehensive.[122] Accordingly, we also find no likelihood that contrary evidence will arise in any final investigations.

IV. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

The statute directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of imports "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."[123] The Commission must consider the ten statutory factors but is not required to discuss every factor.[124]

A. Cumulation

At the outset, we must consider whether to cumulate imports from the three subject countries for purposes of our threat analysis. The statute indicates that, in its threat analysis, "[t]o the extent practicable . . . the

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[122] See Transcript of Commission Brief and Vote in the Matter of New Steel Rails from Japan, Luxembourg and the United Kingdom, Invs. Nos. 731-TA-557-559 (Preliminary), June 10, 1992 at 4.

[123] 19 U.S.C. § 1677(7)(F)(ii).

[124] See 19 U.S.C. § 1677(7)(F)(i). Asociacion Colombiana de Exportadores de Flores, et al. v. United States, 693 F. Supp. 1165, 1073 (Ct. Int'l Trade 1988) ("Asocoflores").

Commission may cumulatively assess the volume and price effects of imports from two or more countries. . . ."[125] Hence, cumulation for threat analysis, in contrast to cumulation for material injury analysis, is discretionary.[126]

The Court of International Trade has held that

> cumulative analysis for threat purposes [is] feasible in certain circumstances. For example, if imports are increasing at similar rates in the same markets and have relatively similar margins of underselling, it is likely that cumulation could be undertaken. This does not mean that each country's imports need threaten injury by themselves . . . Here, the ITC found great disparity in the patterns of volume increases and decreases among imports from the various countries . . . Finally ITC notes that patterns of underselling, or lack thereof, varied greatly from one country to the next.[127]

We have determined to exercise our discretion not to cumulate any of the subject imports for a number of reasons. First, there is a lack of uniformity in the import trends among the imports from the three subject countries.[128] Similarly, volume and market penetration trends vary markedly.[129] In addition, each country competes primarily in a different segment of the market. Japan exports only premium T rails; Luxembourg exports all types of rails and is the largest exporter in the crane rails and contact rails market; and the United Kingdom exports primarily standard T rails because it is not yet qualified to supply premium T rails.[130] In addition, the patterns of underselling vary widely among countries and between standard and premium T rails.[131] These factors, which render meaningful cumulative analysis difficult in the context of threat, have been held to constitute a sufficient

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[125] 19 U.S.C. § 1677(7)(F)(iv) (emphasis added).
[126] Compare 19 U.S.C. § 1677(7)(F)(iv) (Commission "may" cumulate for threat analysis) with 19 U.S.C. § 1677(7)(C)(iv) (Commission "shall" cumulate for present injury analysis).
[127] Asocoflores, 693 F. Supp. at 1072.
[128] Report at I-43, table 23.
[129] Report at I-43, table 23.
[130] Report at I-43, table 23.
[131] See Report at I-47-I-48.

basis for the Commission to decline to cumulate for its threat analysis.[132]

B. No Reasonable Indication of Threat by Reason of Allegedly LTFV Imports from Japan

The record establishes that the Japanese producers are currently, and have been throughout the period of investigation, producing at a very high level of capacity utilization. In addition, there is no evidence that Japanese producers' capacity will increase in the near future.[133] While the percentage of total Japanese exports to the United States has fluctuated over the period of investigation, there is no compelling evidence that exports will increase substantially in the near future.[134] Indeed, the home market demand for all new steel rails has risen.[135] Moreover, Japanese producers are exporting into a segment of the market which is expanding and which the domestic producers are unable to supply.[136]

There is also no evidence that Japanese producers will start exporting standard T rails to the United States. The home market demand for standard T rails has remained strong over the period of investigation, and there is no evidence that such demand will decline or that Japan's exports will be diverted from other countries to the United States. Finally, there is no evidence on the record that Japan's exports will increase rapidly to an injurious level.[137] We note that, during the period of investigation, a voluntary restraint agreement (VRA) was in effect setting limits on exports of steel products from Japan. This VRA expired on March 31, 1992.[138] The mere

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[132] Asocoflores, 704 F. Supp. at 1072.
[133] Report at I-34, table 13. 19 U.S.C. § 1677(7)(F)(ii)(II) & (VI).
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[135] Report at I-34, table 13.
[136] Tr. at 110.
[137] 19 U.S.C. § 1677(7)(F)(i)(III). Japan only exports premium rail to the United States.
[138] Report at I-13.

fact of the expiration of the VRA, however, does not create a reasonable indication that imports will increase to injurious levels.[139]

In light of the evidence that imports of Japanese premium T rails have consistently been priced higher than the domestic product, and in consideration of the various non-price factors purchasers consider in accepting a bid,[140] we do not find that imports from Japan of premium rail will likely enter the U.S. market at prices that will depress or suppress domestic prices.[141]

The Commission is also directed to consider any substantial increase in inventories in the United States.[142] We note that the importers do not maintain inventories in the United States because shipments are made in response to specific orders. Hence, this factor does not support a finding of a reasonable indication of threat of material injury. To the extent these inventories are relevant, there is no evidence regarding the final destination of products being inventoried in Japan and the low ratio of inventories to both production and total shipments supports a finding that the inventories do not pose a threat to the domestic industry.[143]

The record includes no evidence of other adverse trends or any likelihood of product shifting.[144] Finally, in light of the absence of price suppression by the subject imports and the inability of the domestic producers to supply the domestic market, we find no evidence of actual or potential

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[139] Commissioner Nuzum further notes that imports of rail and rail products (the VRA subcategory that includes the subject imports) from Japan did not consistently fill the levels authorized by the VRA. See Staff Report at I-14.
[140] See discussion above.
[141] 19 U.S.C. § 1677(7)(F)(i)(IV).
[142] 19 U.S.C. § 1677(7)(F)(i)(V).
[143] Report at I-34, table 13.
[144] 19 U.S.C. § 1677(7)(F)(i)(VII) & (VIII).

negative effects on the domestic industry's development and production efforts.[145]

C. No Reasonable Indication of Threat by Reason of Allegedly LTFV Imports from Luxembourg

We find no reasonable indication of threat of material injury by reason of imports from Luxembourg for many of the same reasons we find no reasonable indication of threat of injury by reason of imports from Japan.

The industry in Luxembourg is running at very high rates of capacity utilization.[146] Although exports to the United States in absolute terms have increased slightly over the period of investigation, exports to the United States as a percentage of all exports have remained steady.[147] There is no evidence that MMRA will increase either its capacity or its exports to the United States.[148] Consequently, we see no indication that import penetration will increase to an injurious level. We note that, during the period of investigation, a VRA was also in effect setting limits on exports of steel products from Luxembourg. This VRA, as well, expired on March 31, 1992.[149] The mere fact of the expiration of the VRAs does not create a reasonable indication that imports will increase to injurious levels.[150]

We again note that there are no inventories of imported rails from

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[145] 19 U.S.C. § 1677(7)(F)(ii)(X). The statutory factors relating to subsidized imports, 19 U.S.C. § 1677(7)(F)(ii)(I), and agricultural products, 19 U.S.C. § 1677(7)(F)(ii)(IX), are inapplicable in any of these investigations and are therefore not addressed.

[146] Report at I-35, table 17. 19 U.S.C. § 1677(7)(F)(i)(II) & (IV).

[147] Report at I-36, table 17.

[148] See, MMRA Brief at 23.

[149] Report at I-13.

[150] Commissioner Nuzum further notes that the extent to which the VRA with the European Community effectively limited imports of the subject imports from Luxembourg and the United Kingdom is unclear, in light of the fact that the official restraints applied generally to imports from the European Community, rather than from specific EC countries. See Staff Report at I-14.

Luxembourg maintained in the United States. Furthermore, inventories of Luxembourgian rails have remained constant, supporting a negative threat determination.[151] We therefore conclude that the presence of inventories of rails in Luxembourg does not support a finding of threat in this industry.

In light of only a single instance of underselling by MMRA's imports[152] and their small share of the domestic market,[153] we find no likelihood that imports from Luxembourg will enter the United States at prices that will have a price depressing or suppressing effect.[154]

There is no evidence of other adverse trends or the likelihood of product shifting.[155] Finally, in light of the fact that imports from Luxembourg tend to be concentrated in the crane rails market, where U.S. producers hold a dominant and increasing share, we find no evidence of actual or potential adverse effects on the domestic industry's development and production efforts.[156]

D. Reasonable Indication of Threat by Reason of Imports from the United Kingdom

Imports of new steel rails from the United Kingdom show distinctly different trends from those of either Japan or Luxembourg, which leads us to find a reasonable indication of threat of material injury. First, from 1990 to 1991, imports rose significantly in volume and in terms of market share.[157] It is the change in the level of imports and market share rather than the

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[151] 19 U.S.C. § 1677(7)(F)(i)(V).
[152] Report at I-48.
[153] Report at I-43, table 23.
[154] 19 U.S.C. § 1677(7)(F)(ii)(IV).
[155] 19 U.S.C. § 1677(7)(F)(i)(VII) & (VIII). The statutory factors relating to subsidized imports, 19 U.S.C. § 1677(7)(F)(ii)(I), and agricultural products, 19 U.S.C. § 1677(7)(F)(ii)(IX), are inapplicable in any of these investigations and are therefore not addressed.
[156] 19 U.S.C. § 1677(7)(F)(i)(X).
[157] Report at I-43, table 23.

absolute level of imports, that we find particularly probative in these investigations. In addition, the share of total U.K. exports that are shipped to the United States rose rapidly.[158] The shift of exports from other markets in 1990 and from the home market in 1991 indicate the ease with which the U.K. producer can shift its exports from one market to another.[159]

The U.K. producer currently exports primarily standard T rails to the United States. Although we consider the likelihood of injury to the overall industry by reason of imports, we note that the bulk of U.K. exports compete in that segment of the market (i.e., standard T rails) in which the domestic industry may be the most vulnerable.[160] Domestic capacity utilization for the part of the domestic industry producing standard rail is very low and has declined over the period of investigation.[161]

The rapid increase in exports from the United Kingdom, the apparent ability of BSC to shift shipments either from the home market or third country markets to the U.S. market, and evidence of underselling convince us that there is a reasonable indication of threat of material injury by reason of imports from the United Kingdom.[162]

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[158] Report at I-43, table 23. Although in these investigations we have not relied heavily on interim data, we note that, unlike for the other countries, the most recent comparative periods, interim 1991 and interim 1992, show a significant increase in volume share for the United Kingdom as well as a significant shift of exports from other markets to the United States. Id.

[159] Report at I-38, table 21.

[160] Commissioners Rohr and Nuzum note that the bulk of U.K. exports compete in that segment of the market (i.e., standard T rails) in which the domestic industry is the most vulnerable.

[161] Report at I-25, table 2.

[162] We also note that BSC is trying to have its premium rails qualified for sale to domestic railroads. Tr. at 134. The record indicates that, if qualified, BSC might export premium rails that would have a price suppressing effect. Report at I-48, n.160. 19 U.S.C. § 1677(7)(F)(i)(VII).

Dissenting Views of Chairman Don E. Newquist

I concur with my colleagues' determinations and views regarding the definition of the like product and domestic industry, as well as their general discussion of the condition of the domestic industry. Unlike the majority, however, I find there is a reasonable indication that the domestic industry is materially injured by reason of imports of new steel rails from Japan, Luxembourg, and the United Kingdom that are allegedly sold at less than fair value.

Before discussing the bases for my determination, I note that although I accept petitioners' arguments for a single like product composed of all new steel rails, I also recognize that this definition covers certain products which are not commercially interchangeable, are perceived differently by producers and purchasers, and have different price structures. Therefore, although I have examined the subject imports' overall volumes and pricing behavior, I agree with respondents that a "disaggregated" causation analysis, which considers the structure of this industry and its various submarkets, is useful in order to "provide a context in which to evaluate the impact of LTFV imports."[1]

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[1] Post-Conference Brief of Japanese Respondents, at 4. See also Certain Telephone Systems and Assemblies from Japan and Taiwan,

(continued...)

As to the condition of the domestic industry, the evidence of negative financial returns and general declines in production, domestic shipments, net sales, capital investment, employment and wages, in my view, demonstrates by any standard that U.S. producers of new steel rails are suffering material injury.[2]

In addition, several factors reasonably indicate that the subject imports are "a cause"[3] of the industry's poor performance.[4] As total consumption of new steel rails has fluctuated, but declined overall during the period of investigation, the volume and value of the subject imports have been significant, and have increased each year. These increases have been at the expense of U.S. producers, whose share of domestic consumption has steadily eroded.[5] These factors alone strongly suggest that subject imports have contributed to the

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[1](...continued)
Invs. Nos. 731-TA-426, 428 (Final), USITC Pub. 2237 (Nov. 1989).

[2] I do not place great weight on the interim data in this investigation. The evidence showing some improvement in the industry's performance (and declines in subject imports) from January to March of this year does not persuade me that U.S. producers no longer are injured by, or are extremely vulnerable to, the impact of alleged LTFV imports.

[3] Metallverken Nederland, B.V. v. United States, 728 F. Supp. 730, 741 (CIT 1989). The Commission need not determine that imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249, 96th Cong., 1st Sess. 57 and 74 (1979).

[4] I believe the statutory bases for cumulatively assessing the price and volume effects of the subject imports in my causation analysis are met, and join in the discussion of this issue at pages 15 through 17 of the majority opinion.

[5] Staff Report, Table 23.

U.S. industry's material injury.

I also have separately examined import volumes and market share in the tee rails and "other rails" categories. I note that tee rails ("standard" and higher-value-added "premium" tee rails) account for the largest segment of the domestic market, where the great bulk of both domestic and subject imports is sold. It is here where the subject imports have made their most significant gains, both in absolute terms and as a share of total consumption.[6]

Respondents contend, however, that a disaggregated analysis provides no indication that the subject rail imports have had injurious effects.[7] They point out that domestic shipments of standard tee rails have declined, due to a shift in demand to premium tee rails,[8] and that, although it is this decline in

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[6] Id.

[7] The record in these preliminary investigation does not contain a breakout of U.S. producers' income and loss experience in tee rails compared with "other" rails, or as between standard and premium tee rails. Should such disaggregated data become available in any final investigation, I believe they would greatly enhance the Commission's ability, through variance analysis, to quantify the price, cost and volume effects on changes in the domestic industry's profitability in each sector of this market.

[8] As Class 1 railroads have sought to upgrade existing lines with more durable and greater weight-bearing track, there has been a significant shift from standard to heat treated, premium tee rails. Report at I-21; I-40. In choosing between standard and premium rail, "[t]he railroads measure the speed, the degree of curvature, and the gross tonnage on a particular section of railroad and determine, based on the pricing differential between standard rail and premium rail, the most cost effective application of standard or premium rail." Report at I-21-22.

consumption that has left U.S. producers with substantial excess capacity, they still have a very strong position in this sector of the market.

Respondents also note that, unlike in the case of standard tee rails, domestic consumption of premium tee rails has risen. Although subject imports of premium tee rails have increased, respondents contend that this simply reflects the overall increase in demand for premium rails, and is a reaction to the inability of domestic producers to satisfy that demand.[9]

I note that, although the overall decline in consumption of standard rails has contributed to the domestic industry's deteriorating performance, the Commission may not weigh causes of material injury.[10] Both the volumes and market share of standard rails subject to investigation are, in my view, significant. Moreover, although the domestic industry continues to account for a very large share of total consumption in this sector of the market, it is here where the rate of increase in market penetration by the subject imports has been highest, coinciding with a significant decline in U.S. producers' capacity

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[9] Petitioners concede that in their production of premium tee rails, the domestic industry is operating at near-full capacity. Conference Transcript ("Tr."), at 42.

[10] Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (1988). See also, S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979) (recognizing "contraction in demand or changes in patterns of consumption" as alternative causes of injury.)

utilization rates.[11]

In the premium tee rail sector of this market, as total consumption and U.S. producers' domestic shipments, capacity utilization, and market share declined from 1989 to 1990, imports from the subject countries increased substantially.[12] When consumption then rebounded in 1991, domestic production increased, to its current, near-capacity levels.[13]

While conceding that U.S. producers cannot increase significantly their output of premium tee rails in the short term,[14] petitioners contend that alleged LTFV rail imports have depressed or suppressed domestic prices.[15] They further argue that, absent import price discrimination, "fair" pricing of tee rails and "other" rails would permit market prices to rise. This would not only improve U.S. producers' overall gross revenues, but also improve their ability to invest in the additional capacity that is necessary if they are to meet the increase in

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[11] Staff Report, Tables 2 and 23. I note that the gain in market penetration by imports of standard tee rails from the subject countries has been almost entirely at the expense of domestic producers. Staff Report, Table 23.

[12] Staff Report, Tables 2, 23.

[13] Id.

[14] I note, however, that even as late as January 1992, when Union Pacific Railroad filed with the Commerce Department a "short supply request" that it be permitted to purchase additional premium tee rail in excess of Japan's allotted VRA tonnage, that request was denied by the Secretary of Commerce, on the basis that a domestic supplier can produce the material meeting Union Pacific's specifications. Staff Report at I-15.

[15] Tr. at 46, 50.

U.S. demand for premium rail, as Japan, Luxembourg, and the United Kingdom have done.[16]

In assessing the price effects of subject imports, the statute instructs the Commission to consider whether:

> (I) there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[17]

I find there is at least a reasonable indication that, in the context of bid negotiations with Class 1 railroads, where lower rebids are routinely solicited and it is understood that each railroad is likely to split its purchasing requirements among several different suppliers, bids by the importers are used as leverage in negotiating lower prices from domestic producers.[18]

A review of bid and quote information on purchases by Class 1 railroads[19] shows a number of instances wherein domestic

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[16] Tr. at 27, 52. In examining the impact of the subject imports on producers of the domestic like product, the Commission is instructed to consider "actual and potential negative effects on cash flow, . . . ability to raise capital, and investment." 19 U.S.C. §1677(7)(C)(iii)(III).

[17] 19 U.S.C. § 1677(7)(C)(ii).

[18] Staff Report at I-44. I note that the number of bids awarded to respondent importers, both for standard and for premium tee rails, has increased each year. Staff Report, Table 34.

[19] The Commission has received bid and quote information on purchases by the Burlington Northern, Norfolk Southern, Union Pacific, Conrail, Chicago & Northwestern, Kansas City Southern,

(continued...)

producers lowered their initial bids in order to share in a supply contract with the importers.[20] There also have been instances where, on a delivered price basis, petitioners could not match the lowest import price.[21] In other cases, where a U.S. producer might not have been undersold, its final bid was matched by respondents.[22] Also, a witness for Bethlehem Steel Corporation testified that Bethlehem has attempted to obtain price increases from its major purchasers, with "very limited success."[23] This evidence tends to substantiate petitioners' claim that the subject imports act to restrain market prices.[24]

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[19](...continued)
CSX, Soo Line, Southern Pacific, Grand Trunk, Florida East Coast, and Atchinson, Topeka, and Santa Fe railroads. Some of these railroads do not purchase rails from the respondent countries.

[20] Bidders are generally aware of the prices bid by their competitors. Tr. at 38.

[21] The record does not show "consistent" underselling by the subject imports. However, contract awards to lower-priced imports likely act as a significant check on U.S. producers' bid prices.

[22] See Staff Report, Tables 25-32.

[23] Tr. at 41. See also, Tr. at 48. The fact that the domestic industry's cost of goods sold * * * net sales in each year over the period of investigation strongly suggests the presence of price suppression. Staff Report, Table 5.

[24] Petitioners further contend that the adverse price effects of the subject imports in the bid negotiations surveyed by the Commission also have a significant ripple effect, as the major railroads set prevailing market prices for the entire railroad industry. See Tr. at 39, 47, 55. I note that the available data actually show somewhat higher prices for those sales where imports did not compete (Staff Report at I-47-48), which supports the conclusion that the subject imports are indeed having a price depressing effect in those instances where there is head-to-head competition with domestic producers. In any final investigation, I intend to further explore the extent to which subject imports
(continued...)

To counter petitioners' claim of price depression and suppression, respondents point out that average prices generally have risen over the period of investigation.[25] In addition, domestic producers have been the low or sole bidders on many bids, and Class 1 railroads often purchase at least some of their requirements domestically even when the domestic producers' prices exceed those paid for imported rails. These factors are relevant in analyzing the price effects of the subject imports and their significance. They do not, however, controvert petitioners' basic argument that domestic producers face great pressure to (where possible) lower their bids in order to meet or beat the prices offered by the respondent importers. In my view, the detailed evidence on the process by which domestic producers were able to obtain supply contracts with Class 1 railroads provides a "reasonable indication" that substantial volumes of subject imports have had the effect of preventing price increases, which otherwise would have occurred.[26]

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[24](...continued)
constrain domestic producers' pricing flexibility, even on quotes for those purchases where the importers are not bidding.

[25] Tr. at 124-125, 164. I note that price series for "other rails" are not available. Unit values for domestic shipments of "other rails," however, have steadily declined over the period of investigation. Staff Report, Table 3.

[26] Other factors noted by the respondents, such as restraints on spending by the railroads, alternative sources of tee rails, and competition between the domestic producers no doubt have also constrained market prices. In any final investigation, I would further explore the significance of these "other causes," as well as claims that some imports are of superior quality.

Nor can I say there is no likelihood that evidence to support an affirmative determination will arise under the more rigorous evidentiary standard that applies in any final investigation. The respondents testified that "because of VRA limits, imports have only been available to less than half of the [domestic] railroads." [27] On March 31, 1992, these agreements were terminated. Petitioners assert that Japan, which filled its VRA quota with exports of premium tee rails, may soon make inroads into the U.S. market for standard rails.[28] Also, British Steel Corporation, which reports it sold primarily test samples of premium tee rails over the period of investigation, may soon have its product qualified for sale in large-scale, commercial quantities.

For these reasons, I find that there is a reasonable indication of material injury to a domestic industry by reason of alleged LTFV imports of new steel rails from Japan, Luxembourg, and the United Kingdom.

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[27] Tr. at 98.

[28] I note that Japan's capacity utilization rate for "all new steel rails" declined sharply from 1990 to 1991. Production and exports of standard tee rails to third country markets, however, increased each year. Staff Report, Table 10.

DISSENTING VIEWS OF VICE CHAIRMAN ANNE E. BRUNSDALE

New Steel Rails from Japan, Luxembourg, and the United Kingdom
Investigation Numbers 731-TA-557 - 559 (Preliminary)

I dissent from the conclusion of my colleagues in the majority and find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of new steel rails from Japan, Luxembourg, and the United Kingdom that are allegedly sold at less than fair value. I join my colleagues' determination that there is a single like product in these investigations consisting of all new steel rails regardless of shape and regardless of whether the rails are standard or premium.[1] I also join my colleagues' discussion of

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[1] As I have stated in several recent opinions, I find two domestic products to be part of the same like product if a change in their relative prices will lead to substitution by either producers or consumers. By producer substitution, I mean that a decline in the price of one product, perhaps caused by competition from dumped imports, will lead producers to reduce their production of that product and to increase production of the other product whose price has not been reduced. Consumer substitution occurs when consumers of the product whose price has not declined reduce their purchases of that product and instead purchase more of the product with the reduced price. (See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From Japan and the Republic of Korea, Invs. Nos. 731-TA-458 and 459 (Final), USITC Pub. 2383 (May 1991), at 31-43 (Dissenting Views of Acting Chairman Anne E. Brunsdale).)

In this case, purchasers of new steel rail cannot substitute among tee, crane, girder and contact rail. Each has a distinct shape and is designed for a particular application. There is some substitution between standard and premium grade tee rail in that a change in relative prices may cause a railroad to use premium rail in more or fewer locations. (Staff Report at I-22) However, the main reason for concluding that all rail should be part of the same like product is the presence of producer

(continued...)

the domestic industry, cumulation, and the condition of the domestic industry.

Here I discuss the reason for my affirmative determination: the absence of certain information that is necessary for me to conduct my analysis of the effects of the dumped imports in this case. But before turning to the specifics of this case, I think it useful to review both the general standard for preliminary determinations and the general approach I use in making my determinations in Title VII cases.

Legal Standard in Preliminary Determinations

In preliminary antidumping cases, the Commission is required to determine whether, based on the best information available at the time of the preliminary determination, there is a reasonable indication of material injury or threat thereof to a domestic industry by reason of the subject imports.[2] In these investigations, I considered whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists

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[1](...continued)
substitutability. All rails are produced using the same machinery and employees, though certain changes must be made in the equipment to produce rails of different shapes. (Id. at I-8 - I-11; Petitioners' Post-Conference Brief at 8)

[2] 19 U.S.C. 1673b(a).

that contrary evidence will arise in a final investigation."[3] The U.S. Court of Appeals for the Federal Circuit has held that this interpretation of the standard "does not contravene but accords with clearly discernible legislative intent and is sufficiently reasonable."[4]

Economic Analysis and Title VII Cases

In determining whether a domestic industry is materially injured by reason of dumped imports,[5] I consider, as the statute directs, the volume of subject imports, the effects of these imports on the price of the like product, and the effects on the domestic industry producing the like product.[6] As is obvious from these statutory factors, and as I have stated so often in the past,[7] a

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[3] American Lamb Co. v. United States, 785 F.2d 994, 1001 (Fed. Cir. 1986).

[4] Id. at 1004.

[5] Of course, the elimination of the dumped imports could be accomplished by raising the price of those imports to the point where they are no longer being dumped.

[6] 19 U.S.C. 1677(7)(B).

[7] See, e.g., Coated Groundwood Paper from Belgium, Finland, France, Germany, and the United Kingdom, Invs. Nos. 731-TA0487 through 490 and 494 (Final), USITC Pub. 2467 (December 1991) (Concurring Views of Acting Chairman Anne E. Brunsdale); Certain Steel Pails from Mexico, Inv. No. 731-TA-435 (Final), USITC Pub. 2277 (May 1990), at 24-28 (Additional Views of Chairman Anne E. Brunsdale); Certain Residential Door Locks and Parts Thereof From Taiwan, Inv. No. 731-TA-433 (Final), USITC Pub. 2253 (January 1990), at 33-36 (Additional Views of Chairman Anne E. Brunsdale); Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, Inv. Nos. 701-TA-287 (Final) and 731-TA-378 (Final), USITC Pub. 2103 (August 1988), at 42-46 (Dissenting Views of Chairman Anne E. Brunsdale); and Color Picture Tubes from Canada, Japan, the

(continued...)

coherent and transparent analysis of the kind demanded by the statute requires an assessment of the domestic market and an understanding of the role of the subject imports within that market. Economics, which is the study of markets and how they change, is an ideal source of the tools necessary for making that assessment.

Economic analysis involves little more than organizing and evaluating the evidence in the record in a manner that permits a Commissioner to assess the impact of the dumped imports in a rigorous fashion. These tools are not surrogates for the statutory factors. They simply permit me to analyze in a direct and open way the volume effect, the price effect, and the overall impact of the dumped imports on the domestic industry as the law specifically and unambiguously requires.

Volumes and Prices of LTFV Imports. The first factors that we are directed to consider are the volume and prices of the LTFV imports. This directive -- which is of course consistent with an economic analysis of the effects of the dumped imports -- calls for examining the market share of the dumped imports and the margins of dumping.

The smaller the sales of the dumped imports as a share of the domestic market, the smaller the effect of those imports on

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[7](...continued)
Republic or Korea, and Singapore, Inv. Nos. 731-TA-367-370 (Final), USITC Pub. 2046 (December 1987), at 23-32 (Additional Views of Vice Chairman Anne E. Brunsdale).

the domestic market. Similarly, the smaller the dumping margin, the smaller the effect. The dumping margin measures the difference between the fair price of the imports and the unfair price at which they are being sold. The effect of the dumped imports will depend on how far below the fair price they are actually priced. The greater the difference, the greater the number of purchasers who will shift from the domestic like product to the dumped imports in order to obtain the benefits of a reduced price.

Effect on Domestic Prices and Volumes Sold. Consideration of the dumping margins and import penetration figures alone is not sufficient to determine, as I must, the way in which a domestic industry is affected by dumped imports. In order to evaluate the effects on the volume of sales and on the prices at which these sales are made, I must know how purchasers and suppliers respond to changes in the prices of the imported product and the domestic like product. The key attribute of dumped imports is their unfairly low price, and it is through this low price that the effects on the domestic industry are felt and must be evaluated.

(1) Substitutability. A crucial factor in determining how dumped imports affect the demand for the domestic like product is the substitutability between them -- that is, the extent to which a reduction in the price of the unfairly traded import will lead U.S. buyers to purchase the unfair imports rather than the domestic like product. If purchasers believe the domestic and

imported products are close substitutes, the dumped imports are more likely to cause material injury because a small decrease in the price of the imported product may lead a large fraction of purchasers to switch from the domestic product to the unfairly traded import. If, on the other hand, substitutability is low, fewer purchasers will make the switch to the imported product, making material injury less likely. The degree of substitutability between products of different producers can be quantified using a concept that economists call the elasticity of substitution, which is defined as the percentage change in the relative quantities demanded of two goods resulting from a 1 percent change in their relative prices. A high elasticity of substitution indicates that products are good substitutes, while a low elasticity indicates they are not.

(2) Changes in total quantity purchased. The injury that dumped imports cause a domestic industry will also depend on the extent to which the aggregate demand for that product responds to a change in price. If demand is highly responsive, the lower dumped price will generate a large increase in total sales of the product. In such a case, a relatively large portion of the increased sales of the dumped imports will be sales that would not have been made had the price been higher, and a relatively small portion will be sales lost by domestic producers. By contrast, if quantity does not increase significantly with the decrease in price, most of the increased sales of the unfair imports will come from the domestic producers or from other

sources of imports. Thus, the greater the price responsiveness of total demand, the smaller the likelihood that the domestic industry will be materially injured. The economic concept used in measuring this effect is the elasticity of aggregate demand, which is defined as the percentage change in the quantity of a product sold resulting from a 1 percent change in the average price of the product. The higher this elasticity the more responsive demand is to a change in price.

(3) Price responsiveness of domestic supply. A third factor that will influence the way in which dumped imports affect the domestic industry is the responsiveness of domestic supply to a change in its price. If a slight decrease in price causes domestic firms to cut their production by a relatively large amount, any effect of dumping is likely to be found primarily in decreased quantities sold by the domestic firms, rather than in depressed or suppressed prices for the product. On the other hand, if a price change results in a small change in production, dumping may have a smaller quantity effect along with greater price depression or suppression. The responsiveness of supply to a change in price can be expressed quantitatively in the elasticity of domestic supply, which is the percentage change in the quantity of domestic production resulting from a 1 percent change in the domestic goods's price.

Consideration of the three issues discussed above allows me to determine how the dumped imports affect the volume of sales by the domestic industry and the prices received for those sales.

Effects on the Domestic Industry. In addition to considering the impact of dumping on the domestic industry's sales volume and the prices at which those sales occur, the statute directs us to examine "the impact of such merchandise on domestic producers of like products. . . ."[8] In conducting this examination, we are instructed to consider such factors as industry employment, investment, and utilization of capacity.[9] In general, the effect of the dumped imports on these factors can be inferred from the effects on prices and volumes. For example, the effect on industry employment is directly related to the effect on volume, since an industry's employment level will rise or fall with changes in its level of production. Similarly, the effect on investment will depend on the expected future profitability of the industry and the demand for its product. If there is a significant effect on the volume of sales, there may be a significant effect on investment as this may indicate that less new capacity is needed. If there is a significant effect on price, it may signal a reduction in profitability which makes future investment less attractive financially.

Incomplete Information in These Investigations

The record in these preliminary investigations provides some, but not all of the information needed for my analysis. We have good

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[8] 19 U.S.C. 1677(7)(B)(i)(III).

[9] 19 U.S.C. 1677(7)(C)(iii).

information on sales by the domestic and foreign producers and therefore have complete evidence on market share. While the exact numbers are confidential, the subject imports accounted for a significant and increasing share of total sales during the three year period of investigation.[10] As noted above, larger market shares suggest a greater likelihood of injury ceteris paribus.

As in any preliminary investigation, we have only petitioners' allegations concerning the margins of dumping. In these cases, alleged dumping margins for the Japanese producers range from 23.1 percent to 53.8 percent; those for Metallurgique et Miniere de Rodange-Athus, the only producer in Luxembourg, range up to 70.0 percent; while those for British Steel plc, the only British producer, range up to 61.9 percent.[11] While these margins are little more than petitioners' allegations, they provide the best information available at this point concerning the extent to which import prices are below "fair" levels; and they suggest that the imports may be priced substantially below those fair levels.

Given the significant market shares and alleged dumping margins, the effect of the dumped imports is likely to be material unless there is little substitutability between the domestic and imported products and the demand for new steel rails

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[10] Staff Report at I-43, Table 23.

[11] Id. at I-16.

is very responsive to changes in price.[12] The record does provide some indication of limited substitutability between the domestic and imported products. Railroads conduct lengthy evaluation processes before they will purchase rail, particularly premium rail, from a new supplier;[13] and the importers are not qualified at all railroads. The ability to provide timely delivery is an important consideration to the railroads and can lead to rejection of the lowest price bid.[14] Transportation costs are also significant in selecting suppliers in this industry.[15] Finally, at least one railroad testified that it finds European and Japanese premium rail to be of higher quality than that made by the domestic producers.[16]

All of these factors suggest limited substitutability between imported and domestic rail, particularly for premium rail. However, there is obviously some degree of substitutability. Several railroads solicited competing bids from domestic and import producers and made purchases from

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[12] In other cases where market shares and/or dumping margins are smaller, it is possible to conclude that there is no reasonable indication of material injury without detailed information on these factors because the effect is not material for any reasonable values of these parameters. In my view this is not the case here.

[13] Staff Report at I-44, I-48; Post Conference Brief on Behalf of British Steel PLC at Attachment A.

[14] Staff Report at I-44.

[15] Id. at I-44- I-45.

[16] Id. at I-48.

both.[17] The degree of substitutability between imports and domestic rails appears to be higher in standard rail.

The record also provides some indication that the demand for new steel rail is responsive to changes in price. When a railroad replaces track in one location, it may be able to reuse that rail elsewhere in its system. This used rail, known as relay rail, is more likely to be used the higher the price of new rail. However, relay rail substitutes for new rail primarily in areas where there is less traffic and the demands on the rails are lower.[18] It is unlikely that relay rail is a substitute for premium rail.

While all of this information is relevant to determinations of substitutability and price responsiveness of demand, the current record does not allow me to determine that the substitutability is low enough and the price responsiveness high enough to result in no material injury as a result of the dumped imports. These issues, including an evaluation of the elasticity of substitution and the elasticity of aggregate demand, are issues that the parties and Commission staff traditionally evaluate in final investigations.[19] I would therefore expect to

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[17] Id. at I-46.

[18] Id. at I-12.

[19] The situation in which I find myself in these investigations suggests that it may be desirable for Commission staff and parties to address, at least preliminarily, issues of elasticities in preliminary investigations. I ask Commission staff to consider the feasibility of doing so in future investigations.

obtain significantly more information on these questions in final investigations.

Absent additional information on these issues, I am unable to conclude that "the record as a whole contains clear and convincing evidence that there is no material injury"[20] by reason of allegedly dumped imports of new steel rail from Japan, Luxembourg, and the United Kingdom. I therefore find in the affirmative in these preliminary investigations.

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[20] American Lamb at 1001.

INFORMATION OBTAINED IN THE INVESTIGATIONS

INTRODUCTION

On May 1, 1992, counsel for the Steelton Rail Products & Pipe Division of Bethlehem Steel Corporation (Bethlehem), Steelton, PA, and CF&I Steel Corporation (CF&I), Pueblo, CO, filed petitions with the U.S. International Trade Commission (Commission) and the U.S. Department of Commerce (Commerce) alleging that an industry in the United States is being materially injured and is threatened with material injury by reason of imports from Japan, Luxembourg, and the United Kingdom of new steel rails[1] that are allegedly sold in the United States at less than fair value (LTFV). Accordingly, effective May 1, 1992, the Commission instituted antidumping investigations Nos. 731-TA-557-559 (Preliminary) under section 733(a) of the Tariff Act of 1930 (the Act) (19 U.S.C. § 1673b(a)) to determine whether 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 these investigations, by June 15, 1992. Notice of the institution of the Commission's investigations was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on May 8, 1992 (57 F.R. 19931).[2] Commerce published its notice of initiation in the Federal Register on May 28, 1992 (57 F.R. 22457). The Commission held a public conference in Washington, DC, on May 22, 1992, at which time all interested parties were allowed to present information and data for consideration by the Commission.[3] The Commission's vote in these investigations was held on June 10, 1992.

PREVIOUS COMMISSION INVESTIGATIONS CONCERNING STEEL RAILS

There have been nine previous Commission subsidy and dumping investigations concerning steel rails. In October 1982 the Commission determined, pursuant to section 703(a) of the act (19 U.S.C. § 1671b(a)), that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of steel rails from the Federal Republic of Germany, France, the United Kingdom, and Luxembourg, upon which bounties or grants were alleged to be paid (investigations Nos. 701-TA-191-194 (Preliminary)). The Commission also determined, pursuant to section 733(a) of the act, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports from the Federal Republic of Germany, France, and the United Kingdom of steel rails that were alleged to

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[1] The merchandise covered by these investigations is new steel rail, except light rail and girder rail, of other than alloy steel, and over 30 kilograms per meter. New steel rail includes standard tee rail, crane rail, and contact rail (electrical rail), provided for in subheadings 7302.10.10 (statistical reporting numbers 7302.10.1010, 7302.10.1015, 7302.10.1035, 7302.10.1045), and 8548.00.00 of the Harmonized Tariff Schedule of the United States (HTS).

[2] Copies of cited Federal Register notices are presented in app. A.

[3] A list of conference participants is presented in app. B.

be sold in the United States at LTFV (investigations Nos. 731-TA-104-106 (Preliminary)).[4] On October 21, 1982, representatives of the U.S. Government and the European Community (EC) concluded agreements with respect to imports into the United States of certain steel products from the EC (U.S.-EC arrangement on steel). The arrangement was predicated upon the withdrawal and termination of all countervailing duty and antidumping petitions, and an undertaking from all petitioners not to file any petitions seeking import relief on the arrangement products during the period in which the arrangement was in effect.[5] Pursuant to the stipulations of the arrangement the petitions were withdrawn and there were no final investigations.

Bethlehem and the United Steelworkers filed a section 201 petition with the Commission on January 24, 1984, which included rails. Following the Commission's investigation and recommendations, and after the recommendations of the U.S. Trade Representative, the President denied relief under section 203 of the Trade Act of 1974.[6] Subsequently, rails were included[7] in the voluntary restraint agreements (VRAs), which, as extended, expired on March 31, 1992.

The most recent subsidy and dumping investigations were filed by Bethlehem on September 26, 1988, alleging that an industry in the United States was materially injured or threatened with material injury by reason of subsidized imports and sales in the United States at LTFV of new steel rails from Canada. On September 8, 1989, the Commission determined[8] that an industry in the United States was threatened with material injury by reason of imports from Canada of new steel rails.[9] The determinations were affirmed by binational panels under article 19 of the U.S.-Canada Free-Trade Agreement.[10]

THE PRODUCT

Description

The imported articles that are the subject of these investigations are new steel rails, weighing more than 30 kilograms per meter of length, of

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[4] Steel Rails from the Federal Republic of Germany, France, the United Kingdom, and Luxembourg; investigations Nos. 701-TA-191-194 (Preliminary) and 731-TA-104-106 (Preliminary), USITC Publication 1301, Oct. 1982.

[5] Certain Steel Products from Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, the Netherlands, and the United Kingdom; Termination of Countervailing Duty and Antidumping Investigations (47 F.R. 42603, Oct. 29, 1982).

[6] Executive Communication 4046, H.R. Doc. No. 98-263, 49 F.R. 36814.

[7] Rails from Canada were not included.

[8] Chairman Brunsdale, Vice Chairman Cass, and Commissioner Lodwick dissented.

[9] New Steel Rails from Canada; investigations Nos. 701-TA-297 (Final) and 731-TA-422 (Final), USITC publication 2217, Sept. 1989.

[10] New Steel Rails from Canada; Completion of Panel Review, 55 F.R. 38376 (countervailing decision on remand affirmed); 55 F.R. 41369 (antidumping determination affirmed).

carbon, high carbon, or other quality steel, except alloy steel.[11] [12] Excluded from these investigations are light rails, which weigh 30 kilograms per meter of length, or less, and girder rails, which are generally imbedded in pavement and are used primarily for trolley transit systems. Because rails sold in the U.S. market must meet American Railway Engineering Association (AREA) or American Society for Testing Materials (ASTM) standards for chemical composition, hardness, and size/proportional tolerances, the imported and domestic products are essentially similar.[13]

Rails are designed with a head for wheel treads and for guiding wheel flanges, a web for girder strength, and a base for fastening the rail to its support (fig. 1). They differ in size, weight, metallurgical composition, and end use. Rails are characterized as "standard" or "premium" on the basis of alloy content and hardness. Standard rails are made of carbon steel. Premium rails are those that have been heat treated (tempered) for increased hardness, or those made from alloy steel, which is inherently harder and stronger than carbon steel.

There are four common rail shapes: tee, crane, girder, and contact (fig. 1). Tee rails (so named because they resemble the letter "T") are the most common and are used in mainline track construction. Tee rails generally weigh between 115 and 140 pounds per yard (roughly 57 to 69 kilograms per meter) and are commonly produced in lengths of 78 to 82 feet.[14] Tee rails are produced to AREA standards in both standard and premium qualities.[15]

Crane rails are similar in shape to tee rails, with variations in the configuration and dimensions of the head, web, and base. Crane rails are designed to carry heavy concentrated loads at slow speeds, and are produced to ASTM standards in both standard and premium qualities.[16] Their principal use is on crane runways.[17]

Girder rails differ from tee and crane rails in that they are not symmetrical in section. They have a beam-type base and a grooved head from which a flange projects to prevent encroachment by the pavement in which they are usually embedded. Girder rails are generally 60 to 62 feet in length and are produced to ASTM standards. Although included in the petition, Commerce

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[11] During the conference, petitioners included alloy rail in the domestic like product; transcript of the Commission's staff conference (TR), p. 70. By including alloy rail, the petitioners define like product more broadly than the articles subject to investigation.

[12] Also included is "industrial" rail, which is new rail that has imperfections. It is used as track at industrial sites such as steel mills.

[13] TR, May 22, 1992, testimony of Timothy Demma, p. 10. However, some railroads and other purchasers have stricter requirements than AREA on the quality of steel rails. These railroads believe that the imported and domestic rails are different.

[14] Until the mid-1980s, rails were commonly produced in 39-foot lengths.

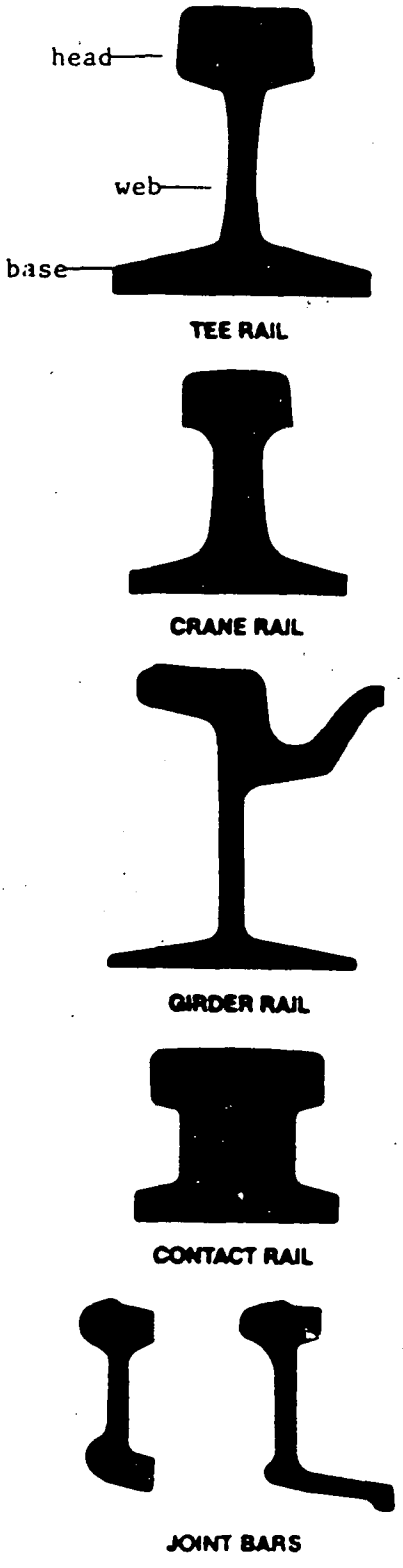
[15] Petitioners' postconference brief, p. 4.

[16] Postconference brief filed on behalf of Rodange (the Luxembourg producer) and Tradearbed, p. 3.

[17] TR, testimony of Timothy Demma, p. 69.

Figure 1
Rail shapes by type

RAILS, JOINT BARS AND TIE PLATES

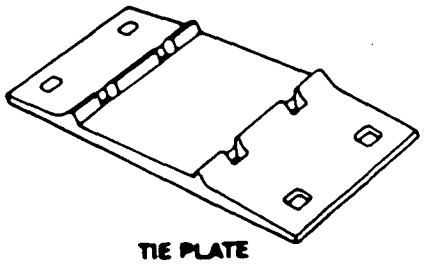


Bethlehem steel rails are used to form a continuous runway of track to carry moving wheel loads of railroad rolling stock, overhead and gantry cranes, transit vehicles, and miscellaneous mining and industrial equipment

Rails are designed with a ***head*** for contact with wheel treads and for guiding wheel flanges, a ***web*** for girder strength, and a ***base*** for bearing and for fastening the rail to its support For various loading conditions, the size and proportion of the head, web, and base will vary

All Bethlehem rails are manufactured at Steelton, Pa., of superior quality continuous cast steel, and can be furnished control-cooled, end-hardened, or fully heat-treated

For more information on steelmaking for railroad rails, see page 1-15


TIE PLATE

The four general types of rail rolled by Bethlehem are

Standard Tee Rails—Rails having a nominal weight greater than 60 lb per yard and having a tee shaped configuration

Crane Rails—Rails with a shorter and thicker web larger head, and thicker base than tee rails Crane rails usually carry very heavy concentrated loads at slow speeds

Girder Rails—Rails rolled with a raised lip which provides a channel for a moving wheel flange Girder rails are generally imbedded in pavement and the lip guards against pavement encroachment

Contact Rails—Rails used to conduct current for electric transit systems. It is important that contact rails have a low electrical resistance

Joint bars (also known as splice bars or fish plates) are used in pairs to bolt together the ends of abutting rails. The bars are I- or L-shaped and are attached in the web area of each side of the rail.

Tie plates are placed under rails on wood ties to give the rails the desired cant, hold the rail to gauge, protect the tie, and distribute the wheel load to the tie

Details on rails, joint bars and tie plates are contained in this section

Source: Bethlehem Steel Corporation

specifically excluded girder rails from the scope of the investigations at the request of the petitioners, who had not intended to include this product.[18]

Contact rails are classified as electrical apparatus used for carrying electricity. Their shape resembles the letter "I," different from that of tee, crane, or girder rails. Their use is for conducting electricity and not for bearing loads or providing a wheel runway. It is important for contact rails to have a low electrical resistance.

Rails are further differentiated by a number of quality-related criteria, including hardness, chemical composition, and metal cleanliness. Hardness is the principal criterion by which wear may be analyzed--the harder a rail or rail head is, the longer its service life. Hardness may be achieved through metallurgy (e.g., adhering to strict tolerance levels in carbon, molybdenum, chrome-vanadium, or silicon levels) or through a tempering treatment. Cleanliness is a measure of the nonferrous oxide inclusions in the rail, such as silicon or aluminum. Weight, measured by the industry in kilograms per meter, is a function of the height and thickness of the head, web, and base of a rail; an increase in rail weight provides improved rail properties such as greater strength and additional headwear. Hardness and cleanliness are to a great extent achieved in the basic steelmaking process, whereas weight and shape are achieved in rolling operations.[19]

Petitioners allege that both standard and premium rails constitute the product that is like the imported product, stating that both are produced in the same facility by the same workers, to similar specifications, for the same types of end use.[20] Petitioners further allege that tee, crane, and contact rails all constitute the product that is like the imported product, stating that all three types are rolled in the same mill, by the same employees (although the rolls that shape each rail must be changed to shift from production of one type of rail to another).[21] On the other hand, respondents state that premium rail is a separate like-product from standard rail.[22] They also assert that tee, crane, and contact rails are each separate like-products

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[18] See "Notice of Initiation of Antidumping Duty Investigations: New Steel Rails, Except Light Rail and Girder Rail, from Japan, Luxembourg and the United Kingdom," (57 F.R. 22457, May 28, 1992).

[19] The AREA sets the standards for premium and standard grade rails based on the Brinell Hardness Number, a standard measure of hardness. (See app. C for an excerpt from the AREA "Specifications for Steel Rails," 1991 revision). To measure hardness, *** the Vickers Hardness Number, allegedly a more discriminating measure than the Brinell test. Both measures are indentation hardness tests that utilize different types of indenters, and there is a concordance between Brinell Hardness Numbers and Vickers Hardness Numbers.

[20] TR, testimony of Timothy Demma, p. 11, and postconference brief, pp. 3-9.

[21] TR, testimony of Timothy Demma, p. 69. To change the rolls is a routine operation and is encountered in changing from one size of tee rail to another; petitioners' postconference brief, p. 8

[22] TR, testimony of Richard Cunningham, p. 137; testimony of Gary Zaversnik, p. 118. See also the postconference briefs filed on behalf of British Steel, Nippon Steel, and NKK.

because they have distinct physical characteristics and channels of distribution, and are not interchangeable with other types of rails.[23] [24]

Manufacturing Processes

The manufacture of rails begins with the production of steel by either the integrated or nonintegrated process (fig. 2). In the nonintegrated process, molten steel is produced by melting scrap in an electric furnace (termed an electric arc furnace, or EAF). In the integrated process, typically, iron ore and coke are smelted in a blast furnace to produce molten iron, which is subsequently poured into a steelmaking furnace, generally a basic oxygen furnace (BOF), together with scrap metal.[25] The hot metal is processed into steel when oxygen is blown into the metal bath. Lime is added to serve as a fluxing agent; it combines with impurities to form a floating layer of slag, which is later removed. Alloy steels are produced by additions of alloying agents (including chromium, nickel, and molybdenum) to the liquid steel to impart specific properties to finished steel products. After refining, the molten steel is tapped from the furnace into a large refractory-lined ladle, where further refining and deoxidation of the steel occurs. The molten steel is also usually stirred with argon or nitrogen gas to promote homogeneous mixing of additives, to fine-tune the steel chemistry, and to float out additional nonmetallic inclusions. The steel may also be vacuum degassed to rid it of hydrogen, oxygen, and nitrogen, which requires specialized equipment for maintaining molten steel in a vacuum.

Once molten steel with the correct properties has been produced, it is cast into a form that can enter the rolling process (see fig. 3 for a presentation of steel products and processes). Currently, the industry uses two principal methods of casting: ingot teeming and continuous casting. Ingot teeming is the traditional process in which steel is poured into individual molds, allowed to solidify, and then separated from the molds. The steel ingots are then placed in soaking pits where they are heated until they reach a uniform temperature. The reheated ingots are then ready to be processed, or rolled, into semifinished shapes.

Continuous casting, the newer process, bypasses several steps of the conventional ingot casting process by casting steel directly into semifinished shapes. Molten steel is poured into a reservoir (called a tundish) from which it is released into the molds of the casting machine. As the column of steel descends through the molds, water sprays cool the cast steel, resulting in solidification. The many benefits derived from this quicker casting method include increased yield, improved product quality, decreased energy consumption, and less pollution.[26]

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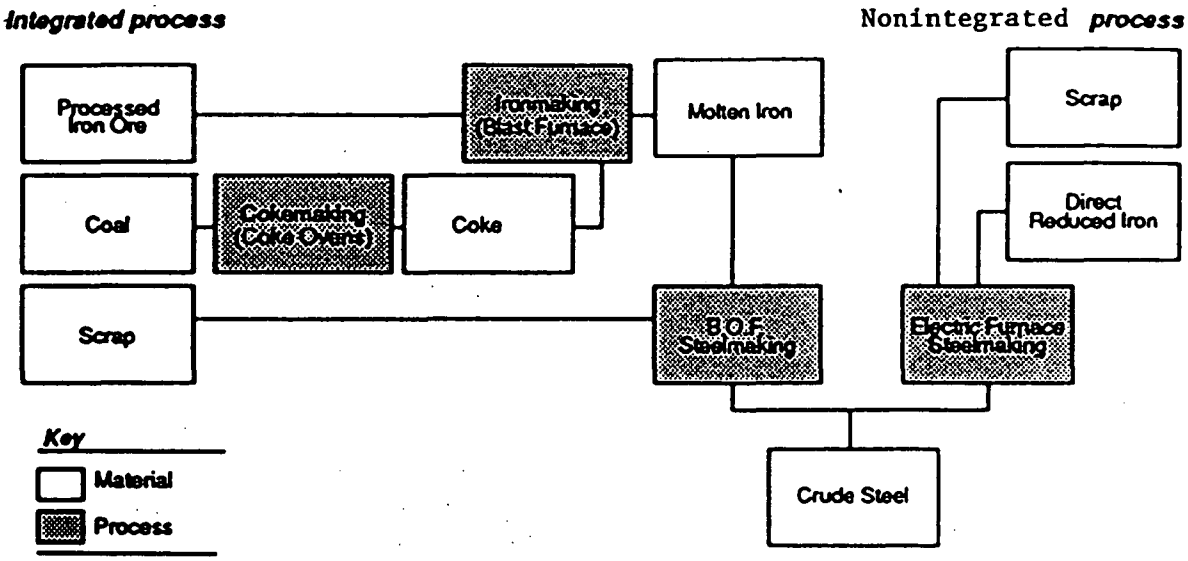
[23] TR, testimony of Craig McKee, counsel for the Luxembourg respondent, pp. 130-132. See also respondent's postconference brief, pp. 2-7 and app. A.

[24] Premium rail can be used in applications that typically call for crane rail, but not the reverse.

[25] Both of the U.S. rail producers produce steel in EAFs. The rail producers in Japan and the United Kingdom produce steel in BOFs, and the Luxembourg producer purchases semifinished steel (blooms) for rolling into rails (Petition, pp. 7, 9, and 12 and Exhibits 10 and 11).

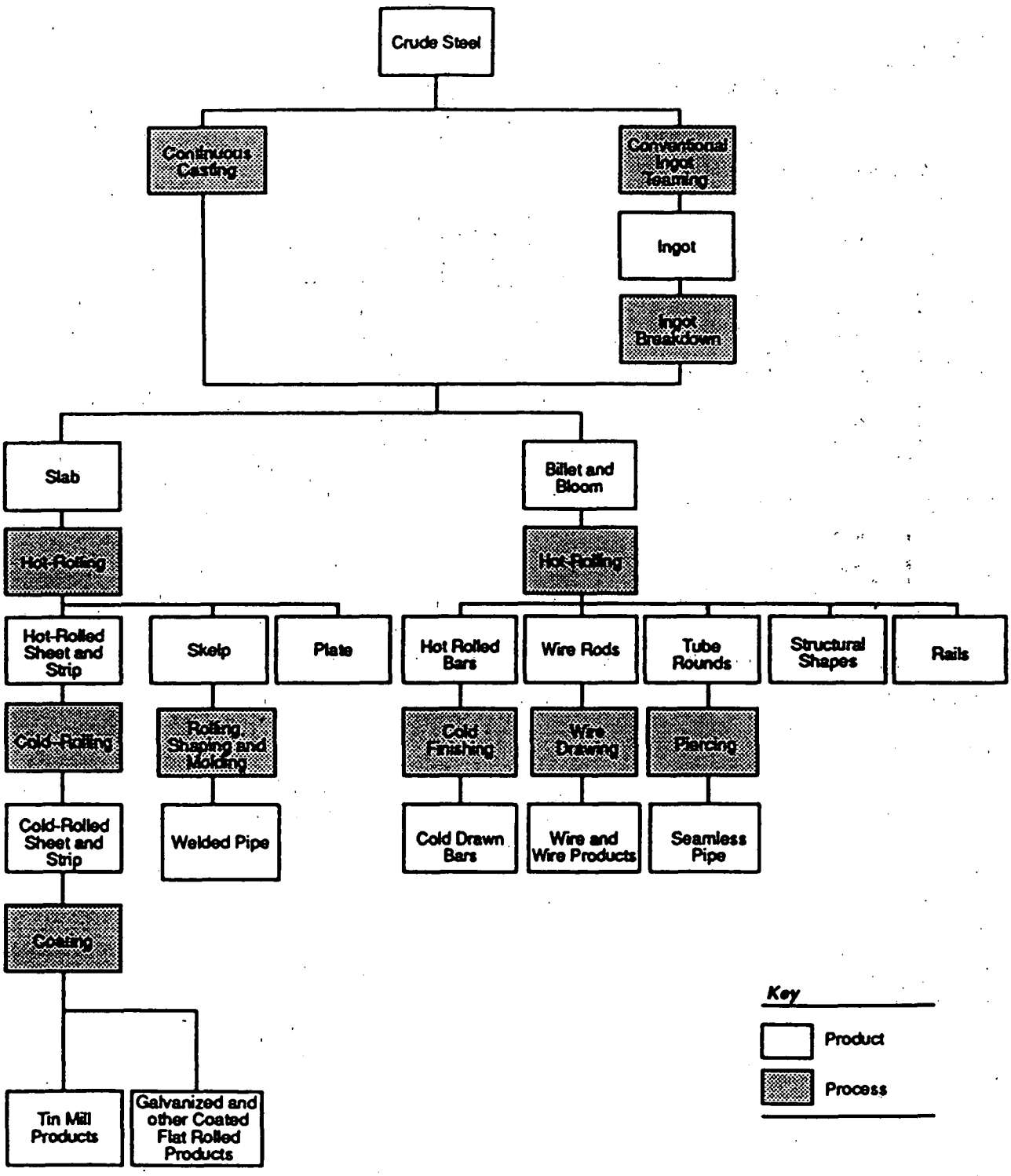
[26] United States Steel, The Making, Shaping and Treating of Steel, 10th ed. (1985), p. 745.

Figure 2
Simplified steelmaking flowchart



Source: Steel Industry Annual Report, USITC 2436, September 1991, p. 2-2.

Figure 3
Steel products and processes



Source: Steel Industry Annual Report, USITC 2436, September 1991, p. 2-3.

Rails can be made directly from continuous-cast blooms or from blooms rolled from ingots.[27] In either case the rail section is hot formed by passing the product through a series of grooved rollers that progressively and gradually develop the rail into its desired contour and shape. In a typical mill, the bloom is roll-passed 10 to 15 times through a series of roughing, intermediate, and finishing stands. (The total number of passes varies with the equipment used.) After the rail exits the final pass, it is hot sawed to the desired length, cambered, and allowed to cool to 750-1,000 degrees Fahrenheit. It may then be charged into an insulated cooling box and control cooled to 300 degrees Fahrenheit. Control cooling helps eliminate hydrogen gas, which may cause internal fractures or ruptures in the rail. The vacuum degassing process removes hydrogen gas from the molten steel and eliminates the need for control cooling. After control cooling for as much as 48 hours, the rail is unloaded from the control-cooling box, inspected for surface defects, and straightened by a roller straightener. The rail is then sawed to length and inspected.[28]

The rails may be heat treated (or tempered) to improve grain structure in the steel, to increase head or overall hardness, and to improve wear capability. Because this process increases hardness, it allows the substitution of carbon rail for alloy rail. Heat treatment may involve heating the entire rail in a re-heat furnace (through-hardening), or the head only (head-hardening), by induction heating, followed by accelerated cooling of the heated portion by air quenching or by immersion in oil and/or water. An in-line tempering process, one that is part of the production line, is less costly than off-line tempering because of lower energy and process costs;[29] head-hardening processes are said to be less costly than through-hardening for the same reasons.

The two major Japanese producers in these investigations, Nippon Steel and NKK, have an in-line tempering process, as do the United Kingdom's rail producer and Luxembourg's rail producer.[30] U.S. producers currently use off-line processes for tempering. CF&I produces a head-hardened rail using an off-line induction heating process, and Bethlehem uses a re-heat furnace and oil quench process to produce a through-hardened rail.[31]

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[27] Blooms are semifinished steel products having dimensions of at least 36 square inches in cross-sectional area. CF&I rolls blooms from ingots; all the other producers continuously cast blooms, with the exception of MMRA in Luxembourg, which does not produce its own blooms (Petition, p. 9 and exhibits 10 and 11).

[28] During the entire railmaking process, various chemical, mechanical, and internal tests are performed to insure the quality of the product. There is an ongoing emphasis by end users on upgrading the quality of purchased rail, so that the specifications of certain Class I railroads have become more restrictive than AREA specifications with respect to hardness, steel cleanliness, and improved testing and inspection by the railmaking companies. (TR, testimony of Mr. Demma, p. 10).

[29] The term "in-line" is used interchangeably with the term "on-line".

[30] Petition, exhibits 10 and 11.

[31] TR, testimony of Mr. Zaversnik, p. 117.

Uses

The service demands of a particular installation dictate the type of rail to be used. The principal engineering considerations are the type and wheel loads of the locomotive and cars to be used; the density and speed of traffic; and the physical characteristics of the line (e.g., track alignment, including degree of curvature, track gradients, and ballast conditions). U.S. railroads are upgrading mainlines and sections of mainlines with harder, more durable track in response to heavier axle loads (weights of cars and cargoes) and more frequent traffic along the rail routes.[32]

Standard tee rails are generally considered to be the basic rail of the railroad industry, and are commonly used on main and secondary tangent (straight) rail lines. However, U.S. railroads are using more heat-treated rail because of the longer useful life in comparison with standard carbon rail.[33] Premium rails (alloy rail and/or fully and partially heat-treated rails) are used for heavy service, such as on curves and heavy use lines, because they possess greater resistance to stress, abrasion, and weather extremes.[34]

Substitute Products

Most track now laid is of continuous-welded rail, and the use of 80-foot continuous-welded rails has superseded that of the bolted 39-foot rail sections due to the former's lower installation costs.[35] The railroads weld 80-foot rails together into quarter-mile-long sections of track at their own or contractors' weld plants and transport the strings of rail to the job site on specially designed articulated trains. The use of continuously welded track has led to higher quality standards with regard to end straightness, butt-end angles, and metallurgical quality in the section.[36]

Rails made of alloy steel can be used in the same applications as heat-treated carbon steel rails. Properties imparted to the rail by heat treating, such as hardness, are also imparted by the use of alloy steel.

Relay (used) rails are the primary substitute for new steel rails. The railroads' track replacement programs "cascade" relay rail from current locations to other locations. Before cascading the relay rail, the rail is reconditioned by grinding away imperfections and welding it into quarter-mile sections. Relay rail is graded to determine its capacity to handle traffic (freight density)--the higher the grade, the higher the freight density.

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[32] TR, testimony of Kenneth Button, p. 120.
[33] Ibid.
[34] Ibid.
[35] USITC, New Steel Rails from Canada, USITC publication 2217.
[36] ***.

Although relay rail is often placed on rail lines with lower freight densities, 57 percent of all rail laid in 1990 was relay rail.[37]

U.S. Tariff Treatment

Imports of new steel rails from Japan, Luxembourg, and the United Kingdom are classified for tariff purposes in subheadings 7302.10.10 (tee rails and crane rails) and 8548.00.00 (contact rails) of the Harmonized Tariff Schedule of the United States (HTS). These imports are covered by statistical reporting numbers 7302.10.1010, 7302.10.1015, 7302.10.1035, 7302.10.1045, and 8548.00.0000.

The column 1-general (most-favored-nation) rate of duty for the subject rails, applicable to the imports from Japan, Luxembourg, and the United Kingdom, is 0.3 percent ad valorem for tee and crane rails, and 3.9 percent ad valorem for contact rails under the two subheadings mentioned above.

Voluntary Restraint Agreements Concerning New Steel Rails

Rail exports from Japan, Luxembourg, and the United Kingdom to the United States have been subject to VRAs since October 1, 1984.[38] As part of the program to bring the VRAs into effect, U.S. producers withdrew pending unfair trade petitions and the U.S. Government terminated antidumping and countervailing duties on covered products. The VRA program was to have ended September 30, 1989; however, in July 1989, as part of the Steel Trade Liberalization Program (STLP), the President announced that VRAs would be extended for 2-1/2 more years. The program was terminated on March 31, 1992.

When the VRAs were extended in 1989, the United States sought to address the causes of unfair trade and to eliminate subsidies to and overcapacity in the steel industry. These agreements sought to include commitments by countries to prohibit export and production subsidies specifically for steel products, to reduce tariffs and nontariff barriers to steel trade, and to incorporate a binding arbitration mechanism; the bilateral consensus agreements were to be multilateralized within the General Agreements on Tariff and Trade (GATT) through incorporation in the Uruguay Round of negotiations.[39] As envisioned, negotiations were to be completed by December 1990 with the new

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[37] Association of American Railroads, "Railroad Ten-Year Trends," 1991. At the conference, both the petitioner and respondents stated that relay rail may not be suitable in some applications because the capability of handling load requirements is limited, or the rail does not meet AREA specifications. Areas requiring premium rail are unlikely to use relay rail as a substitute, whereas areas requiring standard rail may use relay rail. However, both the petitioner and respondents contend that the substitution of relay rail for applications requiring new standard rail has been declining. The use of relay rail is generally determined by the engineering department of the railroads prior to the decision to purchase new steel rails.

[38] Luxembourg and the United Kingdom were included in the single VRA between the EC and the United States.

[39] Press Release of U.S. Trade Representative, Dec. 12, 1989, and accompanying Steel Trade Liberalization Program Fact Sheet.

agreement called the Multilateral Steel Agreement (MSA). On March 31, 1992, negotiations on a MSA were suspended without agreement, although considerable progress had been made. Negotiators have reportedly agreed to continue to meet bilaterally and multilaterally, but no specific time schedule has been set.

Under the VRAs, governments agreed to limit their steel exports to the U.S. market over specified time periods. Foreign governments issued to their industries export certificates that were required to be presented to U.S. Customs officials upon entering the products into the United States. Some of the VRAs set fixed tonnage limits. Others, such as the VRAs with Japan and the EC, limited exports to a certain share of U.S. domestic consumption, based on consumption forecasts. Since final consumption could only be determined at the end of a period, any adjustments for overshipping or undershipping were carried forward to a subsequent period. The VRAs also provided for flexibility, wherein a limited amount of tonnage could be shifted between categories or carried forward to a subsequent period, upon consultation with the United States.

In addition to the above, it may be difficult to draw a conclusion as to how "binding" Japan's VRA has been on the specific subject products because the VRA subcategory "rail and rail products" included light rails, cross-ties, fish plates, railroad wheels, and other rail products not subject to these investigations. The category excluded contact rails. Nevertheless, Japan's restraint limits and exports for rails and rail products for the relevant periods are shown in the following tabulation, based on export certificate data and final consultations conducted by Commerce's Office of Agreements Compliance (in metric tons):

Rails and rail products:[1] VRA period[2]					
1988 (12 months)		Jan.-Sept. 1989 (9 months)		Oct. 1989-Dec. 1990 (15 months)	
Exports to U.S.	Adjusted ceiling	Exports to U.S.	Adjusted ceiling	Exports to U.S.	Adjusted ceiling
83,209	91,619	56,079	81,564	101,264	101,264

[1] Includes new and used rails of carbon and/or alloy steel, as well as certain rail products. Excludes contact rails.
[2] Final period data (Jan. 1991-Mar. 1992) not yet available.

Based on the above data, the extent to which Japan has filled its VRA subcategory limits on rails is shown in the following tabulation (in percent):

Rails and rail products:[1] VRA period[2]		
1988 (12 months)	Jan.-Sept. 1989 (9 months)	Oct. 1989-Dec. 1990 (15 months)
90.8	68.8	100.0

[1] Includes new and used rails of carbon and/or alloy steel, as well as certain rail products. Excludes contact rails.
[2] Final period data (January 1991-March 1992) not yet available.

Data approximating the extent to which Luxembourg and the United Kingdom filled their VRA limits on rails are not available because the VRA limits on steel exports from these two countries were included in the overall VRA limit on the EC's steel exports. Allocation of the overall quota among member countries was determined in large part by Eurofer, an association of EC steel producers. There appears to have been some shifting of assigned quota limits among EC countries, and the United Kingdom allegedly obtained some of Germany's VRA quota for rails.[40]

Short Supply Determinations

Two petitions requesting additional import allowances of new steel rails in excess of Japan's allotted VRA tonnage were filed with Commerce. The first, filed by Burlington Northern Railroad on May 20, 1991, requested a short supply allowance for 10,000 metric tons of certain damage-resistant steel rail from Japan for September-December 1991.[41] In making its request, Burlington Northern stated that Japan had no regular export licenses available to ship this product, and that potential domestic producers were unable to meet the required specifications. On June 19, 1991, the Secretary of Commerce granted Burlington Northern's request on the basis that no domestic steel rail manufacturer was capable of producing the requested product, and that Burlington Northern's potential Japanese supplier did not have available quota.

The second short supply request, filed by Union Pacific Railroad on January 15, 1992, requested a short-supply allowance for 13,000 net tons of certain premium curve rail for the first quarter of 1992.[42] In its petition, Union Pacific alleged that the requested product is not produced domestically and that its potential Japanese suppliers did not have sufficient export licenses available during this period. On February 14, 1992, the Secretary of Commerce denied Union Pacific's request on the basis that a domestic supplier can produce the material meeting Union Pacific's specifications, and that Union Pacific's required order-to-delivery period did not offer the domestic producer an adequate opportunity to supply the material because it was not within the normal order-to-delivery period for this product. Union Pacific acquired a portion *** tons of the requested tonnage from Japan after Japan's VRA expired.[43]

THE NATURE AND EXTENT OF ALLEGED SALES AT LTFV

In order to calculate the estimated dumping margins for new steel rails from Japan, Luxembourg, and the United Kingdom, petitioners compared U.S. prices of the subject merchandise with estimates for foreign market values (FMV). If the Commission makes affirmative preliminary injury determinations with respect to alleged LTFV imports from Japan, Luxembourg, and the United Kingdom, Commerce will make its preliminary determinations of sales at LTFV on or before October 8, 1992.

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[40] TR, testimony of Kenneth Button, p. 124.
[41] 56 F.R. 29230, June 26, 1991.
[42] 57 F.R. 6214, Feb. 21, 1992.
[43] Postconference brief filed on behalf of NKK and Nippon, p. 41.

Japan

Petitioners estimated dumping margins based on the home market and export prices of Nippon Steel and NKK, which are believed to account for 90 percent of Japan's production of new steel rail. Petitioners compared the FMV for 30-kilograms-per-meter rails, standard or head-hardened (premium), to U.S. prices for standard and head-hardened tee rails. For U.S. imports of crane rail, petitioners compared rail over 30 kilograms per meter, not heat-treated, to the lowest FMV obtained for crane rail. In this way, margins ranging from 23.1 percent to 53.8 percent were calculated.[44]

Luxembourg

According to petitioners, Metallurgique et Miniere de Rodange-Athus (MMRA) is the only producer of rail in Luxembourg. Petitioners based FMV on the Belgium-Luxembourg Economic Union (BLEU) transaction prices or on French export sales as a third-country because the Luxembourg market alone is too small to be considered a viable home market.[45] Petitioners compared the FMV for UIC 60 standard and heat-treated rails and A75 crane rails with U.S. prices as given by the Bureau of Census, by EC export statistics, and by sources in the U.S. market. Petitioners arrived at alleged dumping margins ranging from 0.1 percent to 70.0 percent.[46]

United Kingdom

Petitioners maintain that British Steel plc is the only producer of new steel rails in the United Kingdom. Petitioners based FMV on adjusted published prices and transaction prices in the United Kingdom. Petitioners' comparisons of FMV and U.S. price provided alleged dumping margins ranging from 18.4 percent to 61.9 percent.[47]

THE DOMESTIC MARKET[48]

Apparent U.S. Consumption[49]

Consumption of rail is dependent upon new track programs (or rail line expansion), maintenance, replacement or upgrading of existing roadbeds and lines, changes in track usage (e.g., transportation system changes), and

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[44] Petition, pp. 12-25.
[45] ***; petition, exhibit 10.
[46] Petition, pp. 27-39.
[47] Petition, pp. 40-55.
[48] This section of the report is based, in part, on information presented in USITC, New Steel Rails from Canada, USITC publication 2217, public documents, questionnaire responses, fieldtrip notes, and telephone conversations with industry specialists.
[49] The Commission received questionnaire responses from the two producers in operation during 1989-March 1992. Importer questionnaire responses and official import statistics from the U.S. Department of Commerce have been used in the calculation of apparent consumption.

funding for rehabilitation of track. The continuing Class I railroad mergers and/or buyouts with resulting consolidations and downsizing have reduced the annual demand for new rail consumption since 1980.[50] In addition, the improved longer life of rails has affected the demand for new steel rails. In the United States and Europe, railway investments have slowed, and more efficient use is being made of new rails.

Demand for new steel rails is directly related to the replacement of primary track for a railroad or a transit authority. The railroads' civil engineers regularly inspect the track to determine how much track needs to be upgraded. The amount of maintenance a railroad performs during a year depends upon track condition and the revenues of the railroad; if revenues go down, the budget for rail maintenance and rail purchases goes down. Thus, when revenues are limited, maintenance can be curtailed, concentrating only on critical areas of track. In situations where track replacement does not require new rail, the decision to use new rail depends, in part, upon several factors, including the availability of good used rail, the revenues of a railroad, the budget allocated for rail maintenance, and the portion of the rail maintenance budget allocated for rail purchases.

Data on apparent U.S. consumption of new steel rails are presented in table 1.[51] The table presents consumption of standard tee rails, premium tee rails, all other rails (i.e., industrial, crane, girder, and contact rails), and total consumption of all new steel rails.

Table 1
New steel rails: U.S. shipments of domestic producers,[1] U.S. imports,[2] and apparent U.S. consumption, by products, 1989-91, January-March 1991, and January-March 1992

* * * * * * *

Total apparent U.S. consumption of new steel rails (on the basis of quantity) *** during 1989-91, from *** short tons in 1989 to *** short tons in 1991. During January-March 1991-92, total consumption *** short tons to *** short tons, or by *** percent. Standard rail consumption also *** during 1989-91, from *** short tons in 1989 to *** short tons in 1991. Such consumption *** percent during January-March 1992 as compared to the corresponding period in 1991. Premium rail consumption followed a different trend, *** between 1989 and 1991. Such consumption *** short tons in 1989 to *** short tons in 1992, or by *** percent. Apparent U.S. consumption of premium steel rails *** in interim 1992, from *** short tons in January-March 1991 to *** short tons in the corresponding period of 1992. Consumption of

[50] The Staggers Act deregulated the railroads on Oct. 1, 1980, liberalizing processes for abandoning and selling rail lines, and accelerating the spin-off of branch lines and mainline segments of Class I railroads, Railway Age, May 1986; TR, p. 119.

[51] The data presented in the report include both nonalloy and alloy new steel rails, as well as girder rails.

premium rails as a percentage of standard rails *** from *** percent in 1989 to *** percent in 1991, and *** from *** percent in January-March 1991 to *** percent in interim 1992.

U.S. Producers

There are currently two U.S. producers of new steel rails: Bethlehem Steel Corp. (Bethlehem), and CF&I Steel Corp. (CF&I). Bethlehem[52] produces steel rails[53] at its Steelton, PA, plant.[54] The Steelton facility was built in the 1860s, but the company has modernized the plant several times.[55] It eliminated the blast furnaces and coke ovens in 1960 by moving to a cold-charge, scrap and iron open-hearth operation. Three EAFs were installed during 1968-69, eliminating the open hearth; ladle metallurgy capability, allowing improved temperature and alloy control and lance stirring, was added in 1982; and a three-strand continuous bloom caster was added in 1983. Various improvements were made to the rail-finishing equipment as well: Bethlehem installed a roller-straightener in 1978, ultrasonic testing (to confirm the internal quality of the rail in nondestructive ways), and other inspection equipment. Bethlehem began producing "double length" rail (80 feet) in 1986. During 1984-89, heat-treating capacity to produce a through-hardened rail was doubled.

Bethlehem produces an 80-foot (and shorter lengths) standard and premium through-hardened carbon steel rail.[56] The company has explored several processes that would allow it to go to an on-line hardening process to supplement or replace the through-hardening process. It is the only facility in the United States that rolls girder rails. Bethlehem is considering a modernization program (i.e., installing a ladle furnace and vacuum degassing) of the rail facilities pending completion of a facility study currently underway.[57] The primary focus of the program is to increase the capacity to produce premium rail and to lower unit costs. Bethlehem estimates that the planned program cost would total $50 million.[58]

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[52] Bethlehem's total annual raw steel production capacity was 16 million tons during 1989-91. Bethlehem has discontinued its Bar, Rod and Wire Division and has announced its plans to cease its iron and steelmaking operations at its Structural Products Division over the next several years. These actions are expected to reduce Bethlehem's raw steel capacity by approximately 10 to 20 percent.

[53] Bethlehem produces tee rail (used by the freight railroads and the passenger railroads both as standard rail and premium rail), contact rail (used by the transit authority as a conductor), and crane rail; TR, pp. 9-10.

[54] Bethlehem closed its rail mill at Lackawanna, NY, in 1977.

[55] The Rail Products and Pipe Division in Steelton includes 5 EAFs with a combined annual raw steel production capacity of 1.3 million tons. The primary (raw steelmaking) capacity for all products at Steelton is *** tons; capacity to produce new steel rails in 1991 was *** tons, which was limited by the mill's rolling and finishing capabilities.

[56] Bethlehem's through-hardened rails meet the specifications of all Class I railroads except Union Pacific; questionnaire response and TR, p. 12.

[57] The program is dependent upon obtaining a competitive labor agreement with the United Steelworkers of America.

[58] TR, pp. 23-24.

CF&I produces standard and premium head-hardened steel rails at its plant in Pueblo, CO.[59] The company was incorporated on January 11, 1872, as the Central Colorado Improvement Co. Like Bethlehem, its steelmaking is EAF-based, but its rails are produced by casting of ingots (Bethlehem casts blooms) and rolling on a universal mill.[60] The company has retrenched operations since 1983, decreasing melt capacity by more than 50 percent, while retiring four blast furnaces, a coke battery, and two BOFs. Peripheral holdings such as land, water, and coal mining rights were sold, and product lines outside the rail niche were reduced or discontinued. CF&I has modernized by adding capacity to its two 150-ton EAFs,[61] a ladle treatment center and argon stirring (allowing accurate control of chemistry, deoxidation, temperature, and desulfurization), and a continuous caster currently used to produce semifinished products for pipe. CF&I plans to replace the ingot source product with a continuous cast billet that will be produced on a modified round caster.[62] Earlier improvements to the rolling and finishing equipment allowed the company to become one of the first in North America to produce long-length 80-foot rails. These included a computer-controlled 45-inch blooming mill, 36-inch breakdown mill, intermediate roller, controlled cooling boxes, roller straightener, and new enders and drills. CF&I completed the installation of a rail-hardening facility in 1986 that has the capacity to produce 30,000 tons of off-line head-hardened AREA rail per year.[63] Despite these efforts to modernize, CF&I filed for protection under Chapter 11 of the Bankruptcy Code on November 7, 1990. The principal reasons for the Chapter 11 filing were the company's pension plan obligation, which was underfunded by an estimated $145 million, and health insurance costs.[64]

There have been several plant closings in recent years. The most recent was Wheeling-Pittsburgh's (W-P), Monessen, PA, decision to cease production of rails in December 1986. W-P's shipments stopped in April 1987, about 2 years after it entered bankruptcy proceedings. Following W-P's bankruptcy petition, ownership of the rail rolling mill in Monessen was returned to the Economic Development Administration (EDA), a part of Commerce,

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[59] CF&I is the only U.S. producer of premium alloy (chromium-molybdenum) steel rails ("Cromorail") for high performance on curves and other areas of heavy use.

[60] The rail mill was modernized in 1979 and has a capacity of *** tons per year.

[61] The two furnaces now have a raw steelmaking capacity of up to 1 million tons per year, operating on scrap iron and steel generated in the Rocky Mountain area. Brokers supply 75 percent of the scrap needed and CF&I's four subsidiary metal companies supply the remainder.

[62] CF&I also plans to purchase vacuum degassing, install another ladle treatment station, modify the continuous caster, and install on-line heat treatment. Such improvements are estimated to cost approximately $80 million; TR, pp. 25-26.

[63] Pueblo Railroad Service Co. located in Pueblo, CO, was established by CF&I in 1989 to provide rail welding on new and used rail and other services to railroad customers. Welding services have been provided to such concerns as Santa Fe, South Pacific, Union Pacific, and the Denver, Rio Grande and Western railroads. The Colorado & Wyoming Railway Co., located in Pueblo and Trinidad, CO, also provides railroad services to CF&I and other customers.

[64] According to CF&I, due to current market conditions, the company has ***.

which had guaranteed construction bonds of about $100 million to build the mill. Bethlehem purchased this part of the facility for $20 million at yearend 1988.[65] Sharon Steel bought the steelmaking assets of the Monessen facility in the second quarter of 1988.

There is one other company that produces rails; Steel of West Virginia, which started up in the third quarter of 1982, produces light rails for the mining and quarrying industries.

U.S. Importers

Thirteen firms were named in the petition as importing new steel rails from Japan, Luxembourg, and the United Kingdom. The Commission sent 19 questionnaires to firms identified in the petition and in ***. All firms responded, of which 5 provided usable data on imports[66] and 12 responded that they were not the importer of record.[67] Mitsui & Co. (USA) Inc.,[68] Sumitomo Corp. of America,[69] British Steel, Inc.,[70] Francosteel Corp.,[71] and Tradearbed, Inc.,[72] are believed to be the only importers into the United States of new steel rails from Japan, Luxembourg, and the United Kingdom.

Channels of Distribution and Marketing Considerations

In the U.S. market, sales of new steel rails by U.S. producers and importers are primarily made to end users. The largest end user market for domestically produced steel rails (80 percent) is the rail transportation

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[65] The rail mill in Monessen is not operating and Bethlehem has announced that it will begin actively seeking buyers for the production equipment at the mill.

[66] Two additional firms provided responses to the importer questionnaire. *** provided information on imports of steel rails from ***. This firm's data is not included because it purchases its imported steel rails from ***, which is the importer of record; telephone conversation on ***. Similarly, *** reported a small purchase of steel rails in 1991 from *** and is also not included.

[67] These firms (such as ***) are reportedly purchasers (distributors and end users) of imported steel rails. A purchaser questionnaire was not issued in these preliminary investigations although firms were requested to provide information on purchases of imported product in the pricing section of the importer questionnaire.

[68] ***. Mitsui reported importing ***. Mitsui also imported *** short tons in 1991 and *** short tons in Jan.-Mar. 1992 of "damage resistant rail" under a short-supply agreement. Burlington Northern petitioned Commerce to allow imports of 10,000 metric tons of damage resistant rail from Japan to enter the United States during Sept.-Dec. 1991 because U.S. producers were unable to meet its required specifications for continuous cast steel rails with varying head hardness (56 F.R. 29230, June 26, 1991).

[69] ***.

[70] ***.

[71] ***.

[72] ***.

industry,[73] mainly for maintenance. Most rails consumed domestically are for the replacement, or upgrading, of worn track.[74] Rail for tangent track is expected to have a life cycle of ***. Rail for curves (normally premium rail) may last *** depending on the degree of the curves. ***.[75] The following tabulation presents a summary of the channels of distribution used by U.S. producers[76] and importers of new steel rails in 1991 (in percent):

	Distributors	End users
Share of U.S. producers' shipments made to....	***	***
Importers:		
Share of Japanese product shipped to.....	***	***
Share of Luxembourg product shipped to.....	***	***
Share of United Kingdom product shipped to..	***	***

Rail consumers are increasing their demand for high-quality rail, consequently there is an increased use of head-hardened or through-hardened rail for mainline use. Several importers, purchasers,[77] and counsel for foreign producers have argued that there is not sufficient domestic capacity to supply the market demand for head-hardened or premium rail in the time frame needed by the purchaser.[78] Kenneth Button, Vice President of Economic Consulting Services, testifying on behalf of respondents, cited CF&I's and Bethlehem's comments to Commerce on the short-supply request of Union Pacific: CF&I was sold out of premium rail for the first quarter of 1992 and could not supply Union Pacific with premium rail until the third quarter of 1992. Bethlehem's capacity was committed through July 1992 and thereafter it was

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[73] At the request of the Commission, Bethlehem provided information on Class I, regional, and other types of railroads (based on Association of American Railroads (AAR) data). The AAR classifies those freight-hauling systems with annual operating revenues of at least $94.4 million as Class I railroads. AAR identified 14 Class I railroads, 30 regional railroads, 285 local linehaul railroads, and 160 switching and terminal railroads. The Class I railroads are: Atchison, Topeka and Santa Fe Railway Co.; Burlington Northern Railway Co.; Chicago and North Western Transportation Co.; CSX Transportation; Consolidated Rail Corp. (Conrail); Denver and Rio Grande Western Railroad; Florida East Coast Railway; Grand Trunk Western Railroad Corp.; Illinois Central Gulf Railroad; Kansas City Southern Railway; Norfolk Southern Corp.; Soo Line Railroad; Southern Pacific/DRGW Companies; and Union Pacific Railway. Class I railroads accounted for 91 percent of freight revenue in 1990.

[74] ***.

[75] Bethlehem's questionnaire response, attachment to p. 40.

[76] Bethlehem estimates that 70 percent of its sales of rails go to Class I railroads, 5 to 10 percent goes to the transit industry, 10 percent goes to distributors, and the remainder is sold to manufacturers of trackwork and short line railroads; TR, p. 15.

[77] TR, pp. 104-106 and 110.

[78] Bethlehem and CF&I testified at the conference that their head-hardening operations have been running at full capacity.

prepared to offer Union Pacific only 1,000 to 2,000 tons of premium rail per month between August 1992 through March 1993.[79]

The railroad transportation industry uses both standard and premium steel rails. The railroads measure the speed, the degree of curvature, and the gross tonnage on a particular section of railroad and determine, based on the pricing differential between standard rail and premium rail, the most cost effective application of standard or premium rail.[80] Within the steel rail industry there are significant differences in customer perceptions of standard and premium rail,[81] and other rails, as well as differences in the marketing and distribution of such rails.[82] In general, premium and standard rails are sold directly by the rail producers to Class I railroads, to rail contractors, to transit districts, and to distributors for resale to short line and regional railroads (as mentioned earlier in the report, foreign rail producers tend to sell through agents in the United States),[83] whereas crane and contact rails tend to be sold through distributors who, in turn, sell to port authorities and warehouses.[84] Class I railroads generally do not use relay rail, which tends to be taken up and relaid on less used sections within the

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[79] TR, p. 122, and 57 F.R. 6214, Feb. 21, 1992. Gary Zaversnik, Director Materials Operations Supply Dept., Union Pacific, testified that Union Pacific's rigorous qualification process for its premium rail suppliers has prevented it from purchasing premium rails from U.S. suppliers. Bethlehem's off-line, full-rail heating and oil quenching process, results in a head hardness less than Union Pacific's requirements and CF&I's railmaking process does not utilize vacuum degassing or continuous casting technology; TR, pp. 116-118.

[80] It is the total life cycle cost calculation that determines whether standard or premium rail is used by the purchaser; TR, p. 13; petitioners' postconference brief, p. 5.

[81] CSX, a major U.S. purchaser of steel rails, testified at the conference (and in its postconference brief) that premium rails and standard rails are neither interchangeable with nor substitutable for each other. Rather, they are separate, discrete products used for different applications (standard rails are normally chosen by its engineering department for low-wear sections of track; whereas, premium rail is chosen for high-wear applications of track, including high curvature sections of track or lines carrying high volumes of trains and high tonnages); TR, pp. 100-101 and postconference brief, pp. 2-3. See also testimony of John Leeper, Chief Engineer of Maintenance, and Michael Cronin, Director of Purchasing, for Burlington Northern, TR, pp. 106-112; and Burlington Northern's established engineering criteria for determining whether premium or standard rail should be used as provided in exhibit 1 of the postconference brief submitted on behalf of Nippon Steel and NKK.

[82] TR, pp. 95-96. Railroads prefer to purchase from sources geographically close to them and to source from more than one supplier; TR, pp. 102-103.

[83] Bethlehem and CF&I prefer to deal directly with the major railroad lines, not with distributors. Japanese and European producers sell rail to the railroad lines through their sales agents in the United States.

[84] Crane and contact rails are handled by the same distributors that sell tee rails to short line railroads and transit authorities; petitioners' postconference brief, p. 9.

same railroad[85] or sold to a distributor for resale. Class I railroads prefer to maintain input into the production and quality control processes, which is only possible at a producer's facility.

Sales are made through a bidding process by both the railroads and the municipal transit authorities. Both systems utilize prequalification requirements in terms of material specifications, origin of manufacture, and bidder; some distributors may also be asked to bid. Generally quotes are made with a specific price for a specified quantity and shipment schedule on a delivered basis (or f.o.b. producer's facility with a freight allowance factored into the quote).[86] The Class I railroads request written and verbal bids directly from producers and some distributors, and negotiate directly with the most competitive bidder following submission of the bids.

The majority of rail is purchased in the third quarter of the year for delivery in the first and second quarters of the next calendar year.[87] Each purchaser's delivery time depends on the project's (welding) work schedule and the seasonal nature of rail laying. Municipal transit authorities normally conduct open bids with material specifications, service, and price as determinants for preselection.[88] In addition, municipal governments and transit authorities may have "Buy American" provisions that either eliminate foreign sourcing altogether or specify that the foreign source must be at least 10 to 25 percent, or more, lower in cost than the lowest available bid by a domestic producer.[89] Recent trends in the transit authority sector indicate that Federal funds have increased and transit procurements are predicted to be an opportunity for growth in the coming years.[90]

The railroads are heavily dependent upon hauling bulk commodities, such as coal,[91] steel, chemicals, automobiles, and grains (grain shipments from

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[85] During the last 2 to 3 years there has been no nonworn relay rail available that could be used by the railroads; *** conversation with ***; TR, pp. 20-21.

[86] According to several importer questionnaire responses, two of the most important factors considered by Class I railroads when selecting a vendor are the quality of the product (i.e., the ability of the rail to meet its specifications, which include such factors as head hardness, ability to withstand heavy tonnage, longevity, and maintenance requirements) and the ability to satisfy the railroad's delivery requirements to meet the work schedule.

[87] During the second and third quarters of the year preceding the program year, the railroads' engineering departments put their budgets together in terms of rail requirements for both standard and premium rail; TR, pp. 37-38.

[88] Suppliers that meet these specifications are then asked to submit a sealed bid.

[89] *** was the only importer that reported sales to the transit authorities. Telephone conversations with several importers and purchasers of steel rails confirmed that very little imported product is sold to the transit authorities because of the "Buy American" policies of Federal and State Governments.

[90] TR, pp. 62-63.

[91] The transporting of low-sulfur coal is seen as a growth commodity in the 1990s, "1992 Outlook--A record year for rails?," Railway Age, December 1991, pp. 27-33. Coal is the industry's leading commodity, comprising about 41 percent of total railroad tonnage in 1990.

Iowa and Minnesota for export are expected to improve in 1992). Despite the recession, 1991 was a good year for the railroad industry.[92] Congress passed legislation limiting the use of the Nation's highways by longer combination vehicles (LCVs)[93] and a special board was appointed in April 1991 to settle a 3-year dispute between rail labor and management. The resulting contract should lead to future gains in productivity. The railroads will likely focus their efforts in 1992 upon matters like the Federal Employers' Liability Act, the Railroad Retirement System, and other laws unique to railroads.[94]

Purchases of new rail are made pursuant to capital expansion programs and/or track maintenance programs (which are tied to the amount of tonnage moving over the tracks). The 263,000-pound weight-on-rail limit is no longer valid. Loads are going to 286,000 pounds and will probably go higher.[95] Today's rails are sustaining greater tonnages mainly due to the longer service life of head-hardened rail and alloy rail. Railroad maintenance programs, particularly in-place head grinding and wheel flange and track lubrication, also contribute to increased service life. The following tabulation presents data on miles of road and track owned on December 31 of the specified years, as well as the tons of new rail laid by Class I railroads during 1986-90:

Year	Miles of road owned[1]	Miles of track owned[2]	Tons of new new rail laid	Tons of relay rail laid
1986	140,061	233,205	456,066	681,660
1987	132,220	220,518	377,282	661,238
1988	127,555	213,669	357,371	520,477
1989	124,236	208,322	348,186	407,209
1990	119,758	200,074	338,867	461,767

[1] Miles of road owned represents the aggregate length of roadway, excluding yard tracks, sidings, and parallel lines. The decline in miles of road and track owned in recent years reflects the many "lost" Class I railroad miles that have been sold to non-Class I railroads.

[2] Miles of track owned differs from miles of road owned in that it includes multiple main tracks, yard tracks, and sidings.

Source: American Association of Railroads, Railroad Facts, 1991.

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[92] At the conference, Mr. Demma (Bethlehem) testified that initial budget indications are that the total rail buy for 1993-95 will be up somewhat from current levels; TR, p. 58 and p. 66.

[93] This benefited the railways by preventing large losses of high-rated traffic and allowing the growth of rail intermodal, "Midyear report: Is the worst over?," Railway Age, July 1991; and "1992 outlook: A record year for rails?," Railway Age, December 1991.

[94] Railway Age, December 1991.

[95] Railway Age, March 1992.

CONSIDERATION OF ALLEGED MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

The data appearing in this section of the report are for the two rail mills that provided information in response to the Commission's producer questionnaires.[96] Bethlehem and CF&I are believed to be the only U.S. mills producing new steel rails, over 30 kilograms per meter, during January 1989 through March 1992.

U.S. Capacity, Production, and Capacity Utilization

The Commission requested U.S. producers to provide data on their full production capability[97] to produce all steel rail products, standard rails, premium rails, and all other rails,[98] for 1989-91, January-March 1991, and January-March 1992. These data are presented in table 2.

Table 2
New steel rails: U.S. capacity, production, and capacity utilization, by products, 1989-91, January-March 1991, and January-March 1992[1]

* * * * * * *

Total steel rail end-of-period capacity *** percent during 1989-91, *** from *** short tons to *** short tons. The January-March interim figures show *** in capacity of *** percent in 1992 over the corresponding period in 1991.[99] Bethlehem reported that its end-of-period capacity to produce steel rails *** throughout the period of investigation, while CF&I's reported annual capacity to produce steel rails was *** short tons.[100] Both firms reported operating *** hours per week, *** weeks per year.[101]

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[96] Data include both nonalloy and alloy rails, as well as girder rails.

[97] Full production capability was defined as the maximum level of production that the plant could reasonably expect to attain under normal operating conditions.

[98] ***.

[99] According to petitioners' postconference brief (p. 21), Bethlehem and CF&I together have sufficient capacity to supply *** of total U.S. consumption of premium rail.

[100] CF&I's capacity to produce standard rail *** short tons in interim 1992 and its capacity to produce premium rail *** short tons.

[101] It is recognized that the reported capacity for each mill is an average for the year and that the rolling mills operate at higher levels in the fourth quarter and peak in the first quarter of the year. Timothy Demma (Bethlehem) testified at the conference that during the heavy demand period, the first quarter in particular, they will frequently run at or near the capacity of the rolling mill. Operations taper off in the second quarter and during the third quarter there may be periods that the mill is rolling rail just for heat treating; TR, pp. 71-73.

The mills' standard rail end-of-period capacity utilization *** percent in 1989 to *** percent in 1991. Such capacity utilization then *** percent in interim 1992 compared to *** percent in 1991. Premium rail capacity utilization *** during 1989-91, *** percent in 1989 to *** percent in 1991. Such capacity utilization *** percent in January-March 1991 to *** percent in the corresponding period of 1992.

U.S. Producers' Shipments

Total U.S. shipments[102] of U.S. rail mills (based on quantity) *** during 1989-91, *** short tons in 1989 to *** short tons in 1991 (table 3). Total U.S. shipments *** percent in interim 1992, *** short tons in January-March 1991 to *** short tons in the corresponding period of 1992.[103] U.S. producers' shipments of standard rails *** percent during 1989-91 and then *** percent during interim 1992 compared to the corresponding period in 1991. Shipments of premium rails *** short tons in 1989 to *** short tons in 1991. Such shipments *** percent between January-March 1991 and January-March 1992. Bethlehem and CF&I shipped *** short tons in 1991, of which *** percent was premium head-hardened or through-hardened rail.

Table 3
New steel rails: Shipments by U.S. producers, by products and by types, 1989-91, January-March 1991, and January-March 1992

* * * * * * *

The unit value of standard rails *** throughout the period, from $*** per short ton in 1989 to $*** per short ton in January-March 1992. The unit value of premium rails *** during 1989-91, *** from $*** per short ton in 1989 to $*** per short tons in 1991. Such unit values *** from $*** per short ton in interim 1991 to $*** per short ton in the corresponding period of 1992.

* * * * * * *[104]

U.S. Producers' Inventories

Rail mills produce steel rails upon receipt of an order and consequently maintain little or no finished goods inventories. At times the mills produce small production overruns or accumulate industrial rails, which may be sold to

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[102] U.S. shipments equal company transfers plus domestic shipments.

[103] Shipments are typically concentrated in the fourth, first, and second quarters, with both production and shipments peaking in the first quarter; TR, p. 34 and petitioners' postconference brief, pp. 12-14.

[104] Metal Bulletin, May 11, 1992, reported that the United States exported 18 tons of rails to Japan in 1991.

distributors or held until an order is received. The following tabulation presents U.S. new steel rail inventories[105] based on questionnaire responses:

* * * * * * *

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

Table 4 presents data collected in the Commission's producer questionnaires. In past investigations, U.S. producers were unable to separate workers by the type of new steel rail produced because most of the workers were involved in producing all new steel rails. Therefore, in these investigations the Commission requested employment data for all steel rails combined. Both firms are represented by the United Steelworkers of America.

Table 4
Average number of total employees and production and related workers in U.S. establishments wherein all new steel rails are produced, hours worked,[1] wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs,[2] by products, 1989-91, January-March 1991, and January-March 1992

* * * * * * *

The number of production and related workers (PRWs) producing new steel rails *** during 1989-91, *** from *** PRWs in 1989 to *** PRWs in 1991. The number of PRWs *** percent from January-March 1991 to January-March 1992. The number of hours worked by PRWs *** percent during 1989-91 and *** percent in interim 1992 compared with the same period a year earlier.

Wages paid to PRWs *** during 1989-91 (by *** percent) and by *** percent from January-March 1991 to January-March 1992. Total compensation paid to PRWs *** during 1989-91, and then *** percent between January-March 1991 and January-March 1992. Average hourly wages *** from $*** per hour in 1989 to $*** per hour in 1991. Interim hourly wages *** from $*** per hour in 1991 to $*** per hour in 1992.

In its questionnaire, the Commission requested new steel rail producers to provide detailed information concerning reductions in the number of PRWs producing rails since 1989, if such reductions involved at least 5 percent of the workforce or 50 workers. Both firms reported reductions during January 1989 to March 1992 due to *** but neither firm provided specific information on the dates of such reductions or the number of workers involved.

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[105] With the exception of *** had no inventories of steel rails.

Financial Experience of U.S. Producers

Both producers (Bethlehem and CF&I) supplied income-and-loss data on the overall operations of their establishments in which new steel rails are produced and, separately, on their operations in producing such products.

Overall Establishment Operations

Bethlehem manufactures semifinished steel, rail accessories, bars, and pipes as well as steel rails in its Steelton, PA, plant. Bethlehem's sales of new steel rails accounted for *** percent of its overall establishment sales in 1991.[106] CF&I produces other steel products in its Pueblo, CO, establishment.[107] [108] New steel rails accounted for *** percent of its overall establishment sales in 1991. The overall establishment operations of the producers are presented in table 5.

Table 5
Income and loss experience of U.S. producers[1] on the overall operations of their establishments wherein new steel rails are produced, fiscal years 1989-91, January-March 1991, and January-March 1992[2]

* * * * * * *

Operations on New Steel Rails

The combined income-and-loss experience of both producers are presented in table 6. Net sales of new steel rails *** percent from $*** in 1989 to $*** in 1990. In 1991, sales were $***, a *** percent from 1990. Operating *** were $*** in 1989, $*** in 1990, and $*** in 1991. Operating income (loss) ratios, as a share of net sales, were *** percent in 1989, *** percent in 1990, and *** percent in 1991. ***.

---

[106] Bethlehem defined its "establishment" as those operations directly related to steel rail production, rather than the whole Steelton plant.

[107] CF&I's establishment represents its only plant. These data are the same as the company reported in its annual reports.

[108] In November 1990, CF&I filed a petition for reorganization under chapter 11 of the U.S. Bankruptcy Code. "The principal reason for the chapter 11 filing was the Company's pension plan obligations which is underfunded by an estimated $145 million." CF&I Annual Report for 1990, p. 2. "The Company's goal is to file a plan of reorganization in the second half of 1992 and have it confirmed by the Bankruptcy Court by the end of 1992." CF&I Annual Report for 1991, p. 8.

Table 6
Income and loss experience of U.S. producers[1] on their new steel rail operations, fiscal years 1989-91, January-March 1991, and January-March 1992[2]

* * * * * * *

Interim 1992 sales were $***, *** sales of $***. Operating income was $*** in interim 1991 and $*** in interim 1992. Operating income margins were *** percent in interim 1991 and *** percent in interim 1992. ***. Selected income-and-loss data, by firm, is shown in table 7.

Table 7
Selected income-and-loss data of U.S. producers on their operations producing new steel rails, fiscal years 1989-91, January-March 1991, and January-March 1992

* * * * * * *

Past Service Expenses

As in the prior investigations, one of the significant cost factors for this industry is the amount of past service (previously retired) pension and medical expense that the two companies must absorb against their current operations. However, beginning in 1991, CF&I eliminated its pension contributions for past service employees as a result of its bankruptcy filing. "The Company intends to terminate its pension plans which would result in the Pension Benefit Guaranty Corporation (PBGC) becoming one of its largest unsecured creditors."[109] The PBGC is a U.S. Government agency. CF&I is still responsible for its retiree health benefits.

A summary of the estimated past service costs and their effect on operating income (loss) for the two firms is shown in the following tabulation (in thousands of dollars):

* * * * * * *

A comparison of the revenues and estimated costs per ton for the current producers is shown in the following tabulation (in dollars per ton, except as noted):

* * * * * * *

[109] CF&I Annual Report, 1991, p. 8.

Investment in Productive Facilities

U.S. producers' investment in property, plant, and equipment and returns on investment are shown in table 8.

Table 8
Assets of U.S. producers[1] as of the end of fiscal years 1989-91, March 31, 1991, and March 31, 1992

* * * * * * *

Capital Expenditures

Capital expenditures by U.S. producers are shown in table 9.

Table 9
Capital expenditures by U.S. producers, fiscal years 1989-91, January-March 1991, and January-March 1992

* * * * * * *

Research and Development Expenses

Research and development expenses for the two producers are shown in the following tabulation (in thousands of dollars):

* * * * * * *

Impact of Imports on Capital and Investment

The Commission requested U.S. producers to describe and explain the actual and potential negative effects, if any, of imports of new steel rails from Japan, Luxembourg, and/or the United Kingdom on their growth, investment, ability to raise capital, and existing development and production efforts (including efforts to develop a derivative or improved version of new steel rails). Their responses are shown in appendix D.

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 the merchandise, the Commission shall consider, among other relevant economic factors[110]--
>
> (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,
>
> (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,

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[110] 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."

> (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 706 or 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.[111]

Subsidies (item (I)) and agricultural products (item (IX)) are not issues in these investigations; 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;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of Alleged Material Injury to an Industry in the United States." Available information follows on U.S. inventories of the subject product (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets.

Inventories of U.S. Importers

As discussed earlier in the report, U.S. importers generally act as selling agents for the foreign producers/exporters and, therefore, maintain very little product in inventory. The only reported inventories were of *** rails--*** short tons in 1991 and *** short tons in 1990, representing *** percent.

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[111] 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."

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other Than the United States

The Commission requested certain information from counsel for producers in Japan, Luxembourg, and the United Kingdom. The Commission also requested information from the U.S. embassies in Tokyo, Luxembourg, and London.[112] The information discussed below was supplied by petitioners and by counsel for the foreign producers.

The Industry in Japan

Six Japanese producers of new steel rails were named in the petition: Nippon Steel, NKK Corp., Godo Steel, Yamato Kogyo, Topy Industries, and Osaka Seitetsu. Nippon Steel and NKK reportedly produce 90 percent of Japan's rails over 30 kilograms per meter and have on-line hardening processes. Nippon Steel's Yawata plant and NKK's Fukuyama plant[113] accounted for *** percent and *** percent, respectively, of reported production of rails over 30 kilograms per meter in 1991. Nippon Steel produces standard and premium tee rail, and is the only producer of crane rails in Japan. NKK produces standard and premium tee rails.

Nippon Steel's Yawata plant has BOF converters and continuous casters, and a rail mill consisting of two 2-high reversing rolling mills and three universal rolling mills. NKK's Fukuyama plant is equipped with BOF converters and four continuous casters (one identified as a bloom caster), and a universal rail/heavy section mill. NKK's new steel rail finishing line generally involves the following: ***. Both producers sell directly to the Japan Railroad in the home market. Export sales of new steel rails to the United States are made either directly to major U.S. railroads or to trading companies, including Mitsui & Co. (U.S.A.), Inc.,[114] and Sumitomo Corp. of America. Rails for export to the United States are premium rails produced to AREA standards. Japan's principal other export markets for steel rails are ***.

Capacity to produce new steel rails in Japan was *** short tons during 1989-91, and *** short tons in January-March 1991, and January-March 1992 (tables 10-13 present data for standard, premium, all other, and total new steel rails). Japanese capacity to produce rails was projected to remain unchanged in 1992 and to *** to *** short tons in 1993. The Japanese mills' capacity utilization *** from *** percent in 1989 to *** percent in 1990, and then *** percent in 1991. Capacity utilization was *** percent in interim 1991 and *** percent in interim 1992. Projected capacity utilization was *** percent in 1992, and *** percent in 1993.

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[112] The embassies did not respond to the Commission's request for information.

[113] ***.

[114] ***.

Table 10
Standard rails: Japan's production, inventories, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

Table 11
Premium rails: Japan's production, inventories, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

Table 12
All other rails: Japan's production, inventories, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

Table 13
All new steel rails: Japan's capacity, production, inventories, capacity utilization, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

End-of-period inventories of new steel rails *** from *** short tons in 1989 to *** short tons in 1991, an *** percent. Such inventories *** percent between January-March 1991 and the corresponding period of 1992. Exports to the United States *** from *** short tons in 1989 to *** short tons in 1990, and then *** short tons in 1991. Exports to the United States *** percent between interim 1991 and interim 1992. Such exports were projected to *** short tons in 1992 and to *** short tons in 1993. Exports of new steel rails to the United States accounted for *** percent of total Japanese exports in 1989, *** percent in 1990, *** percent in 1991, *** percent in interim 1991, and *** percent in interim 1992.

Nippon Steel reported the capacity for its Yawata rolling mill. This mill also produces ***. In 1991, approximately *** percent of the total production of the facility was of nonrail products. Nippon's capacity to produce new steel rails was *** short tons during 1989-91[115] and *** short tons in the interim periods. Nippon's capacity is based on operating *** hours per week, *** weeks per year. Nippon's production of standard rails as a share of its total rail production was *** percent in 1989, *** percent in 1990, and ***

[115] ***.

percent in 1991. Production of premium rail accounted for *** percent in 1989, *** percent in 1990, and *** percent in 1991.

NKK's capacity to produce new steel rails was *** short tons during 1989-91 and *** short tons in the interim periods.[116] Such capacity was projected to *** short tons in 1992. NKK's production of standard rail accounted for *** percent of total rail production in 1989 and *** percent in 1990-91, with production of premium rails accounting for virtually all of the remainder. NKK does *** steel rails and produced ***.

The Industry in Luxembourg

There is only one producer of steel rails in Luxembourg: Metallurgique et Miniere de Rodange-Athus (MMRA). It was established in 1882 and has been a subsidiary of Arbed S.A. since 1978.[117] Arbed also owns SIDMAR in Belgium and has an interest in Companhia Siderurgica Belgo-Mineira in Brazil. Other shareholders include Groupe Bruxelles Lambert, Cockerill Sambre, and the Luxembourg Government. MMRA obtains semifinished steel (blooms) from Arbed and from Unimetal (a subsidiary of Usinor-Sacilor in France)[118] for rolling at its rail mill in Rodange. MMRA produces standard and premium tee rails, ***, crane rails,[119] and contact ***.[120] MMRA also produces *** on the same equipment and machinery used in the production of new steel rails.[121] ***.

MMRA's capacity to produce new steel rails was *** short tons during 1989-91, and *** short tons during interim 1991 and interim 1992 (tables 14-17 present data for standard, premium, all other, and total new steel rails). MMRA projects its capacity to produce rails to be *** short tons in 1992 and 1993.[122] MMRA's capacity utilization rate for all rails was *** percent in 1989, *** percent in 1990, *** percent in 1991, and slightly higher than *** percent in the interim periods.[123]

Table 14
Standard rails: Luxembourg's production, inventories, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

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[116] The company's capacity is based on operating *** hours per week, *** weeks per year.

[117] ***; petition, exhibit 10.

[118] Cockerille Sambre and Unimetal distribute MMRA rails in Belgium and France, respectively.

[119] To produce crane rails, MMRA's ***; postconference brief, pp. 11-12..

[120] To manufacture contact rails, MMRA uses ***; postconference brief, p. 11.

[121] MMRA cannot shift production from these other products to the production of rails because rails are subject to a separate, more complicated finishing process; postconference brief, p. 25.

[122] MMRA has no plans to increase its capacity nor does it have existing unused capacity that would likely result in a significant increase in imports of rails from Luxembourg; postconference brief, p. 23.

[123] MMRA calculated its annual capacity based on operating *** hours per week, *** weeks per year.

Table 15
Premium rails: Luxembourg's production, inventories, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

Table 16
All other rails: Luxembourg's production, inventories, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

Table 17
All new steel rails: Luxembourg's capacity, production, inventories, capacity utilization, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

End-of-period inventories *** short tons in 1989 to *** short tons in 1991, *** percent. Inventories *** percent in the interim periods. Exports to the United States *** short tons in 1989 to *** short tons in 1991, representing *** percent. Such exports *** percent between January-March 1991 and January-March 1992. Exports were projected to *** short tons in 1992. Exports to the United States accounted for *** percent of MMRA's total export shipments in 1989, *** percent in 1990, *** percent in 1991, *** percent in interim 1991, and *** percent in interim 1992. MMRA's U.S. exports of premium rails accounted for *** percent of total U.S. exports of steel rails in 1989, *** percent in 1990, *** percent in 1991, *** percent in January-March 1991, and *** percent in the corresponding period of 1992.[124] Over the period 1989-91, *** percent of MMRA's exports to the United States were of crane and contact rails.

* * * * * * *

Trade Arbed Rails, a wholly owned subsidiary, serves as an agent for MMRA for distribution of its rails. Francosteel Corp., New York, NY, also serves as a selling agent for MMRA in the United States.

[124] The majority (*** percent) of MMRA's export sales of premium rails to the United States were to ***; postconference brief, p. 14.

The Industry in the United Kingdom

British Steel plc is the only producer of new steel rails in the United Kingdom.[125] British Steel produces rails at its Workington plant and exports rails from Workington, Middlesborough (Teesside), Liverpool, and London.[126] The Workington plant produces standard and premium rails, industrial rails, crane rails, contact rails, and trackwork. Blooms for rolling are produced in the British Steel plant in Teesside using a BOF converter and continuous caster. The Workington mill has an on-line head-hardening facility which enables production of heat-treated rail in 120 foot lengths.

British Steel's capacity to produce new steel rails was *** short tons during 1989-91, and *** short tons in interim 1991 and interim 1992 (tables 18-21 present data for standard, premium, all other, and total new steel rails). British Steel projects its capacity to produce rails to *** short tons[127] during 1992 and 1993.[128] The company's rail facilities operated at *** percent of capacity in 1989, *** percent in 1990, *** percent in 1991, *** percent in interim 1991, and *** percent in interim 1992.

Table 18
Standard rails: United Kingdom's production, inventories, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

Table 19
Premium rails: United Kingdom's production, inventories, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

Table 20
All other rails: United Kingdom's production, inventories, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

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[125] ***; petition, Exhibit 11.

[126] ***; petition, exhibit 11. New steel rails accounted for *** percent of British Steel's total sales in its most recent fiscal year.

[127] Postconference brief, p. 6. British Steel projects a capacity utilization rate of *** percent in 1992 and *** percent in 1993; ibid., p. 26.

[128] Foreign producer questionnaire (p. 4) revised May 27, 1992.

Table 21
All new steel rails: United Kingdom's capacity, production, inventories, capacity utilization, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * * * *

End-of-period inventories of steel rails *** short tons in 1989 to *** short tons in 1990, and then *** short tons in 1991. Inventories *** percent in the interim periods. Exports to the United States *** short tons in 1989 to *** short tons in 1991, representing *** percent.[129] Exports *** in the interim periods from *** short tons in January-March 1991 to *** short tons in the corresponding period in 1992.[130] Exports to the United States accounted for *** percent of British Steel's total export shipments in 1989, *** percent in 1990, *** percent in 1991, *** percent in interim 1991, and *** percent in interim 1992.

Total British Steel exports *** short tons in 1989 to *** short tons in 1990 and then *** short tons in 1991. Exports *** short tons in interim 1991 to *** short tons in interim 1992.[131] British Steel's projected rail exports to the United States in 1992 and 1993 will ***. Exports to other countries *** irregularly between 1989 and 1991 and continued to *** in the interim periods. According to the petitioners, ***.

* * * * * * *

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

U.S. Imports

U.S. imports of new steel rails are presented in table 22. Mitsui and Sumitomo, the two importers of new steel rails from Japan, alleged in their questionnaire responses ***. U.S. imports from Japan, Luxembourg, and the

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[129] Counsel for British Steel claims that the 1991 increase in UK imports was a replacement of declines in other imports from the EC, principally as a result of a withdrawal of German rail producers from the U.S. market; postconference brief, p. 2.

[130] Exports of premium steel rails to the United States accounted for *** percent of British Steel's U.S. exports in 1989, *** percent in 1990, *** percent in 1991, *** percent in interim 1991, and *** percent in interim 1992. However, counsel for British Steel testified at the conference that British Steel is not yet qualified with a U.S. railroad as a supplier of premium rail and that imports of premium rail from the United Kingdom are trial shipments; TR, pp. 134-135 and postconference brief, pp. 1-2, 21-24, and app. A. Petitioners note that British Steel's premium sales were in quantities greater than trial sizes; postconference brief, pp. 27-28.

[131] Exports of steel rails are projected to *** from *** short tons in 1992 to *** short tons in 1993.

Table 22
New steel rails: U.S. imports,[1] by sources, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.-- 1991	Jan.-Mar.-- 1992
	Quantity (short tons)				
* * * * * * *					
Belgium	342	32	189	83	82
Germany	12,127	8,987	3,763	753	965
Canada	11,641	34	1,729	0	111
France	9,629	247	2,841	123	4,230
Other sources	6,865	5,752	5,232	396	4,579
Total	***	***	***	***	***
	Value (1,000 dollars)[2]				
* * * * * * *					
Belgium	168	20	119	48	51
Germany	6,486	4,964	1,823	394	498
Canada	4,420	14	476	0	69
France	4,598	153	1,683	71	2,537
Other sources	3,289	3,660	2,358	315	2,608
Total	***	***	***	***	***
	Unit value (per short ton)				
* * * * * * *					
Belgium	$490.28	$641.96	$628.19	$579.57	$624.74
Germany	534.83	552.37	484.45	522.97	516.04
Canada	379.73	418.05	275.12	(3)	625.69
France	477.55	619.16	592.36	577.09	599.93
Other sources	479.02	636.19	450.68	796.21	569.62
Average	***	***	***	***	***

[1] May include some relay rails from Canada.
[2] C.i.f. duty-paid value.

Note.--Because of rounding, figures may not add to the totals shown; unit values for nonsubject sources are calculated from unrounded figures and unit values of subject sources are calculated using data of firms supplying both numerator and denominator information.

Source: Figures for subject sources are compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and figures for other sources are from official statistics of the U.S. Department of Commerce.

United Kingdom are calculated from data provided by importers in their questionnaires, and imports of steel rails from all other countries are from official Commerce statistics.[132]

The HTS did not have subheadings for non-heat-treated (standard) rails and heat-treated (premium) rails until 1990. Therefore, Commission staff determined the percentages of 1990 imports from nonsubject countries of standard rails and premium rails (as reported in official statistics) and applied these percentages to imports in 1989 to estimate the quantity and value of standard rail and premium rail imports from nonsubject countries in 1989. Approximately *** percent of U.S. tee rail imports in 1991 from the subject countries were head-hardened rails, which are increasingly preferred by U.S. railroads for durability and weldability.

Japan

Japan was the largest source of U.S. imports of new steel rails from the subject countries. Imports of new steel rails from Japan *** from *** short tons in 1989 to *** short tons in 1991, *** percent. During January-March 1992, imports from Japan *** percent from the corresponding period in 1991.

Luxembourg

Imports of new steel rails from Luxembourg *** from *** short tons in 1989 to *** short tons in 1990, a *** percent. Such imports then *** short tons in 1991, or by *** percent. Imports *** percent during January-March 1992 when compared with those of the year-earlier period.

United Kingdom

Imports of new steel rails from the United Kingdom *** short tons in 1989 to *** short tons in 1991, or by *** percent. Such imports were *** short tons in January-March 1991, and *** short tons in the corresponding period of 1992.

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[132] Commerce statistics are thought to accurately reflect U.S. imports of steel rails from other sources, in that such imports are believed to be mostly, if not entirely, new rails. Official U.S. import statistics include the subject products (premium and standard rails and other new steel rails), but may also include some relay rails from Canada; TR, pp. 59-60.

Total Subject Imports

Cumulative imports of new steel rails from Japan, Luxembourg,[133] and the United Kingdom[134] increased from *** short tons in 1989 to *** short tons in 1991, an increase of *** percent. Such imports then declined from *** short tons in January-March 1991 to *** short tons in January-March 1992, or by *** percent.

Events in Eastern Europe have increased the demand for rail in Germany as Germany rebuilds the East German rail system.[135] British Steel apparently increased its exports to the United States in 1991 by using Germany's quota under the VRAs.[136]

Import data compiled from Commission questionnaires for the subject countries, by type of rail, are presented in the following tabulation (in short tons):

* * * * * * *

Imports of standard rails from Luxembourg *** percent between 1989 and 1990 and then *** percent in 1991. Such imports *** percent in interim 1992. Imports of standard rails from the United Kingdom *** percent between 1990 and 1991.

Imports of premium rails from Japan *** percent during 1989-91, and then *** percent between January-March 1991 and January-March 1992. Such imports from Luxembourg *** percent during 1989-91, and *** percent in interim 1992. Imports of premium rails from the United Kingdom *** percent during 1989-91, and *** percent during interim 1992.

In terms of deliveries of steel rails after March 31, 1992, Japanese producers are believed to have shipped 30,000 short tons of new steel rails to Portland, OR, for delivery in April and May.[137] Mitsui and Sumitomo reported in their questionnaires that the following deliveries of new steel rails from Japan are expected after March 31, 1992: *** short tons in May, *** short tons in June, *** short tons in August, and *** short tons in September. British Steel expects deliveries of *** short tons of new steel rails from the United

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[133] Counsel for MMRA argues that imports from Luxembourg should not be cumulated because they are negligible and have no discernible adverse impact on the domestic industry; postconference brief, pp. 7-20.

[134] Counsel for British Steel plc argued at the conference that imports from the United Kingdom should not be cumulated with those from Japan because they do not compete with each other. The British producer is not yet qualified to sell premium rails to any U.S. railroad; TR, pp. 134-136 and postconference brief, pp. 3-5 and 7-18.

[135] TR, p. 61.

[136] Respondent's postconference brief, p. 4.

[137] Metal Bulletin, May 7, 1992.

Kingdom during April-June 1992 and Tradearbed and Francosteel expect a total of *** short tons from Luxembourg during April-July 1992.[138]

Market Penetration of Allegedly LTFV Imports

U.S. producers' shipments of new steel rails, imports, apparent consumption, and market penetration by imports are presented in table 23. Cumulative market penetration (based on quantity) by imports of new steel rails from Japan, Luxembourg, and the United Kingdom *** from *** percent in 1989 to *** percent in 1991. Market penetration of such imports *** percent in interim 1991 to *** percent in the corresponding period of 1992. Except for 1991, the United Kingdom accounted for ***.

U.S. producers' share of apparent consumption (based on quantity) *** percent in 1989 to *** percent in 1991. U.S. producers' market share *** percent in January-March 1991 to *** percent in the corresponding period of 1992.

Prices

Marketing Considerations

Approximately 70 percent of the market for new steel rails consists of Class I railroads, 10 percent of the market consists of the smaller railroads, and the remaining 20 percent of the market consists of transit authorities, distributors, and contractors. More than 90 percent of new steel rails are purchased through a bid or quote procedure. Requests for quotes originate with the railroads while requests for bids originate with the transit authorities.

New steel rail prices generally vary with weight requirements, with the quantity ordered, and whether the rail is standard carbon, alloy, through-hardened, or head-hardened. Premium rails such as alloy, through-hardened, and head-hardened rails are more expensive than standard carbon steel rails.[139] Currently, CF&I is the only U.S. producer of head-hardened rails; Bethlehem's premium rail is through-hardened. Both CF&I and Bethlehem are currently producing premium rails at or near capacity.[140]

After a Class I railroad or a transit authority has determined the amount and types of rail needed, they solicit quotes from several rail producers approximately 6 months prior to actual need. Railroads often request quotes for two or three types of rail for the project. Both a railroad's and a transit authority's request for a quotation usually includes

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[138] Petitioners allege that during the 1992 bid negotiations, MMRA obtained an order for *** net tons of head-hardened rails from *** for delivery in 1992; petition, p. 58.

[139] Through-hardened rails are about *** percent more expensive to produce than head-hardened rails.

[140] TR, pp. 43-44, and 52.

Table 23
New steel rails: U.S. shipments of domestic producers, U.S. imports, and apparent U.S. consumption, by products, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.-- 1991	Jan.-Mar.-- 1992
	Quantity (short tons)				
Standard rails:					
* * *	*	*	*	*	
Premium rails:					
* * *	*	*	*	*	
All other rails:					
* * *	*	*	*	*	
All new steel rails:					
* * *	*	*	*	*	
Apparent consumption	581,978	461,515	524,094	167,243	181,968
	Value (1,000 dollars)				
Standard rails:					
* * *	*	*	*	*	
Premium rails:					
* * *	*	*	*	*	
All other rails:					
* * *	*	*	*	*	
All new steel rails:					
* * *	*	*	*	*	
Apparent consumption	286,541	236,316	270,987	87,345	93,009

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

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

a set of specifications and criteria for the rails. The rail producers estimate the likely production costs for the length and type of track and submit a quote, offering a quantity and price commitment to obtain all or a portion of the contract. Typically, a quote or bid takes 1 to 2 months to prepare.[141]

After reviewing the quotes, the railroads generally contact the producer with the higher quote to see whether they want to be more competitive. Further negotiations on aspects of the bid, such as changes in rail requirements and types of rail, may also occur before a final price is agreed upon. Generally, the railroad does not reveal the names of the competing firms to each other, but since there are so few suppliers, supplying firms usually know who their competitors are. The producer with the lowest quote does not necessarily receive the contract if it cannot deliver the steel rails at the times required. The railroads usually choose several producers to supply the rails.

Transit authorities, as quasi-public agencies, generally handle rail purchases differently. After a transit authority details the scope of a job and requests bids from rail producers, the transit authority sets a specific date that a sealed bid should be received from all competitors. There are no second bids or additional negotiations. Selection is based upon price unless the delivery schedule cannot be met by the lowest bid producer. When the delivery schedule cannot be met, the firm that made the next-lowest bid is offered the contract.

To be chosen to supply steel rails, a producer must first be an approved supplier who is qualified by the railroad's or transit authority's purchasing and engineering departments. The railroads then purchase a small sample of rail product from a supplier, approximately 1,000 to 2,000 tons, for testing on a major line. If the sample performs adequately, the supplier is qualified to bid for additional business with the railroad companies. Once a supplier has been approved, it achieves the same status as all other approved suppliers.

Although producers differ as to what constitutes a large-volume, medium-volume, or small-volume sale or quote, small-volumes are generally less than 1,000 net tons (4 to 5 miles of track), medium-volumes are generally between 3,000 and 10,000 net tons (13 to 50 miles of track), while large-volumes are generally greater than 10,000 net tons (50 miles of track).

Bethlehem and CF&I consider transportation costs an important factor in their customers' purchase decisions.[142] ***. CF&I benefits from its proximity to four of the five western Class I railroads: Atchison, Topeka and Santa Fe; Burlington Northern; Denver, Rio Grande and Great Western; and Union Pacific

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[141] At the conference, John Nevin of CSX, John Leeper and Michael Cronin of Burlington Northern, and Gary Zaversnik of Union Pacific stated that when they request quotations for specific rail types, such as premium or standard new rails, they will not substitute standard rails for premium rails. Quotes for each type of rail are requested independently.

[142] Importers of steel rails did not think transportation costs were an important consideration in their customers' purchase decision.

have tracks into Pueblo, CO.[143] This allows CF&I to deliver rail directly to the western railroads at their nearest rail line with relatively low transportation costs.

Similarly, Bethlehem has a transportation advantage over CF&I for eastern railroads.[144] Bethlehem will typically quote the western railroads on a ***. It charges transportation costs of $*** per ton for shipments ***.[145]

Questionnaire Responses

The Commission requested U.S. producers and importers of steel rail from Japan, Luxembourg, and the United Kingdom to report the details of bid competition for new steel rails to the Class I railroads. It also requested the details of bid competition for transit authorities and for spot prices of new steel rails.

Quote competition with Class I railroads

U.S. producers and importers of steel rails were requested to provide information on all their quotes to Class I railroads between January 1989 and March 1992. Both U.S. producers and importers submitted information on the quote process and provided detailed information on specific projects.[146] Five Class I railroads also provided information.

Aggregate quote information to Class I railroads is presented by rail type, year, and producing country in table 24. U.S. producers reported that they quoted standard rail to *** Class I railroads for delivery in 1989-91, and *** railroads after 1991. They also quoted premium rail to *** Class I railroads for delivery in 1989, *** railroads in 1990, *** railroads in 1991, and *** railroads after 1991. Of their *** individual quotes for standard rail to Class I railroads during 1989-92, U.S. producers received all of the business on *** quotes and a portion of the business on *** quotes. Of their *** individual quotes for premium rail to Class I railroads during 1989-92, U.S. producers received all of the business on *** quotes and a portion of the business on *** quotes.[147] [148] The total volume awarded to U.S. producers over this period was *** tons of premium rail valued at $*** and *** tons of standard rail valued at $***.

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[143] The primary market for CF&I rail is the major western railroads that accounted for over 60 percent of the revenue ton miles in the United States during the period 1981 through 1990, according to the American Association of Railroads.

[144] ***.

[145] ***.

[146] In its initial questionnaire response, ***.

[147] ***.

[148] U.S. producers reported that they received more than the initial volume they quoted on *** of their standard rail quotes and *** of their premium rail quotes.

Table 24
New steel rails: Aggregate quote information to Class I railroads, by rail type, submitted by U.S. producers and importers from Japan, Luxembourg, and the United Kingdom, 1989-92[1]

* * * * * * *

The two U.S. importers of Japanese steel rail, Mitsui and Sumitomo, reported that they quoted only premium rail to *** Class I railroads in the United States during 1989-92. Of their *** quotes for premium rail to Class I railroads during 1989-92, Mitsui and Sumitomo received all of the business on *** quotes and a portion of the business on *** quotes.[149] The total volume awarded to these importers over this period was *** tons valued at $***.

Francosteel, the reporting U.S. importer of steel rail from Luxembourg, reported that it quoted *** to Class I railroads in the United States during 1989-92. These quotes were to *** railroads for delivery in 1989, *** railroads in 1990, *** railroads in 1991, and *** railroads after 1991. Of its *** quotes for premium rail to Class I railroads during 1989-92, Francosteel received all of the business on *** quotes and a portion of the business on *** quotes.[150] The total volume awarded to Francosteel over this period was *** tons valued at $***.

British Steel, the reporting U.S. importer of steel rail from the United Kingdom, reported that it quoted premium rail to *** Class I railroads for delivery in 1989, *** in 1990, *** railroads in 1991, and *** railroads after 1991. It also quoted standard rail to *** Class I *** for delivery in 1990, 1991, and after 1991.[151] British Steel received all of the business on *** of its individual quotes for premium rail and *** of its quotes for standard rail to Class I railroads during 1989-92. The total volume awarded to British Steel over this period was *** tons of premium rail valued at $*** and *** tons of standard rail valued at $***.[152]

Information on the competition between U.S. producers and importers of steel rail from Japan, Luxembourg, and the United Kingdom for rail sales to Class I railroads is summarized in tables 25-32. Because most transactions are made with Class I railroads through quote competition and subsequent negotiations, the discussion of prices is organized according to the railroad requesting the quote.[153] Competing bids for the same contract are not always identifiable so caution must be exercised in making comparisons. The following information describes specific projects that were quoted from January 1989 to

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[149] Sumitomo and Mitsui received more than the volume they quoted on *** of their quotes for premium rail.

[150] Francosteel received more than the volume it quoted on *** of its quotes for premium rail.

[151] ***.

[152] British Steel reported that all of its premium rail sales were for testing and qualification purposes.

[153] Lost sales and lost revenues were alleged based on the quotes to ***.

Table 25
New steel rails: Quote information to Burlington Northern by U.S. ***, from Japan, Luxembourg, and the United Kingdom, January 1989-March 1992[1]

* * * * * * *

Table 26
New steel rails: Quote information to Norfolk Southern by U.S. ***, from Japan, Luxembourg, and the United Kingdom, January 1989-March 1992[1]

* * * * * * *

Table 27
New steel rails: Quote information to Union Pacific by U.S. ***, from Japan, Luxembourg, and the United Kingdom, January 1989-March 1992[1]

* * * * * * *

Table 28
New steel rails: Quote information to CSX by U.S. ***, from Japan, Luxembourg, and the United Kingdom, January 1989-March 1992[1]

* * * * * * *

Table 29
New steel rails: Quote information to Conrail and Chicago & Northwestern by U.S. ***, from Japan, Luxembourg, and the United Kingdom, January 1989-March 1992

* * * * * * *

Table 30
New steel rails: Quote information to Atchison, Topeka, and Santa Fe and Kansas City Southern by U.S. ***, January 1989-March 1992[1]

* * * * * * *

Table 31
New steel rails: Quote information to Grand Trunk and Florida East Coast by U.S. ***, January 1989-March 1992

* * * * * * *

Table 32
New steel rails: Quote information to Soo Line and Southern Pacific by U.S. ***, January 1989-March 1992[1]

* * * * * * *

March 1992 and reportedly involved competition between U.S. producers and U.S. importers of steel rails from Japan, Luxembourg, and the United Kingdom.[154] [155]

*** Class I railroads received competing quotes from U.S. producers and importers of steel rail from Japan, Luxembourg, and the United Kingdom.[156] An additional ***.[157] ***.

Burlington Northern.--***.

Norfolk Southern.--***.

Union Pacific.--***.

CSX.***.

Chicago and Northwestern.--***.

---

[154] These tables reveal the level of competition between domestic and subject foreign suppliers but do not take into account competition from other suppliers.

[155] Purchase information submitted by *** Class I railroads is presented in appendix E. This information may not be comparable to producer and importer information. Most of these railroads provided only purchase price data and did not include all quote information from U.S. producers, importers of the subject countries, or other foreign suppliers. Moreover, some of the railroads aggregated specific rail types and reported the average delivered price on either a calendar year or a railroad year (Oct.-Sept.) basis.

[156] ***.

[157] ***.

Conrail.--***.

Atchison, Topeka, and Santa Fe.--***.

Kansas City Southern.--***.

Southern Pacific.--***.

Grand Trunk.--***.

Florida East Coast.--***.

Soo Line.--***.

Bid competition with transit authorities

U.S. producers and importers of steel rails were also requested to provide information on all bids to transit authorities between January 1989 and March 1992. ***.[158]

*** reported that they did not quote the transit market because most U.S. transit systems follow buy-American policies. Transit authorities who receive Federal funds are subject to buy-American policies that require the purchase of domestic product unless the price of the foreign rail is 25 percent below the price of the domestic product. In New York State, the foreign price must be 7 percent below the domestic bid price to allow foreign purchases. Aggregate quote information to transit authorities is presented by rail type, producer, and year in table 33.

Table 33
New steel rails: Aggregate bid information to transit authorities by U.S. producers and importers from Luxembourg, January 1989-March 1992

* * * * * * *

Bethlehem reported that it quoted steel rails to *** transit authorities for delivery during 1989, *** during 1990, *** during 1991, and for delivery

[158] Distributors buy in large quantities and take advantage of volume discounts and other discounts such as accepting a certain percentage of shorter rails. The distributors then pass some of their savings to their customers that need smaller quantities and undersell U.S. producers.

after 1991. The total volume awarded to Bethlehem over this period was *** tons valued at $***. This represented over *** percent of all reported transit business by ***. Bethlehem's sales included *** tons of premium rail valued at $***, *** tons of standard rail valued at $***, and *** tons of contact rail valued at $***.[159]

CF&I reported that it quoted *** transit authorities for delivery in 1989, *** during 1990, *** during 1991, and *** for delivery after 1991. The total volume awarded to CF&I over this period was *** tons valued at $***. CF&I sales included *** tons of premium rail valued at $*** and *** tons of standard rail valued at $***.

* * * * * * *

Spot market sales to distributors and end users[160]

Spot market sales of premium, standard, and industrial rail by rail producers are made to both distributors and end users. Distributors often compete with rail producers for spot sales to end users. Class I railroads make spot purchases of rail for one of two reasons--if there is an unexpected need for rail such as is caused by derailments, or if the railroad failed to provide for enough rail in its yearly contracts. Typically spot sales are small, with quantities usually below 1,000 tons. Class I railroads and distributors have indicated that spot market sales do not affect the quote competition to Class I railroads. Many spot market sales are made to smaller railroads, transit authorities, and industrial sites with small rail lines.

U.S. producers and importers of steel rails were also requested to provide information on their largest spot market sales of 136RE premium and standard steel rails in each quarter to distributors and end users between January 1989 and March 1992. Only the two U.S. producers submitted information on such sales. U.S. importers of steel rail from Japan and the United Kingdom reported that they do not sell new steel rails in the spot market. The U.S. importer from Luxembourg reported that although it does sell new steel rails in the spot market, it does not sell 136RE rail.

U.S. producers' spot market weighted-average prices for standard 136RE rail to distributors and end users *** during January-March 1989 to January-March 1992 (table 34). U.S. producers' spot market weighted-average prices for premium 136RE rail to distributors *** during the quarters in which product was sold, whereas spot market prices to end users ***.

---

[159] ***.

[160] Spot sales represent less than 10 percent of the market for new steel rails.

Table 34
New steel rails: Weighted-average spot market prices and quantities of the largest sales by U.S. producers of new steel rails, by customers, products, and quarters, January 1989-March 1992

* * * * * * *

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the currencies of the three countries subject to these investigations fluctuated in relation to the U.S. dollar over the period from January-March 1989 through January-March 1992 (table 35).[161] The value of the Japanese currency fluctuated, ending the period at its initial January-March 1989 value. During the same interval, the respective values of the Luxembourg and United Kingdom currencies showed net appreciations of 16.3 and 1.3 percent. When adjusted for movements in producer price indexes in the United States and the specified countries, the real value of the Japanese currency depreciated by 1.0 percent while the Luxembourg and United Kingdom currencies appreciated 4.3 and 19.3 percent, respectively, during the periods for which data were collected.

[161] International Financial Statistics, May 1992.

Table 35
Exchange rates:[1] Indexes of nominal and real exchange rates of selected currencies, and indexes of producer prices in those countries,[2] by quarters, January 1989-March 1992

Period	U.S. producer price index	Japan			Luxembourg			United Kingdom		
		Producer price index	Nominal exchange rate index	Real exchange rate index[3]	Producer price index	Nominal exchange rate index	Real exchange rate index[3]	Producer price index	Nominal exchange rate index	Real exchange rate index[3]
1989:										
Jan.-Mar.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apr.-June.....	101.8	102.6	93.0	93.8	100.5	95.6	94.4	101.3	93.1	92.7
July-Sept.....	101.4	103.5	90.3	92.1	100.6	96.2	95.5	102.5	91.3	92.3
Oct.-Dec.....	101.8	103.2	89.8	91.1	99.8	101.8	99.9	103.8	90.7	92.5
1990:										
Jan.-Mar.....	103.3	103.7	86.8	87.2	100.1	109.8	106.4	105.4	94.8	96.8
Apr.-June.....	103.1	104.5	82.7	83.9	98.7	112.0	107.2	107.6	95.8	100.0
July-Sept.....	104.9	104.5	88.4	88.1	97.8	118.2	110.2	108.6	106.5	110.3
Oct.-Dec.....	108.1	105.2	98.2	95.6	96.2	125.1	111.3	109.8	111.3	113.1
1991:										
Jan.-Mar.....	105.9	105.3	96.0	95.5	95.5	123.0	110.9	111.9	109.3	115.5
Apr.-June.....	104.8	104.8	92.9	92.9	96.5	108.7	100.0	114.0	97.7	106.2
July-Sept.....	104.7	104.5	93.6	93.5	96.2	107.9	99.2	114.6	96.4	105.6
Oct.-Dec.....	104.8	103.8	99.2	98.2	94.5	115.7	104.3	115.3	101.5	111.6
1992:										
Jan.-Mar.....	104.6	103.5	100.0	99.0	(4)	116.3	(4)	123.1[5]	101.3	119.3[5]

[1] Exchange rates expressed in U.S. dollars per unit of foreign currency.
[2] Producer price indexes--intended to measure final product prices--are based on period-average quarterly indexes presented in line 63 of the International Financial Statistics.
[3] The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and the specified countries.
[4] Not available.
[5] Derived from United Kingdom price data reported for January-February only.

Note.--January-March 1989 = 100. The real exchange rates, calculated from precise figures, cannot in all instances be derived accurately from previously rounded nominal exchange rates and price indexes.

Source: International Monetary Fund, International Financial Statistics, May 1992.

APPENDIX A

FEDERAL REGISTER NOTICES OF THE U.S. INTERNATIONAL TRADE COMMISSION AND THE U.S. DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-557-559 (Preliminary)]

New Steel Rails From Japan, Luxembourg, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-557-559 (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 the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan, Luxembourg, and the United Kingdom of new steel rails,[1] provided for in subheadings 7302.10.10 and 8548.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 15, 1992.

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

EFFECTIVE DATE: May 1, 1992.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-205-3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on May 1, 1992, by counsel on behalf of Steelton Rail Products & Pipe Division, Bethlehem Steel Corp., Steelton, PA, and CF&I Steel Corp., Pueblo, CO.

Participation in the Investigations and Public Service List

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

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

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

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on May 22, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202-205-3190) not later than May 20, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 28, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

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

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 4, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-10752 Filed 5-7-92; 8:45 am]

BILLING CODE 7020-02-M

[1] Specifically excluded from the scope of these investigations are imports of alloy steel rails and imports of "light rails," which are 30 kg. or less per meter, such as are used in amusement park rides. "Relay rails," which are used rails that have been taken up from a primary railroad track and are suitable to be reused as rails (such as on a secondary rail line or in a rail yard), are also excluded.

[(A-588-822) Japan, (A-423-802) Luxembourg, (A-412-812) United Kingdom]

Antidumping Duty Investigations: New Steel Rail, Except Light Rail and Girder Rail, From Japan, Luxembourg and the United Kingdom

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

EFFECTIVE DATE: May 28, 1992.

FOR FURTHER INFORMATION CONTACT: Steven Lim, 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.

INITIATION:

The Petition

On May 1, 1992, we received a petition filed in proper form by the Steelton Rail Products & Pipe Division of Bethlehem Steel Corporation and CF&I Steel Corporation. In accordance with 19 CFR 353.12, petitioners allege that imports of new steel rail, except light rail and girder rail (new steel rail), from Japan, Luxembourg and the United Kingdom, 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 there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of these imports.

Petitioners have stated that they have standing to file the petition because they are an interested party, as defined under section 771(9)(E) of the Act, and because they filed the petition on behalf of the U.S. industry producing the product that is subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's 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 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioners provided multiple methodologies for calculating United States price (USP) and foreign market value (FMV). We have only analyzed the price-to-price allegations. If necessary at a later date, we will analyze petitioners' additional allegations involving constructed value.

For Japan, Luxembourg, and the United Kingdom, petitioners based their estimates of USP on actual transaction prices that were obtained in the course of price negotiations. Petitioners adjusted the delivered prices for distributor's mark-up, U.S. and foreign inland freight, credit expenses, ocean freight, brokerage and customs duties, where appropriate.

Petitioners based their estimate of FMV for Japan on price quotations obtained through a market research report, and for the United Kingdom on published price lists. Petitioners, contending that the Luxembourg market is not viable, based their estimate of FMV on third country prices for Belgium and France obtained through a market research report. They adjusted these prices for discounts, obtained through the market research report of prices in Belgium and France. For all three countries, in calculating FMV, petitioners adjusted the prices to reflect relevant discounts, movement expenses, credit expenses, and differences in merchandise, where appropriate. Petitioners made adjustments to USP and FMV to account for the value-added tax in Japan and the United Kingdom.

Based on the 1991 price-to-price comparisons of U.S. price and foreign market value, petitioners allege dumping margins for Japan ranging from 23.1 to 53.8 percent, for Luxembourg from 0.1 percent to 70.0 percent, and for the United Kingdom from 18.4 percent to 61.9 percent.

Initiation of Investigations

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

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether imports of new steel rail from Japan, Luxembourg, and the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally, we will make our

preliminary determinations by October 8, 1992.

Scope of Investigations

The product covered by these investigations is new steel rail, except light rail and girder rail, of other than alloy steel, and over 30 kilograms per meter. New steel rail includes standard T rail, crane rail and contact rail (electrical rail). This merchandise is currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7302.10.1010, 7302.10.1015, 7302.10.1035, 7302.10.1045, and 8548.00.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of these actions and we have done so.

Preliminary Determination by ITC

The ITC will determine by June 15, 1992, whether there is a reasonable indication that imports of new steel rail, from Japan, Luxembourg, and/or the United Kingdom are materially injuring, or threaten material injury to, a U.S. industry. Any ITC determination that is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 21, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-12471 Filed 5-27-92; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

CALENDAR OF THE PUBLIC CONFERENCE

CALENDAR OF THE PUBLIC CONFERENCE

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

Subject: NEW STEEL RAILS FROM JAPAN, LUXEMBOURG, AND THE UNITED KINGDOM

Investigations Nos: 731-TA-557-559 (Preliminary)

Date and Time: May 22, 1992 - 9:30 a.m.

Sessions were held in connection with the investigations in Courtroom A, Room 100, of the United States International Trade Commission, 500 E Street, SW, Washington, DC.

In support of the Imposition of Antidumping Duties:

Stewart & Stewart--Counsel
Washington, DC
On behalf of

Bethlehem Steel Corp., Steelton, PA
CF&I Steel Corp., Pueblo, CO

Timothy Demma, Manager, Sales and Marketing
Steelton Rail Products & Pipe Div., Bethlehem Steel Corp.

Jerry Marshal, General Manager Railroad Sales, CF&I Steel Corp.

Eugene L. Stewart)
)--OF COUNSEL
James R. Cannon, Jr.)

In Opposition to the Imposition of Antidumping Duties:

Steptoe & Johnson--Counsel
Washington, DC
On behalf of

Nippon Steel Corporation, Tokyo, Japan
Sumitomo Corporation of America, New York, NY

Gary P. Zaversnik, Director, Materials Operations Supply Dept., Union Pacific Railroad, Omaha, NE

Daniel J. Plaine)--OF COUNSEL

British Steel plc, London, United Kingdom

Richard O. Cunningham--OF COUNSEL

Kenneth Button, Economic Consulting Service, Inc.

Baker & McKenzie--Counsel
Washington, DC
On behalf of

CSX Transportation, Inc., Jacksonville, FL

John D. Nevine, III, Assistant Vice President - Purchasing and
Don Bates, Director of Engineering & Materials, CSX Transportation, Inc.

Thomas P. Ondeck)--OF COUNSEL

O'Melveny & Myers--Counsel
Washington, DC
On behalf of

Metallurgique et Miniere de Rodange-Anthus, Rodange, Luxembourg
Trade Arbed, New York, NY

Craig L. McKee)--OF COUNSEL

Willkie Farr & Gallagher--Counsel
Washington, DC
On behalf of

NKK Corporation, Tokyo, Japan

John Leeper, Chief Engineer - Maintenance, and
Michael Cronin, Director of Purchasing, Burlington Northern Railroad
Company, Fort Worth, TX

William H. Barringer)--OF COUNSEL

APPENDIX C

AMERICAN RAILWAY ENGINEERING ASSOCIATION SPECIFICATIONS FOR STEEL RAILS, 1991

AMERICAN RAILWAY ENGINEERING ASSOCIATION

[1]Part 2

Specifications

[1]SPECIFICATIONS FOR STEEL RAILS

(Reapproved with revisions 1991)

1. Scope

1.1 These specifications cover steel tee rails for use in railway track.

1.2 Supplementary requirements S1 and S2 shall apply only when specified by the purchaser.

2. Manufacture

2.1 The steel shall be made by any of the following processes: open hearth, basic oxygen, or electric furnace.

2.2 The steel shall be cast by a continuous process, in hot topped ingots, or by other methods agreed by purchaser and manufacturer.

2.3 Sufficient discard shall be taken from ingots and blooms rolled from ingots to insure freedom from injurious segregation and pipe.

3. Chemical Composition

3.1 The chemical composition of the standard rail steel determined as prescribed in 3.3 shall be within the following limits:

	Chemical Analysis Weight Percent Nominal Weight lb/yd		Product Analysis Weight Percent Allowance Beyond Limits of Specified Chemical Analysis	
Element	90 to 114	115 & Over	Under Min.	Over Max.
Carbon	0.67-0.80	0.72-0.82	0.04	0.04
Manganese	0.70-1.00	0.80-1.10*	0.06	0.06
Phosphorus, Max.	0.035	0.035	—	0.008
Sulfur, Max.	0.037	0.037	—	0.008
Silicon	0.10-0.50	0.10-0.50	0.02	0.02**

*The upper manganese limit may be extended to 1.25% by the manufacturers to meet the hardness specifications. When the manganese exceeds 1.10% the residual alloy contents will be held to 0.25% max. Ni, 0.25% max. Cr, 0.10% max. Mo., and 0.03% max V.

**Product analysis for continuously cast steel shall be 0.05% over maximum limit for Silicon.

3.1.1 Finished material representing the heat may be product tested. The product analysis shall be within the limits for product analyses specified in the Table of 3.1.

[1]References: Vol. 3, 1902, pp. 204, 208; Vol. 5, 1904, pp. 465, 469; Vol. 6, 1905, pp. 183; Vol. 7, 1906, pp. 549, 573, Vol. 10, 1909, part 1, pp. 374, 393; Vol. 11, 1910, part 1, pp. 237, 255; Vol. 12, 1911, part 1, p. 467, Vol. 12, 1911, part 2, p. 12; Vol. 13, 1912, pp. 853, 1017; Vol. 14, 1913, pp. 181, 1103; Vol. 15, 1914, pp. 158, 375; Vol. 16, 1915, pp. 1117; Vol. 21, 1920, pp. 1070, 1447; Vol. 26, 1925, pp. 619, 1413; Vol. 31, 1930, pp. 1455, 1770; Vol. 32, 1931, pp. 347, 816; Vol. 34, 1933, pp. 606, 821; Vol. 37, 1936, pp. 426, 991; Vol. 38, 1937, pp. 216, 635; Vol. 40, 1939, pp. 596, 738; Vol. 43, 1942, pp. 575, 704; Vol. 47, 1946, pp. 373, 625; Vol. 52, 1951, pp. 596, 824; Vol. 54, 1953, pp. 1177, 1413; Vol. 55, 1954, pp. 775, 1098; Vol. 57, 1956, pp. 786, 1088; Vol. 58, 1957, pp. 962, 1248; Vol. 63, 1952, pp. 501, 768; Vol. 64, 1963, pp. 498, 690; Vol. 65, 1964, pp. 521, 851; Vol. 68, 1967, p. 408; Vol. 69, 1968, p. 356; Vol. 71, 1970, p. 223; Vol. 75, 1974, p. 479; Vol. 80, 1979, p. 82; Vol. 85, 1984, p. 13; Vol. 87, 1986, p. 69; Vol. 89, 1988, p. 71; Vol. 92, 1991, p. 58.

[1]*Latest page consist: 1 (1991); 2 to 6 incl. (1988).*

3.2 The chemical composition of alloy high strength rail will be subject to agreement of the purchaser and manufacturer.

3.3 Separate analysis shall be made from test samples representing one of the first three and one of the last three ingots or continuously cast blooms preferably taken during pouring of the heat. Determination may be made chemically or spectrographically. Any portion of the heat meeting the chemical analysis requirements of 3.1 may be applied. Additionally, any material meeting the product analysis limits shown in 3.1 may be applied after testing such material.

3.4 Upon request by the purchaser, samples shall be furnished to verify the analysis as determined in 3.3.

3.5 The first analysis shall be recorded as the official heat analysis, but the purchaser shall have access to all chemical analysis determinations.

4. Hardness Properties

4.1 Rails shall be produced as specified by the purchaser within the following limits:

	Standard Rail		High Strength Rail
	90-114 lb./yd.	115 and over lb./yd.	
Brinell Hardness	248 min.	285 min.	341-388*

*A maximum hardness of 388 BHN may be exceeded provided a fully fine pearlitic structure is maintained.

4.2 A Brinell hardness test shall be performed on a rail or a piece of rail at least 6 inches long cut from a rail of each heat of steel and a report furnished to the purchaser.

4.2.1 The test shall be made on the side or top of the rail head, after decarburized material has been removed, to permit an accurate determination of hardness.

4.2.2 The test shall otherwise be conducted in accordance with the American Society for Testing and Materials (ASTM) Standard Method of Test for Brinell Hardness of Metallic Materials E10 latest version.

4.3 If any hardness test fails to meet the specifications, two additional checks shall be made, one on each side of the point first measured. If both checks meet the specified minimum hardness as ordered, the heat shall have met the hardness requirement. If either of the additional checks fails, two further rails in the heat shall be checked with each of these two rails meeting the minimum ordered for the heat to be accepted. If any one of these two checks fails, individual rails may be tested for acceptance.

4.4 If for heat treated rails a test fails to meet the requirements of 4.1, the rails may be retreated, at the option of the manufacturer, and such rails may be retested in accordance with 4.2 and 4.3.

5. Section

5.1 The section of the rails shall conform to the design specified by the purchaser subject to the following tolerances on dimensions:

	Inches (Thousandths) Plus	Minus
5.1.1 height of rail (measured within 1 ft. from end)	0.040	0.015
5.1.2 width of rail head (measured within 1 ft. from end)	0.030	0.030
5.1.3 thickness of web	0.040	0.020
5.1.4 width of either flange	0.040	0.040
5.1.5 width of base	0.050	0.050

5.1.6 Base concavity shall not exceed 0.010". Convexity is not permitted.

5.1.7 No variation will be allowed in dimensions affecting the fit of the joint bars, except that the fishing templet may stand out not to exceed 0.060" laterally.

5.2 Verification of tolerances shall be made using appropriate gages, as agreed upon by purchaser and manufacturer.

6. Branding and Stamping

6.1 Branding shall be rolled in raised characters on the side of the web of each rail at a minimum of every 16 ft. in accordance with the following requirements:

6.1.1 The data and order of arrangement of the branding shall be as shown in the following typical brand, the design of letters and numerals to be optional with the manufacturer.

132 (Weight)	RE (Section)	CC (Method of Hydrogen Elimination if indicated in Brand)	Manufacturer (Mill Brand)	1982 (Year Rolled)	III (Month Rolled)

6.2 The web of each rail shall be hot stamped at a minimum of every 16 ft. on the side opposite the brand, and shall not occur within two feet of either end of rails of standard lengths, and in accordance with the following requirements:

6.2.1 The data shall be shown in the following typical stamping. The height of the letters and numerals shall be 5/8".

297165 (Heat Number)	ABCDEFGH (Rail Letter)	12 (Ingot Number) or (Strand & Bloom Number)	BC (Method of Hydrogen Elimination, if indicated in stamping)

6.2.2 The top rail from each ingot shall normally be hot stamped "A" and succeeding ones "B", "C", "D", "E", etc., consecutively.

6.2.2.1 The top rail from each hot topped ingot may be hot stamped "B" and succeeding ones "C", "D", "E", etc. consecutively, when agreed between purchaser and manufacturer.

6.2.3 Ingots shall be numbered in the order cast.

6.2.4 Rails from continuous cast blooms shall be identified by a designation for heat number, strand number, and bloom number.

(Note strand and bloom numbers may be joined or may be coded at the manufacturer's option).

The rail shall be identified by an alphabetical designation beginning with "P", and succeeding "R", "S", "T", etc., consecutively, or any other identification of the position of the rail within the cast, as agreed between the purchaser and manufacturer.

6.2.5 Stamping shall be legible and not injurious to the rail. The characters shall be of a uniform depth not exceeding 1/16 inch and approximately centered on the web.

6.2.6 High strength rail shall be identified in accordance with Section 15.1.

7. Hydrogen Elimination

7.1 The rail shall be free from shatter cracks.

7.2 The above shall be accomplished by at least one of the following processes:

Control Cooling of Rails (CC) (See Appendix 1)

Control Cooling of Blooms (BC)
Vacuum Treated (VT)
Such other processes as will meet the conditions of 7.1 (OP)

7.3 The mill brand or stamp shall identify the process used by the initials in parentheses shown in Section 7.2.

8. Ultrasonic Testing

8.1 Rails shall be ultrasonically tested for internal imperfections subject to the provisions of 8.2 through 8.8.

8.2 Full length of the rail shall be tested using in line ultrasonic testing equipment provided by the manufacturer except, if agreed to between purchaser and manufacturer, rails may be tested in accordance with Supplementary requirement S2. The rail shall be free from rough surfaces, loose scale or foreign matter which would interfere with the ultrasonic detection of defects. Testing shall be done when the rail temperature is below 150°F.

8.3 The calibration test rail shall be a full section rail of the same section as that being tested. The test rail shall be long enough to allow calibration at the same rate of speed as the production rail.

8.4 The size, shape, location and orientation of calibration references to be placed in the test rail shall be agreed upon by the purchaser and manufacturer. At least one reference shall be put into the test rail to represent each search unit in the system.

8.4.1 The in-line testing system sensitivity level, using the calibration rail, shall be adjusted to detect a minimum 3/32 in. diameter defect anywhere in the sound path in the head, a minimum of 1/16 in. diameter in the web, and longitudinal imperfections exceeding 1/2 in. length and greater than 1/16 in. depth occuring in the base.

8.4.2 Any indication equal to or greater than the references specified in 8.4.1 when scanning the rail at the production speed shall be cause for initial rejection. A record shall be made of each suspect rail. This record shall be available to the purchaser's inspector.

8.5 The calibration rail shall be run through the ultrasonic testing equipment at the start of each shift or at least once each 8 hour operating turn and additionally at any section change or at any indication of equipment malfunction. A record shall be maintained by the manufacturer of each time the calibration test rail is run through the test system. This record shall be available to the purchaser's inspector.

8.6 In the event of a calibration failure, all rails processed since the last successful calibration shall be retested.

8.7 The suspect rail may be retested using manual non-destructive testing techniques before final rejection. The testing criteria of the manual non-destructive retesting shall be in accordance with Section 8.4. The method of inspection shall be agreed to between purchaser and manufacturer.

8.8 Rejected rails shall be cut back to sound metal as indicated by the ultrasonic testing subject to the length restrictions in Section 11. The cut shall be a minimum of 12 inches from any indication.

9. Interior Condition/Macroetch Standards

9.1 Sample Location and Frequency

9.1.1 Ingot Steel - A test piece representing the top end of the top rail from one of the first three, middle three, and last three ingots of each heat shall be macroetched.

9.1.2 Continuous Cast Steel - A test piece shall be macroetched representing a rail from each strand from the beginning of each sequence and whenever a new ladle is begun, which is the point representative of the lowest level in the tundish (i.e. the point of lowest ferrostatic pressure.) One additional sample from the end of each strand of the last heat in the sequence shall also be tested. A new tundish is considered to be the beginning of a new sequence.

9.1.3 Upon receipt the purchaser has the right to examine any rail from any part of a heat at his option, and if the purchaser determines that the rail sample selected is rejectionable, the entire heat shall be re-evaluated according to Section 9.4.

9.2 Sample Preparation

9.2.1 A full transverse section of the rail can be cut by abrasive or mechanical means as long as care is maintained in preventing metallurgical damage.

9.2.2 The face to be etched shall have at least a 125 microinch finish.

9.2.3 The sample shall be degreased and totally immersed in a hot (160° to 180°F) one to one mixture, by volume, of concentrated hydrochloric acid (38 volume percent) and water to sufficiently etch the specimen. Etching time shall be between ten and twenty minutes. The solution surface shall be at least one inch above the etched surface.

9.2.4 Upon removal from the bath, the sample shall be rinsed and brushed under hot water and dried. The sample shall not be blotted dry. A rust inhibitor shall be applied to the etched face.

9.3 Macroetch Evaluation

9.3.1 According to Figure 9.1, the areas of cross section shall be defined as head, web, and base.

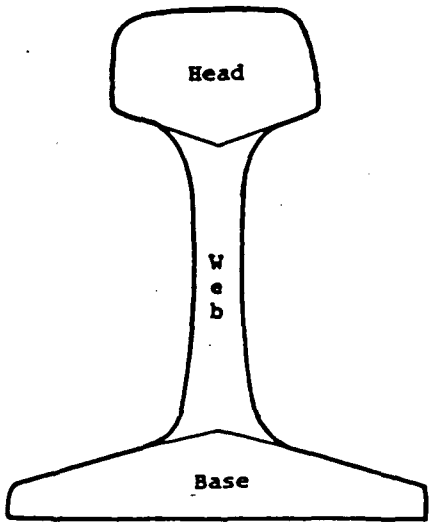

Figure 9.1 Definition of Rail Cross Sectional Areas for Macroetch Evaluation

9.3.2. Rejectionable Condition - Continuous Cast

9.3.2.1 Hydrogen flakes (Fig. 9.2)

9.3.2.2 Pipe; any size (Fig. 9.3 & 9.4)

9.3.2.3 Central web streaking extending into the head or base (Figs. 9.5, 9.6)

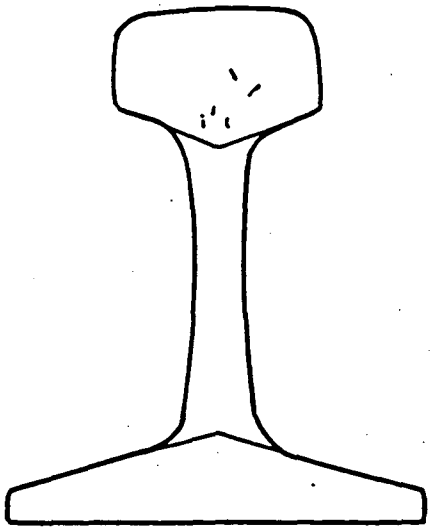

Figure 9.2 Hydrogen Flakes

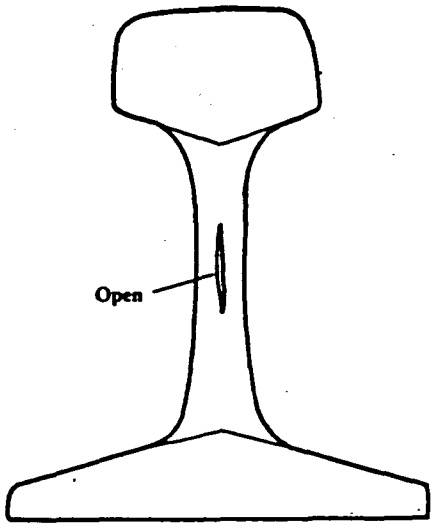

Figure 9.3 Pipe

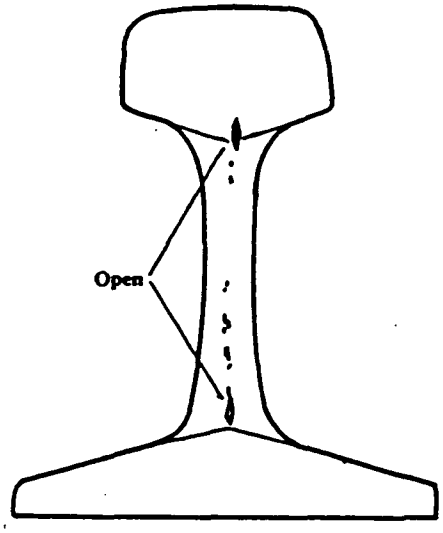

Figure 9.4 Pipe

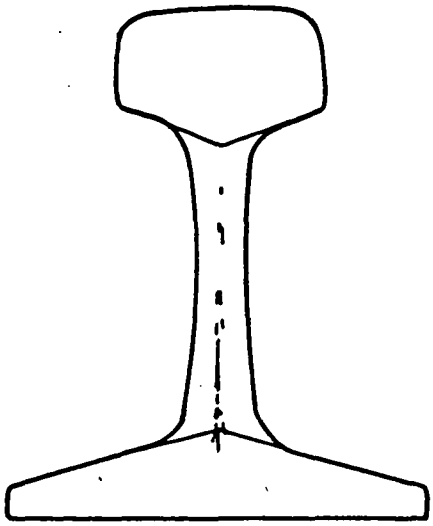

Figure 9.5 Central Web Streaking Extending into Base

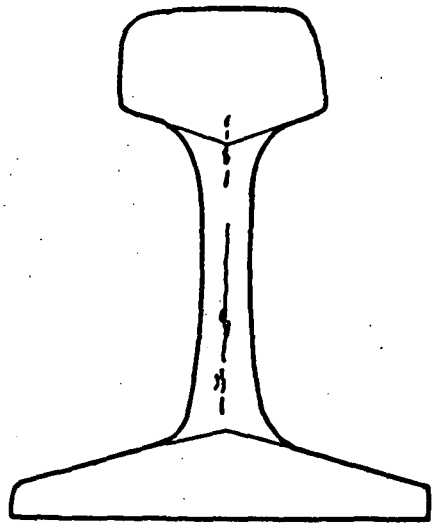

Figure 9.6 Central Web Streaking Extending into Head

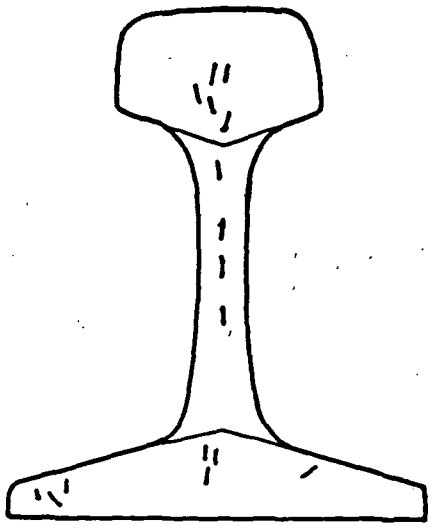

Figure 9.7 Scattered Central Web Streaking Extending into Head and Base

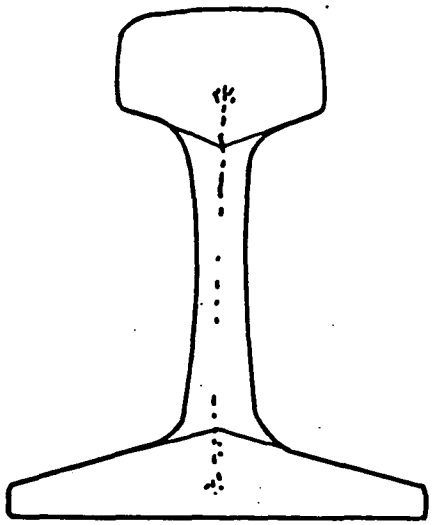

Figure 9.8 Scattered Segregation

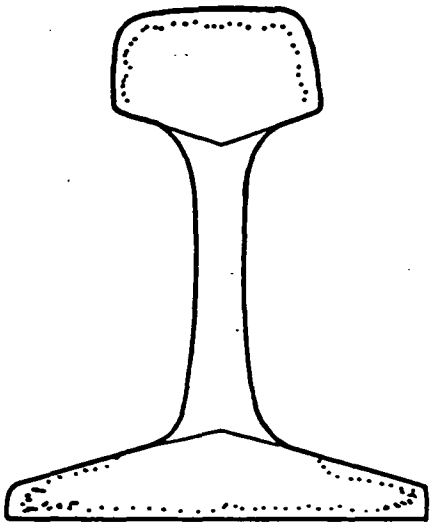

Figure 9.9 Subsurface Porosity

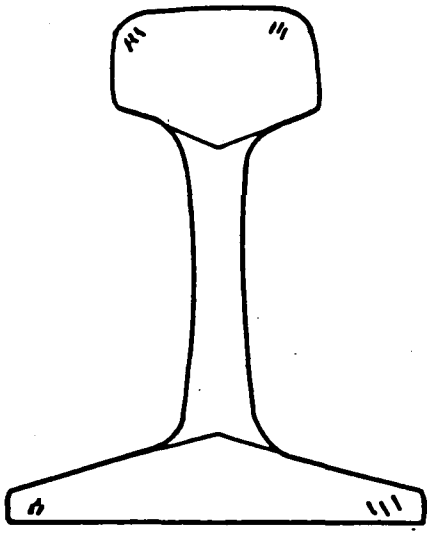

Figure 9.10 Radial Streaking

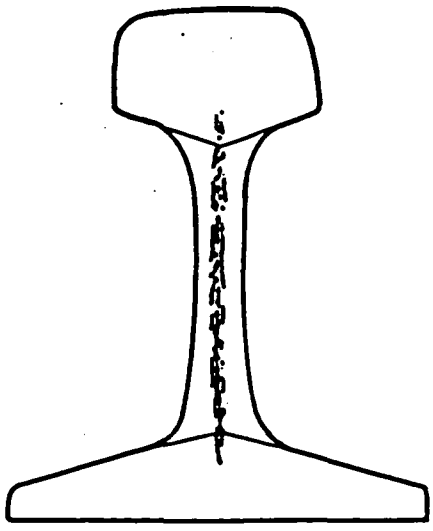

Figure 9.11 Scattered Central Web Segregation

9.3.2.4 Streaking greater than 2-1/2 in. in length

9.3.2.5 Scattered central web streaking from the web into the head and base. (See Fig. 9.7)

9.3.2.6 Scattered segregation extending more than one inch into the head or base (Fig. 9.8)

9.3.2.7 Subsurface porosity (Fig. 9.9)

9.3.2.8 Radial streaking (see Fig. 9.10).

9.3.2.9 Inverse or negative segregation having a width greater than 1/4 in. and extending more than 1/2 in. into the head or base.

9.3.2.10 Streaking greater than 1/8 in. in the head from internal bloom cracking:
Radial cracks
Halfway cracks
Hinged cracks

9.3.2.11 Other defects that could cause premature failure (i.e., slag, refractory, etc.)

9.3.3 Rejectionable Condition - Ingot Cast

9.3.3.1 Hydrogen Flakes (Fig. 9.2)

9.3.3.2 Pipe, any size (Fig. 9.3 & 9.4)

9.3.3.3 Segregation extending into the head or base

9.3.3.4 Segregation greater than 1/8 in. wide in the head or base

9.3.3.5 Scattered central web segregation extending into the head and base as shown in Fig. 9.11.

9.3.3.6 Subsurface porosity (Fig. 9.9)

9.3.3.7 Inverse or negative segregation having a width greater than 1/4 in. and extending more than 1/2 in. into either the head or base.

9.3.3.8 Other defects that could cause premature failure (i.e., slag, refractory, etc.)

9.4 Retests

9.4.1 If any specimen fails to meet the macroetch standard for interior quality, two additional samples of rail representative of the same strand or one adjacent lower sample from the ingot shall be obtained.

9.4.2 These retests shall be taken from positions selected by the manufacturer and the material from between the two retest positions shall be rejected.

9.4.3 If any retest fails, testing shall continue until acceptable internal quality is exhibited.

9.4.4 All rails represented by failed tests shall be rejected.

9.4.5 Short Rails - If finished rail from the ingot process or the beginning of a strand shows defects, it shall be cut back through successive rails to sound metal and accepted as short rail, subject to the requirements of Section 11.

9.5 Magnified Inspection

In the event that there is a question of the seriousness of the indication, further examination may be performed at higher magnification.

9.5.1 Inspect sample with stereo microscope up to 5X.

9.5.2 A polished sample may be inspected at 100x for metallographic interpretation.

10. Surface Classification.

Rails which do not contain surface imperfections in such number or of such character as will, in the judgement of the purchaser, render them unfit for recognized uses, shall be accepted.

10.1 Hot Marks

10.1.1 Rails with hot marks such as from shearing, scabs, pits, or hot scratches greater than 0.020 in. in depth shall be rejected.

10.1.2 Rails with guide marks in the head greater than 0.020 in. deep or greater than 0.062 in. wide shall be rejected.

10.2 Cold Scratches

10.2.1 Rails with longitudinal cold scratches, formed below 700°F, exceeding 36 in. in length and 0.010 in. in depth shall be rejected.

10.2.2 Rails with transverse cold scratches, formed below 700°F, which exceed 0.010 in. in depth shall be rejected.

10.3 Protrusions

10.3.1 Rails with any protrusion of excess metal extending from the surface of the rail, such as could be caused by a hole in the roll or a roll parting in the web shall be rejected if the protrusion affects the fit of the joint bar or causes the fishing template to stand out more than 1/16 in laterally.

10.3.2 Rails with any protrusion in the web greater than 1/16 in. high and greater than 1/2 square inch in area shall be rejected.

10.3.3 No protrusion of excess metal shall be allowed on the head or the base of the rail.

11. Length

11.1 The standard length of rails shall be 39 ft. and/or 80 ft., when corrected to a temperature of 60°F. Other standard lengths may be specified by the purchaser.

11.2 Up to 15 percent of 80 ft. or 9 percent of 39 ft. rail of the total tonnage accepted from each individual rolling will be accepted in shorter lengths as follows: 79'-78'-77'-75'-70'-65'-60'-39'-38'-37'-36'-33'-30'-27'-25'.

11.3 A variation of plus or minus 7/16 in. on 39 ft. rails or plus or minus 7/8 in. on 80 ft. rails from the specified length will be permitted.

11.4 Standard short length variations other than those set forth in 11.2 and 11.3 may be established by agreement between the purchaser and manufacturer.

11.5 Lengths of rails shall be designated with proper color paint as set forth in Section 15.

12. Drilling

12.1 The purchaser's order shall specify the amount of right-hand drilled and left-hand drilled rails, drilled-both-end rails and undrilled (blank) rails desired. The right-hand or left-hand end of the rail is determined by facing the side of the rail on which the brand (raised characters) appears.

12.1.1 When right-hand and left-hand drilling is specified, at least the minimum quantity of each indicated by the purchaser will be supplied.

12.1.2 Disposition of short rails which accrue from left-hand drilled, right-hand drilled, and undrilled (blank) rail production, and which are acceptable in accordance with 12.2 shall be established by agreement between the purchaser and the manufacturer.

12.2 Circular holes for joint bolts shall be drilled to conform to the drawings and dimensions furnished by the purchaser.

12.2.1 A variation of nothing under and 1/16 in. over in the size of the bolt holes will be permitted.

12.2.2 A variation of 1/32 in. in the location of the holes will be permitted.

12.3 Fins and burrs at the edge of bolt holes shall be eliminated. The drilling process shall be controlled so as not to mechanically or metallurgically damage the rail.

13. Workmanship

13.1 Rails shall be straightened cold in a press or roller machine to remove twists, waves and kinks until they meet the surface and line requirements specified, as determined by visual inspection.

13.2 When placed head up on a horizontal support, rails that have ends higher than the middle will be accepted, if they have a uniform upsweep, the maximum ordinate of which does not exceed 3/4" in any 39 ft. as illustrated in Fig. 13.1.

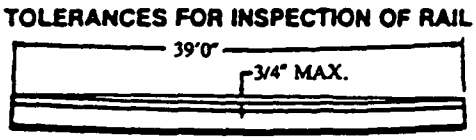

FIG. 13.1. Side Elevation of Rail Uniform Upsweep Tolerance per Section 13.2

13.3 The uniform surface upsweep at the rail ends shall not exceed a maximum ordinate of 0.025" in 3 ft. and the 0.025" maximum ordinate shall not occur at a point closer than 18" from the rail end as illustrated in Fig. 13.2.

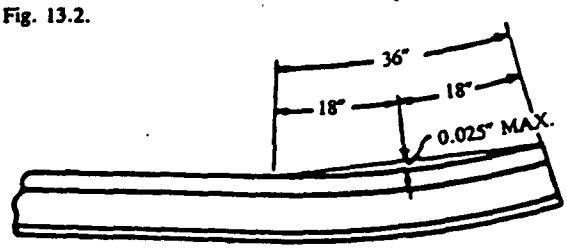

FIG. 13.2 Side Elevation of Rail Uniform Upsweep Tolerance at Rail Ends per Section 13.3

13.4 Surface downsweep and droop shall not be accepted.

13.5 Deviations of the lateral (horizontal) line in either direction at the rail ends shall not exceed a maximum mid-ordinate of 0.030 inches in 3 feet using a straight edge and of 0.023 inches at the end quarter point as illustrated in Figure 13.3.

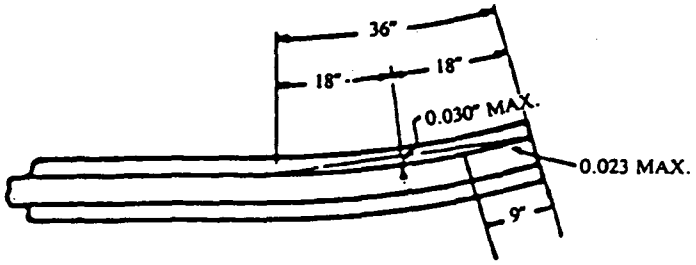

FIG. 13.3. Top View of Rail Lateral (Horizontal) Line Tolerance at Rail Ends per Section 13.5

13.6 Uniform lateral sidesweep in any 39 feet shall not exceed 3/4 inch as illustrated in Figure 13.4.

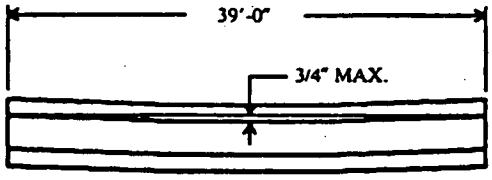

FIG. 13.4. Top View of Uniform Lateral Sidesweep Tolerance per Section 13.6.

13.7 When required, proof of compliance with Section 13.2 shall be determined by string (wire) lining, and a straightedge and taper gauge shall be used to determine rail end surface and line characteristics specified in Sections 13.3, 13.4, and 13.5.

13.8 Rails shall be hot sawed, cold sawed, milled, abrasive wheel cut, or ground to length, as specified by purchaser on purchase order, with a variation in end squareness of not more than 1/32 in. allowed. The method of end finishing rails shall be such that the rail end shall not be metallurgically or mechanically damaged.

13.9 If the rail shows evidence of twist while being laid head up on the final inspection bed, it will be checked by inserting a taper or feeler gage between the base and the rail skid nearest the end. If the gap exceeds 0.090 in. the rail will be rejected. Alternatively, a twist gage may be used and if the rail exceeds 1.5° in 39 feet the rail will be rejected. Rejected rails may be subject to straightening.

14. Acceptance

14.1 To be accepted, the rails offered must fulfill all the requirements of these specifications.

14.2 Only A-rails produced on the purchaser's order will be accepted.

14.3 Rails accepted shall be shipped and invoiced based on the calculated weight per yard for the rail section.

15. Markings

15.1 High-strength rails shall be marked by either a metal plate permanently attached to the neutral axis, hot stamped, or in the brand which gives the manufacturer, type and/or method of treatment. Heat treated rail shall be paint-marked orange and alloy rail shall be paint-marked aluminum.

15.2 "A" rails shall be paint-marked yellow.

15.3 Rails except for those 80 ft. or 39 ft. shall be paint-marked green.

15.4 Individual rails shall be paint-marked only one color, according to the order listed above, or as agreed upon by purchaser and manufacturer.

15.5 Paint markings will appear on the top of the head at one end only, at least 3 ft. from the end.

15.6 All short length rails produced shall have the length identified in a manner acceptable to the purchaser and manufacturer on the top of the head approximately one foot from each end.

16. Loading

16.1 All rails shall be handled carefully to avoid damage and shall be loaded with the branding on all rails facing the same direction. Rails of different markings shall not be intermixed in loading, but shall be segregated and loaded head up. If there are not enough rails of one marking for a full car, smaller groups consisting of tiers of different markings as approved by the purchaser, may be loaded onto one car.

SUPPLEMENTARY REQUIREMENTS

The following supplementary requirements shall apply only when specified by the purchaser in the inquiry, order, and contract.

S1. End Hardening

S1.1 The drilled ends may be specified to be end hardened. When so specified, end hardening and chamfering shall be in accordance with S1.1.1 through S1.1.7.

S1.1.1 End-hardened rails may be hot stamped with letters "CH" in the web of the rail ahead of the heat number.

S1.1.2 Water shall not be used as a quenching medium except in oil-water or polymer-water emulsion process approved by the purchaser.

S1.1.3 Longitudinal and transverse sections showing the typical distribution of the hardness pattern produced by any proposed process shall, upon request of purchaser, be submitted for approval before production on the contract is started.

S1.1.4 The heat-affected zone defined as the region in which the hardness is above that of the parent metal shall cover the full width of the rail head and extend longitudinally a minimum of 1-1/2 in. from the end of the rail. The effective hardness zone 1/2 in. from the end of the rail shall be at least 1/4 in. deep.

S1.1.5 The hardness measured at a spot on the center line of the head 1/4 in. to 1/2 in. from the end of the rail shall show a Brinell hardness number range of 341 to 401 when decarburized surface has been removed. A report of hardness determination representing the product shall be given to the purchaser or his representative.

S1.1.6 The manufacturer reserves the right to retreat any rails which fail to meet the required Brinell hardness number range.

S1.1.7 Chamfering rail ends shall be done in such a manner as will avoid formation of grinding cracks.

S2. Manual Ultrasonic Testing

S2.1 The rail may be specified by the purchaser to be ultrasonically tested for internal imperfections subject to the provisions of S2.2.

S2.2 Manual Ultrasonic Test of Web at the Rail Ends for Weld Plant Application.

S2.2.1 Manual End testing shall be performed using standard ultrasonic testing equipment acceptable to the purchaser and manufacturer.

S2.2.2 The search unit shall be a standard dual element crystal or similar transducer acceptable to the purchaser and manufacturer.

S2.2.3 The calibration test block shall be of the following characteristics: Material 4340 AISI Steel/Nickel plated, manufactured in accordance with ASTM E428. As an alternate, reference standards may be fabricated from a section of rail as agreed upon between the purchaser and manufacturer.

S2.2.4 Dimensions of the calibration test block and calibration references shall be agreed upon by the purchaser and manufacturer. (For calibration reference the recommended thickness of the block should approximate the thickness of the rail web and contain a 1/16 flat bottom hole drilled to one-half the thickness.)

S2.2.5 Calibration of the instrument shall be performed before the commencement of testing, every 100 rail ends thereafter, and after any test delay exceeding 30 minutes.

S2.2.6 When the search unit is coupled to the calibration test block, the indication height from the calibration reference shall serve as a reference level for the test. (Recommended reference levels should appear from 40% to 80% of the maximum height on the cathode ray tube graticule.)

S2.2.7 Couplant shall be distributed over the entire web area at least 12" from the end of the rail and the search unit moved over the entire area in vertical and/or horizontal sweeps.

S2.2.8 An indication equal to or exceeding the reference level shall be cause for rejection.

S2.2.9 Rejected rails may be cut back to sound metal as indicated by the ultrasonic testing, subject to the length restrictions in Section 11.

APPENDIX 1

Inasmuch as the controlled cooling of rails has proved a successful method for the elimination of hydrogen, the following procedure is presented as one which will meet the requirements of Section 7.1.

1. All rails shall be cooled on the hot beds or runways until full transformation is accomplished and then charged immediately into the containers. In no case should the rail be charged at a temperature below 725°F.

2. The temperature of the rails before charging shall be determined at the head of the rail at least 12 in. from the end.

3. The cover shall be placed on the container immediately after completion of the charge and shall remain in place for at least 10 hours. After removal or raising of the lid of the container, no rail shall be removed until the temperature of the top layer of rails has fallen to 300°F or lower.

4. The temperature of an outside rail or between an outside rail and the adjacent rail in the bottom tier of the container, at a location not less than 12 in. nor more than 36 in. from the rail end, shall be recorded. This temperature shall be the control for judging rate of cooling.

5. The container shall be so protected and insulated that the control temperature shall not drop below 300°F in 7 hours for rails 100 lbs. per yd. in weight, or heavier from the time the bottom tier is placed in the container and 5 hours for rails of less than 100 lbs. per yd. in weight. If this cooling requirement is not met, the rails shall be considered control-cooled, provided that the temperature at a location not less than 12 in. from the end of a rail at approximately the center of the middle tier does not drop below 300°F in less than 15 hours.

6. The purchaser shall be furnished a complete record of the process for each container of rails.

APPENDIX D

COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF IMPORTS OF NEW STEEL RAILS FROM JAPAN, LUXEMBOURG, AND THE UNITED KINGDOM ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND EXISTING DEVELOPMENT EFFORTS

COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF IMPORTS OF NEW STEEL RAILS FROM JAPAN, LUXEMBOURG, AND THE UNITED KINGDOM ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND EXISTING DEVELOPMENT EFFORTS

The Commission requested U.S. producers to describe and explain the actual and potential negative effects, if any, of imports of new steel rails from Japan, Luxembourg, and the United Kingdom on their growth, investment, ability to raise capital, and existing development and production efforts (including efforts to develop a derivative or improved version of new steel rails).

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APPENDIX E

PURCHASER PRICE INFORMATION

Table E-1
New steel rails: Quote and pricing information on contracts to **Burlington Northern**, submitted by Burlington Northern, January 1989-March 1992

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Table E-2
New steel rails: Quote and pricing information on contracts to **Chicago and Northwestern**, submitted by Chicago and Northwestern, January 1989-March 1992[1]

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Table E-3
New steel rails: Quote and pricing information on contracts to **Norfolk Southern**, submitted by Norfolk Southern, January 1989-March 1992

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Table E-4
New steel rails: Union Pacific's purchases of steel rails from U.S. producers and importers, submitted by Union Pacific, January 1989-March 1992[1]

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Table E-5
New steel rails: CSX' purchases of steel rails from U.S. producers and importers, submitted by CSX, January 1989-March 1992

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