

SHEET PILING FROM CANADA

Determination of the Commission in
Investigation No. 731-TA-52
(Final) Under the Tariff Act
of 1930, Together With the
Information Obtained in the
Investigation

USITC PUBLICATION 2384

MAY 1991

**United States International Trade Commission
Washington, 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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

Investigation No. 731-TA-52 (Final)

SHEET PILING FROM CANADA

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of sheet piling, provided for in subheading 7301.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted the continuation of final investigation 731-TA-52 effective November 29, 1990, following the cancellation of the suspension agreement concerning sheet piling from Canada by the Department of Commerce because sales at less than fair value were found during the period of administrative review. As a consequence, Commerce resumed its antidumping investigation as if its affirmative preliminary determination was made on the date of the publication of its notice to resume the investigation. Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in

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

the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of December 19, 1991 (55 FR 52106). The hearing was held in Washington, DC, on April 17, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

On the basis of the information obtained in this investigation, we determine that an industry in the United States is not materially injured, or threatened with material injury, by reason of imports of sheet pilings from Canada that are sold at less than fair value (LTFV).

I. Procedural Background

This final investigation is set against a rather unusual procedural background. This investigation was initiated by the Department of Commerce on November 24, 1981 pursuant to information developed under the Trigger Price Mechanism.¹ On January 8, 1982, the Commission reached a preliminary affirmative determination.² On June 28, 1982, Commerce published its preliminary determination finding LTFV margins of 1.9 percent.³ On September 15, 1982, Commerce suspended the investigation following an agreement by Casteel, the dominant Canadian producer and exporter, to revise its pricing to eliminate LTFV sales. Accordingly, the Commission immediately suspended its final investigation.⁴

Commerce initiated an administrative review of the suspension agreement on October 24, 1986. The review led to a determination on November 29, 1990, that Casteel violated the suspension agreement by selling imports in the United States at LTFV.⁵ As a result, the agreement was cancelled, and

¹ 46 Fed. Reg. 57586 (Nov. 24, 1981).

² See 47 Fed. Reg. 2947 (Jan. 20, 1982).

³ 47 Fed. Reg. 27881 (June 28, 1982).

⁴ 47 Fed. Reg. 40683 (Sept. 15, 1982); 47 Fed. Reg. 41886 (Sept. 15, 1982).

⁵ 55 Fed. Reg. 49551 (Nov. 29, 1990).

Commerce and the Commission resumed their final investigations. Commerce's final dumping margin of 2.97 percent was based upon an investigation of sales by Casteel from June 1, 1990 through November 30, 1990.⁶

The Commission held a public hearing in this final investigation on April 17, 1990. No parties appeared at the hearing. No domestic producer filed prehearing or posthearing briefs. Bethlehem Steel, the largest domestic producer, ceased its active participation in the investigation following Casteel's announcement that it was opening a sheet piling plant in the United States and would soon cease production of sheet piling in Canada.⁷ Casteel also did not file prehearing or posthearing briefs. Another smaller Canadian producer did file a posthearing statement, however, arguing that the move of Casteel to the United States and the allegedly non-competitive nature of the other Canadian imports required a negative determination.⁸

II. Like Product and the Domestic Industry

In order to determine whether there is "material injury" or "threat of material injury," to a domestic industry, the Commission must first determine the parameters of the "domestic industry." Section 771(4)(A) of the Tariff Act of 1930 defines the relevant domestic 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

⁶ 56 Fed. Reg. 18565 (April 23, 1991) (copy attached at Appendix B of the Report of the Commission).

⁷ Letter to Commission from Counsel for Bethlehem Steel dated April 8, 1991.

⁸ Posthearing Comments of CMRM dated April 25, 1991.

production of that product."⁹ "Like product" is defined as a "product that is like, or in the absence of like, most similar in characteristics and uses with the article subject to investigation."¹⁰

The Commission's decision regarding the appropriate like product(s) in an investigation is essentially a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. In analyzing like product issues, the Commission generally considers a number of factors relating to characteristics and uses including (1) physical appearance, (2) interchangeability, (3) channels of distribution, (4) customer perception, (5) common manufacturing facilities and production employees, and, where appropriate, (6) price.¹¹ No single factor is necessarily dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. Generally the Commission disregards minor variations between the articles subject to an investigation, and requires "clear dividing lines among possible like products."¹²

The imported article subject to this investigation is sheet piling, which is a rolled section of iron or steel that is formed with an interlocking

⁹ 19 U.S.C. § 1677(4)(A).

¹⁰ 19 U.S.C. § 1677(10).

¹¹ Torrington Co. v. United States, Slip Op. 90-90 at 10 (CIT Sept. 11, 1990); Asociacion Colombiana de Exportadores de Flores v. United States, 12 CIT ___, 693 F. Supp. 1165, 1168 n.4, 1180 n.7 (1988) (Asocoflores); 3.5" Microdisks and Media Therefor from Japan, Inv. No. 731-TA-389 (Final), USITC Pub. 2170 at 7-8 (March 1989).

¹² Certain Telephone Systems and Subassemblies Thereof from Japan, Korea and Taiwan, Invs. Nos. 731-TA-426-428 (Preliminary), USITC Pub. 2156 at 4 n.4 (February 1989)(citing Asocoflores, 692 F. Supp. at 1170 n.8).

edge.¹³ When sections of sheet piling are driven into the ground side by side they form a continuous watertight wall. Sheet piling is produced in a variety of weights, thicknesses, and configurations, but all are put to the same use: retaining walls, levies, piers, bridge heads and the like. Competition with other materials, such as timber or concrete, is very limited given the combination of strength and water tightness that is a unique characteristic of sheet piling.¹⁴

In the preliminary investigation we concluded that the like product was all domestically produced sheet piling.¹⁵ No parties contested this determination in the final investigation, nor is there any evidence in the record that suggests that a different conclusion is appropriate at this time. Therefore we again determine that the like product is all domestically produced sheet piling and that the domestic industry consists of all domestic producers of sheet piling.

III. Condition of the domestic industry

In determining the condition of the domestic industry, the Commission considers, among other factors, domestic consumption, shipments, market share, production, capacity, capacity utilization, inventories, employment, prices, profitability, the ability to raise capital, and investment.¹⁶

Apparent domestic consumption of sheet piling declined irregularly

¹³ Report at A-3, n.1 and Appendix B (Commerce's Federal Register Notice).

¹⁴ Report at A-5-A-8.

¹⁵ Sheet Piling from Canada, Inv. No. 731-TA-52 (Preliminary), USITC Pub. 1212 at 5 (January 1982).

¹⁶ 19 U.S.C. § 1677(7)(C)(iii).

during the period of investigation.¹⁷ Notwithstanding this decline, domestic shipments increased steadily, while Canadian imports declined steadily. Consequently, domestic market share has increased.¹⁸ Domestic prices for sheet piling fluctuated a great deal during the period of investigation, with no clear or consistent trend.¹⁹

Domestic production increased irregularly during the period of investigation, while domestic capacity increased at a slightly faster rate. Thus, capacity utilization rates declined slightly.²⁰ Inventories of domestically-produced sheet piling declined irregularly, both in terms of quantity and as a share of domestic shipments.²¹

Overall employment in the domestic industry increased from 1988 to 1990. Hours worked also increased during that same period, as did wages, hourly pay, and total compensation.²²

Due to the dominant position of Bethlehem Steel in the domestic industry, even a discussion of trends in specific financial indicators involves confidential business information. In general, however, the absolute levels or trends in certain indicators, such as net sales and operating income

¹⁷ Report at A-12, Table 1. Because of the dominant position of Bethlehem Steel in the U.S. industry and Casteel in the Canadian industry, virtually all the aggregate data in this investigation are confidential. Consequently, much of the discussion which follows is general in nature, while reference is made to the confidential data supporting the general characterizations.

¹⁸ Report at A-24, Table 12.

¹⁹ Report at A-26.

²⁰ Report at A-13, Table 2.

²¹ Report at A-14-A-15, Table 4.

²² Report at A-15, Table 5.

as a share of net sales, do not suggest the existence of material injury.²³

Based upon all the evidence available in this investigation, we find that the domestic industry is not materially injured.²⁴ The trade data indicate that production, shipments, market share, employment, and wages are all increasing. While the financial data are mixed, it is significant that no domestic producers filed prehearing or posthearing statements, or sent representatives to the Commission's hearing, explaining how material injury had manifested itself. While an analysis of trends in certain financial indicators, as well as trends in inventories and employment, does suggest a possible downturn in 1990, it is insufficient to persuade us that there is material injury under the circumstances of this case.

IV. No material injury by reason of LTFV imports from Canada²⁵

Even if we had determined that the domestic industry was materially injured, it is apparent from the record that such injury is not "by reason of" the LTFV imports from Canada.²⁶ In analyzing causation, the Commission is required to consider, inter alia, the volume of the imports subject to investigation, the effect of such imports on domestic prices, and the impact

²³ See Report at A-16-A-18 and Table 7.

²⁴ Acting Chairman Brunsdale does not reach a separate legal conclusion concerning the presence or absence of material injury based on this information. While she does not believe an independent determination is either required by the statute or useful, she finds the discussion of the condition of the domestic industry helpful in determining whether any injury resulting from the dumped imports is material.

²⁵ While Acting Chairman Brunsdale finds the information in this section to be germane to her negative determination, it does not present her complete analysis of causation. See Additional Views of Acting Chairman Brunsdale.

²⁶ 19 U.S.C. § 1673b(a).

of such imports on the domestic industry.²⁷ Evaluation of these factors involves a consideration of: (1) whether the volume of imports, or increase in volume is significant, (2) whether there has been significant price underselling by the imported products, and (3) whether imports have otherwise depressed prices to a significant degree, or have prevented price increases.²⁸ In addition, the Commission must evaluate the impact of the imports on the domestic industry by examining other relevant economic factors, such as actual and potential changes in profits, productivity, capacity utilization, and investment.²⁹

The Commission may not weigh the various causes of material injury,³⁰ nor must it determine that LTFV or subsidized imports are the principal, a substantial, or a significant cause of material injury.³¹ However, the Commission may consider any information demonstrating possible alternative causes of injury to the domestic industry.³²

Imports of sheet piling from Canada have declined steadily throughout

²⁷ 19 U.S.C. § 1677(7)(B).

²⁸ 19 U.S.C. § 1677(7)(C)(i-ii).

²⁹ 19 U.S.C. § 1677(7)(C)(iii).

³⁰ S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979); La Metalli Industriale S.p.A. v. United States, 712 F. Supp. 969, 971 (CIT 1989); Citrosuco Paulista v. United States, 704 F. Supp. 1075, 1101 (CIT 1988); Hercules, Inc. v. United States, 673 F. Supp. 454, 481 (CIT 1987); British Steel Corp. v. United States, 593 F. Supp. 405, 413 (CIT 1984).

³¹ S. Rep. No. 249, 96th Cong., 1st Sess. at 74 (1979).

³² S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). Such alternative causes may include "the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry." Id. at 74.

the period of investigation, both in terms of quantity and value.³³ Thus, there has been no increase in imports, much less a "significant" increase. Furthermore, as noted previously, shipments of domestically-produced sheet piling have increased. Thus, the market share of domestic producers has also increased, while the market share of Canadian imports has remained essentially unchanged. The market share of nonsubject imports has declined.³⁴

With regard to the pricing data, there is no clear or consistent trend for either the domestic or imported product.³⁵ Price comparisons were somewhat problematic because of differences in the nature of contracting and differences in the products themselves.³⁶ Even when taking such considerations into account, however, the record does not contain sufficient evidence of significant underselling by Canadian imports.³⁷ When the Canadian

³³ Report at A-23, Table 11. Canadian import data consists of all Canadian merchandise, including that of Casteel. Even though Casteel's imports were subject to a suspension agreement during most of the period of investigation, Congress has directed the Commission not to consider the effect of the suspension agreement when determining which merchandise is subject to investigation. 19 U.S.C. § 1677c(j). Subsection (j), however, does not direct the Commission to ignore the impact of a suspension agreement on relevant economic indicators, such as changes in the volume or price of imports brought about by an agreement to eliminate LTFV sales. Such an interpretation would provide a benefit to importers who violate suspension agreements. Moreover, it would create an incentive for all importers to violate suspension agreements as soon as prices rise, imports drop, and the condition of the domestic industry improves. In this investigation, we believe that the existence of an agreement by Casteel to stop selling at the preliminary LTFV margins of 1.9 percent, and the violation of that agreement as early as 1986, tend to offset one another. Thus, the effect of the suspension agreement on the data in this investigation is not significant.

³⁴ Report at A-24, Table 12.

³⁵ Report at A-26.

³⁶ Report at A-28.

³⁷ Acting Chairman Brunsdale believes that underselling margins are distorted beyond usefulness in this case because Canadians export cold-formed sheet
(continued...)

products were priced lower than the U.S. product, the margins were relatively small compared with the margins of overselling when Canadian prices were higher.³⁸

Lost sales and lost revenue calls also fail to provide evidence of a causal link between Canadian imports and the condition of the domestic industry. In fact the most frequent response from purchasers was that they did not buy the Canadian product at all, often due to "Buy America" restrictions.³⁹

Based upon the information available in this investigation, we determine that, even if the domestic sheet piling industry were suffering material injury, it is not by reason of LTFV imports from Canada. Imports from Canada have declined, prices have not declined, and there is no evidence of significant underselling by Canadian imports. Further, we again note that domestic producers did not file prehearing or posthearing briefs and did not appear at the Commission hearing to explain the existence of a causal connection between Canadian imports and the purported material injury to the domestic industry.

V. No threat of material injury by reason of LTFV imports from Canada.

Section 771(7)(F) of the Tariff Act of 1930, as amended by the Trade and Tariff Act of 1984, requires that, in assessing a threat of material injury, the Commission consider, inter alia, increases in production capacity or

³⁷(...continued)
piling while U.S. manufacturers produce largely the more expensive hot-rolled sheet piling. See Report at A-28.

³⁸ Report at A-29.

³⁹ Report at A-31-A-34.

existing unused or underutilized capacity in the exporting country that might lead to a significant increase in imports, any rapid increase in U.S. market penetration and the likelihood that the penetration will reach an injurious level, the probability that imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices, and whether there are substantial increases in inventories of the imported products in the United States.⁴⁰ The statute also cautions that an affirmative threat determination "shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent" and not on the basis of mere conjecture or supposition.⁴¹

First and foremost, it is uncontested in the record that Casteel, far and away the largest Canadian producer, is about to relocate all its sheet piling production from Canada to Ohio.⁴² The property has been purchased, employees are being hired, and the Ohio plant is scheduled to open shortly. The Canadian plant will close at that time. The certainty of this occurrence is demonstrated by Bethlehem Steel's citation of this move as the basis for ceasing its active participation in this investigation.⁴³ As a consequence of this move, Canadian capacity will drop dramatically. Furthermore, the remaining excess capacity of other Canadian producers is insufficient to pick up more than a small fraction of Casteel's share of import shipments. Thus for the real and imminent future, Canadian imports are also likely to drop

⁴⁰ 19 U.S.C. § 1677(7)(F)(i)(I)-(VII); see Citrosuco Paulista v. United States, 704 F. Supp. 1075, 1094 (CIT 1988).

⁴¹ 19 U.S.C. § 1677(7)(F)(ii).

⁴² Report at A-21; Posthearing Comments of CMRM at 3 and Attachment 1.

⁴³ Letter to the Commission from counsel to Bethlehem Steel dated April 8, 1991.

dramatically. Given the already steady decline in Canadian imports from 1988 through 1990 and the lack of any effect of those imports on domestic prices, future Canadian imports of even smaller volumes are not likely to have a depressing or suppressing effect on domestic prices. Application of the threat criteria therefore leads us to conclude that imports from Canada do not pose a threat of material injury to the domestic industry.

Additional Views of Acting Chairman Anne E. Brunsdale

Sheet Piling from Canada
Inv. No. 731-TA-52 (Final)

I concur with my colleagues that the domestic industry producing sheet piling is not materially injured or threatened with material injury by reason of dumped imports from Canada. While I join their views, I write these additional views to present my analysis of causation.

I do not base my negative determination on the condition of the domestic industry or on the fact that industry trends have been positive during the period of investigation. In addition, while I find the information in the causation section to be germane to my determination that a domestic industry is not materially injured by reason of dumped imports, my analysis of causation does not rest simply on those trends.¹ Rather, I use economic analysis to ascertain the effect of the dumped imports on the domestic industry.

An industry with positive trends can still be materially injured by dumped imports. For example, if an industry's sales have increased but they would have increased much more, and the industry would have employed many more workers, had imports not been dumped in the U.S. market, that industry is likely to be materially injured by reason of the dumped imports. If an

¹ Although our investigation covers a three-year period, we only know that dumping occurred in the six months from June 1, 1990 to November 1, 1990. Attributing declining trends in 1988 and 1989 to dumping would be speculative, given our limited information. See Report at A-8.

industry must be "unhealthy" in an absolute sense in order to receive relief from unfairly traded imports, then such relief is available only for declining industries.

It must be clear, however, that the dumped imports are responsible for the material injury. The task of isolating the effects of dumped imports from the effects of all other economic variables is extremely difficult. Given the enormous quantity of data gathered during an investigation and the complex interaction of economic variables, it is essential to use a rigorous analytical framework.

Material Injury by Reason of Dumped Imports

In considering whether an industry is materially injured by reason of the dumped imports, the Commission is required to consider (1) the volume of subject imports, (2) the effect of those imports on the price of the domestic like product, and (3) the impact of those imports on domestic producers.² Commissioners may consider other economic factors that are relevant to their determinations.

The Market Share of Unfair Imports and the Dumping Margin. In addition to assessing the effects of the volume of imports in absolute terms, we are instructed to consider the market share of the subject imports.³ The larger the market share of dumped

² See 19 U.S.C. 1677(7)(B).

³ See 19 U.S.C. 1677(7)(C)(i).

imports, the greater the effect of the dumping on the demand for the domestic like product.

Imports of Canadian sheet piling accounted for a relatively small share of the domestic market.⁴ Fairly traded imports accounted for a much larger share during the period of investigation and domestic sheet piling held the majority of the domestic market.⁵

The dumping margin calculated by the Department of Commerce indicates the percentage difference between the dumped price of the subject imports and their price at "fair value." I find the dumping margin to be extremely important in determining the effect of the subject imports on domestic producers of the like product. The higher the dumping margin, the greater the difference between the dumped price and the "fair price" of the subject imports. It stands to reason that if the imports are sold at 50 percent below their fair price, those imports would be more likely to take sales away from domestic producers and suppress domestic prices than if they were sold at only 5 percent below their fair price.

In this case, Commerce found the dumping margin to be 2.91 percent. Thus, the fair price of Canadian sheet piling would be

⁴ In addition imports from Canada declined over the period of investigation. See Report at A-23.

⁵ In addition, the market share of domestic producers increased, while the market share of fair imports decreased. For reasons of business confidentiality, however, even the discussion of aggregate data must be general. See Report at A-24.

roughly 3 percent higher than the dumped price, at most.⁶

Substitutability. The degree of substitutability between the domestic like product and the subject imports is crucial to the analysis of causation. If the products are close substitutes, customers will be more likely to switch to buying dumped imports if their price falls relative to the price of the domestic like product. If the products are perceived as being different, relative price changes will not affect purchases to the same extent.

The record indicates that sheet piling imported from Canada is only a moderately close substitute for domestic sheet piling.⁷ A large percentage of domestic sheet piling is hot-rolled, while Canadian sheet piling is cold-formed. This limits their substitutability in certain applications. Hot-rolled sheet piling is preferred where water is present, where particular strength is needed, or where the sheet piling will be reused. Cold-formed sheet piling is lighter and less expensive.⁸

The most important limit on the substitutability between domestic sheet piling and imported sheet piling is "Buy America"

⁶ It is assumed that Canadian producers would have not have charged a lower home market price rather than a higher U.S. price if they had not been dumping. However, this is not necessarily the case.

⁷ See Economics Memo, at 10-13.

⁸ The fact that Canadians export the cheaper cold-formed product to the U.S., while U.S. firms largely produce the more expensive hot-rolled sheet piling distorts margins of underselling in this case. See Report at A-28.

restrictions, which are estimated to apply to a sizable share of all domestic sheet piling purchases. There is no substitutability between domestic and imported sheet piling when "Buy America" restrictions are in effect, regardless of what the price differential may be.

The Relationship between Quantity Demanded and Price. In order to determine the extent to which prices were suppressed and the domestic producers were losing sales to the dumped imports, it is important to consider the sensitivity of demand for the product to changes in price. If the quantity of a product demanded is sensitive to changes in price, then lower prices will generate increased sales. In such cases, dumping is likely to generate sales that would not have otherwise been made, rather than taking sales away from domestic producers and/or other foreign firms.

The record indicates that the demand for sheet piling is not very sensitive to changes in price.⁹ The basic reason is that sheet piling makes up only a small fraction of the cost of a construction project. While there are substitutes for sheet piling that can be used in construction projects, ITC staff suggests that it is unlikely that a small relative price change would induce a switch from sheet piling to a substitute retaining structure. I would conclude that any reduction in the price of sheet piling as a result of dumping is unlikely to have generated many new sales.

⁹ See Economics Memo, at 13-14.

The Ability of Firms to Increase Output. If dumping duties were imposed on the subject imports, additional sales would accrue to either domestic firms or other foreign firms, if they increased their production. If they did not increase production, the price of sheet piling would be likely to rise. Since domestic excess capacity has existed throughout the period of investigation, it is likely that domestic producers would increase their output.¹⁰ In addition, other foreign firms would be expected to increase sales in the U.S. market. I conclude, therefore, that dumping of sheet piling would be likely to have a greater effect on domestic producers' volume of sales than on the domestic price.

Conclusion

I determine that the domestic industry producing sheet piling is not materially injured by dumped imports from Canada. The volume of imports from Canada is small and the dumping margin is very small. Given the limited substitutability of domestic sheet piling and the subject imports, a small decline in the price of Canadian sheet piling would not have caused many buyers of U.S. sheet piling to switch. Nor do I think that domestic prices of sheet piling were suppressed, particularly given the ability of both domestic producers and other foreign producers to respond to price changes by altering their output. I conclude that the dumped imports did not affect prices or the volume of

¹⁰ See Economics Memo at 6-8.

domestic output to a degree that would constitute material injury. I reach the same conclusion with respect to the effects of the dumped imports on the other factors we are instructed to consider such as profits, employment, investment, and utilization of capacity. Given the slight impact of the dumped imports on volume and price, I conclude that there was no material impact on these other factors as well.

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

On November 29, 1990, the Department of Commerce (Commerce) published a notice that the suspension agreement concerning sheet piling¹ from Canada (which was published in the Federal Register on September 15, 1982 (47 FR 40683)) had been cancelled because sales at less than fair value (LTFV) were found during the period of review. As a consequence, Commerce had resumed its antidumping investigation as if its affirmative preliminary determination were made on the date of the publication of its notice to resume the investigation. Accordingly, the U.S. International Trade Commission (Commission), effective November 29, 1990, continued investigation No. 731-TA-52 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) 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. Notice of the continuation of the Commission's final investigation and of the public hearing 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 December 19, 1990 (55 FR 52106).² The hearing was held in Washington, DC, on April 17, 1991.³

Commerce made a final affirmative determination, as published in the Federal Register on April 23, 1991 (56 F.R. 18565), that imports of sheet piling from Canada are being, or are likely to be sold in the United States at a LTFV margin of 2.91 percent.⁴ The Commission voted on this investigation on May 22, 1991, and notified Commerce of its determination on May 29, 1991.

BACKGROUND

Commerce initiated this investigation on its own accord pursuant to information developed under the Trigger Price Mechanism (TPM).⁵ This

¹ The product covered by this investigation is sheet piling of iron or steel, whether or not drilled, punched, or made from assembled pieces. The subject products are rolled sections of metal which can be interlocked so that individual pieces when driven into the ground side by side form a continuous wall. Sheet piling is produced in three general types--straight web, arch web, and Z web. Also included are other sheet piling pieces such as Y's, T's, corners, and filler pieces. These products are provided for in subheading 7301.10.00 of the Harmonized Tariff Schedule of the United States (HTS) (items 609.96 and 609.98 of the former Tariff Schedules of the United States (TSUS)).

² Copies of the Commission's Federal Register notices are presented in app. A.

³ There were no participants in the investigation present at the hearing.

⁴ A copy of Commerce's Federal Register notice is presented in app. B.

⁵ On Dec. 6, 1977, the President approved implementation by the Treasury Department of a Trigger Price Mechanism (TPM) to monitor import prices of steel mill products. Responsibility for administering the TPM was transferred to Commerce on Jan. 2, 1980. The TPM was suspended in March 1980 in response

(continued...)

information indicated that significant sales of sheet piling from Canada were being made in the United States at less than the relevant trigger price. Commerce's notice of investigation was published in the Federal Register of November 24, 1981 (46 FR 57586). Accordingly, effective November 24, 1981, the Commission instituted antidumping investigation No. 731-TA-52 (Preliminary), under section 733(a) of the Tariff Act of 1930.

On January 8, 1982, the Commission determined in the investigation that there was a reasonable indication that an industry in the United States was materially injured, or was threatened with material injury, by reason of such imports. This determination was published in the Federal Register of January 20, 1982 (47 FR 2947).

On April 16, 1982, Commerce published a notice announcing that its preliminary determination was being postponed from May 3, 1982, to June 22, 1982 (47 FR 16366). On June 28, 1982, Commerce published a notice announcing a preliminary determination of sales at LTFV (47 FR 27881). The notice indicated that the overall weighted-average LTFV margin on all sales compared was 1.9 percent. The weighted-average margin on sales by Acier Casteel, Inc. was 2.07 percent and the weighted-average margin on sales by Brockhouse Canada Limited was 0.7 percent.⁶

On September 15, 1982, Commerce published a notice suspending the investigation (47 FR 40683). The basis for the suspension was an agreement by Acier Casteel, Inc., the Canadian manufacturer and exporter that accounted for substantially all of the known U.S. imports of sheet piling from Canada, to revise their prices to eliminate sales of this merchandise to the United States at LTFV. Accordingly, effective September 15, 1982, the Commission suspended its final antidumping investigation (47 FR 41886).

On October 24, 1986, Commerce initiated an administrative review of the agreement to suspend the antidumping investigation on sheet piling from Canada. The review covered the period September 1, 1985, through August 31, 1986. As a result of its review, Commerce determined on November 29, 1990, that Casteel was in violation of the suspension agreement. Therefore, Commerce cancelled the suspension agreement and resumed the antidumping investigation. Commerce published notice in the Federal Register of January 17, 1991 (56 FR 1800), that, at the request of counsel for the respondents, it had extended the date for its final determination in the investigation from February 12, 1991, to April 15, 1991. The Commission published a notice in

⁵ (...continued)

to the filing of antidumping petitions by U.S. Steel Corp. relating to certain carbon steel products from European countries. On Oct. 8, 1980, following the withdrawal of the antidumping complaints, Commerce reinstated the TPM. Production costs of steel mill products in Japan, deemed to be the most efficient producer in the world, formed the basis of the trigger prices. Imports priced below trigger prices were considered potential sales at LTFV. If substantial quantities of steel mill products entered the United States below the applicable trigger price, an antidumping investigation could be "triggered" by Commerce on its own motion.

⁶ ***.

the Federal Register of January 17, 1991 (56 FR 1823), revising its schedule in the investigation to conform with Commerce's new schedule.⁷

THE PRODUCT

Description

Sheet piling is a rolled section of iron or steel formed with a continuous interlocking edge. The piling interlocks generally allow sections to be driven singly or in pairs. The design of the interlock varies from producer to producer. As a result, the piling produced by different manufacturers is generally incompatible (see fig. 1). When individual sections are driven into the ground side by side they form a continuous wall that is practically watertight when subjected to lateral pressures.

Sheet piling is produced in a variety of weights and thicknesses in order to meet a wide range of strength requirements. Most sheet piling is produced in one of three profiles: straight web, arch web, or Z web (see fig. 2).⁸ Special sheet piling sections such as corners, Y's, T's, or filler pieces are fabricated from rolled sections by bending, cutting, bolting, or welding.

Uses

Sheet piling is used in the construction of retaining walls, cofferdams, levies, piers, breakwalls, bridge heads and wing walls, and other, related applications. It is used primarily in applications that require a watertight barrier, either between water and earth or water and air. It can also be used as a barrier between earth and air.

In the construction of cellular cofferdams, it is critical that the sheet piling have a designated interlock strength to meet the engineering requirements of the structure. Interlock strength is a standard specification only for straight-web piling and shallow-arch piling.⁹ Deep-arch and Z-web piling are inappropriate for the construction of such structures.

Substitute Products

Sheet piling competes with a number of materials, including timber, concrete, aluminum, plastic, stone, and a combination steel/timber product. Sheet piling is far more versatile than these other materials, however, and

⁷ Copies of the Commission's Federal Register notices are presented in app. A.

⁸ Some producers of lighter gauge piling produce non-traditional profiles. Such piling is apparently directly substitutable for arch-web or Z-web piling of similar thicknesses.

⁹ Straight-web piling and shallow-arch piling are only produced by the hot-rolled method.

Figure 1
Interlock types

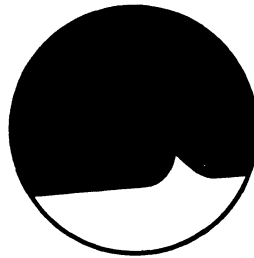
BALL & SOCKET



3 POINT CONTACT

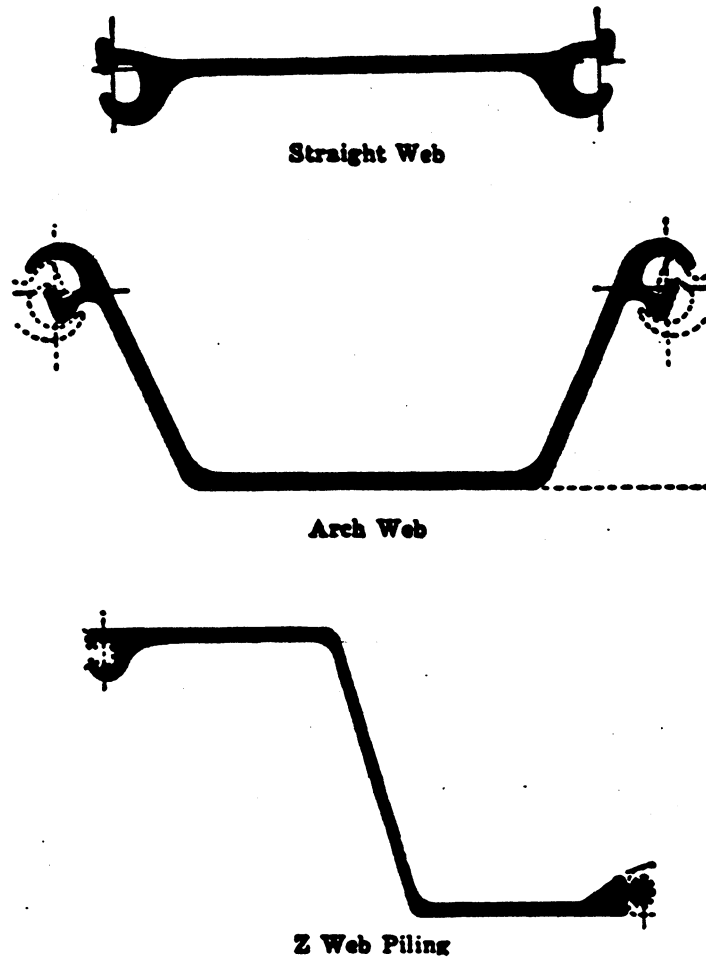


COLD-FORMED



Source: Bethlehem Steel Corp. and Acier Casteel, Inc.

Figure 2
Typical sheet piling sections



Source: Steel Products Manual: Carbon Steel: Plates, Structural Sections; Rolled Floor Plates; Steel Sheet Piling, American Iron & Steel Institute, December 1957, p. 53.

competes with them in relatively few markets. In some applications, such as those requiring a high degree of strength and water tightness, sheet piling has few practical substitutes.

Manufacturing Processes

Two processes are used to manufacture sheet piling: hot rolling and cold forming. In the range of popular sizes, there is a broad overlap between the products manufactured by these two different methods. However, the heaviest sheet piling is generally hot-rolled and the lightest sheet piling is generally cold-formed.

The hot-rolling process is commonly used by integrated steelmakers that produce molten steel. These manufacturers cast the molten metal into semifinished forms, such as blooms or ingots (which are subsequently rolled into blooms).¹⁰ The blooms are then heated and rolled into final form on rolling mills that are used to produce a variety of structural shapes. In the cold-forming process, the piling is produced using hot-rolled sheet, which is cold-formed at ambient temperatures to final shapes.

Canadian producers of sheet piling all utilize the cold-forming method of production. In the United States, Bethlehem employs the hot-rolled process, while all other producers use the cold-forming method of manufacture. Hot-rolled and cold-formed deep-arch and Z-web sheet piling are usable for similar applications. However, for hard driving conditions or repetitive usage, hot-rolled piling is preferable.

U.S. Tariff Treatment

Imports of sheet piling are classified in subheading 7301.10.00 of the Harmonized Tariff Schedule of the United States. The most-favored-nation (column 1-general) rate of duty for this subheading is 0.8 percent ad valorem. Eligible imports from Canada are currently assessed a duty of 0.5 percent ad valorem pursuant to the United States-Canada Free-Trade Agreement, with additional staged reductions scheduled to reduce the FTA rate of duty to "free" by January 1, 1997.

NATURE AND EXTENT OF SALES AT LTFV

On April 23, 1991, Commerce published in the Federal Register its final determination that imports of sheet piling from Canada are being, or are likely to be, sold in the United States at LTFV. Commerce used adjusted data from Acier Casteel's response to compare the United States price to the foreign market value. The period of investigation for Commerce's final

¹⁰ Ingots are a primary form of solidified steel, usually rectangular in cross section. Blooms are a semifinished, intermediate steel product, typically rectangular in cross section, but having a smaller cross section and longer length than an ingot.

determination was June 1, 1990, through November 30, 1990. The value of sales examined during the period of Commerce's investigation amounted to *** tons valued at ***. The sales found to be at LTFV amounted to *** tons valued at ***. The amount by which the foreign market value of the merchandise subject to the investigation exceeded the U.S. price was 2.91 percent ad valorem for Casteel, and 2.91 percent ad valorem for all other manufacturers/producers/exporters.

Commerce directed the U.S. Customs Service, under section 733(d)(1) of the Act, to continue to suspend liquidation of all entries of sheet piling from Canada that are entered, or withdrawn from warehouse for consumption, and to require a cash deposit or the posting of a bond equal to the estimated dumping margin.¹¹

U.S. MARKET

U.S. Producers

There are currently six producers of sheet piling in the United States. All but the largest producer are rolling mills that utilize the cold-forming method of production. The largest producer is a fully integrated steel mill that uses the hot-rolling method of production. The producers, their position on the investigation, and their share, in percent, of U.S. production in 1990 are presented below:

<u>Company</u>	<u>Location</u>	<u>Position</u>	<u>Share of production</u>
Bethlehem	Bethlehem, PA	***	***
Big R	Greeley, CO	***	***
Contech	Winchester, KY	***	***
Shoreline	New Haven, MI	***	***
Superior	Bridgeview, IL	***	***
Syro	Girard, OH	***	***

Bethlehem Steel Corp. (Bethlehem) is the largest producer of sheet piling. Bethlehem's facilities include five raw steel producing plants and certain related facilities. The Structural Products Division, in Bethlehem, PA, is the sole plant that produces sheet piling. The plant's principal products are structural steel shapes and pilings for the building and bridge construction markets. The plant is also a major producer of ingot molds and foundry products for the energy, defense, and metals industries. Its facilities include coke ovens, blast furnaces, basic oxygen furnaces, blooming mills, structural mills, and foundries. The Bethlehem plant has an annual steelmaking capability of 2.6 million tons.

¹¹ Liquidation was originally suspended at the time of Commerce's final results of its antidumping duty administrative review (Nov. 29, 1990).

On January 24, 1991, Bethlehem and British Steel announced the signing of a letter of intent to complete a feasibility study to form an equally owned joint venture in the United States to produce and market structural and rail products.¹² The discussions between the two companies have been based on restructuring and combining into a single entity certain of the assets of Bethlehem's existing structural and rail business units in Bethlehem and Steelton, PA, and making a significant capital investment. At Bethlehem, the new venture would include all rolling and shipping facilities for structural shapes, piling, and special sections. On completion of the capital investment, all steelmaking for the new venture would be at Steelton, and steelmaking at Bethlehem would be discontinued.

Big R Manufacturing and Distributing, Inc. (Big R), in Greeley, CO, serves the geographical market of Kansas, Nebraska, Oklahoma, and Colorado. Big R, ***, began production in ***. ***. All of the data reported by Big R ***. Since 1990, ***. In addition, Big R ***.

Contech Construction Products Inc. (Contech), is in Winchester, KY. The 160,000-square-foot facility produces seven different product lines, including its cold-formed sheet piling. Contech purchased this construction facility from Armco in 1986. All of Contech's steel coils are purchased from ***.

Shoreline Steel Supply (Shoreline), in New Haven, MI, began production of sheet piling in ***. Shoreline produces no other product lines besides sheet piling. In addition, Shoreline ***. Shoreline is ***.

Superior Piling, Inc. (Superior), in Bridgeview, IL, has been producing sheet piling since ***. Superior produces no other product lines besides sheet piling. However, the building it is in ***. ***,

Syro Steel Co. (Syro), in Girard, OH, produces sheet piling, railroad car sections, highway safety products, structural plate pipe, and sign structures. The company also ***. A significant amount of Syro's sales ***. Syro ***.

U.S. Importers

The largest importer of Canadian sheet piling is Casteel USA, Inc., in Pittsburgh, PA. Casteel USA is *** percent owned by Acier Casteel, Inc., of Longueuil, Quebec, Canada, and has *** sales offices and *** warehouses throughout the United States. Casteel USA ***. Casteel's U.S. geographic market area includes all 50 States.

Channels of Distribution

The ability of contractors to use Canadian material (as well as any other foreign-produced piling) is affected by various federal, State, and local "Buy America" laws that apply to publicly financed projects. In some

¹² See press release, app. C.

cases, contractors are required to buy U.S.-produced sheet piling because of "Buy American" restrictions. If the sheet piling is to be left in place permanently, government agencies such as State highway departments of transportation, county governments, and municipalities generally require the sheet piling to be U.S.-produced. If the sheet piling is to be extracted after the project is completed, the contractors are generally free to use imported sheet piling. These publicly financed projects represent a significant share of the U.S. market. ***.¹³ In 1990, Syro and Shoreline shipped *** percent and *** percent, respectively, of their shipments pursuant to "Buy America" contracts. Bethlehem and Superior shipped *** and *** percent, respectively, of their shipments pursuant to "Buy America" contracts. Big R and Contech ***.

In the U.S. market, sales of sheet piling by domestic producers and importers are made to both distributors and end users. In 1990, *** U.S. producers to ship a majority of their sheet piling, ***, respectively, to unrelated distributors. *** L.B. Foster, a wholesaler/distributor. Foster purchases large quantities of sheet piling from U.S. and European manufacturers, which it then resells or rents in both large and small quantities to industrial and commercial users. The other reporting producers shipped a majority of their product to unrelated end users. ***. *** percent of its domestic shipments of sheet piling to unrelated end users. *** that sheet piling sold for temporary uses such as cofferdams and industrial excavations accounted for approximately *** percent of the total market for sheet piling.¹⁴ For temporary uses, contractors often rent sheet piling or buy the sheet piling and return the used, undamaged pieces for a "buy-back" rate. None of the U.S. producers rents its own sheet piling. Casteel USA, L.B. Foster, and many other U.S. distributors supply the rental market. For some small temporary jobs, contractors may buy the sheet piling and keep it in their own inventory to reuse. Heavy construction contractors in particular typically carry small amounts (100 tons) of sheet piling in stock. Foster charges *** per ton and charges ***. The contractors return the used sheet piling to Foster, and Foster cuts off the damaged material (such as the tops of the piling that are driven by the pile-driver). The contractors pay Foster the market price for the damaged material.¹⁵ Casteel sometimes offers purchasers ***. For example, *** reported that he bought approximately ***.

Apparent U.S. Consumption

Data on apparent U.S. consumption of sheet piling were compiled from information submitted in response to questionnaires sent by the Commission and official statistics of the U.S. Department of Commerce. These data, presented in table 1, are comprised of U.S.-produced domestic shipments, U.S. intracompany consumption, and U.S. imports.

The quantity and value of apparent U.S. consumption of sheet piling decreased by 8 percent and 7 percent, respectively, between 1988 and 1990.

¹³ ***.

¹⁴ ***.

¹⁵ ***.

Table 1

Sheet piling: U.S.-produced domestic shipments and U.S. intracompany consumption, U.S. imports, and apparent U.S. consumption, 1988-90

Item	1988	1989	1990
	Quantity (tons)		
U.S.-produced domestic shipments.....	***	***	***
U.S. intracompany consumption.....	***	***	***
U.S. imports:			
Canadian.....	20,489	19,399	17,923
All other.....	91,577	66,936	71,824
Total.....	112,066	86,335	89,747
Apparent U.S. consumption.....	***	***	***
	Value (1,000 dollars)		
U.S.-produced domestic shipments.....	***	***	***
U.S. intracompany consumption.....	***	***	***
U.S. imports:			
Canadian.....	9,904	9,648	9,213
All other.....	41,779	31,474	32,958
Total.....	51,683	41,122	42,171
Apparent U.S. consumption.....	***	***	***

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

The percent of apparent U.S. consumption represented by imports of sheet piling *** from *** percent in 1988 to *** percent in 1989 and 1990.

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

The information in this section of the report is based on data received from all six U.S. producers of sheet piling, except as noted.

U.S. Producers' Capacity, Production, and Capacity Utilization

Data for production, capacity, and capacity utilization for the firms producing sheet piling are summarized in table 2. Capacity to produce sheet piling increased by 4 percent from 1988 to 1990. This increase was due to

Table 2

Sheet piling: U.S. capacity, production, and capacity utilization, by firms, 1988-90

Item	1988	1989	1990
End-of-period capacity (tons):			
* * *	*	*	*
Production (tons):			
* * *	*	*	*
Capacity utilization (percent):			
* * *	*	*	*
Average.....	50	43	48

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

***. ***.¹⁶ Production increased by 1 percent from 1988 to 1989. Capacity utilization fell from 50 percent in 1988 to 43 percent in 1989 and increased to 48 percent in 1990.

The capacity for Bethlehem is typical of an integrated steel mill. The hot-metal operations must run continuously with coordination between the front end of the mill and the back end of the mill. The fewer times the metal must be reheated, the less costly the process. Bethlehem's capacity is based on operating ***. The plant ***. ***.

Bethlehem produces ***. It reported that the ***. Big R produces *** and reports that ***. Contech produces *** and reports that ***. Superior produces ***. Syro ***.

U.S. Producers' Shipments

The U.S. producers' company transfers, domestic shipments, and export shipments of sheet piling are presented in table 3.

COMPANY TRANSFERS

*** to report company transfers of sheet piling. These company transfers ***. Company transfers ***.

¹⁶ ***.

Table 3

Sheet piling: U.S. producers' company transfers, domestic shipments, export shipments, and total shipments, by firms, 1988-90

Item	1988	1989	1990
	*	*	*

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

DOMESTIC SHIPMENTS

U.S. producers' domestic shipments of sheet piling increased by 6 percent from 1988 to 1990. The value of U.S. shipments increased by 3 percent during the same period.

EXPORT SHIPMENTS

*** producers to report exports of sheet piling. *** percent from 1988 to 1989 and then *** in 1990. In 1988, ***. In 1989, ***. *** tons of sheet piling being exported ***.

TOTAL SHIPMENTS

Total U.S. producers' shipments of domestically produced sheet piling increased by 4 percent between 1988 and 1990. The value of such shipments increased by 2 percent during the same period.

U.S. Producers' Inventories

Yearend inventories of sheet piling were reported by *** (table 4). Inventories decreased by 12 percent from 1988 to 1990. This was almost entirely due to ***. Inventories as a share of both U.S. shipments and total shipments decreased from 20 percent in 1988 to 16 percent in 1990. *** stated that their sheet piling is usually made upon receipt of an order and consequently few or no inventories are maintained. However, ***.

U.S. Employment, Wages, and Productivity

Data on employment and productivity for the U.S. producers of sheet piling are shown in table 5. The number of workers producing sheet piling and

Table 4

Sheet piling: U.S. producers' end-of-period inventories and inventories as a share of total shipments, by firms, 1988-90

Item	1988	1989	1990
Inventories (tons):			
* * *	*	*	*
Inventories as a share of total shipments ¹ (percent):			
* * *	*	*	*
Average ²	20	13	16

¹ ***.

² ***.

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

Table 5

Average number of production and related workers producing sheet piling and all products, hours worked, wages paid, average hourly wages, total compensation paid, unit labor costs, and productivity, 1988-90¹

Item	1988	1989	1990
* * *	*	*	*

¹ ***.

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

average hourly wages *** by *** percent from 1988 to 1990. The hours worked and wages paid *** by *** percent and *** percent, respectively, during the same period. Total compensation *** from 1988 to 1990 by *** percent. Unit labor costs *** by *** percent from 1988 to 1990. The average number of work hours required to produce a ton of sheet piling was *** in 1988, *** in 1989, and *** in 1990.

The production and related workers at ***. The workers at *** are not represented by a union. Bethlehem and the USWA entered into a new 50-month labor agreement that became effective on June 1, 1989, and runs through July 31, 1993. Under the new agreement, hourly wage rates were restored to the level that existed prior to the 1983 labor agreement. Wages increased an average of \$1 per hour in January 1991 and will increase by an average of \$0.50 per hour in January 1992. Additions were also made in pension and insurance benefits.

The production and related workers at *** are also used to produce products other than sheet piling. *** the number of production workers producing sheet piling. During the period of investigation it ***.

Financial Experience of U.S. Producers

Financial information was provided on sheet piling operations in addition to overall establishment operations by one large, fully integrated producer, Bethlehem, and *** rolling mills, ***. These data, representing *** percent of 1990 production of sheet piling, are presented in this section. The sheet piling data differs significantly from that in the prehearing report as a result of recent on-site verifications. ***.

OVERALL ESTABLISHMENT OPERATIONS

Income-and-loss data on the U.S. producers' overall establishment operations are presented in table 6. In addition to the product under investigation, Bethlehem indicated in its questionnaire response that it produces *** in its overall establishment operations represented by the plant in Bethlehem, PA. *** indicated that ***. *** indicated that its primary overall establishment products are ***. As a percent of 1990 overall establishment net sales, sheet piling net sales were ***.

SHEET PILING OPERATIONS

Income-and-loss data for the U.S. producers' sheet piling operations are presented in table 7. As a large, fully integrated producer, Bethlehem's sheet piling operations are substantially different from those of the rolling mills, which basically purchase hot-rolled sheet and cold-form it into various shapes of sheet piling. Bethlehem's *** whereas the rolling mills ***. Selected income-and-loss data for the respective producers are shown in the following tabulation ***:

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
* * *	*	*	*

Table 6

Income-and-loss experience of U.S. producers¹ on the overall operations of their establishments within which sheet piling is produced, accounting years 1988-90

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
-------------	-------------	-------------	-------------

* * * * *

¹ ***.

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

Table 7

Income-and-loss experience of U.S. producers¹ on their sheet piling operations, accounting years 1988-90

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
-------------	-------------	-------------	-------------

* * * * *

¹ ***.

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

Components of cost of goods sold expressed as dollars per ton are presented in the following tabulation:

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
-------------	-------------	-------------	-------------

* * * * *

***. Average selling prices and operating income for the individual producers on a per-ton basis are shown in the following tabulation:

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
* * *	*	*	*

INVESTMENT IN PRODUCTIVE FACILITIES

The value of property, plant, and equipment and total assets for the U.S. producers are presented in table 8. The return on total assets for these producers is presented in table 9. The ***.

CAPITAL EXPENDITURES

The capital expenditures (essentially all machinery and equipment) reported by the U.S. producers are presented in the following tabulation (in thousands of dollars):

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
* * *	*	*	*

CAPITAL AND INVESTMENT

The Commission requested the U.S. producers to describe any actual or potential negative effects of imports of sheet piling from Canada on their existing development and production efforts, growth, investment, and ability to raise capital. Their responses are shown in appendix D.

RESEARCH AND DEVELOPMENT EXPENSES

The U.S. producers' research and development expenses are presented in the following tabulation (in thousands of dollars):

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
* * *	*	*	*

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--

Table 8

Value of property, plant, and equipment of U.S. producers of sheet piling as of the end of accounting years 1988-90

(In thousands of dollars)			
Item	As of end of the accounting year--		
	1988	1989	1990

* * * * *

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

Table 9

Return on total assets of U.S. producers of sheet piling as of the end of accounting years 1988-90

(In percent)			
Item	1988	1989	1990

* * * * *

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors¹⁷--

¹⁷ 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."

(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,

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

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

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.¹⁸

Items I and IX do not apply to this investigation. 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 on U.S. inventories of the subject products (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, follows.

U.S. Inventories of Sheet Piling From Canada

Casteel USA reported *** the period of investigation. Casteel USA's end-of-period inventories ***.

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

The Commission requested counsel for the respondent in the subject investigation, Acier Casteel, Inc., to provide information on its client's sheet piling operations. Casteel's sheet piling capacity was *** (table 10). In 1991, Casteel's capacity is projected to decline to ***. This reflects Casteel's intent to close down the plant by ***, and to move its entire production facility to the United States.¹⁹ Casteel's production *** in 1989. Similarly, Casteel's capacity utilization was ***. Casteel's end-of-period inventories and home market shipments *** from 1988 to 1990. Home market shipments represented *** percent of Casteel's total shipments in 1988 and *** percent in 1989 and 1990. ***. Exports to the United States *** from 1988 to 1990.

¹⁸ 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."

¹⁹ Casteel recently purchased *** in Marietta, Ohio and has begun construction on its new facility.

Table 10

Sheet piling: Acier Casteel's and Canadian Metal Rolling Mills' capacity, production, capacity utilization, end-of-period inventories, shipments, and exports, 1988-90 and projected 1991

Item	1988	1989	1990	Projected 1991
------	------	------	------	-------------------

* * * * * *

Source: Data submitted by counsel for Acier Casteel, Inc., and Canadian Metal Rolling Mills, in response to a request for information by the Commission.

The *** producer of sheet piling in Canada is Canadian Metal Rolling Mills (CMRM), located in Mississauga, Ontario. CMRM is responsible for most of the remaining exports of sheet piling to the United States. CMRM's capacity was ***. Its production of sheet piling *** percent from 1988 to 1990, and its capacity utilization *** percent in 1988 to *** percent in 1990. CMRM's end-of-period inventories *** percent from 1988 to 1990. Home market shipments *** percent from 1988 to 1990. CMRM's home market shipments represented *** percent of its total shipments in 1990. Its exports to the United States *** percent during the period of investigation. The United States ***.

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

U.S. Imports

U.S. imports of sheet piling from Canada and the rest of the world decreased by 13 percent and 22 percent, respectively, from 1988 to 1990 (table 11). The value of such imports similarly decreased by 7 percent and 21 percent, respectively. The unit value of imports from Canada increased by 6 percent during the period of investigation.

U.S. Market Penetration by Imports

Data on penetration of imports of sheet piling from Canada into the U.S. market are presented in table 12. Based on quantity, market penetration of imports from Canada was *** percent in 1988 and 1990, and *** percent in 1989. Based on value, the market penetration of imports from Canada was *** percent in 1988 and 1990, and *** percent in 1989.

Table 11
Sheet piling: U.S. imports for consumption, 1988-90

Item	1988	1989	1990
	Quantity (tons)		
Sheet piling from--			
Canada.....	20,489	19,399	17,923
Luxembourg.....	32,408	23,153	29,434
Germany.....	25,196	12,265	16,457
France.....	18,460	12,224	13,915
United Kingdom.....	11,182	14,736	9,353
All other sources.....	4,332	4,558	2,665
Total.....	112,066	86,335	89,747
	Value (1,000 dollars)		
Sheet piling from--			
Canada.....	9,904	9,648	9,213
Luxembourg.....	14,853	10,979	13,713
Germany.....	11,879	6,178	8,187
France.....	8,463	5,689	6,224
United Kingdom.....	4,578	6,204	3,770
All other sources.....	2,006	2,423	1,064
Total.....	51,683	41,122	42,171
	Unit value (per ton)		
Sheet piling from--			
Canada.....	\$483	\$497	\$514
Luxembourg.....	458	474	466
Germany.....	471	504	497
France.....	458	465	447
United Kingdom.....	409	421	403
All other sources.....	463	532	399
Average.....	461	476	470

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

Prices

MARKET CHARACTERISTICS

U.S. producers generally sell sheet piling on a contract basis, whereas the largest importer reported that all of its sales were on a spot-sales basis. U.S. producers and Casteel both sold a small amount²⁰ of sheet piling on a negotiated bid basis.²¹ Typical sales terms for both Canadian and U.S.-produced sheet piling are ***.

²⁰ All of the U.S. producers and the Canadian importer reported that they sold sheet piling on a bid basis. However, ***.

²¹ ***.

Table 12

Sheet piling: Share of U.S. consumption supplied by Canada and all other countries, 1988-90

Item	1988	1989	1990
	*	*	*

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.

Most of the U.S.-produced sheet piling is shipped by truck, while the Canadian product is either shipped by truck or rail.²² The average lead times for domestic sheet piling delivered from stock were between ***. The average lead times for domestic sheet piling made to order were between ***. The Canadian importer reported average lead times of between *** for shipments of sheet piling either from stock or made to order. U.S. producers reported that they were generally able to supply sheet piling to customers in a timely manner. Bethlehem reported that *** percent of its orders are shipped complete within *** after the piling has been rolled. The Canadian importer reported that it ***.

Overland transportation costs for sheet piling increase significantly as the distance increases. Bethlehem reported that average U.S. freight costs were *** percent of the U.S. f.o.b. price for shipments of less than 100 miles, *** percent for shipments of 100-500 miles, and *** percent for shipments of more than 500 miles. The Canadian importer, Casteel, reported that average U.S. freight costs were *** percent of the U.S. f.o.b. price²³ for shipments of less than 100 miles, *** percent for shipments of 100-500 miles, and *** percent for shipments of more than 500 miles.

The Commission contacted *** purchasers and requested information concerning the quality of U.S. and Canadian sheet piling and other factors that these purchasers considered when buying sheet piling. *** responses were received; *** firms reported information and *** firms did not buy sheet piling during 1989-90. *** firms bought both U.S.- and Canadian-produced sheet piling during the period of investigation. *** of these purchasers stated that the quality of the Canadian product was comparable to that of the domestic product and the remaining *** purchasers stated that it was inferior. The reporting purchasers prefer hot-rolled sheet piling to cold-formed sheet piling in situations where water is present. Purchasers reported that the

²² Casteel USA reported ***.

²³ Casteel ***.

looser interlocks of cold-formed sheet piling allow water to enter an excavation at a greater rate than the interlocks of hot-rolled sheet piling. Purchasers that reuse the steel sheet piling also prefer the hot-rolled product because the interlocks do not bind as easily and the ends do not deform as easily. However, several purchasers reported that they bought cold-formed sheet piling because it was lower priced than the available hot-rolled product, and it was acceptable for their purposes. Bethlehem sold only hot-rolled sheet piling, whereas the other U.S. producers and the Canadian importer sold only the cold-formed product.

U.S. producers of sheet piling generally publish list prices, whereas the importer of Canadian sheet piling does not. ***,²⁴ Neither the U.S. producers nor the Canadian importer offer quantity discounts. However, ***,²⁵ U.S. producers reported that contract prices are generally firm for a specified time period, in some cases up to one year. Prices at the end of the contract period are either subject to renegotiation or a price adjustment is negotiated at the time of the order. The quantities and delivery terms are specified in the contract.

***. Because Foster's role in the market is substantial and it does not provide all of the services of a distributor, ***. According to its spokesman, Foster ***,²⁶ Although it ***. In this arrangement, Foster provides ***. However, Foster competes ***,²⁷

In *** with Foster, Foster agrees ***. ***. Foster has *** sales offices, each having *** sales representatives. ***. Foster also rents sheet piling and piledriving equipment, ***. These activities give Foster ***. ***. Foster is responsible for ***. ***,²⁸ ***.

Bethlehem reported ***. The Commission estimated ***,²⁹ ***. Thus, in some instances, ***. ***. Because these prices are only estimates of actual prices, direct price comparisons with Canadian prices and margins of underselling have not been calculated.

QUESTIONNAIRE PRICE DATA

U.S. producers and the importer were requested to report U.S. f.o.b. and delivered selling prices and total quantities sold of selected U.S.- and Canadian-produced sheet piling products sold in the United States. Both the U.S. firms and the respondent agreed that the majority of sheet piling sold in the United States is Z-web sheet piling. For each representative product listed below, price data for the largest sale of the specified product to end users, sold as single or paired sections, were requested for each quarter during January 1988-December 1990:

-
- 24 ***.
 - 25 ***.
 - 26 ***.
 - 27 ***.
 - 28 ***.
 - 29 ***.

PRODUCT 1: Z-web sheet piling with A328- or A572-grade 50 steel, section modulus ranging from 30.2 to not greater than 35.3 cubic inches per foot, weight from 24.8 to not greater than 27.0 pounds per square foot, gauge of 0.375 inches, and height ranging from 18 to not greater than 21.25 inches. Products include but are not limited to PZ27, PLZ25, CZ128, and SZ27.

PRODUCT 2: Z-web sheet piling with A328- or A572-grade 50 steel, section modulus ranging from 29.5 to not greater than 31.6 cubic inches per foot, weight from 22.6 to not greater than 23.4 pounds per square foot, gauge from 0.335 to not greater than 0.340 inches, and height from 21.6 to not greater than 24.0 inches. Products include but are not limited to PLZ23, CZ114, SPZ23, and SZ24.

PRODUCT 3: Z-web sheet piling with A328- or A572-grade 50 steel, section modulus ranging from 15.5 to not greater than 16.6 cubic inches per foot, weight from 18.3 to not greater than 19.6 pounds per square foot, gauge from 0.295 to not greater than 0.315 inches, height from 7.9 to not greater than 9.0 inches, and section width from 21.6 to not greater than 25.2 inches. Products include but are not limited to CZ95, Z75, SPZ19.5, and SZ18.

*** U.S. producers, ***, accounting for approximately *** percent of domestic shipments of steel sheet piling in 1990, reported usable price data. ***. The primary Canadian importer, Casteel, also reported usable price data. The Commission also requested and received supplemental pricing information from Bethlehem for its sales of sheet piling to ***, L.B. Foster.

Price Trends

Delivered prices of U.S.-produced and imported Canadian products 1, 2, and 3 sold to end users during January 1988-December 1990 are shown in tables 13, 14, and 15, and figures 3 and 4. Adjusted delivered prices for Foster's sales of Bethlehem-produced sheet piling products 1 and 2 sold to end users are shown in table 16. F.o.b. selling prices of U.S.-produced and imported Canadian products 1, 2, and 3 sold to end users during the investigation period are presented in appendix E, tables E-1, E-2, and E-3, and figures E-1 and E-2. In general, delivered prices for single and paired sections of the specified U.S. and Canadian products sold to end users ***. ***.

Delivered prices for U.S.-produced sheet piling showed ***. Prices for single sections of the U.S.-produced product 1 ***. Prices for paired sections of U.S.-produced product 1 ***. Prices for single sections of product 2 ***. Prices for paired sections of U.S.-produced product 2 ***. Prices for single sections of the U.S.-produced product 3 *** during the remainder of the investigation period.

Table 13

Net delivered prices of U.S.-produced single sections and U.S.-produced and imported Canadian paired sections of sheet piling product 1 sold to end users, by quarters, January 1988-December 1990

Period of shipment	<u>Single sections</u>		<u>Paired sections</u>			
	<u>United States¹</u>		<u>United States¹</u>		<u>Canada²</u>	
	Price	Quantity	Price	Quantity	Price	Quantity

* * * * * *

¹ The U.S. prices shown are the net delivered selling prices of U.S. producers' largest sales to end users of the specified U.S.-produced product in each quarter. The quantities shown represent U.S. producers' total sales of the product to end users during each quarter.

² The prices of the imported product are the net delivered prices of the primary importer, Casteel, based on its largest sale to end users of the specified imported product in each quarter. The quantities shown represent Casteel's total sales of the specified products to all U.S. end users during each quarter.

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

Figure 3

Net weighted-average delivered prices for U.S.- and Canadian-produced sheet piling products 1 and 2, by quarters, January 1988-December 1990

* * * * * *

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

During the period of investigation, all imported Canadian products 1, 2, and 3 were sold as paired sections. Delivered prices for these imported Canadian products ***. Prices for Canadian product 1 ***. Prices for imported Canadian product 2 ***. Prices for imported Canadian product 3 were ***.

During the period January 1989-December 1990, adjusted delivered prices for Foster's sales of Bethlehem-produced sheet piling products 1 and 2 ***.

Table 14

Net delivered prices of U.S.-produced single sections and U.S.-produced and imported Canadian paired sections of sheet piling product 2 sold to end users, by quarters, January 1988-December 1990

Period of shipment	<u>Single sections</u>		<u>Paired sections</u>			
	<u>United States¹</u>		<u>United States¹</u>		<u>Canada²</u>	
	Price	Quantity	Price	Quantity	Price	Quantity

* * * * * *

¹ The U.S. prices shown are the net delivered selling prices of U.S. producers' largest sales to end users of the specified U.S.-produced product in each quarter. The quantities shown represent U.S. producers' total sales of the product to end users during each quarter.

² The prices of the imported product are the net delivered prices of the primary importer, Casteel, based on its largest sale to end users of the specified imported product in each quarter. The quantities shown represent Casteel's total sales of the specified products to all U.S. end users during each quarter.

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

Figure 4

Net weighted-average delivered prices for U.S.- and Canadian-produced sheet piling product 3, by quarters, January 1988-December 1990

* * * * * *

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

Price Comparisons

Comparisons of delivered selling prices to end users for U.S.-produced and imported Canadian sheet piling products are presented in table 17. Delivered prices were compared because sheet piling prices are typically quoted on a delivered basis. Two factors should be considered when comparing the sales prices of these products. First of all, *** of the specified U.S. sheet piling products are hot-rolled whereas all of the imported Canadian sheet piling products are cold-formed. Furthermore, U.S. sheet piling is

Table 15

Net delivered prices of U.S.-produced single sections and imported Canadian paired sections of sheet piling product 3 sold to end users, by quarters, January 1988-December 1990

Period of shipment	<u>Single sections</u>		<u>Paired sections</u>	
	<u>United States¹</u>		<u>Canada²</u>	
	Price	Quantity	Price	Quantity

* * * * * * *

¹ The U.S. prices shown are the net delivered selling prices of U.S. producers' largest sales to end users of the specified U.S.-produced product in each quarter. The quantities shown represent U.S. producers' total sales of the product to end users during each quarter.

² The prices of the imported product are the net delivered prices of the primary importer, Casteel, based on its largest sale to end users of the specified imported product in each quarter. The quantities shown represent Casteel's total sales of the specified products to all U.S. end users during each quarter.

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

typically sold on a contract basis, while imported Canadian sheet piling is generally sold on a spot basis. Because of these differences, the specified U.S. and imported Canadian sheet piling products and prices are not entirely comparable.

Taking the above factors into account, 12 quarterly price comparisons were possible for paired sales of product 1 and product 2.³⁰ During those quarters for which price comparisons were possible, prices for the Canadian product were ***. Prices for Canadian product 1 were ***. Prices for Canadian product 2 were ***.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January 1988-December 1990 the nominal value of the Canadian dollar fluctuated, appreciating 9.2 percent overall relative to the U.S. dollar (table 18).³¹ Adjusted for movements in producer price indexes in the United

³⁰ Price comparisons were only possible for steel sheet piling products sold in pairs since all of the specified Canadian products were sold in pairs.

³¹ International Financial Statistics, May 1991.

Table 16

Adjusted delivered prices of L.B. Foster's sales of Bethlehem-produced single and paired sections of sheet piling product 1 and paired sections of product 2 sold to end users¹, by quarters, January 1989-December 1990²

Period of shipment	Product 1			Product 2	
	Single Price	Paired Price	Quantity ³	Paired Price	Quantity

* * * * *

¹ Sales to L.B. Foster accounted for *** percent of Bethlehem's sales to distributors during 1989-90. ***.

² ***.

³ The quantities shown were reported by L.B. Foster as quantities purchased and are for the total purchases of the specified product, bought either as single sections or as paired sections.

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

Table 17

Net U.S. delivered selling prices to end users of paired sheet piling products 1 and 2 produced in the United States and imported from Canada, and margins of under/(over) selling,¹ by quarters, January 1989-September 1990²

Period	Product 1			Product 2		
	United States price	Canada price	Margins of under/(over) selling	United States price	Canada price	Margins of under/(over) selling

* * * * *

¹ Any figure in parentheses indicates that the price of the domestic product was less than the price of the imported product.

² Price comparisons are based on net U.S. delivered selling prices reported by U.S. producers and the importer Casteel.

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

Table 18

Exchange rates:¹ Indexes of nominal and real exchange rates of the Canadian dollar, and indexes of producer prices in the United States and Canada,² by quarters, January 1988-December 1990

Period	U.S. producer price index	Canadian producer price index	Nominal exchange rate index	Real exchange rate index ³
1988:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	101.6	101.2	103.1	102.7
July-September.....	103.1	102.3	103.9	103.1
October-December....	103.5	103.1	105.1	104.6
1989:				
January-March.....	105.8	104.6	106.3	105.2
April-June.....	107.7	104.8	106.2	103.4
July-September.....	107.3	104.4	107.2	104.4
October-December....	107.7	103.8	108.5	104.5
1990:				
January-March.....	109.3	104.2	107.2	102.2
April-June.....	109.1	104.4	108.3	103.6
July-September.....	111.0	104.4	109.9	103.4
October-December....	114.4	105.6	109.2	100.8

¹ Exchange rates expressed in U.S. dollars per Canadian dollar.

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 Canada.

Note.--January-March 1988 = 100.

Source: International Monetary Fund, International Financial Statistics, May 1991.

States and Canada, the real value of the Canadian currency showed an overall appreciation of 0.8 percent for the period January 1988 through December 1990.

Lost Sales And Lost Revenues

During the preliminary and final investigations, *** firms reported *** allegations of lost sales and *** allegations of lost revenue due to competition from imported Canadian sheet piling. The lost sales allegations involved *** million pounds of sheet piling with a declared net value of *** million. The firms claimed lost revenues of *** on sales of *** million pounds of sheet piling. The Commission has contacted the *** customers listed

below concerning *** allegations representing *** million in alleged lost sales and *** allegations representing *** in alleged lost revenues.

*** was cited by Bethlehem for a sale lost on *** of *** pounds of sheet piling with a net value of ***. ***, a representative of ***, reported that they bought sheet piling during 1990, but did not buy any Canadian product during that time. *** uses sheet piling primarily for public projects such as Federal and state highway systems and township projects. *** reported that *** percent of their sheet piling work is subject to "Buy American" restrictions. *** stated that they buy sheet piling when the use is permanent, since the end users often require new material. When the use is temporary, they rent and extract the sheet piling and receive a return for the extracted piling if it is in good condition. *** reported that most of their sheet piling work during 1990 was for temporary uses.

*** estimated that they paid between *** and *** per hundredweight (cwt) for the U.S.-produced hot-rolled sheet piling that they bought in 1990. *** considers hot-rolled sheet piling to be better than cold-formed sheet piling, primarily because the interlocks are better. The hot-rolled joints can hold back sand and water, whereas the cold-formed joints cannot produce a form-fitting lock. The other properties of the sheet piling are generally the same.

*** was cited for a lost sale of *** pounds of sheet piling worth *** on ***. *** reported that they bought approximately *** pounds of sheet piling during 1990, but did not buy any Canadian product. Canadian-produced sheet piling was ruled out because it was cold-formed. Cold-formed sheet piling is a softer material than hot-rolled sheet piling. Cold-formed piling can be used in permanent applications, but hot-rolled piling is generally used when the piling is temporary. It is harder to extract cold-formed piling because the interlocks bind. Furthermore, if the piling has to be driven into a hard material, such as clay, the bottoms of the cold-formed piling sometimes roll up.

*** reported that *** uses sheet piling for earth retention applications. *** rents approximately *** percent of its sheet piling and most of their contracts have "Buy American" restrictions. *** buys U.S.-produced hot-rolled sheet piling mainly from Bethlehem. Domestic hot-rolled sheet piling is priced at *** per ton, whereas imported cold-formed sheet piling is ***.

*** was named by *** for a lost sale of *** pounds of sheet piling, worth ***. *** reported that during late 1989 they bought *** pounds of Canadian sheet piling at *** per ton from Casteel. *** cited lower prices and faster delivery (half the leadtime) as the reasons that they chose Canadian sheet piling over U.S.-produced sheet piling. *** also reported that Casteel will cut piling to specific lengths, whereas *** only sells from stock. For example, *** can buy specified 37-1/2 foot lengths as opposed to being forced to buy 40-foot lengths and paying for the extra piling weight.

*** reported that there are slight differences between hot-rolled and cold-formed sheet piling. Cold-formed is slightly less expensive, and the

interlocks are not as tight. Private jobs might allow *** to use cold-formed sheet piling, but state jobs generally require hot-rolled sheet piling.

*** was cited by *** for a lost sale of *** pounds of sheet piling worth *** on ***. *** reported that they did not buy any Canadian sheet piling in 1989. During 1989, *** bought sheet piling from L.B. Foster for a job for the U.S. Army Corps of Engineers. That piling had to be U.S.-produced because of a "Buy American" restriction. *** buys on average *** worth of sheet piling a year on an irregular basis (*** worth one year, and no purchases during the following two years). *** has bid on *** sheet piling jobs but did not win any of these jobs. In general, they do not buy Canadian because of quality problems.

*** was named by *** for a lost sale of *** million pounds of sheet piling worth *** on ***. *** reported that, at some time within 6 months of ***, they bought approximately *** tons of sheet piling from Casteel for temporary use. *** bought the sheet piling with an option to sell it back. *** paid roughly *** per ton of sheet piling, and could return it for *** per ton if it were in good condition. *** used the sheet piling for a road construction job for the ***. *** requires permanent placement sheet piling to be U.S.-produced, but will allow temporary sheet piling to be foreign-produced. The prices per ton of the competing suppliers were all about the same, but *** was able to negotiate a better buy-back price from Casteel.

*** was cited by *** for a lost sale of *** pounds of sheet piling worth *** in ***. *** reported that they bought approximately *** tons of sheet piling during 1990. All of the sheet piling was U.S.-produced. Most of their contracts have "Buy American" provisions. They buy most of their piling from Bethlehem for about *** per cwt. *** uses sheet piling in cofferdams and for projects for the U.S., state, and county governments. The sheet piling is delivered to the jobsite. *** does not think that there are significant differences between hot-rolled and cold-formed sheet piling. *** buys from Bethlehem because *** considers them to be the only U.S. producer available.

*** was named by *** for a lost sale of *** million pounds of sheet piling worth *** on ***. *** recognized the particular allegation, but he reported that the nature of the job changed and that specific purchase was never made. He said that the "accepted quote" was not entirely Canadian, and that his company wanted to purchase European sheet piling. *** usually buys German-produced sheet piling because it is cheaper than U.S.- or Canadian-produced. Approximately *** percent of *** sheet piling purchases are U.S.-produced and the remainder are foreign produced.

*** was cited by *** for lost revenue of *** on a sale made on ***. *** could not confirm or deny the specific allegation. *** reported that his firm bought sheet piling from Bethlehem during 1989. They were required to buy U.S.-produced sheet piling for a U.S. Government project because of "Buy American" restrictions.

*** was named by *** for lost revenue of *** on a sale made on ***. *** recognized the transaction but could not confirm or deny the allegation. *** reported that they had bought sheet piling from Bethlehem during the period of investigation. They attempted to buy sheet piling from Casteel

because it was lower priced, but they were forced to buy U.S.-produced sheet piling because the piling was for use in a Government project and was subject to "Buy American" restrictions.

The *** was cited by *** for lost revenue of *** on an *** sale of *** tons of sheet piling priced at *** per ton. *** reported that *** bought *** tons of sheet piling from Casteel at a price of *** per ton during the second quarter of ***. During the fourth quarter of *** bought *** tons of sheet piling from *** priced at *** per ton. *** reported that imported Canadian sheet piling was generally available at a lower delivered price than domestic sheet piling during 1990. *** reported that *** has a strong preference for hot-rolled ball and socket type interlocks for temporary applications.

*** was named by *** for lost revenue of *** on a *** sale of *** tons of sheet piling priced at *** per ton. *** reported that *** bought between *** and *** tons of sheet piling from *** in *** for an oceanfront seawall project in ***. The seawall was built for private homeowner groups, so there were no "Buy American" restrictions. *** paid *** a ton for the sheet piling, ***. *** bid was the low bid of the competing suppliers (***).

*** was cited by *** for a lost sale of *** pounds priced at *** per cwt on ***. *** reported that in *** bought *** tons (*** pounds) from Casteel USA priced at *** per cwt. *** chose Casteel because it was the low bidder and it offered the highest buy-back rate. The buy-back rate was important since *** only needs to use the piling temporarily, and it does not have any use for an inventory of sheet piling. *** suppliers bid on this job. *** quoted *** per square foot with a buy-back rate of *** per ton; Casteel quoted *** per square foot with a buy-back rate of *** per ton; *** quoted *** per square foot with a buy back rate of *** per ton; and L.B. Foster quoted *** per square foot with a buy-back rate of *** per ton.

B-1

APPENDIX A

COMMISSION'S FEDERAL REGISTER NOTICES

[Investigation No. 731-TA-52 (Final)]

**Sheet Piling From Canada;
Antidumping Investigation**

AGENCY: United States International Trade Commission.

ACTION: Continuation of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: the Commission hereby gives notice of the continuation of final antidumping investigation No. 731-TA-52 (Final) under section 732(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether 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 Canada of sheet piling, provided for in subheading 7301.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, the Commission will make its final injury determination by March 28, 1991 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing

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

EFFECTIVE DATE: November 29, 1990.

FOR FURTHER INFORMATION CONTACT:

Elizabeth A. Haines (202-252-1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—The Department of Commerce published notice in the Federal Register on November 29, 1990 (55 FR 49551), that the suspension agreement concerning sheet piling from Canada (which was published in the Federal Register on September 15, 1982 (47 FR 40683)) has been cancelled because sales at less than fair value were found during the period of review. As a consequence, Commerce has resumed its antidumping investigation as if its affirmative preliminary determination were made on the date of the publication of its notice to resume the investigation.

The investigation was originally initiated by the Department of Commerce on November 24, 1981, pursuant to section 732(a) of the Tariff Act of 1930 (19 U.S.C. 1673a(a)). Accordingly, the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (47 FR 2947, Jan. 20, 1982).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will appear a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) 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 business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on January 28, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on February 12, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 4, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference

to be held at 9:30 a.m. on February 7, 1991, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is February 7, 1991. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due February 8, 1991.

Testimony at the public hearing is governing by section 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 19, 1991. If posthearing briefs contain business proprietary information, a nonbusiness proprietary version is due February 20, 1991. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 19, 1991.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business

proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than February 26, 1991. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs. A nonbusiness proprietary version of such additional comments is due February 27, 1991.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: December 14, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary

[FR Doc. 90-29697 Filed 12-18-90; 8:45 am]

BILLING CODE 7530-02-M

the U.S. International Trade Commission Building on April 12, 1991; the prehearing staff report will be placed in the nonpublic record on April 2, 1991; the deadline for filing prehearing briefs is April 12, 1991 (nonbusiness proprietary version due April 15, 1991); the hearing will be held at the U.S. International Trade Commission Building on April 17, 1991; the deadline for filing posthearing briefs is April 23, 1991 (nonbusiness proprietary version due April 24, 1991), and the deadline for parties to file additional written comments on business proprietary information is April 30, 1991 (nonbusiness proprietary version due May 1, 1991).

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

AUTHORITY: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

Issued: January 11, 1991.

By order of the Commission,

Kenneth R. Mason,
Secretary.

[FR Doc. 91-1128 Filed 16-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-52 (Final)]

Sheet Piling From Canada

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: January 10, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202-252-1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: On November 29, 1990, the Commission instituted the subject investigation and established a schedule for its conduct (55 FR 52106). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from February 12, 1991 to April 15, 1991. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than April 9, 1991; the prehearing conference will be held at

**INTERNATIONAL TRADE
COMMISSION**
**Change in Briefing Schedule for
Ongoing Title VII Investigations**
AGENCY: United States International
Trade Commission.

ACTION: Revised briefing schedule for
ongoing Title VII investigations.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT:
Lynn Featherstone (202) 252-1161,
Office of Investigations, U.S.
International Trade Commission, 500 E
Street SW., Washington, DC 20438.
Hearing-impaired individuals are

advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 252-1000.

SUPPLEMENTARY INFORMATION: On March 21, 1991, the Commission published final rules concerning the conduct of investigations under Title VII of the Tariff Act of 1930 (58 FR 11918). The new rules become effective April 22, 1991, and apply to all investigations active on that date. The new rules delete the provisions of former rule 207.7(g), which authorized parties to file supplemental written comments on business proprietary information received under an administrative protective order (APO) by no later than five calendar days after the deadline for posthearing briefs in a final investigation, or three calendar days after the deadline for postconference briefs in a preliminary investigation. In lieu of the separate APO submission, the Commission intends to extend the deadlines for posthearing/postconference briefs to better enable the incorporation of data received under APO in those documents. Accordingly, revised due dates for posthearing/postconference briefs in ongoing investigations are presented below; the supplemental APO submissions originally scheduled for these investigations will not be accepted.

Investigation	Original posthearing/ postconference brief deadline	Revised posthearing/ postconference brief deadline
731-TA-514 (Preliminary), Shop Towels from Bangladesh	April 23, 1991	April 24, 1991.
731-TA-52 (Final), Sheet Piling from Canada	April 23, 1991	April 25, 1991.
731-TA-458 and 459 (Final), Polystyrene Terephthalate Film, Sheet and Strip from Japan and the Republic of Korea	April 24, 1991	April 26, 1991.
731-TA-484 (Final), Seariders from the People's Republic of China	May 6, 1991	May 8, 1991.
731-TA-469 (Final), High-Information Content Flat Panel Displays and Subassemblies Thereof from Japan	July 17, 1991	July 19, 1991.
731-TA-472 (Final), Silicon Metal from the People's Republic of China	May 1, 1991	May 3, 1991.
731-TA-470 and 471 (Final), Silicon Metal from Argentina and Brazil	June 12, 1991	June 14, 1991.

As specified in rule 207.3(c), if posthearing/postconference briefs contain business proprietary information, a nonbusiness proprietary version must be filed no later than one business day later.

Issued: April 12, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-8333 Filed 4-18-91; 8:45 am]

BILLING CODE 7530-02-01

APPENDIX B

COMMERCE'S FEDERAL REGISTER NOTICE

section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(d)(a)) (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

On June 28, 1982, the Department published its preliminary determination in this investigation (47 FR 27882). On September 15, 1982, the Department entered into a suspension agreement with Acier Casteel, Inc. (Casteel), the exporter accounting for substantially all of the U.S. imports of sheet piling from Canada. Under the terms of that agreement, Casteel agreed to revise its prices to eliminate completely sales at less than fair value (LTFV) (Sheet Piling from Canada: Notice of Suspension of Investigation 47 FR 40683, September 15, 1982). Pursuant to that agreement, and at the request of L.B. Foster, an interested party, the Department conducted an administrative review of the suspension agreement in accordance with section 751 of the Act. On August 8, 1990, the Department published the preliminary results of that review (55 FR 32280). On November 29, 1990, the Department published its Notice of Final Results of Antidumping Administrative Review and Cancellation of Suspension Agreement (55 FR 49551) in which it was determined that Casteel had sold sheet piling in the United States at LTFV. Pursuant to section 734(i)(1)(b) of the Act, we cancelled the suspension agreement and resumed the investigation as if our preliminary determination had been made on that date. We also instructed Customs to resume the suspension of liquidation on Canadian sheet piling.

We determined that it was appropriate to seek current data as the basis for our final determination for the reasons described in the DOC position to Comment 3 in the "Interested Party Comments" section of this notice. Accordingly, on December 20, 1990, we issued to Casteel an antidumping questionnaire requesting information for the period June 1 through November 30, 1990. We received a questionnaire response from Casteel on January 28, 1991. On February 6, 1991, we issued a deficiency questionnaire. The response to that questionnaire was received on February 13, 1991. On February 4, 1991, L.B. Foster alleged that Casteel was engaged in selling in its home market at prices below the cost of production (COP). L.B. Foster supplemented this allegation on February 13, 1991. Based on this allegation, we issued a COP questionnaire to Casteel on February 13,

[A-122-007]

Final Determination of Sales at Less Than Fair Value: Sheet Piling From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that imports of sheet piling from Canada are being, or are likely to be, sold in the United States at less than fair value. We have notified the International Trade Commission (ITC) of our determination and have directed the Customs Service to continue to suspend liquidation of all entries of sheet piling from Canada, as described in the "Suspension of Liquidation" section of this notice. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: Jim Terpstra or Mary Jenkins, 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) 377-3965, or (202) 377-1756, respectively.

SUPPLEMENTAL INFORMATION:

Final Determination

We determine that imports of sheet piling from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided in

1991. On March 7, 1991, we received a response to the COP questionnaire.

From March 11 through 15, 1991, verification of the questionnaire responses was conducted in Canada and in the United States. On March 29, 1991, a disclosure conference was held during which we provided interested parties with an outline of the methodology we planned to use for the final determination. Casteel and L.B. Foster filed case and rebuttal briefs on April 3 and 5, 1991, respectively. A public hearing was held on April 5, 1991.

Scope of Investigation

For purposes of this investigation, the term "sheet piling" covers sheet piling of iron and steel currently classifiable under Harmonized Tariff Schedule (HTS) subheading 7301.10.00. This merchandise was previously classifiable under item numbers 609.9600 and 609.9800 of the Tariff Schedules of the United States Annotated (TSUSA). Sheet pilings are shapes having interlocking joints on both sides to permit being driven, side-by-side, to form a continuous wall. The HTS and TSUSA subheadings are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation for purposes of this final determination is June 1, 1990, through November 30, 1990.

Such or Similar Merchandise

We have determined that all sheet piling constituted one such or similar category. When an identical comparison product could not be found, we selected the most similar comparison product by considering the following factors: (1) Whether or not the merchandise was cornered or rounded; (2) the alpha code (e.g., C2) which reflects the shape of the sheet piling; and (3) the other physical characteristics of sheet piling identified in Casteel's product brochures (e.g., width, height, thickness and coating area). When comparing coated sheet piling in the United States with uncoated sheet piling in the home market (there were no sales of coated sheet piling in the home market), we made an adjustment for physical differences in merchandise for coating costs.

We did not include in our analysis fabricated sections, which were only sold in the home market, because we determined that they were less similar to the products sold in the United States than other products sold in Canada. Nor did we include home market sales of reinforced sections in our analysis because they were also determined to

be less similar to the products sold in the United States than other products sold in Canada. Finally, we did not include used sheet piling in our analysis. (See Comment 2 in the "Interested Party Comments" section of this notice.)

Fair Value Comparisons

To determine whether sales of sheet piling from Canada to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on both purchase price (PP) and exporter's sales price (ESP), in accordance with section 772(b) and (c) of the Act. We calculated USP as ESP for transactions where the merchandise was sold to unrelated purchasers after importation into the United States. We calculated USP as PP where the merchandise was sold to unrelated purchasers prior to importation into the United States.

We calculated USP for both PP and ESP transactions based on unpacked, delivered prices to customers in the United States. We made deductions, where appropriate, for foreign inland freight, U.S. brokerage and handling, U.S. import duties, and U.S. taxes, in accordance with section 772(d)(2) of the Act. We added to the U.S. selling price the amount of the Canadian federal and provincial sales taxes that would have been collected if the merchandise had not been exported.

For ESP transactions, we made additional deductions for indirect selling expenses, which included inventory carrying costs, in accordance with section 772(e) of the Act. (See Comment 5 in the "Interested Party Comments" section of this notice.) We also included in indirect selling expenses a portion of the sales manager's salary incurred in Canada which Casteel claimed should be allocated entirely to home market sales.

Foreign Market Value

We determined that sales in the home market were the most appropriate basis for FMV because the home market was viable, pursuant to section 773(a)(1) of the Act.

Because L.B. Foster alleged that Casteel was selling to the home market at prices below the cost of production (COP), we gather and verified data on Casteel's production costs. In order to determine if Casteel's home market sales were above the COP, we calculated the COP on the basis of

Casteel's reported materials, labor, other fabrication costs, and general expenses. We relied on the data reported by Casteel except as follows. We allocated general expenses over total tons of sheet piling sold. The financial statements for the second half of the period of investigation were not yet prepared and, as such, we were unable to allocate these expenses over cost of goods sold. In addition, we re-calculated interest expense to reflect the expenses of the Casteel Group. (See Comment 10 in the "Interested Party Comments" section of this notice.)

We found that less than 10 percent of Casteel's home market sales were at prices below the COP. Consequently, we did not disregard any below-cost sales because we determined that Casteel's below-cost sales were not made in substantial quantities over an extended period of time.

We calculated FMV based on unpacked, delivered or ex-works prices to unrelated customers in Canada. We made deductions, where appropriate, for inland freight.

When making comparisons with PP sales, we made adjustments where appropriate, for differences in circumstances of sale for credit costs, the bend test (quality control), and Canadian federal and provincial taxes, in accordance with 19 CFR 353.56. In addition, we allowed an adjustment for indirect selling expenses in Canada to offset commissions paid on U.S. sales, in accordance with 19 CFR 353.56(b), where appropriate. We re-calculated indirect selling expenses because Casteel was unable to substantiate at verification its basis for allocating certain expenses to the home market.

When making comparisons with ESP sales, we deducted home market credit expenses and Canadian federal and provincial taxes. We added the amount of Canadian federal and provincial taxes that we had calculated for the U.S. sale. We also deducted home market indirect selling expenses, which included inventory carrying costs, capped by the amount of the indirect selling expenses in the United States, in accordance with 19 CFR 353.56(b)(2). We re-calculated indirect selling expenses for the reason described above.

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures, including examination of relevant accounting records and original source documents of the respondent.

Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Interested Party Comments

All comments raised by interested parties in this investigation are discussed below.

Comment 1

L.B. Foster contends that the Department should compare identical merchandise sold in the United States and home market. If this is not possible, the Department must make comparisons of the most similar, non-identical merchandise, with appropriate adjustments for cost differences. L.B. Foster maintains that in this investigation, the sheet piling types vary in coating area, mass, height, thickness, width, section modulus and weight. L.B. Foster further maintains that the Department should adjust for these different physical characteristics by factoring in the numerous manufacturing cost differences in producing the sheet piling models.

Casteel argues that the Department should ignore differences in shape or profile when comparing sheet piling. Casteel points out that comparisons of sheet piling in both the original investigation and the final results of the administrative review of the suspension agreement were made without regard to the type of piling involved, and that it would be illogical to compare the prices of piling sales on the basis of profile type. Casteel indicates that throughout this proceeding, sheet piling has been sold by weight, and not by profile or type. Casteel also asserts that there are no cost differences in producing sheet piling of different types.

DOC Position

We agree with L.B. Foster that comparisons of identical merchandise should be made where possible. In the calculation outline provided to interested parties prior to this determination, we indicated that we planned to compare sheet piling without regard to the type of sheet piling. However, after reviewing the information on the record in light of comments submitted by interested parties, we determined that identical matches should be made in this case.

Casteel's product brochure (attached to the questionnaire response) clearly indicates that there are physical differences in sheet piling with different alpha codes and series. Furthermore, although we have found no quantifiable cost differences associated with these

product differences, Casteel has provided no evidence that it prices sheet piling without regard to alpha code or series. Casteel may, in fact, sell sheet piling on a per ton basis, but this does not mean, and Casteel has not demonstrated, that the price per ton is the same for all alpha codes and series.

We disagree with L.B. Foster that we should make an adjustment for costs associated with the physical differences between sheet piling of different alpha codes and series. At verification, we found that Casteel incurs the same per ton COP regardless of the alpha code or series of the sheet piling.

Comment 2

L.B. Foster contends that the Department should include Casteel's sales of used sheet piling in the United States in its fair value comparisons; specifically, L.B. Foster contends that the Department should compare used sheet piling sold in the United States to new sheet piling sold in Canada. L.B. Foster further contends that if the Department ignores sales of used merchandise, it would be discarding some of the lowest-priced sales which compete directly with L.B. Foster's sales in the United States. L.B. Foster further argues that Casteel's ability to manipulate what it categorizes as used versus new sheet piling (marketed in the exact same manner) is a strong incentive not to discard these sales.

Casteel asserts that the Department should omit these sales from the margin calculations since they represent a relatively small portion of total U.S. sales during the period of investigation (POI). Additionally, Casteel argues that if the Department were to include these U.S. sales of used sheet piling in its margin calculations, these sales should be compared with home market sales of used piling. Otherwise, a difference of merchandise adjustment should be made.

DOC Position

We disregarded used sales because we had sufficient sales of new sheet piling to form the basis of our fair value comparisons. Although Casteel stated that some of the differences between new and used sheet piling include differences in straightness, length, and fit of the interlocks, no company records were maintained to account for these differences. In reporting sales of used sheet piling, Casteel only reported the alpha code and series of the used sale and gave no indication of the types of physical differences described above.

Comment 3

Casteel asserts that the Department has improperly handled this investigation in three ways: (1) The Department should not have resumed the investigation because a Binational Panel may overturn the cancellation of the suspension agreement and render this proceeding a nullity; (2) the Department, in deciding to collect data for a current period, rushed the investigatory process and ignored the Act by disregarding the information used in the preliminary determination in 1982; and (3) the Department improperly conducted a COP investigation because no interested party made a timely COP allegation and because Casteel was not given an opportunity to comment on the allegation.

L.B. Foster contends that the Department should have resumed this investigation using information developed in the review which resulted in the cancellation of the suspension agreement (September 1, 1985, through August 31, 1986). L.B. Foster further maintains the Department is required to consider merchandise which is the subject of the investigation without regard to the affect of the suspension agreement on those imports and that the Department, by looking at current information, is not ignoring the effect of the suspension agreement on Casteel's pricing practices. L.B. Foster asserts that Casteel knew it was under scrutiny by the Department as a result of the ongoing administrative review of the suspension agreement and, consequently, moderated its pricing practices.

DOC Position

With respect to Casteel's first argument, in similar circumstances the U.S. Court of International Trade has ruled that the Department need not defer its conduct of one stage of an antidumping proceeding merely because litigation is pending with respect to an earlier stage of the same proceeding. *Tai Yang Metal Industrial Co., Ltd. v. United States*, 712 F. Supp. 973 (CIT 1989). There is nothing in section 516A(g) of the Act which warrants a different outcome here.

Section 734(i)(1)(B) of the Act provides that if the Department determines that an agreement has been violated, it shall resume the investigation as if its affirmative preliminary determination were made on the date notice of cancellation of the suspension agreement is published. Accordingly, we resumed the investigation on November 29, 1990, the date notice of the

cancellation of the suspension agreement was published. Because of the highly unusual nature of this proceeding, we were faced with the issue of determining which time period to examine for purposes of determining the existence of sales at less than fair value. We considered three alternatives: (1) The data on the record from the original 1982 proceeding; (2) the data on the record from the 1985-86 review; and (3) data from June through November 1990 (i.e., the month the investigation was resumed plus the preceding five months.) We determined that the information from the original investigation would not be reflective of Casteel's current pricing practices. Moreover, the dearth of discussion concerning this subject in the legislative history of the Act indicates that Congress, in designing a mechanism requiring the resumption of the investigation, apparently did not contemplate a situation where the Department would have to reach a final determination using eight-year old information. Similarly, we determined that the data from the 1985-86 administrative review would not be any more reflective of Casteel's current pricing than the 1982 data. Consequently, we determined that current information would be the most appropriate.

The ITC also decided to collect data from a current period since it is required to make a determination of present injury or threat thereof. According to the Act, a causal link between dumped imports and injury to a domestic injury must exist before antidumping duties may be assessed. Therefore, there must be contemporaneity between our LTFV determination and the ITC's injury determination.

Regarding the effect of the suspension agreement on the sales in question, L.B. Foster has provided no evidence that Casteel's pricing practices were less affected by the suspension agreement during the 1985-1986 review period than during the current period. Casteel had been providing price information to, and was subject to the scrutiny of, the Department during the entire period the suspension agreement was in effect.

Regarding the COP allegation, under normal circumstances the Department will not consider a COP allegation submitted more than 45 days prior to the preliminary determination, in accordance with 19 CFR 353.31(c). However, due to the highly unusual nature of this proceeding, this regulation can not apply. Therefore, the Department was required to construct a reasonable time limit to allow interested

parties to make COP allegations. Given our decision to use current information, we decided that one week from the filing of Casteel's questionnaire response was reasonable time limit. Casteel was free to submit comments on the COP allegation; it chose not to do so.

Regarding Casteel's contention that the COP allegation was not made by an interested party, the term interested party is defined in section 771(9)(C) of the Act to include "a manufacturer, producer, or wholesaler in the United States of a like product." L.B. Foster has submitted a certified statement that it is a wholesale distributor of the subject merchandise in the United States. Accordingly, L.B. Foster qualifies as an interested party.

Comment 4

L.B. Foster contends that the Department should make a difference in merchandise adjustment for those sales made by Casteel which incurred additional pairing costs.

Casteel contends that there is no evidence on the record indicating that pairing costs are substantial and further maintains that an adjustment is unnecessary. In the alternative, the Department should exclude these sales with pairing costs from the margin calculations.

DOC Position

We agree with Casteel. At verification we found no indication of any costs associated with pairing other than an insignificant number of labor minutes. Therefore, there is no basis for making a difference in merchandise adjustment.

Comment 5

L.B. Foster contends that the Department should include inventory carrying costs in its calculation of indirect selling expenses for ESP transactions. Casteel maintains that the Department should not deduct inventory carrying charges for ESP transactions. Casteel further argues that there is nothing on the record to indicate that inventory carrying costs are substantial or are different for the home market when compared with U.S. sales. Otherwise, Casteel points out that the Department should make the same cost adjustment to FMV.

DOC Position

At verification, we gathered inventory records for both home market and U.S. sales (see, cost verification report at exhibit COP-16 and exporter's sales price verification report at exhibit I-1). These records indicate that Casteel did hold sheet piling in inventory in both markets during the POL. Although

Casteel reported no such expenses, verification confirmed that such expenses were incurred. Consequently, we calculated inventory carrying costs for sales in both markets based on the data obtained at verification.

Comment 6

L.B. Foster argues that the record in this proceeding does not support an adjustment for a bend test. L.B. Foster further argues that if the Department does make an adjustment for the bend test, it should be treated as an indirect selling expense.

DOC Position

We disagree. At verification we determined that the bend test was a requirement specified by the customer for certain sales and that Casteel reported these expenses only on the sales on which they were incurred. Consequently, we are allowing Casteel's claim for a circumstance of sale adjustment for the bend test as a direct selling expense.

Comment 7

L.B. Foster alleges that the leasing of sheet piling by Casteel U.S.A. is equivalent to sales and should, therefore, be included in the Department's fair value comparisons.

DOC Position

We examined Casteel's leases at verification and determined that these transactions are not equivalent to sales within the meaning of section 1327 the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act). Section 1327 of the 1988 Act provides six factors which the Department should consider when determining whether a lease is "equivalent to a sale": (1) The terms of the lease; (2) normal commercial practice within the industry; (3) the circumstances of the specific transaction; (4) the integration of the product into the operations of the lessee or importer; (5) the likelihood of continuation or renewal of the lease over a significant period of time; and (6) other relevant factors, including the possibility of avoidance of dumping duties.

Our review of the terms of the lease revealed that: Casteel used a standard contract for all these transactions; all contracts ranged from one to three years; none of the contracts provided for successive lease extensions with the same lessee; none of the contracts contained an option-to-buy provision; and the only obligation borne by the lessee was an adjustment charge for any portion of sheet piling returned that was

unusable. Thus, when viewed together, these contract terms suggest transactions more analogous to short-term operating leases than sales.

In addition, our examination of Casteel's records demonstrates that leasing sheet piling does not, in effect, amount to a transfer of ownership. The language of the lease agreement clearly contemplates the return of the sheet piling to Casteel at the expiration of the rental term. Finally, there is no evidence that Casteel's leases are being used as a guise to avoid dumping duties. A review of Casteel's lease contracts demonstrates that Casteel's leases are an on-going line of business, not a technique developed to circumvent the antidumping law. Therefore, we determine that Casteel's leases should not be included in our fair value comparisons.

Comment 8

L.B. Foster argues that, since Casteel has not supported the U.S. freight charges it reported, the Department should use the highest freight charge reported as best information available on all ESP sales.

DOC Position

We agree. At verification, Casteel was unable to substantiate its reported freight cost. We have applied the highest inland freight charge incurred on any ESP sale to all ESP sales as best information available.

Comment 9

L.B. Foster urges the Department to reject Casteel's allocation of indirect selling expenses based on profit. This method, it argues, distorts the amount of indirect selling expenses attributable to U.S. sales. This is especially true if Casteel is dumping, since its U.S. sales of sheet piling will have less profit than other product lines.

DOC Position

We agree. Casteel has provided no justification for its profit-based allocation of indirect selling expenses. We have reallocated indirect selling expenses over total sales in accordance with our normal practice.

Comment 10

L.B. Foster argues that the Department should impute an interest expense for a related party loan and apply this expense to the COP. L.B. Foster further argues that the Department should disregard Casteel's claimed offset for interest income because it includes related party payments for investments

not related to the production or sale of sheet piling.

DOC Position

We have rejected Casteel's reported interest expense for the COP including its offset for interest income. Instead, we included in COP an allocated portion of the finance expense reported in the Casteel Group's financial statements. The Department considers financing expenses to be those costs incurred for the general operations of the corporation. Given the fungible nature of a corporation's invested capital resources, including debt, we allocated the Casteel Group's interest expense over the total operation of the consolidated corporation.

Comment 11

L.B. Foster argues that the Department should reject the fabrication cost reported by Casteel in favor of the amount Casteel charges unrelated parties for purposes of making adjustments for differences in merchandise. L.B. Foster asserts that Casteel has not demonstrated that these are arm's-length transactions.

DOC Position

Given that we are comparing sales of cornered sheet piling in each market, no adjustments for physical differences associated with cornering are necessary. Consequently, this issue is irrelevant to this final determination.

Comment 12

L.B. Foster argues that the Department should reject the overhead and general and administrative expenses for June and July because expenses incurred during these months were abnormally low.

Casteel argues that the two-week plant shutdown in June and the auditor's year-end adjustments in July are annual occurrences. Consequently, the annual average is an accurate reflection of Casteel's actual cost expense.

DOC Position

We agree with Casteel. At verification we determined that the adjustments to June and July expenses were normal, recurring events. Accordingly, we determined that annual averages would be reflective of Casteel's actual cost experience.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of sheet piling from Canada, as defined in the "Scope of Investigation" section of this notice,

that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service will require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of sheet piling in Canada exceeds the United States price as shown below.

The weighted average margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Casteel, Inc.	2.91
All others	2.91

ITC Notification

In accordance with section 735(c) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on sheet piling from Canada entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the margin shown above.

This determination is published pursuant to 19 CFR 353.20(a)(4) and section 735(d) of the Act.

Dated: April 15, 1991.

Eric I. Garfunkel,
Assistant Secretary for Import
Administration.

[FR Doc. 91-9498 Filed 4-22-91; 8:45 am]

BILLING CODE 3510-05-W

B-13

APPENDIX C

BETHLEHEM'S PRESS RELEASE

BETHLEHEM STEEL CORPORATION
Corporate Communications
Public Affairs Department
Bethlehem, PA 18016
(215) 694-3711



FOR IMMEDIATE RELEASE

BETHLEHEM, Pa., January 24 -- In order to facilitate further investigations, Bethlehem Steel Corporation and British Steel plc today announced the signing of a Letter of Intent to complete a feasibility study to form an equally owned joint venture in the United States to produce and market structural and rail products. This potential alliance would combine the resources of two of the world's major steelmakers to create an internationally competitive business able to meet fully the market requirements in the products concerned.

The discussions to date between the two companies have been based on restructuring and combining into a single entity certain of the assets of Bethlehem's existing structural and rail business units located in Bethlehem and Steelton, Pa., and making a significant capital investment.

At Steelton, the venture would include steelmaking, casting, heating, rolling, fabricating and shipping facilities for railroad rails, track work and rail accessories. At Bethlehem, the new venture would include all rolling and shipping facilities for structural shapes, piling and special sections. On completion of the capital investment, all steelmaking for the new venture would be located at Steelton, and steelmaking at Bethlehem would be discontinued.

Some of the facilities now located at Bethlehem and Steelton would not be part of the proposed joint venture but would continue in operation. They are the BethForge Division, the coke oven operations, the ingot mold foundry and the subsidiary railroad at Bethlehem and the pipe mill operations and the subsidiary railroad at Steelton.

Bethlehem and British Steel said that if the venture goes forward, its success would depend on the substantial modernization and restructuring program, the full support of the employees for the venture, and the employees' cooperation and willingness to adopt best work practices and compensation programs throughout its operations.

(more)

The companies emphasized that the employees' response to this challenge will be critical to a decision to proceed with the venture.

It is estimated that the restructuring and modernization program could result in the reduction of approximately 2,000 jobs, mainly at the Bethlehem operations. Most of the reduction would occur in the latter part of the restructuring period.

Employees who would be affected by the restructuring and modernization program would be eligible for all of their entitlements under Bethlehem's current labor agreement with the United Steelworkers and under Bethlehem's salaried employees' benefits program.

The company said that if the modernization and restructuring program is implemented, it would result in competitive operations and, thus, provide employment security for the longer term. Bethlehem said that it is aware of the effect job eliminations would have on many of its loyal and dedicated employees and on the plant communities. It said it would work closely with those employees and local communities to assist them in making the transition as the restructuring plans are implemented. The company would offer a comprehensive outplacement program with retraining opportunities to affected employees.

Following satisfactory completion of the feasibility study, the venture will be subject to the negotiation of definitive agreements, approval of such agreements by the boards of directors of both companies and approval by governmental and regulatory agencies.

Bethlehem Steel said that, principally in connection with the venture and the proposed modernization and restructuring plans, it expects to record a \$550 million restructuring charge for the fourth quarter of 1990 and, as a result, a substantial net loss for both the fourth quarter and the full year. The company said that it expects to report its results on January 30, and, excluding the effects of such charge, it would report income from operations for both the fourth quarter and the full year 1990.

APPENDIX D

IMPACT OF IMPORTS ON U.S. PRODUCERS' GROWTH,
INVESTMENT, ABILITY TO RAISE CAPITAL, AND EXISTING
DEVELOPMENT AND PRODUCTION EFFORTS

Response of U.S. producers to the following questions:

1. Since January 1, 1988, has your firm experienced any actual negative effects on its growth, investment, ability to raise capital, or existing development and production efforts as a result of imports of sheet piling from Canada?

* * * * *

2. Does your firm anticipate any negative impact of imports of sheet piling from the subject country?

* * * * *

3. Has the scale of capital investments undertaken been influenced by the presence of imports of the subject merchandise from the subject country?

* * * * *

APPENDIX E

F.O.B. PRICES OF U.S.- AND CANADIAN-PRODUCED PRODUCTS 1, 2, AND 3
SOLD TO END USERS

Table E-1

F.o.b. prices of U.S.-produced single sections and U.S.-produced and imported Canadian paired sections of sheet piling product 1 sold to end users, by quarters, January 1988-December 1990

Period of shipment	<u>Single sections</u>		<u>Paired sections</u>			
	<u>United States¹</u>		<u>United States¹</u>		<u>Canada²</u>	
	Price	Quantity	Price	Quantity	Price	Quantity
	*	*	*	*	*	*

¹ The U.S. prices shown are the f.o.b. mill prices of U.S. producers' largest sales to end users of the specified U.S.-produced product in each quarter. The quantities shown represent U.S. producers' total sales of the product to end users during each quarter.

² The prices of the imported product are the f.o.b. U.S. prices of the primary importer, Casteel, based on its largest sale to end users of the specified imported product in each quarter. The quantities shown represent Casteel's total sales of the specified products to all U.S. end users during each quarter.

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

Table E-2

F.o.b. prices of U.S.-produced single sections and U.S.-produced and imported Canadian paired sections of sheet piling product 2 sold to end users, by quarters, January 1988-December 1990

Period of shipment	<u>Single sections</u>		<u>Paired sections</u>			
	<u>United States¹</u>		<u>United States¹</u>		<u>Canada²</u>	
	Price	Quantity	Price	Quantity	Price	Quantity
	*	*	*	*	*	*

¹ The U.S. prices shown are the f.o.b. mill prices of U.S. producers' largest sales to end users of the specified U.S.-produced product in each quarter. The quantities shown represent U.S. producers' total sales of the product to end users during each quarter.

² The prices of the imported product are the f.o.b. U.S. prices of the primary importer, Casteel, based on its largest sale to end users of the specified imported product in each quarter. The quantities shown represent Casteel's total sales of the specified products to all U.S. end users during each quarter.

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

Table E-3

F.o.b. prices of U.S.-produced single sections and imported Canadian paired sections of sheet piling product 3 sold to end users, by quarters, January 1988-December 1990

Period of shipment	Single sections		Paired sections	
	United States ¹		Canada ²	
	Price	Quantity	Price	Quantity

* * * * *

¹ The U.S. prices shown are the f.o.b. mill prices of U.S. producers' largest sales to end users of the specified U.S.-produced product in each quarter. The quantities shown represent U.S. producers' total sales of the product to end users during each quarter.

² The prices of the imported product are the f.o.b. mill prices of the primary importer, Casteel, based on its largest sale to end users of the specified imported product in each quarter. The quantities shown represent Casteel's total sales of the specified products to all U.S. end users during each quarter.

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

Figure E-1

Net weighted-average f.o.b. prices for U.S.- and Canadian-produced sheet piling products 1 and 2, by quarters, January 1988-December 1990

* * * * *

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

Figure E-2

Net weighted-average f.o.b. prices for U.S.-and Canadian-produced sheet piling product 3, by quarters, January 1988-December 1990

* * * * *

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

