

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
ADP/W/349
9 November 1993
Special Distribution

(93-1891)

Committee on Anti-Dumping Practices

Original: English

RESPONSES BY THE UNITED STATES TO QUESTIONS
POSED BY MEXICO WITH REGARD TO THE IMPOSITION OF
ANTI-DUMPING DUTIES ON IMPORTS OF CERTAIN WELDED
STEEL PIPES AND TUBES FROM MEXICO¹

The following communication, received in two parts dated 11 and 25 October 1993, has been received from the Office of the United States Trade Representative.

Question 1

It is known that other countries not included in the investigation (Canada and Japan) had a larger share of the United States market than that of the countries under investigation. Was consideration given to the possibility that for the purposes of analysis of injury these countries, even on the basis of fair competition (without dumping), were responsible for the deterioration in the position of the petitioner firms?

Response

In making its material injury determination, the United States International Trade Commission ("Commission") considered the effects of unfairly traded imports in the context of a number of other factors and conditions of trade operating in the marketplace, including fairly traded imports. It found that the domestic industry was materially injured by reason of cumulated imports from the countries subject to investigation. For example, the Commission noted that the volume of cumulated subject imports of standard and structural pipes and tubes increased between 1989 and 1991 and that "the overall increase in import volume occurred in spite of a decline in apparent US consumption of standard and structural pipes and tubes between 1990 and 1991."² It also stated that "[a]s a result, the cumulated subject imports increased their share of apparent US consumption from 21.9 per cent in 1989 to 23.3 per cent in 1990, then to 25.1 per cent in 1991. At the same time, the market share of non-subject imports decreased from 16.8 per cent in 1989 to 11.1 per cent in 1991."³

¹Document ADP/W/335

²Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, Inv. Nos. 731-TA-532-537 (Final), USITC Pub. 2564 (October 1992) ("Determination") at 34-35.

³Id. at 34.

Question 2

Considering the petitioners' arguments that the recession in the United States construction industry is one of the main causes of the alleged injury, how could the International Trade Commission prove the causal relationship with dumping? How was it able to evaluate the specific rôle of the alleged dumping in the determination of injury?

Response

The Anti-Dumping Code provides that a determination of injury shall be based on an examination of the volume of "dumped imports", their effect on prices of the like product, and the consequent impact of those imports on domestic producers.⁴ The Code directs an examination of the specific rôle of the dumped imports in deciding whether there is material injury to a domestic industry.⁵ The Code specifies that the examination of the impact on the industry concerned is to include an evaluation of all "relevant economic factors".⁶ The Commission conducted such an evaluation.

In its opinion, the Commission stated that it was evaluating the condition of the domestic industry in the "context of the business cycle and conditions of competition that are distinctive of the affected industry".⁷ The Commission explicitly took into account the fact that "[t]he markets for standard and structural pipes and tubes, mechanical tubing, and finished conduit all experienced declines in consumption during the period of investigation", and considered the performance of these industries, including shifts in market share, against the backdrop of declining demand.⁸

With respect to the effect of a possible recession in the United States construction industry on the financial performance of the domestic industry, the Commission found that the volume of cumulated subject imports increased even during periods in which apparent U.S. consumption of the like product declined.⁹

The Code also provides that the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country, and whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred, to a significant degree.¹⁰ Additionally, with respect to the impact

⁴Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("Anti-Dumping Code"), Article 3:1.

⁵Anti-Dumping Code, Article 3:4, including footnote 4.

⁶Anti-Dumping Code, Article 3:3.

⁷19 U.S.C., Section 1677(7)(C)(iii), cited in Determination at 17.

⁸Determination at 18.

⁹Determination at 34. In addition, the Commission specifically noted in its preliminary determination that the financial performance of the domestic industry deteriorated throughout the period of investigation even through periods in which US producers' production and US shipments increased. Preliminary Determination at 11-13.

¹⁰Anti-Dumping Code, Article 3:2.

of the subject imports, the Code provides that the investigating authorities shall evaluate all relevant economic factors and indices having a bearing on the state of the industry.¹¹

In its analysis the Commission considered the volume of dumped imports that competed with each other and the domestic like product, and the consequent effect of such imports, on a cumulative basis.¹² It found that the volume of cumulated subject imports increased over the period of investigation.¹³ In analyzing the price effects of the subject imports the Commission found that a high percentage of the subject imports and the domestically-produced standard and structural pipes and tubes conform to the relevant ASTM standards and are generally substitutable. It also found that price was the most important factor in making purchasing decisions regarding standard and structural pipes and tubes. The Commission further found cumulated imports of standard and structural pipes and tubes undersold the domestic product in 133 of 183 available price comparisons and that petitioners had cited a number of instances of alleged underselling by the subject imports resulting in lost sales or lost revenues. Moreover, the Commission found that unit prices for the US products fell throughout the period of investigation and that virtually all import prices also declined. The Commission stated that "[f]alling prices in the US market contributed to the domestic industry's worsening financial performance but did not prevent domestic producers from losing additional market share to dumped imports."¹⁴

Chairman Newquist, Commissioner Rohr and Commissioner Nuzum determined that, based on the large and increasing volume and market share of subject imports, a strong pattern of underselling by the subject imports, and the domestic industry's deteriorating performance as reflected, *inter alia*, in its financial and employment data, the domestic industry producing standard and structural pipes and tubes was materially injured by cumulated dumped imports.¹⁵

Vice Chairman Watson, Commissioner Brunsdale and Commissioner Crawford found that, given the relatively close substitutability of the subject imports and the domestic like product, if imports had been sold at fair value the domestic producers would have increased their market share significantly. They also found that it was likely that while prices would have been slightly higher if imports had been fairly traded, thereby giving consideration to the degree of dumping, the quantity of standard and structural pipe and tube demanded would not have declined and they therefore concluded that the lower level of domestic sales and lower prices due to the dumped imports demonstrated material injury to the domestic industry.¹⁶

¹¹Anti-Dumping Code, Article 3:3

¹²The Commission considered whether imports from several of the subject countries, including Mexico, were negligible and therefore should not be cumulated with other subject imports. It concluded that imports from Mexico were not negligible, but found that subject imports from Romania were negligible. The Commission thus separately analyzed possible material injury to the domestic industry by reason of dumped imports from Romania.

¹³Determination at 34.

¹⁴Determination at 36. The domestic industry's worsening financial performance was reflected in its decreases in net sales and operating income over the period of investigation. Determination at 20.

¹⁵Determination at 36-37.

¹⁶Determination at 37.

Question 3

As a result of the determination to impose a countervailing duty on standard pipes, HYLSA (a Mexican firm) stopped exporting them and began to export other products, such as line pipe.

On 24 March the United States customs in Laredo, Texas, stated that all Mexican galvanized pipe should be considered standard pipe and therefore subject to the countervailing duty of 32.26 per cent.

Line pipe is a different product from standard pipe, both owing to its steel composition and because of the different tests to which it is subjected. It is also known as API, because it has to be certified by the American Petroleum Institute in order to be able to make it.

In the anti-dumping investigation on standard pipe, line pipe was explicitly excluded from the investigation. Furthermore, the former enters the United States under tariff headings 7306.30**.**, while the latter enters under headings 7306.10**.**. What is the legal basis for broadening the coverage of products subject to the anti-dumping measure? Did the domestic producer make a request to this effect, or was it an ex officio action? Is this a measure taken independently by the United States Customs?

Response

HYLSA is correct in its assertion that line pipe is excluded from the anti-dumping duty order on circular welded non-alloy steel pipe and tube from Mexico. However, the issue is whether the pipe being entered by HYLSA as line pipe is properly classified as line pipe for US Customs purposes.

The reason US Customs reclassified the pipe is that, while perhaps meeting API line pipe specifications, the pipe was also galvanized. It is the position of US Customs that galvanized pipe is not appropriate for line pipe applications and, therefore, was more appropriately classified in categories other than line pipe. To the extent that HYLSA has questions or concerns about US Customs' classification of such merchandise, formal procedures are available under US Customs law and regulations for contesting such classification.

However, as the Government of Mexico and HYLSA are aware, the Department of Commerce is presently conducting an enquiry to clarify the scope of this order. The purpose of this enquiry is to determine whether pipe certified and entered as line pipe but meeting the physical characteristics of standard pipe and used in a standard pipe application is properly included within the scope of the order. All interested parties, including the Government of Mexico, have had an opportunity to comment on this issue and to meet with Department officials. The Department expects to reach a preliminary determination on this issue as soon as possible. However, we wish to make clear that any suspension of liquidation of Mexican galvanized pipe pursuant to customs classification questions is in no way related to the ongoing scope investigation.

Question 4

With regard to the existence of quantitative restrictions during the investigation period (VER), as in the case of steel wire, we continue to be concerned that, even though dumping may have been found to exist, it cannot definitely have been the cause of the injury or threat of injury to the domestic industry which has restrictions of this type, precisely because the importer controls the trade volumes. How does the United States delegation explain this circumstance? Is there a basis in law authorizing it to act as it did?

Response

In determining whether the domestic industry is materially injured by reason of the imports under investigation, the Code provides that the investigating authorities are to consider not only the volume of dumped imports, but also their effect on prices in the domestic market for like products, and the consequent impact of dumped imports on domestic producers of like products.¹⁷ The fact that dumped imports are subject to quota restraints does not preclude a finding that there is material injury to the domestic industry by reason of the dumped imports. Quota limitations concern only the volume of the subject imports; as well, the Code requires an examination of the effects of the imports on prices for like products, and the consequent impact of dumped imports on domestic producers.¹⁸ Moreover, the Voluntary Restraint Agreements (VRAs) are government-to-government agreements and neither the domestic industry nor the importers control the volume of imports.

The volume of imports allowed under the VRAs are not designated to be at a level that is *per se* non-injurious to the domestic industry. Indeed, the VRAs explicitly preserved the rights of US producers to bring anti-dumping actions. The VRAs would not have included this language if the import levels allowed under the VRAs precluded a finding of material injury by reason of dumped imports. Because there is no necessary correlation between the level of imports allowed under a VRA and the level of imports, which, in conjunction with other facts, may support an affirmative determination of material injury to a particular domestic industry by reason of dumped imports, the VRAs are properly a condition of competition relevant to the Commission's analysis of material injury and threat, but are not dispositive of the issue. This has been the United States' consistent practice.¹⁹

¹⁷Anti-Dumping Code, Article 3:1.

¹⁸Anti-Dumping Code, Article 3:1.

¹⁹See e.g., Sweaters Wholly or in Chief Weight of Manmade Fibres from Hong Kong, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-448-450, (Preliminary), USITC Pub. 2234 (November 1989) at 24, n. 74; Certain Steel Wire Rope from Argentina, Chile, India, Israel, Mexico, the People's Republic of China, Taiwan and Thailand, Inv. Nos. 701-TA-305 & 306 and 731-TA-476 through 482 (Preliminary), USITC Pub. 2343 (December 1990).