PUBLIC VERSION

DOC Investigation Nos. A-122-864, A-201-850, A-570-102, C-122-865, C-201-851, C-570-103
USITC Investigation Nos. 701-TA-___ - ___ and 731-TA-___, ___
Total Pages: 176
Investigation
AD/CVD Operations
Petitioner's Business Proprietary Information Removed from Pages 2, 3, 12, 13, 25-27, 29-34, 37, 38, 42, Exhibit List, and Exhibits I-2, I-3, I-4, I-10, I-14, I-15, I-16, and I-19 of this Volume
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BEFORE THE
INTERNATIONAL TRADE ADMINISTRATION OF THE
U.S. DEPARTMENT OF COMMERCE
AND THE
U.S. INTERNATIONAL TRADE COMMISSION

PETITIONS FOR THE IMPOSITION OF
ANTIDUMPING AND COUNTERVAILING DUTIES PURSUANT TO
SECTIONS 701 AND 731 OF THE TARIFF ACT OF 1930, AS AMENDED

VOLUME I:
COMMON ISSUES AND INJURY PETITION

IN THE MATTER OF:

CERTAIN FABRICATED STRUCTURAL STEEL FROM
CANADA, MEXICO, AND THE PEOPLE'S REPUBLIC OF CHINA

PETITIONER:

AMERICAN INSTITUTE OF STEEL CONSTRUCTION, LLC

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February 4, 2019

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These Petitions are presented on behalf of the American Institute of Steel Construction, LLC ("AISC" or "Petitioner"). Petitioner alleges that certain fabricated structural steel ("FSS") imported from Canada, Mexico, and the People's Republic of China ("China") is being or is likely to be sold at less than normal value within the meaning of Section 731 of the Tariff Act of 1930, *as amended* ("the Act"), 19 U.S.C. § 1673. Petitioner further alleges that FSS imported from Canada, Mexico, and China is subsidized within the meaning of Section 701 of the Act, 19 U.S.C. § 1671. Petitioner also alleges that these unfairly traded imports have materially injured the U.S. domestic industry producing FSS and threaten to cause further material injury if remedial action is not taken. These Petitions contain information reasonably available to Petitioner in support of these allegations.

Separate volumes regarding the allegations of dumping by producers in each subject country, as well as countervailable subsidies provided to producers in these countries, are being filed simultaneously at both the U.S. Department of Commerce (the "Department") and the U. S. International Trade Commission (the "Commission"). Petitioner requests that antidumping ("AD") and countervailing duties ("CVD") be imposed to offset the dumping margins and subsidy rates detailed in the specific AD and CVD volumes.

I. COMMON ISSUES

This section contains information required in AD and CVD petitions by 19 C.F.R. §§ 351.202(b)(1) to 351.202(b)(9) and 19 C.F.R. § 207.11.

A. Contact Information for the Petitioner (19 C.F.R. § 351.202(b)(1))

Petitioner was established in 1921 to serve the structural steel industry in the United States and is the primary trade association for domestic FSS producers. Petitioner is a domestic

interested party within the meaning of 19 U.S.C. § 1677(9)(E) and 19 C.F.R. § 351.102(b)(17). Petitioner's contact information is provided in **Exhibit I-1**.

B. Identity of the Industry on Whose Behalf the Petitions are Filed (19 C.F.R. § 207.11(b)(2)(ii); 19 C.F.R. § 351.202(b)(2))

These Petitions are filed on behalf of the U.S. industry that produces FSS. **Exhibit I-2** contains contact information for known U.S. producers of FSS. According to the best information available to Petitioner, **Exhibit I-2** identifies all known producers of the domestic like product in the United States.[1]

C. Information Relating to the Degree of Industry Support for the Petition (19 C.F.R. § 351.202(b)(3))

According to 19 U.S.C. §§ 1671a(c)(4)(A) and 1673a(c)(4)(A), a petition is filed by or on behalf of the domestic industry if: (1) domestic producers who support the petition account for at least 25 percent of the total production of the domestic like product, and (2) domestic producers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Petitioner meets both requirements with respect to each Petition at issue here.

There are no publicly available sources regarding U.S. production of FSS. However, Petitioner has estimated U.S. production based on the quantity of shipments of steel mill products, the primary input into FSS. Specifically, as detailed in **Exhibit I-3**, Petitioner based its calculation on U.S. shipments of parallel flanges [narrative

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[1] **Exhibit I-2** contains [narrative

]. Petitioner then made various adjustments to account for parallel flanges that are not fabricated and/or are not used for the production of FSS and to account for other steel mill products that are used in the production of FSS. Petitioner believes that this methodology constitutes the best information reasonably available to Petitioner to identify the total quantity of production of the domestic like product. Based on this methodology, Petitioner estimates that, in 2017, the total quantity of U.S. shipments of the domestic like product was 3,418,290 short tons.

Petitioner's estimate of its share of total U.S. shipments of the domestic like product is shown below in **Table 1**. This represents the quantity of U.S. shipments for full members of AISC. As explained in **Exhibit I-4**, these data were obtained from [narrative].

TABLE 1
Petitioner's Share Of Domestic Production In 2017 (short tons)

Domestic Production	3,418,290
Supporters' Production	[tons]
Supporters' Share	[%]

As shown in the table above, Petitioner represents U.S. producers accounting for approximately [ ] percent of domestic production of the domestic like product in 2017. Petitioner therefore satisfies the requirement that they account for over 50 percent of total domestic production.

].

D. Previous Requests for Import Relief for the Merchandise (19 C.F.R. § 351.202(b)(4))

1. AD/CVD Litigation

In January 1988, a petition was filed on behalf of AISC alleging that an industry in the United States was materially injured by dumped imports of fabricated structural steel from Canada.[2] The Commission made a preliminary finding that there was no reasonable indication of material injury or threat thereof and thus no order was issued.[3] Petitioner is not aware of any other requests for antidumping and/or countervailing duties by the domestic industry with respect to FSS.

2. Other Forms of Relief

Pursuant to Section 301 of the Trade Act of 1974, on August 16, 2018, the U.S. Trade Representative determined that it was appropriate to impose an *ad valorem* duty of 25 percent on various products from China, including some fabricated structural steel.[4] Specifically, the 25 percent duty applies to the following tariff lines in the U.S. Harmonized Tariff Schedule ("HTSUS") under which FSS may enter the United States: 7308.90.30, 7308.90.60, and 7308.90.95.[5] These tariffs became effective as of August 23, 2018.[6]

In addition, certain HTSUS subcategories under which FSS may enter the United States are subject to *ad valorem* duties of 25 percent pursuant to Section 232 of the Trade Expansion

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2 *See Certain Fabricated Structural Steel from Canada*, Inv. No. 731-TA-387, USITC Pub. 2062 (Feb. 1988) (Prelim.) at 1, excerpts attached as **Exhibit I-5**.

3 *Id.* at 1.

4 *See Notice of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 40,823 (Dep't Commerce Aug. 16, 2018).

5 *Id.* at 40,826.

6 *Id.* at 40,823.

Act of 1962. Specifically, the following HTSUS subcategories under which FSS may enter the United States are subject to duties under Section 232: 7216.99.0010, 7216.99.0090, and 7228.70.6000. These duties became effective as of March 23, 2018.[7] AISC participated in the process through which interested parties could provide comments regarding the products to be subject to duties.

E. Scope of the Investigation and a Detailed Description of the Subject Merchandise (19 C.F.R. § 351.202(b)(5))

1. Scope of Investigation

The physical characteristics of the covered products, which defines the scope, are as follows:[8]

> The merchandise covered by this investigation includes carbon and alloy (including stainless) steel products such as angles, columns, beams, girders, plates, flange shapes (including manufactured structural shapes utilizing welded plates as a substitute for rolled wide flange sections), channels, hollow structural section (HSS) shapes, base plates, plate-work components, and other steel products that have been fabricated for assembly or installation into a structure (fabricated structural steel). Fabrication includes, but is not limited to, cutting, drilling, welding, joining, bolting, bending, punching, pressure fitting, molding, adhesion, and other processes.
>
> Fabricated structural steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is two percent or less by weight.
>
> Fabricated structural steel is covered by the scope of the investigation regardless of whether it is painted, varnished, or coated with plastics or other metallic or non-metallic substances. Fabricated structural steel may be either assembled; disassembled, but containing characteristics or items, such as holes, fasteners, nuts, bolts, rivets, screws, tongue and grooves, hinges, or joints, so that the product(s) may be joined, attached, or assembled to one or more additional

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7 Proclamation 9705, *Adjusting Imports of Steel into the United* States, 83 Fed. Reg. 11,625 (Mar. 15, 2018).

8 The scope of this investigation includes certain exclusions that reference certain standards and specifications. These exclusions are based on the identified specifications and standards as they exist as of the filing of this Petition.

product(s); or partially assembled, such as into modules, modularized construction units, or sub-assemblies of fabricated structural steel.

Products under investigation include carbon and alloy steel products that have been fabricated for erection or assembly into structures, including but not limited to, buildings (commercial, office, institutional, and multi-family residential); industrial and utility projects; parking decks; arenas and convention centers; medical facilities; and ports, transportation and infrastructure facilities.

Subject merchandise includes fabricated structural steel that has been assembled or further processed in the subject country or a third country, including but not limited to painting, varnishing, trimming, cutting, drilling, welding, joining, bolting, punching, bending, beveling, riveting, galvanizing, coating, and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the fabricated structural steel.

Fabricated structural steel may be attached, joined, or assembled with non-steel components at the time of importation. The inclusion, attachment, joining, or assembly of non-steel components with fabricated structural steel does not remove the fabricated structural steel from the scope.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded. Specifically excluded from the scope of this investigation is certain fabricated steel concrete reinforcing bar ("rebar"). Fabricated rebar is excluded from the scope only if (i) it is a unitary piece of fabricated rebar, not joined, welded, or otherwise connected with any other steel product or part; or (ii) it is joined, welded, or otherwise connected only to other rebar.

Also excluded from this scope is fabricated structural steel used for bridges and bridge sections. For the purpose of this scope, fabricated structural steel used for bridges and bridge sections is defined as fabricated structural steel that is used in bridges and bridge sections and that conforms to American Association of State and Highway and Transportation Officials ("AASHTO") bridge construction requirements or any state or local derivatives of the AASHTO bridge construction requirements.

Also excluded from this scope are pre-engineered metal building systems. For the purposes of this scope, pre-engineered metal building systems are defined as complete metal buildings that integrate steel framing, roofing and walls to form one, pre-engineered building system and are designed and manufactured to Metal Building Manufacturers Association guide specifications. Pre-engineered metal building systems are typically limited in height to no more than 60 feet or two stories.

Also excluded from this scope are steel roof and floor decking systems designed and manufactured to Steel Deck Institute standards.

Also excluded from the scope are open web steel bar joists and joist girders that are designed and manufactured to Steel Joist Institute specifications.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7308.90.9590, 7308.90.3000, and 7308.90.6000.

The products subject to the investigation may also enter under the following HTSUS subheadings: 7216.91.0010, 7216.91.0090, 7216.99.0010, 7216.99.0090, 7228.70.6000, 7301.10.0000, 7301.20.1000, 7301.20.5000, 7308.40.0000, 7308.90.9530, and 9406.90.0030.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

2. Technical Characteristics and Uses

As FSS is typically custom-manufactured for a specific project, FSS produced for one project will differ from FSS produced for another project. Nonetheless, all FSS consists of steel mill products, such as angles, columns, beams, plates, hollow structural shapes, channels, and other steel products, that have been fabricated into articles suitable for erection or assembly into a variety of structures.[9] Typical fabrication processes include, cutting, drilling, welding, joining, bolting, bending, punching, pressure fitting, molding, adhesion, and other finishing processes. Additionally, all FSS is intended to provide structural support and ensures that the structure can bear certain loads or weight. FSS is used in constructing a variety of structures, including buildings (commercial, office, institutional, and multi-family residential), industrial and utility projects, parking decks, arenas and convention centers, medical facilities, and ports, transportation and infrastructure facilities.

[9] Petitioner does not intend to include in the scope steel mill products that are punched, drilled, or undergo similar processes solely for transportation, handling, or other non-structural purposes.

3. Production Methodology

The production of FSS is typically done on a project-specific basis following a bidding process through which a bid is awarded to a FSS producer or group of producers. During this process, design and architectural plans are developed and agreed upon between the FSS producer and the contracting party. Once plans are finalized, the FSS producer will commence actual production work to fulfill the terms of the project. This entails the procurement of steel mill inputs, including structural steel such as wide flange beams, steel angles, steel channels, cut-to-length steel plate, hollow structural shapes, support materials (including steel nuts and bolts, steel studs, steel rivets, galvanized steel strand, and steel rope), welding process materials (including cutting gases, welding wire, welding gases, and welding fluxes), and other required material inputs (including galvanizing materials, protective paints and lacquers, insulating and thermal breaks, and lubricating oils).

Based upon the architectural blueprints and drawings, highly skilled welders, crane operators, and machine operators will then fabricate the various inputs and convert them to FSS through processes such as cutting operations, welding operations, drilling and punching operations, bending operations, painting and galvanizing operations, and partial assembly operations to the extent practicable at the FSS producer's production facilities. Some of the work is performed through the assistance of mechanized and automated machinery while other steps must be partially or wholly performed by hand. Once each component of FSS has been manufactured, it is prepared for shipment to a marshalling yard or to the job erection site itself or stored until shipment.

4. Tariff Classification

FSS is currently classified under the following HTSUS subheadings: 7308.90.9590, 7308.90.3000, and 7308.90.6000. FSS may also enter under the following HTSUS subheadings: 7216.91.0010, 7216.91.0090, 7216.99.0010, 7216.99.0090, 7228.70.6000, 7301.10.0000, 7301.20.1000, 7301.20.5000, 7308.40.0000, 7308.90.9530, and 9406.90.0030.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive. Excerpts from the current HTSUS are attached as **Exhibit I-6**. The most favored nation duty rate for imports under these HTSUS subheadings is free for all HTSUS subheadings except 9406.90.0030, which has an *ad valorem* rate of 2.9 percent. The tariff numbers are provided for the convenience of the U.S. Government and do not define the scope of the Petitions.

F. Names of the Subject Countries and the Name of Any Intermediate Country Through Which the Merchandise Is Transshipped (19 C.F.R. § 351.202(b)(6))

FSS covered by these Petitions is manufactured in and exported to the United States from Canada, China, and Mexico. Petitioner does not have any evidence indicating that the subject merchandise is produced in a country other than that from which it is exported.

G. Names and Addresses of Each Person Believed to Sell the Merchandise at Less than Normal Value and the Proportion of Total Exports to the United States (19 C.F.R. § 351.202(b)(7)(i)(A))

The names and addresses of the entities believed by Petitioners to be producing and exporting FSS subject to these Petitions are provided in **Exhibit I-7**. In compiling this exhibit, Petitioner relied primarily upon import data and information regarding producers of FSS that have received certifications from AISC, as well as upon the web sites of individual producers.

Information reasonably available to Petitioner does not allow it to identify the proportion of total exports to the United States accounted for during the most recent 12-month period by the producers listed in this exhibit. Petitioner believes, however, that the companies listed in **Exhibit I-7** account for the vast majority of subject exports.

H. All Factual Information Related to the Calculation of Export Price, the Constructed Export Price of the Subject Merchandise, and the Normal Value of the Foreign Like Product for Market Economy Countries (19 C.F.R. § 351.202(b)(7)(i)(B))

Volumes II and III of these Petitions contain the necessary information concerning the calculation of normal value of the foreign like product and the export price for merchandise produced and exported from the subject countries that are market economies.

I. Factual Information Related to the Calculation of Normal Value of the Foreign Like Product in Non-Market Economy Countries (19 C.F.R. § 351.202(b)(7)(i)(C))

China is the only non-market economy covered by these investigations. Volume IV of these Petitions contains information necessary to substantiate less-then-normal-value allegations and factual information relevant to China.

J. The Names and Addresses of Each Person Believed to Benefit from a Countervailable Subsidy Who Exports the Subject Merchandise to the United States and the Proportion of Total Export to the United States (19 C.F.R. § 351.202(b)(7)(ii)(A))

Volumes V, VI, and VII of these Petitions contain the necessary information regarding the countervailable subsidies from which subject producers benefit. The names and addresses of the entities believed by Petitioner to be benefitting from a countervailable subsidy and who have exported FSS subject to these Petitions are provided in **Exhibit I-7**. Information reasonably available to Petitioner does not allow it to identify the proportion of total exports to the United States accounted for during the most recent 12-month period by the producers listed in this

exhibit. Petitioner believes, however, that the companies listed in **Exhibit I-7** account for the vast majority of subject exports.

K. The Alleged Countervailable Subsidy and Factual Information Relevant to the Alleged Countervailable Subsidy (19 C.F.R. § 351.202(b)(7)(ii)(B))

Volumes V, VI, and VII of these Petitions contain information concerning the alleged countervailable subsidies in the subject countries, as well as factual information relevant to the laws, regulations, and decrees under which the subsidies were bestowed, the manner in which the subsidies were granted, and Petitioner's estimation—to the extent practicable—of the value of the subsidies to the subject producers and exporters of FSS.

L. The Volume and Value of the Merchandise Imported During the Most Recent Two-Year Period (19 C.F.R. § 351.202(b)(8))

Subject imports totaled 928,997 short tons in 2016 and 949,578 short tons in 2017. Imports totaled 810,081 short tons from January to October 2017 and 898,927 short tons from January to October 2018.[10] By value, imports from the subject countries into the United States was $1,856,642,982 in 2016 and $1,906,548,603 in 2017.[11] The value of imports in the period of January to October 2017 was $1,605,481,975 and $1,923,802,787 in January through October of

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[10] *See* Official U.S. Import Statistics, attached at **Exhibit I-8**. Subject imports have been measured based on data obtained from the U.S. International Trade Commission's Dataweb system for the following group of three HTSUS categories: 7308.90.3000, 7308.90.6000, and 7308.90.9590. The domestic industry believes that these HTSUS categories account for the vast majority of the FSS entering the United States. Additionally, these HTSUS categories are limited to FSS. The domestic industry recognizes that FSS may enter the United States under additional HTSUS categories; however, these categories also capture additional, non-FSS materials. Import data for the broader group of HTSUS categories has also been provided in **Exhibit I-8**. As can be seen, the import trends for the broader group of HTSUS categories is consistent with that of the narrower group. In addition, import data have been converted from kilograms to short tons.

[11] *See id.*

2018.[12] These are the best data available to Petitioner. As discussed below, subject imports also increased on a relative basis from 2015 to 2017.

M. Contact Information for Each Entity the Petitioner Believes Imports or Is Likely to Import the Subject Merchandise (19 C.F.R. § 207.11(b)(2)(iii); 19 C.F.R. § 351.202(b)(9))

Contact information for known importers of FSS from the subject countries is listed in **Exhibit I-9**.[13] However, Petitioner believes that there may be additional importers for FSS from the subject countries that could not be readily identified by Petitioner. Therefore, Petitioner respectfully requests that the Department obtain this information from U.S. Customs and Border Protection.

II. MATERIAL INJURY, CAUSATION, AND THREAT

A. Introduction

A surge of dumped and subsidized FSS imports from Canada, China, and Mexico has materially injured the domestic industry and threatens the U.S. industry with further injury. Between 2015 and 2017 ("the POI"),[14] the volume of subject imports grew significantly, increasing by more than 20 percent, greatly outpacing the modest growth in apparent domestic consumption. As a result, subject producers increased their already significant share of the market at the direct expense of the domestic industry. This flood of dumped and subsidized FSS

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12 *Id.*

13 In particular, Petitioner was able to obtain shipment information with respect to [Narrative].

14 Petitioner intended to submit this petition on December 31, 2018, and the period examined in this volume, as well as in the volumes of this petition examining the level of dumping by and subsidization of FSS from Canada, China, and Mexico, is based on that filing date. However, due to extraordinary circumstances relating to the closure of the Federal Government on December 21, Petitioner was unable to file this petition on December 31. Petitioner is filing this petition promptly following the reopening of the Federal Government.

imports from Canada, China, and Mexico continued throughout 2018, reaching almost 900,000 short tons between January and October and continuing to maintain significant market share.

During this time, subject imports also had significant negative price effects on the U.S. market. Subject producers were able to expand their presence in the U.S. market by offering unfair prices well below those of domestic producers, forcing U.S. prices down. This has placed domestic producers in the untenable position of maintaining sales for little to no profit or losing sales altogether. The domestic industry has reported numerous instances in which the prices of subject imports were well below U.S. producers' costs, resulting in [value] of lost sales and revenue for the domestic industry during the POI.

The negative impact that the large volume of unfairly-traded subject imports had on U.S. producers is evident from the domestic industry's plummeting financial performance during the POI. Virtually all of the domestic industry's trade and financial indicia declined during the POI, as subject imports surged into the market, undersold domestic producers by substantial margins, and depressed and suppressed U.S. prices. The causal link between subject imports and the domestic industry's deteriorating performance is corroborated by the [value] of sales and revenue lost due to low-priced subject imports. With a loss in sales and market share and downward pressure on pricing, the available data show that the domestic industry's operating income fell by [ ] percent and net income fell by [ ] percent between 2015 and 2017.[15] The deterioration of the domestic industry's performance continued in the first half of 2018, with U.S.

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[15] The Domestic Industry's Trade and Financial Data, attached as **Exhibit I-10**, are based on data provided by [narrative]. These [narrative].

producers' net income margin remaining below the already low levels experienced in 2015 and 2016, and sales and production on track to remain far below 2015 and 2016 levels.[16] Thus, the domestic industry has suffered, and continues to suffer, material injury by reason of subject imports.

Subject imports also threaten the domestic industry with further material injury. Significant volumes of low-priced subject imports adversely affected the domestic industry during the POI, resulting in domestic producers operating at unsustainably low margins and leaving the industry highly vulnerable to additional injury. The significant increase in subject imports during the POI demonstrates subject producers' ability to enter the U.S. market quickly and in large quantities. Additionally, significant underselling by subject imports and the resulting loss of massive volumes of sales by U.S. producers demonstrate the negative price effects of subject imports on the U.S. market. Moreover, subject producers have the capacity and ability to further increase exports to the United States, and market conditions—namely the global oversupply of steel and the imposition of duties on upstream products—will encourage subject producers to do so. Given these factors, subject imports will cause additional injury to the domestic industry.

B. The Domestic Like Product Consists of FSS Covered by the Scope

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of subject imports, the Commission first defines the domestic like product.[17] The "domestic like product" is defined as "a product which is like, or in the absence

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16 *Id.*

17 *See NEC Corp. v. Dep't Commerce*, 36 F. Supp. 2d 380, 382 (Ct. Int'l Trade 1998).

of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[18] In an investigation, the like product determination is a factual one made on a case-by-case basis.[19] In making this determination, the Commission generally considers the following factors: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price.[20] In evaluating these factors, the Commission looks for clear dividing lines and disregards minor variations.[21]

The Commission should find that there is a single domestic like product co-extensive with the scope. In particular, the Commission should find that fabricated structural steel used for bridges and bridge sections, which is expressly excluded from the scope, is not included in the domestic like product. In this regard, Petitioner notes that, in the prior investigation regarding fabricated structural steel, the Commission found that fabricated structural steel for bridges was not included in the domestic like product covering fabricated structural steel for buildings.[22] In that proceeding, the Commission explained that "the record supported a finding that FSS for bridges differs from FSS for buildings with regard to weight and size, use, and customer and producer perceptions and to some extent the materials from which it is made. In addition, the two kinds of FSS are generally produced in different facilities."[23] In the subject proceeding, the

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18 19 U.S.C. § 1677(10).

19 *See, e.g., NEC Corp.*, 36 F. Supp. 2d at 383.

20 *See Cleo Inc. v. United States*, 501 F.3d 1292 (Fed. Cir. 2007).

21 *Id.* at 1292, 1295.

22 *See* USITC Pub. 2062 at 5-6, excerpts attached as **Exhibit I-5**.

23 *Id.*

Commission should again make this determination, *i.e.*, that the domestic like product is coextensive with the scope and does not include fabricated structural steel used for bridges and bridge sections.

C. There Is a Single Domestic Industry Consisting of All Domestic Producers

Section 771(7)(4) of the Act defines the domestic industry as the domestic "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[24] The Commission should find that there is a single domestic industry composed of entities producing FSS. In this regard, Petitioner notes that, to the extent a company performs erection or other on-site services, such services should not be considered the production of FSS. As discussed above, the merchandise is shipped to the job site for eventual erection after FSS components have been manufactured. Thus, erection companies should not be included in the domestic industry as they do not manufacture the domestic like product, but instead assemble it after it has been produced.

D. Subject Imports Are Causing Material Injury to the Domestic Industry

In determining whether a domestic industry is experiencing present material injury caused by unfairly traded imports, the Commission is directed by law to consider:

(1) the volume of imports of the subject merchandise;

(2) the effect of imports of that merchandise on prices in the United States for domestic like products, and

(3) the impact of imports of such merchandise on domestic producers of domestic like products.[25]

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24 19 U.S.C. § 1677(4)(A).

25 *Id.* § 1677(7)(B).

As demonstrated below, the evidence bearing upon these factors shows that the domestic FSS industry is suffering from material injury by reason of subject imports.

1. All Subject Imports Should Be Cumulated

For purposes of evaluating the volume and price effects for a material injury determination, 19 U.S.C. § 1677(7)(G)(i) requires the Commission to cumulate subject imports from all countries as to which petitions were filed on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.[26] In assessing whether subject imports compete with each other and with the domestic like product, the Commission generally considers four factors:

(1) the degree of fungibility between subject imports from difference countries and between subject imports and the domestic like product, including consideration of specific customer requirements and other quality-related questions;

(2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

(4) whether the subject imports are simultaneously present in the market.[27]

While no single factor is necessarily determinative, and the list of factors is not exhaustive, these factors are intended to provide the Commission with a framework for

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[26] *Id.* § 1677(7)(G)(i). None of the exceptions to cumulation apply. *Id.* at § 1677(7)(G)(ii).

[27] *See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan*, Inv. Nos. 731-TA-278-280, USITC Pub. 1845 (May 1986) (Final), *aff'd*, *Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898 (Ct. Int'l Trade 1988), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

determining whether the subject imports compete with each other and with the domestic like product.[28] Only a "reasonable overlap" of competition is required.[29]

a. Imports from All Subject Countries Are Fungible

FSS are customized products produced for a specific project and, with few exceptions, no two projects are exactly alike. Accordingly, FSS manufactured for one project would not be interchangeable with FSS manufactured for another project, regardless of where the FSS was manufactured. Nonetheless, FSS from Canada, China, and Mexico are still fungible with each other and with the domestic like product. As an initial matter, all FSS consists of steel mill products that have been fabricated into articles suitable for erection or assembly into a structure. In addition, as discussed above, FSS is typically sold through a bidding process. During the POI, FSS producers in Canada, China, and Mexico, as well as in the United States, bid on many of the same projects. That bids were solicited from producers in the subject counties and in the United States for the same projects demonstrates that FSS produced in the subject countries and in the United States are fungible.[30]

b. All Subject Imports Compete in the Same Geographic Market

The record here will show that imports from each of the subject countries compete with imports from the other subject countries and with the domestic like product throughout the U.S.

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28 *See, e.g.*, *Wieland Werke A.G. v. United States*, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

29 Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. I at 84 (1994) ("SAA") (stating that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition."); *see Goss Graphic Sys., Inc. v. United States*, 33 F. Supp. 2d 1082, 1087 (Ct. Int'l Trade 1998) ("{C}umulation does not require two products to be highly fungible"); *Wieland Werke A.G.*, 718 F. Supp. at 52 ("Completely overlapping markets are not required").

30 *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan*, Inv. Nos. 731-TA-736 and 737, USITC Pub. 2988 (Aug. 1996) (Final) at 26 ("The fact that purchasers solicited detailed initial bids from both German and Japanese producers as well as domestic

market. As is evident from the sales and revenue lost by the domestic industry, subject imports compete with each other and with the domestic like product across the United States. Indeed, subject imports often travel substantial distances after entering the United States to be delivered to a project site; thus, for example, FSS produced in Canada may enter the United States at the Canadian-U.S. border and then be transported to a site in Texas, and Mexican FSS may enter the United States at the Mexican-U.S. border and be transported to a site in New York. Moreover, official import statistics show that, during the POI, FSS imports from Canada, China, and Mexico entered the United States in ports throughout the United States, with imports from the subject countries overlapping at various ports of entry, further demonstrating that subject imports compete in the same geographic markets.[31]

c. Subject Imports Are Sold Through the Same Channels of Distribution

Subject imports from each subject country and the domestic like product are sold through the same channels of distribution. The vast majority of FSS, regardless of whether it is imported or manufactured in the United States, is sold through a bidding process. Through this process, a customer issues a request for proposal for a specific project, receives bids from various producers, and awards the bid to a particular producer. This bidding process is the same regardless of where the FSS is manufactured, and subject producers have competed with each other and with domestic producers of FSS for the same projects.

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producers . . . indicates to us that purchasers perceived a reasonable degree of fungibility among various producers' presses at the initial bid stage.").

[31] Official U.S. Import Statistics, attached as **Exhibit I-8**.

d. Subject Imports Were Simultaneously Present in the U.S. Market

Information reasonably available to Petitioner demonstrates that Canadian, Chinese, and Mexican FSS were simultaneously present in the U.S. market throughout the POI. Specifically, official import statistics show that imports from each subject country entered the United States in every single month from January 2015 through October 2018 (the latest month for which data are available).[32]

e. Conclusion

Substantial quantities of FSS imports from Canada, China, and Mexico, as well as FSS produced in the United States, were present across the United States and throughout the POI. Most all FSS, regardless of where it is produced, is sold through a bidding process, and subject imports from each country compete with each other and with the domestic like product for the same bids. Thus, the record shows that subject imports from each country compete with each other and with the domestic like product. Therefore, the Commission should cumulate subject imports for purposes of its material injury analysis.

2. The Volume of Subject Imports Is Significant

a. Substantial and Increasing Volumes of Subject FSS Imports Are Entering the United States

During the POI, significant quantities of FSS imports from Canada, China, and Mexico entered the United States. Between 2015 and 2017, subject imports grew by 21 percent, increasing from 783,641 short tons to 949,578 short tons.[33] As a result, by 2017, subject imports

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32 *Id.*

33 *Id.*

captured 20 percent of the market.[34] This surge in imports has continued in 2018. From January through October of 2018 (the most recent import data available), subject imports reached 898,927 short tons, an increase of 11 percent compared to the same period in 2017.[35]

b. Subject Imports Have Gained Market Share at the Direct Expense of the Domestic Industry

Subject imports have also increased relative to consumption, capturing market share directly from the domestic industry. During the POI, while subject imports surged, apparent domestic consumption grew by only 7.9 percent.[36] As a result, subject imports were able to increase their already significant share of the market, growing from 18.5 percent in 2015 to 20.4 percent in 2017.[37] This increase came at the direct expense of the domestic industry, which saw its market share decrease by a corresponding amount during the POI.

These data establish that the volume of subject imports and the increase in imports was significant both absolutely and on a relative basis.[38]

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34 Market Share Analysis, attached as **Exhibit I-3**.

35 Official U.S. Import Statistics, attached as **Exhibit I-8**.

36 Market Share Analysis, attached as **Exhibit I-3**.

37 *Id.*

38 *See, e.g., 1, 1, 2—Tetrafluoroethane (R-134a) from China*, Inv. No. 731-TA-1313, USITC Pub. 4679 (Apr. 2017) (Final) at 14 (finding the volume of and increase in subject imports significant absolutely and relative to consumption where subject imports' market share increased from 19.3% to 21.9%); *Stainless Steel Sheet and Strip from China*, Inv. Nos. 701-TA-557 and 731-TA-1312, USITC Pub. 4676 (Mar. 2017) (Final) at 15-16 (finding the volume of and increase in subject imports significant in absolutely and relative to consumption where such imports captured 3.3% to 7.4% of the market); *Common Alloy Aluminum Sheet from China*, Inv. Nos. 701-TA-591 and 731-TA-1399 (Preliminary), USITC Pub. 4757 (Jan. 2018) (Prelim.) at 20-21 (finding the volume of and increase in subject imports significant absolutely and relative to consumption where market share increased from 11.0% to 15.3%); *Heavy Walled Rectangular Welded Carbon Steel Pipe and Tubes from Korea, Mexico, and Turkey*, Inv. Nos. 701-TA-539 and 731-TA-1280-1282, USITC Pub. 4633 (Sept. 2016) (Final) at 21 (finding the volume of subject imports significant where subject imports' market share ranged from 8.1 percent to 10.7 percent).

c. All Imports Are Non-Negligible

The Commission will consider imports from a subject country to be negligible if they account for less than three percent of total imports of the merchandise under consideration, or four percent for developing countries subject to a countervailing duty investigation.[39] The Commission may make its determination using "reasonable estimates on the basis of available statistics."[40] The Commission may rely on official import statistics, questionnaire data, or some combination of sources.[41] In assessing negligibility, the Commission will examine "the most recent 12-month period for which data are available that precedes the filing of the petition."[42] The most recent 12-month period for which data are available is November 2017 through October 2018. As shown in **Table 2**, the official import data establishes that, during this period, imports from each subject country exceeded the negligibility threshold.

TABLE 2
U.S. Imports Of FSS From November 2017 – October 2018[43]

	Quantity (Short Tons)	% of Total
Canada	255,866	20.1%
China	481,887	37.9%
Mexico	300,680	23.6%
All Others	234,453	18.4%
Total	1,272,886	100%

39 19 U.S.C. §§ 1677(24)(A)(i), (B).

40 *Certain Oil Country Tubular Goods from India, Korea, the Philippines, Taiwan, Thailand, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1217 and 1219-1223, USITC Pub. 4489 (Sept. 2014) (Final) at 16.

41 *See, e.g., Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand*, Inv. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838, USITC Pub. 3283 (Mar. 2000) (Final) at 8.

42 19 U.S.C. § 1677(24)(A)(i).

43 Official U.S. Import Statistics, attached as **Exhibit I-8**.

3. The Price Effects of Subject Imports Is Significant

Dumped and subsidized FSS imports have had significant negative price effects on the domestic industry. Throughout the POI, subject producers undersold the domestic like product by large margins, forcing domestic manufacturers to lower their sales prices, lose sales, or both. This aggressive pricing by subject producers is particularly harmful given the nature of the FSS industry. Demand for FSS is based on the existence of new projects that require FSS. The vast majority of FSS is sold through a bidding process, through which a customer issues a request for proposal for a specific project.[44] The customer will receive bids from various FSS producers, frequently engage in negotiations resulting in new bids, and award the bid to a particular company.

During this process, price is the primary factor considered by customers in determining to whom a bid is awarded.[45] So long as a bid meets the customer's technical requirements, a customer will typically select the lowest-priced bid.[46] Price plays such an important role, in fact, that there have been instances where a U.S. producer has been awarded a bid only for it to be later pulled back because a subject producer has subsequently offered an even lower price.

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[44] *See Structural Steel: An Industry Overview*, American Institute of Steel Construction (Oct. 2017), at 6, attached as **Exhibit I-11**; USITC Pub. 2062 at A-35, excerpt attached as **Exhibit I-5**.

[45] *See Conditions of Competition Between Certain Domestic and Imported Fabricated Structural Steel Products*, Inv. No. 332-181, USITC Pub. 1601 (Nov. 1984) at xiv (highlighting the "price advantage of imports as the principal determinant of overall competitive advantage in the U.S. market" and noting that "U.S. purchasers cited price as the foremost factor in electing to import foreign fabricated steel"), excerpt attached as **Exhibit I-12**.

[46] *See Dumping and Subsidizing, Finding and Reasons, Inquiry No. NQ-2016-004 Certain Fabricated Industrial Steel Components*, Canadian International Trade Tribunal (June 9, 2017) at 17 (noting that a majority of responding purchasers identified price as "very important" and finding "generally that, as {FSS} is typically purchased as part of a competitive RFQ process, price is determinative in deciding among bids that are technically compliant"), excerpts attached as **Exhibit I-13**; *cf. Large Power Transformers from Korea*, Inv. No. 731-TA-1189, USITC Pub. 4346 (Aug. 2012) (Final) at II-15 (identifying price/cost as the second most important factor behind "meeting specifications" and noting that price/cost was one of the most commonly cited top factors in purchasing decisions).

Throughout the bidding process, purchasers will also use competing subject import prices to leverage U.S. producers' prices down.

Thus, demand for FSS relies on the existence of new projects and new bids. Additionally, demand for FSS is highly inelastic, such that changes in price are not likely to substantially change demand for FSS in the short-term. As such, a project awarded to a subject producer, in part or in full, typically means a sale lost by a domestic producer, and if a domestic producer loses a bid, it will not have an opportunity to make another sale until a new request for proposal is issued. Additionally, many projects can be quite large; a single project can provide work for an entire facility and its employees for a year or more. Thus, losing even a single project, or even part of a project, to unfairly traded imports has an immense effect on a company's profitability and employment,[47] and it may be months before another opportunity to place a bid arises. Moreover, if a U.S. producer loses a project to dumped and subsidized imports, that producer may be forced to bid on another project that it would not have otherwise bid on and, as a result, cause another U.S. producer to lose a project. Adverse price effects would likewise be transmitted throughout the market. Thus, the loss of a project to unfairly traded imports is felt throughout the industry.

a. Subject Imports Are Underselling the Domestic Like Product

During the POI, subject producers undersold domestic fabricators by significant margins. This is evident from numerous bids placed throughout the POI in which domestic producers were forced to lower their offered prices to meet those of subject producers or, more frequently, were

[47] *See Dumping and Subsidizing, Finding and Reasons, Inquiry No. NQ-2016-004 Certain Fabricated Industrial Steel Components*, Canadian International Trade Tribunal (June 9, 2017) at 17, excerpts attached as **Exhibit I-13**.

simply unable to match Canadian, Chinese, and Mexican fabricators' prices and lost the sale.[48]

For example:

- Domestic fabricator [Company] explained with respect to its bid on the [Narrative]—a project that was ultimately awarded to a Chinese company—"[Narrative]."[49]
- With respect to a [Narrative], which was awarded to a Chinese company, U.S. producer [Company] explained that "[Narrative]."[50]
- A recent project, the [Narrative], was awarded to a Canadian fabricator whose bid was approximately [Narrative], below that of U.S. fabricator [Company].[51]
- U.S. producer [Company] reported losing the [Narrative] project to a Canadian fabricator whose bid was almost [Narrative] below the domestic fabricator's price.[52]
- [Company] reported that, in bidding on a [Narrative], the winning company, a Mexican fabricator, bid at approximately [Narrative].[53]

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48 While the Commission typically relies on pricing products to undertake its price effects analysis, in industries such as the FSS industry, where products are custom-built, and sales are based on a bidding process, the Commission has also considered bid information in its analysis. *See, e.g.*, USITC Pub. 4346 at 18; USITC Pub. 2988 at 29-31.

49 [Source], attached as **Exhibit I-14**.

50 [Source], attached as **Exhibit I-15**.

51 Lost Sales and Revenue Data, attached as **Exhibit I-16**. Pursuant to 19 C.F.R. § 207.11(b)(2)(v), Petitioner has provided information on lost sales and lost revenue that is reasonably available to it. This information is also being submitted electronically as required by the Commission's regulations.

52 Lost Sales and Revenue Data, attached as **Exhibit I-16**.

53 *Id.*

These experiences are not unique. Indeed, numerous other domestic fabricators report being underbid by subject producers by significant amounts.[54] This is evident from the massive volume—more than [value]—of sales and revenue lost due to lower priced offerings from subject producers from 2015 through the first three quarters of 2018.[55]

b. Low-Priced Subject FSS Imports Force Domestic Producers to Lower Prices

Due to significant underselling by subject producers during the POI, the domestic industry was forced to reduce its prices to compete with subject imports. The domestic industry reports numerous instances of being forced to lower bids in the face of subject import competition in order to win projects during the POI.[56] The price depressing and suppressing effects of subject imports are shown by the decline in the domestic industry's unit gross profit during the POI, as domestic producers were forced to lower prices to compete with subject imports.[57] However, even where a domestic producer lowered its bid price, subject producers were frequently still able to capture the sale by dropping prices even further. Moreover, as tariffs under Section 232 and Section 301 increase the price of inputs, it will become even more difficult for U.S. producers to lower prices to compete with subject imports.

The price depressing and suppressing effects of subject imports are also evidenced by the downward trend of subject imports' and, consequently, U.S. fabricators' average unit values. During the POI, as the average unit value of subject imports declined,[58] the domestic industry

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54 *Id.*

55 *Id.*

56 *Id.*

57 The Domestic Industry's Trade and Financial Data, attached as **Exhibit I-10**.

58 Official U.S. Import Statistics, attached as **Exhibit I-8**.

was forced to likewise decrease prices. However, despite the fact that the average unit value of FSS sold by domestic fabricators for whom data were collected declined by [ ] percent from 2015 to 2017, subject imports' average unit values remained well below domestic industry prices throughout the POI.[59]

c. Identification of Products for Which Petitioner Requests Collection of Price Data (19 C.F.R. § 207.11(b)(2)(iv))

As discussed above, most all FSS is custom-made for a specific project that is awarded through a bid process. Petitioner recognizes that, in certain prior proceedings addressing custom-built products sold through a bidding process, the Commission has collected data on bid prices instead of traditional "pricing products."[60] Given the nature of FSS, as well as the bidding process, bid price data and traditional pricing products data both present certain limitations. However, Petitioner believes that the way in which certain FSS is sold may allow for a usable pricing product analysis. In addition, there are challenges to obtaining the requisite information for a proper comparison of bid prices, particularly given the time constraints of the preliminary investigation. Accordingly, for the purposes of the preliminary investigation, Petitioner requests that the Commission collect pricing data on the following products for the preliminary phase of the investigation:

> ***Product 1.***—Fabricated light structural,[1] Grade 50, 0-19 lbs. per linear foot, sold for industrial[2] projects.

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59 *Id.*; The Domestic Industry's Trade and Financial Data, attached as **Exhibit I-10**.

60 *See, e.g.*, *Large Power Transformer from Korea*, Inv. No. 731-TA-1189, USITC Pub. 4256 (Sept. 2011) (Prelim.) at 16, V-2 (explaining that the Commission's "conventional approach to pricing analysis" was not useful in the investigation given the custom nature of the products and the manner through which they are sold and therefore requesting that U.S. producers and importers provide data on their largest bids during the POI); USITC Pub. 2988 at 29.

Product 2. —Fabricated medium structural,[1] Grade 50, 20-119 lbs. per linear foot, sold for industrial[2] projects.

Product 3. —Fabricated extra heavy structural,[1] Grade 50, 120 lbs. or greater per linear foot, sold for industrial[2] projects.

Product 4.—Fabricated structural steel[3] sold for schools, libraries, labs, and hospitals, 2-4 stories.

Product 5.—Fabricated structural steel[3] sold for office buildings, multi-family residential buildings, and mixed-use buildings, 5-19 stories.

Product 6.—Fabricated structural steel[3] sold for office buildings, multi-family residential buildings, and mixed-use buildings, 20 stories and greater.

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[1] The term "structural" includes beams, columns, and vertical bracing.

[2] The term "industrial project" includes electric power facilities; oil, gas, and refined products production, processing and storage facilities; alternative fuels facilities; petroleum refining facilities; chemical processing facilities; and metals and minerals processing facilities.

[3] The term "fabricated structural steel" includes the merchandise defined in the scope of this investigation and does not include merchandise excluded from the scope.

4. The Subject Imports Have Had a Negative Impact on the Domestic Industry

The domestic industry has suffered material injury by reason of subject imports, as demonstrated by the massive volume of sales lost to subject imports, lost revenue, and depressed and suppressed U.S. prices. Subject imports have undersold domestically produced FSS, resulting in price depression and suppression, significant lost sales, and financial deterioration, as evidenced by the domestic industry's inadequate net and operating income margins that declined significantly over the POI. These data, as described in more detail below, demonstrate the causal link between the unfairly traded subject imports and the material injury being suffered by the domestic industry and show that the domestic industry would have been substantially better off but for competition from unfairly traded imports.

a. The Domestic Industry's Production, Capacity Utilization, and Shipments Declined Due to Unfair Import Competition

As reviewed above, during the POI, subject imports entered the United States in massive and increasing volumes, despite only limited growth in apparent domestic consumption. As a result of this surge of unfairly traded imports, the domestic industry's production and shipments suffered significantly.[61] But for the competition from large volumes of unfairly traded subject imports, the domestic industry would have been able to produce and sell substantially greater quantities of the domestic like product. This can be seen from the data collected from a sample of U.S. producers, which show a significant decline in production and U.S. shipments from 2015 to 2017, and production and shipments remained low in the first half of 2018.[62] Additionally, as a result of stifled sales and production, capacity utilization for the U.S. producers for whom data were collected dropped from an already low [ ] percent in 2015 to an anemic [ ] percent in 2017 and remained critically low at only [ ] percent in the first half of 2018.[63] In the absence of competition from unfairly traded subject imports, the domestic industry could have increased production and operated at a substantially higher capacity utilization rate.

Notably the domestic industry has significant excess capacity that could be used to serve the U.S. market. "In fact, there is enough capacity to meet any increase in demand that results from additional investment in infrastructure projects and projected increases in private construction activity."[64] However, due to the large volumes of low-priced subject imports

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61 The Domestic Industry's Trade and Financial Data, attached as **Exhibit I-10**.

62 *Id.*

63 *Id.*

64 Testimony of Jeff Sterner, attached as **Exhibit I-17**.

entering the United States, the domestic industry is unable to utilize its full potential and has been forced to allow substantial capacity to remain idle.

b. Unfair Import Competition Has Caused the Domestic Industry's Financial Performance to Plummet

The financial performance of the domestic industry has also deteriorated as a result of competition with unfairly traded FSS imports. The significant presence of unfairly traded imports throughout the POI placed the domestic industry in the untenable position of losing sales to low-priced imports or lowering prices (and sacrificing profits) to maintain sales. The injury to the domestic industry caused by this choice is evident from its poor financial performance during the POI.[65] Notably, the data collected from a sample of domestic producers show a significant decline in sales value, reflecting both the decline in sales quantity and price depression experienced during the POI.[66] Indeed, the increasing volume of low-priced subject imports that undercut the domestic industry's prices and took sales from U.S. producers resulted in steep declines in operating and net income. The data collected from a sample of U.S. producers show that, from 2015 to 2017, operating income dropped by [ ] percent and its net income dropped by [ ] percent.[67] Operating and net income margins likewise declined over the POI, such that the domestic industry's already low margins were at unsustainable levels by 2017.[68]

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65 *See* USITC Pub. 4633 at 29 (finding material injury where the domestic industry cut prices to retain market share, resulting in a decline in revenues); *Steel Concrete Reinforcing Bar from Japan and Turkey*, Inv. Nos. 701-TA-564 and 731-TA-1338 and 1340, USITC Pub. 4705 (July 2017) (Final) at 26 (noting that the domestic industry decreased prices to maintain market share and finding that "{a}s a result of the significant volume of low prices subject imports, the domestic industry's output and revenues were lower than they would have been otherwise").

66 The Domestic Industry's Trade and Financial Data, attached as **Exhibit I-10**.

67 *Id.*

68 *Id.*

The domestic industry continued to experience poor financial performance in the first half of 2018. Notably, in the first half of 2018, the domestic industry's operating margins remained far below the already low operating margins experienced in 2015 and 2016. Moreover, in interim 2018, numerous domestic producers experienced [Trend] net and operating income and/or [Trend]. In addition, domestic producers have been forced to shutter FSS operations as a result of competition with unfairly traded FSS imports. For example, in [Company] announced that it was closing [narrative]. Likewise, [narrative]. This deterioration in the domestic industry's financial performance was the result of increased volumes of unfairly traded subject imports.

c. The Sales and Revenues Lost to Unfairly Priced Subject Imports Are Massive

The decline in the domestic industry's sales, market share, and production is a result of unfairly traded subject imports, as confirmed by the massive volume of sales and revenue lost by domestic fabricators to subject producers because of price. During the POI, the domestic industry lost more than [#] sales to subject imports and were forced to lower their bid prices for multiple other projects because of unfairly traded imports. As a result, the domestic industry experienced [value] in lost sales and revenues.[69] Between 2015 and the first three quarters of 2018, the U.S. producers from whom data were collected lost at least [value] in sales and revenue as a result of unfairly traded FSS from Canada, China, and Mexico.[70] The lost sales represent projects totaling [#] short tons, which could have supported more than

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69 Lost Sales and Revenue Data, attached as **Exhibit I-16**.

70 *Id.*

[ ] U.S. jobs,[71] and which were lost because of unfairly traded subject imports. Losses of such magnitude negatively affected the domestic industry, as can be seen in the decline in the domestic industry's production, employment, and operating and net income margins. These lost sales likewise have significant long-term effects on the domestic industry's trade and financial performance, including capacity utilization. As FSS producers will only bid on projects for which they have capacity, a lost sale results in capacity that will go unused, potentially for a significant amount of time, depending on when a producer is able to next win a bid. And the effect of these substantial lost sales and lost revenues have likely not been fully felt by the domestic industry yet. There is often a significant lag (anywhere from several months to several years) between when a project is bid, when the project begins (*i.e.*, when imports would begin to enter the United States), and when a project is completed; thus, the full price and volume effects of bids lost during the POI are not yet reflected in the domestic industry's financial performance or employment data.[72]

Not only is the sheer volume of sales lost to subject imports significant, but even a single project, or even part of a project, lost to unfair competition can have a significant negative effect on the domestic industry and its workers for an extended period. For example, for one of the Hudson Yards projects in New York City, U.S. fabricators submitted bids, but a subject

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[71] Total jobs is based on AISC's estimate that one American job is created for every 45 short tons of structural steel that is produced, fabricated, and erected in the United States. *Made in America Structural Steel is Produced and Fabricated in America*, American Institute of Steel Construction, https://www.aisc.org/why-steel/made-in-america/, attached as **Exhibit I-18**.

[72] *See, e.g.*, USITC Pub. 2988 at 17 ("{A}fter finalization of the sales contract, there is generally a lengthy production and delivery period. Completion and installation of an LNPP or press addition can take from several months to three years after execution of the sales contract. Thus, there can be a substantial lag between award of a sales contract and shipments of the merchandise to be delivered thereunder. Similarly, because payment on the contract is made in installments over the life of the production process, the full financial impact of a sale (or its loss) is often not reflected in a producer's financial records for two or more years after the date of the sale.").

fabricator was ultimately awarded part of the project by providing a bid far below what domestic fabricators could offer; in fact, the winning bid was approximately $100 million below U.S. producers' bids.[73] There is simply no way for domestic fabricators to compete with such drastically low prices. As a result of the subject producer's bid on the Hudson Yards project, the domestic industry lost a project for 3.6 million square feet of commercial construction, which would have supported 1.3 million man hours of production.[74] To put that in perspective, this single project could have supported more than 600 American workers, full time for an entire year.

Moreover, there are numerous projects for which domestic producers either did not place a bid or were not permitted to place a bid due to competition from subject imports. Many purchasers will not even request a proposal from U.S. fabricators, because the purchasers already know that the subject fabricators' bids will be far lower than what domestic producers could provide. During the POI, there were at least [Narrative], for which the domestic industry did not place a bid (or were precluded from bidding) given their inability to compete with unfairly traded subject imports.[75] These projects likewise represent sales that the domestic industry could have captured in the absence of unfair trade competition,

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73 [Narrative], attached as **Exhibit I-19**.

74 *Id.*

75 Lost Sales and Revenue Data, attached as **Exhibit I-16**. The projects for which no bids were made largely took place toward the latter portion of the POI, as substantial volumes of increasingly low-priced subject imports entered the U.S. market.

making the already substantial lost sales and revenues figures even higher[76] and adversely impacting the domestic industry.

d. Subject Imports Have Severely Harmed American Workers

In light of the adverse effects on the domestic industry's sales and production, the domestic industry's employees were negatively impacted during the POI as well. As the production of FSS is highly labor-intensive, suppressed production greatly affected hours worked.[77] Between 2015 and 2017, and continuing into the interim period, the number of workers, hours worked, and wages paid suffered and would have been much higher in the absence of competition from unfairly traded imports.[78] Moreover, the jobs affected by the domestic industry's decline extends beyond domestic fabricators' production related workers. In fact, Petitioner estimates that one American job is created for every 45 short tons of structural steel that is produced, fabricated, and erected in the United States;[79] this means that in 2017 more than [#] jobs were supported as a result of domestic fabrication. These jobs are increasingly at risk due to subject import competition. Indeed, had the domestic industry not lost substantial sales due to underselling by unfairly traded subject imports, the domestic industry could have supported more than [#] additional jobs. Without relief, the domestic industry

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76 These projects likely would have resulted in [value] of additional revenue for the domestic industry. While value information for the projects are not available, as no bid was made, relying on the lowest average unit value for the domestic industry during the POI [narrative].

77 AISC estimates that 15 to 30 hours of shop time are required for every short ton of fabricated structural steel. *Structural Steel: An Industry Overview*, American Institute of Steel Construction (Oct. 2017), at 4, attached as **Exhibit I-20**.

78 The Domestic Industry's Trade and Financial Data, attached as **Exhibit I-10**.

79 *Made in America Structural Steel is Produced and Fabricated in America*, American Institute of Steel Construction, https://www.aisc.org/why-steel/made-in-america/, attached as **Exhibit I-18**.

will lose additional sales, production will continue to drop, and an increasing number of American jobs will be jeopardized.

e. Conclusion

The data provided herein demonstrate material injury to the domestic industry by reason of dumped and subsidized subject imports. During the POI, subject imports surged into the U.S. market, increasing by more than 20 percent despite an increase in apparent domestic consumption of only 7.9 percent. This significant increase in the volume of subject imports resulted in subject producers growing their market share at the direct expense of the domestic industry. Subject imports did so using aggressive and unfair pricing, which had significant negative price effects on U.S. producers and the U.S. market overall. Dumped and subsidized subject imports undersold domestically-produced FSS by substantial margins, forcing domestic producers to lower prices, lose sales, or both. Consequently, domestic producers experienced massive volumes of lost sales and lost revenues during the POI.

Competition from unfairly traded subject imports forced the domestic industry to either lose sales or sacrifice profit to maintain sales; as a result, the domestic industry's production, capacity, and employees were all adversely impacted. By 2017, the domestic industry's income had plummeted, and U.S. producers were operating at unsustainably low margins. The deterioration in the U.S. industry's performance has continued in the first half of 2018, with capacity utilization remaining abysmal, operating margins remaining well below 2015 and 2016 levels, and production and sales well below what they would have been in the absence of competition from unfairly traded imports. Thus, the domestic industry has been materially injured by reason of subject imports during the POI.

E. Subject Imports Threaten Additional Material Injury to the Domestic Industry

The above discussion establishes that the subject imports have caused material injury to the domestic FSS industry. In addition, evidence available to Petitioner demonstrates that the subject imports also threaten the domestic industry with further material injury. In assessing threat, the Commission should cumulate imports from all subject countries.

1. The Commission Should Cumulate Subject Imports for the Purpose of Its Threat Analysis

In evaluating threat of material injury, the Commission may cumulatively assess the volume and price effects of imports of subject merchandise from all countries with respect to which the petitions were filed on the same day "if such imports compete with each other and with domestic like products in the United States market."[80] As these Petitions cover all subject countries, the first requirement is met. And, as discussed above, subject imports all compete with each other and with the domestic like product in the U.S. market. Thus, the statutory requirements for cumulation in a threat investigation have been satisfied.

2. Subject Imports Threaten Domestic Producers with Additional Material Injury

In determining whether subject imports threaten a domestic industry with material injury, the Commission must consider a number of factors, including:

- A significant rate of increase in the volume or market penetration of imports of the subject merchandise;
- Price effects of the subject imports;
- The nature of any countervailable subsidies;

[80] 19 U.S.C. § 1677(7)(G).

- Existing unused production capacity or potential increases in production capacity in the exporting country;
- Inventories of the subject merchandise; and
- The potential for product-shifting.[81]

In addition, because some bids have been recently awarded to producers in the subject countries, the Commission can identify specific amounts of FSS likely to enter the United States in the near future. These factors support an affirmative threat determination. Therefore, the Commission should find that the domestic FSS industry is vulnerable and that subject imports threaten the domestic industry with material injury.

a. The Domestic FSS Industry Is Vulnerable to Material Injury from Subject Imports

During the POI, substantial volumes of low-priced subject imports entered the United States and captured sales and market share from the domestic industry. As a direct result of competition with unfairly traded subject imports, the domestic industry's trade and financial indicators were adversely impacted. Notably, data collected from a sample of U.S. producers show that the domestic industry is operating at only [ ] percent capacity utilization as of the first half of 2018 and had unsustainably low operating margins. Consequently, the domestic industry has been left in a weakened state and is extremely vulnerable to further material injury from additional volumes of unfairly traded subject imports.

[81] *Id.* § 1677(7)(F)(i).

b. Subject Imports Have Rapidly and Significantly Increased in Volume and Market Share

There has been a substantial increase in both the volume and market share of subject imports over the POI.[82] As discussed above, the volume of subject imports increased significantly during the POI, growing by more than 20 percent and significantly outpacing the growth in apparent domestic consumption.[83] This surge of subject imports is continuing, with the volume of subject imports from January through October of 2018 increasing 11 percent compared to the same period in 2017.[84] Additionally, because of the lag between when a project may be awarded and when the FSS for that project actually enters the United States, all or some of the FSS for projects awarded in 2018 and 2017 (and possibly even 2016) may not yet have been imported. For example, the domestic industry has identified lost sales in the first three quarters of 2018 for projects totaling [tons], and it is likely that much of the FSS associated with these projects has not yet entered the United States.[85]

c. Subject Imports Have Demonstrable Adverse Price Effects That Are Likely to Continue

As discussed above, subject imports have had significant price depressing and suppressing effects.[86] During the POI, subject FSS substantially undersold domestically

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82 *Id.* § 1677(F)(i)(III) (stating that "a significant rate of increase of the volume or market penetration of imports of the subject merchandise" shall be considered in determining whether the domestic industry is threatened with material injury from subject imports).

83 Market Share Analysis, attached as **Exhibit I-3**.

84 Official U.S. Import Statistics, attached as **Exhibit I-8**.

85 Lost Sales & Revenue Data, attached as **Exhibit I-16**.

86 19 U.S.C. § 1677(7)(F)(i)(IV) (stating that, in determining whether the domestic industry is threatened with material injury, "whether imports of subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports" should be considered).

produced FSS, forcing domestic producers to lower prices and lose sales. Given that subject imports have continued to enter the United States in large volumes and at prices well below those of domestically produced FSS, it is likely that domestic producers' prices will continue to decline without relief. Thus, subject imports' adverse price effects indicate that the domestic industry is further threatened with additional material injury.

d. Subject Producers Have Substantial Capacity That Can Be Directed at the United States

Subject producers' capacity to produce significant volumes of FSS, as well as the ability to export additional volumes and target them at the United States, indicate that the domestic industry is threatened with further injury.[87] Information reasonably available indicates that the subject countries have substantial capacity to produce FSS. There are over 130 AISC-certified steel fabricators in Canada, China, and Mexico.[88] However, there appear to be significantly more steel fabricators in the subject countries; in fact, it is estimated that, in 2016, there were approximately 8,644 entities in the Chinese metal fabrication industry—a majority of which are believed to be steel fabricators.[89] The subject countries also have significant capacity to produce upstream goods. For example, in 2015, the subject countries produced over 16 million short tons of heavy sections and over 200 million short tons of plate.[90] Moreover, given the massive global excess steel capacity, particularly with respect to China, subject FSS producers undoubtedly have

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87 *Id.* § 1677(7)(F)(i)(II) (explaining that "any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports" should be considered in examining the threat of material injury).

88 AISC Certified Company Data, attached as **Exhibit I-20**.

89 *See Analysis of Australia's Steel Manufacturing and Fabricating Markets Report to the Commissioner of the Anti-dumping Commission*, Australian Government Department of Industry, Innovation and Science, Antidumping Commission (Nov. 2017) at 34, excerpts attached as **Exhibit I-21**.

access to enormous additional volumes of upstream merchandise for fabrication. The substantial availability of upstream goods provides subject producers with the ability to greatly increase production of FSS.

Information reasonably available also indicates that subject producers are likely to substantially increase production and exportation of FSS. Specifically, global steel excess capacity coupled with duties that have been placed on upstream merchandise provide a significant incentive for subject producers to further increase exports to the United States.[91] This will only accelerate as additional tariffs on steel mill products have been imposed under Section 232 of the Trade Expansion Act of 1962 and under Section 301 of the Trade Act of 1974.[92] Similarly, Chinese producers of mill products will have an increased incentive to ship goods to other export markets — such as Canada and Mexico — and enable producers of downstream products in these countries to manufacture increasing volumes of low-priced FSS, which will then be targeted at the United States. Accordingly, subject producers have both the ability and incentive to increase exports of FSS to the United States, threatening the domestic industry with further injury.

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90 *Steel Statistical Yearbook 2018*, World Steel Association at Table 15 & Table 20, excerpts attached as **Exhibit I-22**.

91 *See Analysis of Australia's Steel Manufacturing and Fabricating Markets Report to the Commissioner of the Anti-dumping Commission*, Australian Government Department of Industry, Innovation and Science, Antidumping Commission (Nov. 2017) at 6 ("The demand/production imbalance for primary steel can flow through into the steel fabrication market and lead to imbalance in the steel fabrication industry. In addition, the primary steel demand/production imbalance may create distortions in markets for steel fabricated products as a result of responses by some exporters to trade remedies on primary steel products that are being dumped or subsidised."), excerpts attached as **Exhibit I-21**.

92 *See id.* (noting a finding in Australia that "imports of some steel fabricated products had increased following the imposition of measures on the primary steel input to their production").

e. Subject Producers Received Significant Countervailable Subsidies

The subsidies received by subject producers provide additional evidence that the domestic industry is threatened with material injury.[93] The substantial subsidies provided by the Government of China to its steel industry and to encourage exports is well documented.[94] These include the provision of major inputs for less than adequate remuneration, tax reductions and exemptions, preferential loans, and grants.[95] The Canadian and Mexican Governments likewise provides numerous countervailable subsidies that are available to FSS producers and exporting entities, including preferential tax rates, grants, and export financing.[96] These subsidies encourage subject producers' exportation of significant volumes of merchandise and contribute to subject producers' ability to undersell domestically produced FSS by substantial margins.

III. CONCLUSION

The domestic FSS industry is currently experiencing material injury, and is threatened with further material injury, by reason of unfairly traded imports from Canada, China, and Mexico. Between 2015 and 2017, and throughout 2018, subject imports surged into the United States and captured market share at the direct expense of the domestic industry. Subject producers entered the U.S. market in such large and increasing quantities by offering unfair prices well below those of domestically produced FSS, forcing domestic producers to lower

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93 19 U.S.C. § 1677(7)(F)(i)(I) (directing consideration of whether subject producers receive countervailable subsidies and the nature of such subsidies in making a determination of threat of material injury).

94 *See, e.g.*, Issues and Decision Memorandum accompanying *Certain Carbon and Alloy Steel Cut-to-Length Plate From the People's Republic of China*, 82 Fed. Reg. 8507 (Dep't Commerce Jan. 26, 2017) (final affirm. countervailing duty deter.) at 8-9.

95 *Id.*

96 *See* Volumes V & VI, *infra*.

prices and resulting in the domestic industry losing [value] of sales and revenue to lower-priced subject imports. The negative impact of this unfair subject import competition on the domestic industry is clear. During the POI, as subject imports increased and undersold domestically produced FSS, the domestic industry experienced declines in essentially all trade and financial indicia, including production, capacity utilization, sales, employment, and operating and net income.

Moreover, the significant volume of unfairly traded imports that entered the U.S. market during the POI has left the domestic industry in an extremely vulnerable state. As subject producers have the ability and the incentive to continue to send massive volumes of dumped and subsidized FSS imports to the United States, the domestic industry's performance will continue to deteriorate in the absence of trade relief. As such, relief from dumped and subsidized FSS imports from Canada, China, and Mexico is critical to the domestic industry and its workers.

Respectfully submitted,

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EXHIBIT LIST		
EXHIBIT NO.	**DESCRIPTION**	**STATUS**
I-1	Petitioner's Contact Information	Public
I-2	List of U.S. Producers	BPI
I-3	Market Share Analysis	BPI
I-4	Standing Analysis	BPI
I-5	*Certain Fabricated Structural Steel from Canada*, Inv. No. 731-TA-387, USITC Pub. 2062 (Feb. 1988) (Prelim.) (excerpts)	Public
I-6	U.S. Harmonized Tariff Schedule (2018) (excerpts)	Public
I-7	List of Subject Producers and Exporters	Public
I-8	Official U.S. Import Statistics	Public
I-9	List of U.S. Importers	Public
I-10	Domestic Industry's Trade and Financial Data	BPI
I-11	*Structural Steel: An Industry Overview*, American Institute of Steel Construction (Oct. 2017) (excerpt)	Public
I-12	*Conditions of Competition Between Certain Domestic and Imported Fabricated Structural Steel Products*, Inv. No. 332-181, USITC Pub. 1601 (Nov. 1984) (excerpts)	Public
I-13	*Dumping and Subsidizing, Finding and Reasons, Inquiry No. NQ-2016-004 Certain Fabricated Industrial Steel Components*, Canadian International Trade Tribunal (June 9, 2017) (excerpts)	Public
I-14	[Source]	BPI
I-15	[Source]	BPI
I-16	Lost Sales and Revenue Data	BPI

EXHIBIT LIST		
EXHIBIT NO.	**DESCRIPTION**	**STATUS**
I-17	Testimony of Jeff Sterner	Public
I-18	*Made in America Structural Steel is Produced and Fabricated in America*, American Institute of Steel Construction, https://www.aisc.org/why-steel/made-in-america/	Public
I-19	[Source]	BPI
I-20	AISC Certified Company Data	Public
I-21	*Analysis of Australia's Steel Manufacturing and Fabricating Markets Report to the Commissioner of the Anti-dumping Commission*, Australian Government Department of Industry, Innovation and Science, Antidumping Commission (Nov. 2017) (excerpts)	Public
I-22	*Steel Statistical Yearbook 2018*, World Steel Association (excerpts)	Public