

- 8) any other demonstrable trends indicating the probability that the subject merchandise will cause material injury.

Petitioners may also allege that the establishment of an industry in the United States is materially retarded by reason of imports (or the likelihood of imports) of the subject merchandise. Such allegations have been uncommon.

With respect to the issue of causation, it is important to note that according to the ITC's interpretation of its statute, the dumping need not be the only cause of injury, nor need it be more significant than any other cause of injury.

9.1 Preliminary Determination

In its preliminary determination, the ITC must determine, based on the best information available at the time, whether there is a "reasonable indication" that a domestic industry is materially injured, or threatened with material injury, by reason of the allegedly dumped imports. While a negative preliminary determination results in termination of the investigation, such a finding is relatively infrequent. The ITC is usually inclined to give the petitioners the benefit of the full process unless the complaint is unsubstantiated.⁴⁴ The petitioner bears the burden of proof with respect to the injury issue.

9.2 Final Determination

A higher standard of evidence is required in the final determination. The ITC must determine whether a U.S. industry is materially injured or threatened with material injury "by reason" of the subject imports. As part of the determination process, a public hearing is held, usually lasting one day. Parties to an ITC proceeding may file substantial pre-hearing submissions, and have an opportunity to analyze and comment upon the data and analysis compiled by the ITC investigating staff. The hearing process is investigatory rather than adjudicatory in nature, provides no opportunity to offer new evidence, and is limited to cross-examination and argumentation. Following the hearing and deliberations by the Commissioners, the ITC issues a report containing its decision.

9.3 Industry Determination

The ITC is responsible for defining the domestic industry engaged in production of the like product. According to the Tariff Act of 1930, the domestic industry is "the domestic producers as a whole of a like product, or those producers whose collective output of the like products constitutes a major proportion of the total domestic production of that product."⁴⁵ U.S. producers of the like product who are related to the exporters or importers, or who are themselves importers of the

44 19 U.S.C. § 1673b (a). ITC procedures are contained in 19 CFR 207.

45 19 U.S.C. § 1677 (4) (A).