

Billing Code: 3510-33

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR 754

Docket No. 040719211- 4211- 01

Determination by the Department of Commerce on the Petition Submitted by the Copper & Brass Fabricators Council, Inc. and the Non-Ferrous Founders' Society, Requesting the Monitoring and Control of U.S. Copper Scrap and Copper-Alloy Scrap Exports in Accordance with the Short Supply Provisions of the Export Administration Act of 1979, as Amended.

AGENCY: Bureau of Industry and Security, Department of Commerce

ACTION: Notice of Determination

SUMMARY: On April 7, 2004, the Bureau of Industry and Security received a written petition requesting the imposition of export monitoring and export controls on copper scrap and copper-alloy scrap. The Department of Commerce reviewed this petition in accordance with Sections 3(2)(C) and 7(c) of the Export Administration Act (“EAA”) (50 U.S.C. app. §§ 2402(2)(c) and 2406(c)), as implemented by Section 754.7 of the Export Administration Regulations (“EAR”) (15 C.F.R. 754.7), and has determined that neither monitoring nor controls is necessary in order to carry out the policy set forth in Section 3(2)(C) of the EAA.

FOR FURTHER INFORMATION CONTACT: Daniel O. Hill, Director of the Office of Strategic Industries and Economic Security, Bureau of Industry and Security, who may be reached at (202) 482-4506.

SUPPLEMENTAL INFORMATION:

The Petition

On April 7, 2004, the Department of Commerce (“Department”) received a petition from the

Copper & Brass Fabricators Council, Inc., and the Non-Ferrous Founders' Society (the "petitioners") requesting that the Department impose monitoring and controls on exports of recyclable metallic materials containing copper ("copper-based scrap"), in accordance with the short supply provisions of Section 7(c) of the Export Administration Act of 1979, as amended, and Section 754.7 of the Export Administration Regulations.

Although the EAA expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), as extended by the Notice of August 7, 2003 (3 C.F.R., 2003 Comp., p. 328 (2004)) continues in effect, to the extent permitted by law, the provisions of the EAA and its implementing regulations under the International Emergency Economic Powers Act.

The petitioners identified four commodities by the Census Bureau's Schedule B numbers as those for which monitoring and export controls were requested: 7404.00.0020 (waste and scrap of refined copper), 7404.00.0045 (waste and scrap of copper-zinc base alloys (brass) containing more than 0.3 percent lead), 7404.00.0062 (waste and scrap of brass containing 0.3 percent or less lead), and 7404.00.0080 (other copper alloy waste and scrap, NESOI).

As a remedy, the petitioners requested that export monitoring be imposed on a weekly basis for copper-based scrap, with the publication of weekly reports on anticipated exports, and that export controls be imposed that limit the monthly total of copper-based scrap exports to 31,678 metric

tons (“MT”), the monthly average of total exports for the five-year period of 1996-2000, to be allocated among destinations in an historically based manner for an initial period of one year.

In a Federal Register notice published on April 22, 2004 (60 FR 21815), the Department acknowledged receipt of and requested public comments on the petition and, at the request of the petitioners, on May 19, 2004 held a public hearing concerning the petition. The Department heard testimony from 12 witnesses at the public hearing, and received several written comments in response to the request for public comment. Interested parties may review the Bureau of Industry and Security’s (“Bureau”) Web site, www.bis.doc.gov, for the complete text of the petition, pertinent Federal Register notices, written public comments, and the transcript of the public hearing.

During the review of the petition, the Bureau consulted with other U.S. Government departments and agencies, including the Departments of State and the Treasury, the Council of Economic Advisors, the Office of the United States Trade Representative, the Department of the Interior’s U.S. Geological Survey, and the Department of Commerce’s Economics and Statistics Administration, and International Trade Administration.

The Statutory Determinations for Short Supply Actions

The Department of Commerce reviewed this petition in accordance with Sections 3(2)(C) and

7(c) of the EAA (50 U.S.C. app. §§ 2402(2)(c) and 2406(c)), as implemented by Section 754.7 of the EAR (15 C.F.R. 754.7).

Section 3(2) of the EAA, states:

It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary –

...

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

In Section 7(c)(3)(A), the EAA sets forth five determinations that the Secretary of Commerce shall make in determining whether short supply action is warranted.¹ The Secretary is to determine whether:

(i) there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand;

¹Pursuant to Section 4.01(b) of Department Organizational Order 10-16 (March 19, 2004), the Secretary of Commerce has delegated to the Under Secretary of Commerce for Industry and Security the authority to make these determinations.

(ii) there has been a significant increase in domestic price of such material or a domestic shortage of such material relative to demand;

(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

(v) monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of the EAA.

The Department of Commerce's Review of the Statutory Determinations

Determination 1: *Whether there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand.*

For the reasons set forth below, the Department has determined that there has been a significant increase, in relation to the specific period of time (1999-2003), in exports of copper-based scrap

in relation to domestic supply and demand of such commodity. The increase in exports should be considered in the context of substantially decreased U.S. domestic consumption, as well as the record showing that some copper-based scrap cannot be directly consumed by the petitioners.

The petitioners allege that exports of copper-based scrap have increased by 138 percent during the 1999-2003 period, and that the volume of copper-based scrap exports has increased in both an absolute sense and as a percentage of the U.S. copper-based scrap supply in relation to U.S. demand.² See Petition for the Imposition of Monitoring and Controls with Respect to Exports from the United States of Copper Scrap and Copper-Alloy Scrap (“Petition”), pp. 10-13. The petitioners also allege that “[e]ssentially all the growth in U.S. exports of copper-based scrap in recent years [1999-2003] has been attributable to rising demand in China.” See Petition, p. 13.

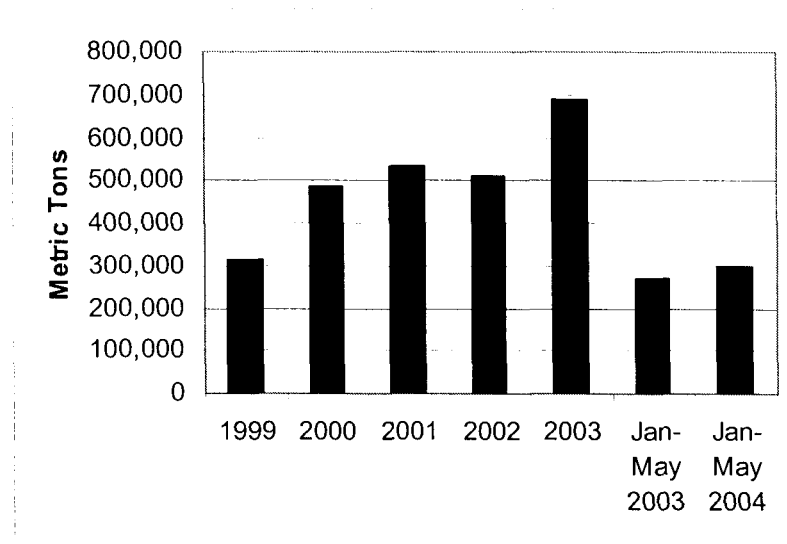
Copper-Based Scrap Exports

The Department has found that U.S. exports of copper-based scrap increased by 119 percent from

²The petitioners are part of the U.S. copper and copper-based scrap consuming (melting) industry, which includes approximately 35 primary brass mills, 15 wire rod mills, 23 ingot makers, 600 foundries, and three fire-refiners. Brass mills melt and alloy feedstock to make metal strip, sheet, plate, tube, rod, bar, mechanical wire, forgings, and extrusions. The brass mills employ fabricating processes, such as hot-rolling, cold-rolling, extrusion, and drawing to convert the melted and cast feedstock into mill products. Ingot-makers produce a wide range of cast copper alloys in the form of ingots. These ingots are small enough (30 pounds) to fit into their customers’ (foundries and brass mills) furnaces. Foundries make shaped castings for industrial and consumer goods, the most important of which are plumbing products and industrial valves.

1999-2003, rising from 315,000 MT in 1999 to 689,000 MT in 2003.³ See Chart 1. During the first five months of 2004 (the most recent data available), exports have increased 11 percent compared to the same period in 2003, rising from 269,000 MT in January-May 2003 to 298,000 MT in January-May 2004.

CHART 1
U.S. DOMESTIC EXPORTS OF COPPER-BASED SCRAP
1999-2004 (YEAR-TO-DATE)

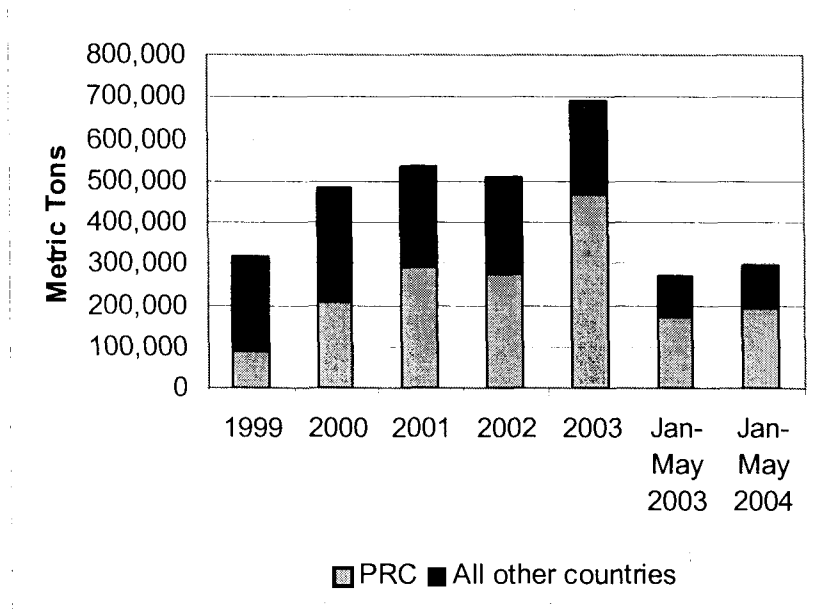


Source: U.S. International Trade Commission DataWeb

³All export data presented in this determination are based on the Bureau of the Census' reporting of "U.S. Domestic Exports" of copper-based scrap. The record does not demonstrate that re-exports of foreign-origin copper-based scrap, as recorded in "U.S. Total Exports," and cited by the petitioners, could be used in the domestic market.

The People's Republic of China ("PRC") has been the leading destination of U.S. copper-based scrap exports since 1999, accounting for 68 percent of U.S. copper-based scrap exports in 2003. U.S. copper-based scrap exports to the PRC increased by 447 percent from 1999-2003, rising from 86,000 MT in 1999 to 470,000 MT in 2003. See Chart 2. During the first five months of 2004, exports to the PRC have increased 14 percent compared to the same period in 2003, rising from 169,000 MT in January-May 2003 to 192,000 MT in January-May 2004. While exports to the PRC have increased during the 1999-2003 period, exports to all other countries have remained relatively stable.

CHART 2
U.S. DOMESTIC EXPORTS OF
COPPER-BASED SCRAP TO THE PRC AND WORLD
1999-2004 (YEAR-TO-DATE)



Source: U.S. International Trade Commission DataWeb

Domestic Consumption

Trends in U.S. consumption of copper-based scrap must be evaluated because the statute requires a determination of whether exports have increased significantly “in relation to domestic supply and demand.”

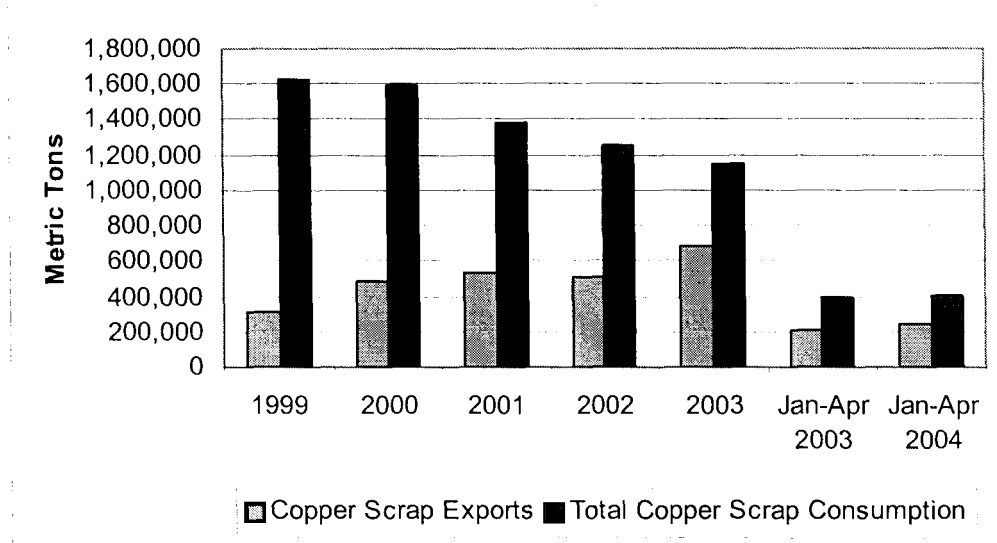
The Department has found that U.S. consumption of copper-based scrap decreased by 30 percent from 1999-2003, falling from 1,631,000 MT in 1999 to 1,152,000 MT in 2003.⁴ During the first four months of 2004, U.S. consumption of copper-based scrap increased 3 percent compared to the same period in 2003, rising from 397,000 MT in January-April 2003 to 410,000 MT in January-April 2004 (the most recent data available).

⁴Copper-based scrap can be distributed into three categories based on its origins and processing. (1) “Home scrap” or “run around scrap” is material generated during manufacturing (clippings, off-spec material) that never leaves the plant of origin and is recycled (remelted) internally. (2) “New scrap” is manufacturing scrap (grindings, turnings, webbing, skimmings, off-spec material) generated downstream from the primary mill that is not recycled internally, but rather enters into commerce and is traded back to the source primary mill or marketed through scrap yards and brokers. New scrap is particularly valuable to the primary mills in that its origins and exact composition are known, it is compatible with their alloy product output, and it requires little or no processing before consumption. (3) “Old scrap” is material recovered from items that have been placed in service and have become obsolete or otherwise removed from service. Old scrap, such as used water tubing, valves, auto radiators, and harnesses is collected through a tier of scrap processors and may be processed or upgraded before marketing to consumers or brokers for domestic use or export.

In 2003, new scrap accounted for approximately 96 percent of U.S. brass mills’ scrap consumption according to U.S. Geological Survey data. See Table 9, U.S. Geological Survey, Copper in December 2003 (March 2004). The U.S. Geological Survey estimates that old scrap accounted for approximately 75 percent of U.S. ingot makers’ scrap consumption and 51 percent of U.S. foundries’ scrap consumption in 2003. Id.

Over the past five years, U.S. consumption of copper-based scrap has decreased more than the rise in U.S. exports during the same period. See Chart 3. From 1999-2003, U.S. exports of copper-based scrap increased by 374,000 MT, while U.S. consumption decreased by 479,000 MT.

**CHART 3
U.S. DOMESTIC EXPORTS AND CONSUMPTION OF COPPER-BASED SCRAP
1999-2004 (YEAR-TO-DATE)**

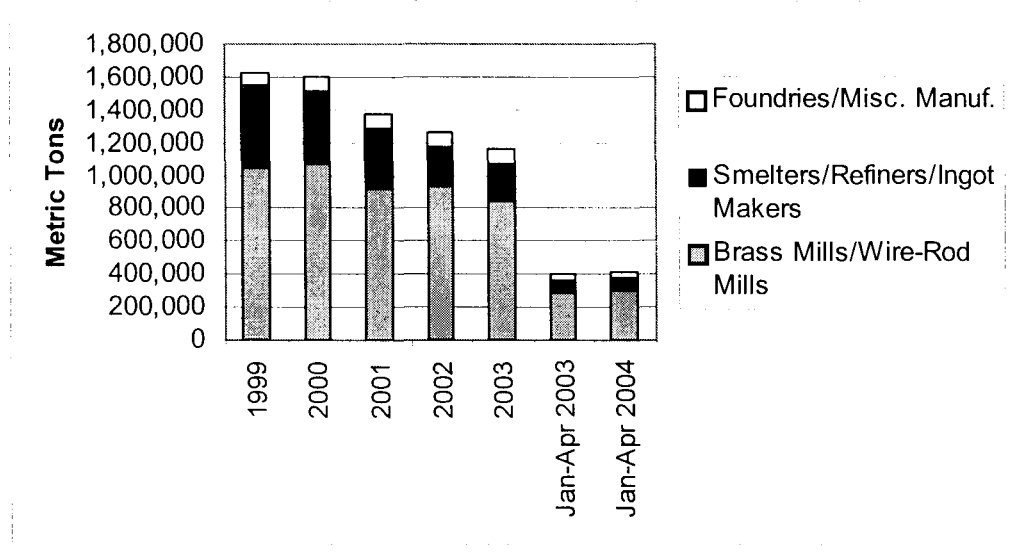


Sources: U.S. International Trade Commission DataWeb; Table 10, U.S. Geological Survey, Minerals Yearbook: Copper, 1999-2002; and Table 10, U.S. Geological Survey, Mineral Industry Surveys (Copper), December 2003-March 2004. April 2004 consumption data provided by U.S. Geological Survey.

The domestic copper-based scrap processing industry underwent significant restructuring during the 1999-2003 period, including the closure of the last operating independent U.S. secondary smelter in 2001.⁵ Historically, a significant portion of the scrap processed by the secondary smelters was material containing certain impurities that prevented copper and brass mills from directly consuming the scrap. During the 1999-2003 period, consumption of copper-based scrap by U.S. smelters, refiners, and ingot makers (including secondary smelters) decreased by 55 percent, falling from 501,000 MT in 1999 to 224,000 MT in 2003. See Chart 4.

⁵The petitioners allege that increased exports of copper-based scrap were a major cause that contributed to the demise of the U.S. secondary smelting industry. See Petitioners' Supplemental Comments (May 27, 2004), p. 9. The record does not demonstrate that the increase in exports was a major cause of the closure of the U.S. secondary smelters. The last two operating secondary smelters closed in May 2000 (Southwire Co., Carrollton, Georgia) and October 2001 (Chemetco Inc., Hartford, Illinois). The closure of both smelters was linked to the costs associated with environmental regulations compliance and the low price of copper. See U.S. Geological Survey, Minerals Yearbook – 2000, p. 23.3; U.S. Geological Survey, Minerals Yearbook – 2001, p. 22.2; and Copper Development Association, Technical Report: The U.S. Copper-base Scrap Industry and Its By-products – 2002 (July 2002), p. 14.

CHART 4
U.S. CONSUMPTION OF COPPER-BASED SCRAP
1999-2004 (YEAR-TO-DATE)



Sources: Table 10, U.S. Geological Survey, Minerals Yearbook: Copper, 1999-2002; and Table 10, U.S. Geological Survey, Mineral Industry Surveys (Copper), December 2003-March 2004. April 2004 consumption data provided by U.S. Geological Survey. 2003 and January-April 2004 Foundries/Misc. Manuf. consumption estimated as equal to 2002 figure. The U.S. Geological Survey includes wire-rod mill consumption with brass mills to avoid disclosing company proprietary data.

The Institute of Scrap Recycling Industries, Inc. (“ISRI”) has stated that “the vast majority of the material being exported is copper scrap that would otherwise not be consumed domestically” due to the closure of the domestic secondary smelters. See ISRI Final Comments (June 7, 2004), p. 17. The petitioners acknowledge that not all the copper-based scrap being exported can be consumed by the domestic industry, noting that “some element of the product exported is not of sufficient quality for use by the brass mill industry” and that “there is no means of discerning how much of the exported product could actually be used by the U.S. brass mill industry.” See

Petition, pp. 11-12, footnote 14. Thus, the Department concludes that the information on the record shows that at least some of the copper-based scrap being exported cannot be consumed by the domestic industry.

Thus, the increase in exports should be considered in the context of substantially decreased U.S. domestic consumption, as well as the record evidence showing that some copper-based scrap cannot be directly consumed by the petitioners.

Determination 2: Whether there has been a significant increase in domestic price of such material or a domestic shortage of such material relative to demand.

For the reasons set forth below, the Department has determined that there has been a significant increase in the domestic price of copper-based scrap. The Department has not determined that there is a domestic shortage of copper-based scrap relative to the demand for such material.

The petitioners allege that “U.S. prices for copper-based scrap have increased significantly” See Petitioners’ Initial Comments (May 13, 2004), p. 2. The petitioners cite increases in copper-based scrap prices since 2001, in particular the dramatic increases that occurred during the first four months of 2004 when the prices of Brass Mill Scrap, No. 1 copper (“No. 1 copper scrap”)

and Refiners' Copper Scrap, No. 2 copper, ("No. 2 copper scrap") rose 66.7 percent and 73.8 percent, respectively, compared to the same period in 2003.⁶ Id.

The petitioners also allege that increased exports of copper-based scrap have reduced U.S. supplies and have caused shortages of the material. The petitioners state that shortages of copper-based scrap have not been reflected in widespread production interruptions to date, but in the increased substitution of copper cathode (99.9 percent pure copper) for copper-based scrap and reduced stocks of copper-based scrap. See Petition, pp. 15-16, and Petitioners' Initial Comments (May 13, 2004), p. 3.

⁶Copper-based scrap is defined in as many as 43 different categories based on its copper purity-level. For many of these categories, there is no universal agreement among the copper scrap consuming and producing industries on definitions. No. 1 copper scrap is one of the scrap designations on which most members of the copper consuming and producing industries can agree. It is comprised of at least 99 percent copper. No. 2 copper scrap is considered by most industrial consumers/producers to be scrap with 94-98 percent copper content. However, some in the scrap consuming industry view No. 2 copper scrap as any scrap not classified as No. 1 copper scrap. Sequential definitions beyond No. 2 scrap indicate material with ever-decreasing percentages of copper and increasing percentages of other metals, such as lead, tin, and zinc.

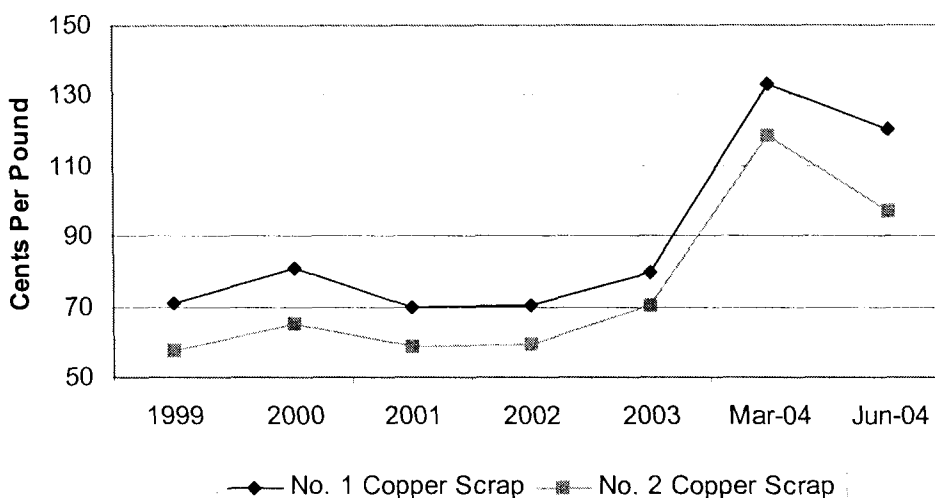
Domestic Prices

The Department has found that the average annual prices for No. 1 copper scrap and No. 2 copper scrap increased by 13 and 22 percent, respectively, from 1999-2003.⁷ The price for No. 1 copper scrap rose from 70.88 cents per pound in 1999 to 79.86 cents per pound in 2003. The price for No. 2 copper scrap rose from 57.53 cents per pound in 1999 to 70.15 cents per pound in 2003. See Chart 5. During the first six months of 2004 (the latest monthly data published), the prices for No. 1 copper scrap and No. 2 copper scrap have increased 65 percent and 64 percent, respectively, compared to the same period in 2003.⁸

⁷The petitioners and ISRI have each utilized American Metal Market published pricing data for copper scrap in their submissions for the record. Because the petitioners and ISRI used this source, the Department determined it was appropriate to utilize American Metal Market pricing data during the course of the review. Copper scrap prices presented in this determination are based on the American Metal Market's published daily estimates of dealer buying prices for carload lots delivered to a buyer's works.

⁸The comparison of year-on-year periods is appropriate because scrap prices and supplies are influenced by seasonal demand for copper products. See Wolverine Tube, Inc., Quarterly 10-Q Report to the Securities and Exchange Commission (August 13, 2003); "Essex cites wire market for earnings cut," Copper News, American Metal Market (May 22, 1998); "Higher Cost of Steel Scrap Boosting Price of Finished Steel," Buffalo News (February 15, 2004).

CHART 5
U.S. COPPER SCRAP AVERAGE PRICES
1999-2004 (YEAR-TO-DATE)

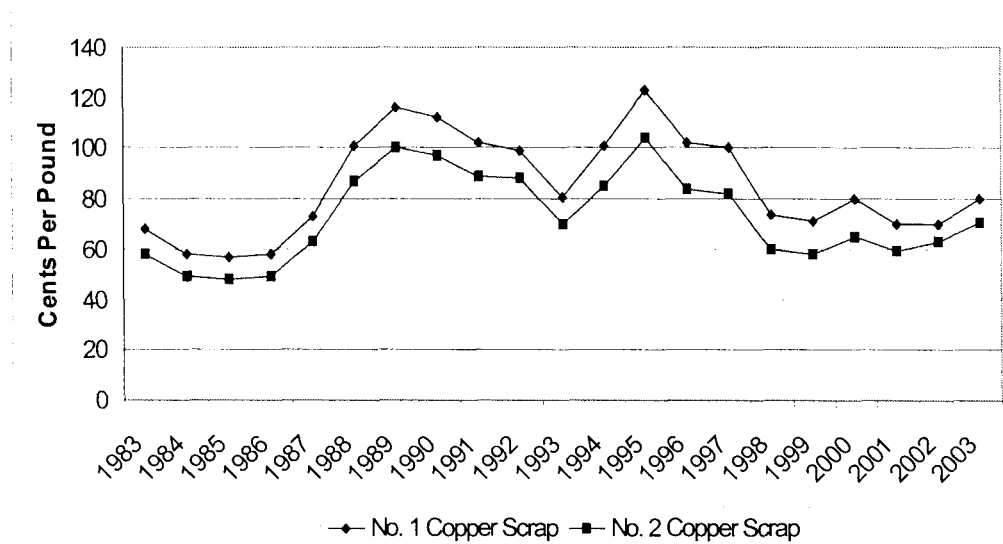


Sources: U.S. Geological Survey compilation of American Metal Market published price data. Table 13, U.S. Geological Survey, Minerals Yearbook: Copper, 2000-2002; and Table 13, U.S. Geological Survey, Mineral Industry Surveys (Copper), December 2003-March 2004. April 2004-June 2004 data provided by U.S. Geological Survey.

The prices for No. 1 copper scrap and No. 2 copper scrap each rose 32 percent during the first quarter of 2004 compared to the fourth quarter of 2003, before falling during the second quarter of 2004. Comparing prices in March 2004 to June 2004, the average monthly prices for No. 1 and No. 2 copper scrap decreased 10 percent and 18 percent, respectively. The price for No. 1 copper scrap fell from 132.89 cents per pound in March 2004 to 120.33 cents per pound in June 2004. The price for No. 2 copper scrap fell from 118.57 cents per pound in March 2004 to 96.90 cents per pound in June 2004. In addition, the Department has found that the price

increase for copper scrap that occurred from 1999-2003 occurred at a slower rate than previous price increases (e.g., 1986-1989 and 1993-1995). See Chart 6.

**CHART 6
U.S. COPPER SCRAP AVERAGE PRICES
1983-2003**



Source: Bureau of Industry and Security compilation of American Metal Market published price data

Domestic Shortage

During the process of the review, the Department found no convincing evidence of the existence of a shortage of copper-based scrap. After reviewing the statute, the Department has determined that, as used in Section 7(c) of the EAA, a shortage of copper-based scrap exists if the domestic industry’s demand exceeds the supply at prevailing market prices. In addition to the fact that the information submitted by the petitioners did not establish that a shortage of copper-based scrap

exists, as discussed below there are no signs of any consequences of a shortage. There is conflicting evidence as to whether the industry has had difficulties purchasing copper-based scrap. Petitioners stated that they have had trouble getting their required supply of copper-based scrap. See Hearing Transcript, pp. 9, 12, 39-41, 52-53, 55, 74-76, 92-95, 107, 112, 124-127, 131-132, 137, 154, 156-157, and 159-161. The petitioners stated that one unnamed brass mill reported that “delays in sourcing input material resulted in a cumulative equivalent of 11 days of lost production” during the first quarter of 2004, and at the hearing three witnesses for the petitioners stated that supply availability had affected their companies’ production schedules. See Petitioners’ Supplemental Comments (May 13, 2004), p. 15 and Hearing Transcript, pp. 107, 112, and 161.

In response, ISRI stated that many scrap processors reported that brass mills were delaying receipt of purchased scrap due to excess inventories of raw materials at the mills. See ISRI Initial Comments (May 13, 2004), p. 7; Hearing Transcript, pp. 177, 191; and ISRI Final Comments (June 7, 2004), pp. 23-24. ISRI provided information stating that brass mills have slowed down their acceptances of shipments of copper-based scrap. ISRI identified ten brass mills or ingot makers by name that it states have extended delivery dates by as long as six-to-eight weeks. See ISRI Final Comments (June 7, 2004), pp. 23-24.

The petitioners disagreed with ISRI’s statements that mills were delaying deliveries. The petitioners surveyed their members (133 companies according to membership lists attached as

Exhibit 1 to the petition) to ascertain if any company had requested that deliveries be delayed, and advised the Department that, of the eight producers responding to their inquiry, none reported delaying “purchasing copper-based scrap offered by scrap dealers because such scrap was not needed.” See Petitioners’ Final Comments (June 7, 2004), p. 10. After the closing of the public comment period, the petitioners also provided additional statements from officials with five of the ten companies identified by ISRI, stating that these companies had not delayed shipment of scrap for “ ‘six to eight weeks’ because of an ‘excess inventory’ of scrap on hand.” See Petitioners’ Statements from Brass Mills (July 13, 2004).⁹ While the Department has accepted this submission, we note that due to the late filing other parties have not had an opportunity to respond. The Department concludes that there is unrebutted record evidence that at least five companies have delayed scrap deliveries.

In addition, there were no signs of significant consequences that would normally result from a shortage. The record does not reflect that the industry is laying off workers or shutting down plants due to an inability to obtain scrap. The record also does not reflect that the industry has been unable to satisfy customer orders to date. See Hearing Transcript, pp. 23-24, 112-113, 126-127, and 161.

⁹One of the company officials noted that his company may have delayed some scrap deliveries in April 2004 due to the shutdown of a furnace for regular maintenance. See Statement of Edward Kerins, Jr., Cambridge-Lee Industries (July 12, 2004), p. 2.

ISRI also suggests that there are extensive potential reserves of obsolete copper-based scrap in the United States. See Nathan Associates Inc., *The National Inventory of Obsolete Copper Scrap: Accumulation and Availability, 1982-2003* (May 2004) (“Nathan Associates Study”). However, the Department has not relied on this study because the study does not demonstrate that these “potential reserves” are readily available for use by copper scrap consuming industries. The study’s definition of obsolete copper scrap “consists of copper contained in installed or in-place products in the U.S. economy.” See Nathan Associates Study, p. i.

As discussed above, the petitioners state that shortages of copper-based scrap have been reflected in the increased substitution of copper cathode for copper-based scrap. The Department has found that there is no quantitative evidence suggesting that U.S. brass mills have been extensively switching to cathode in response to an alleged copper-based scrap shortage. According to U.S. Geological Survey data, there has been only a marginal increase in brass mill consumption of cathode as a percentage of total feedstock since 1999, with cathode accounting for 28.3 percent of total brass mill feedstock consumption in 1999 and 30.8 percent in 2003. During the first four months of 2004 (the most recent data available), cathode has accounted for 27 percent of brass mill feedstock consumption. See Table 1.

TABLE 1
U.S. BRASS MILL CONSUMPTION OF COPPER-BASED SCRAP,
REFINED COPPER, AND CATHODES
1999-2004 (YEAR-TO-DATE)

	(A)	(B)	(C)	(D)	(E)	(F)
	Brass Mill Consumption of Copper-Based Scrap (MT)	Brass Mill Consumption of Refined Copper (MT)	Brass Mill Consumption of Cathodes (MT)	Total Brass Mill Consumption (MT) (A+B)	Scrap as a Percentage of Total Brass Mill Consumption (A/D)	Cathode as a Percentage of Total Brass Mill Consumption (C/D)
1999	1,045,000	691,000	492,000	1,736,000	60.2 percent	28.3 percent
2000	1,070,000	723,000	501,000	1,793,000	59.7 percent	27.9 percent
2001	919,000	623,000	429,000	1,542,000	59.6 percent	27.8 percent
2002	930,000	593,000	439,000	1,523,000	61.1 percent	28.8 percent
2003	840,000	587,000	439,000	1,427,000	58.9 percent	30.8 percent
2004 (Jan-Apr)	307,000	204,000	138,100	511,000	60.1 percent	27.0 percent

Sources: Tables 4 and 5, U.S. Geological Survey, Minerals Yearbook: Copper, 2000-2002. Revised 1999, 2003, and January-April 2004 data provided by U.S. Geological Survey. Refined copper includes cathodes, wire bars, ingots and ingot bars, cakes and slabs, and billets and others. The U.S. Geological Survey includes wire-rod mill copper-based scrap consumption with brass mills to avoid disclosing company proprietary data.

As discussed above, the petitioners also state that shortages of copper-based scrap have been reflected in the decrease of copper-based scrap stock levels. The Department has found that the

domestic copper-based scrap stock level at brass mills; smelters, refiners, and ingot makers; and foundries has declined 36 percent from 1999-2003. However, the level of copper-based scrap stocks has remained relatively constant as a percent of consumption of copper-based scrap during this period. According to U.S. Geological Survey data, copper-based scrap stocks were equal to 5.5 percent of domestic consumption in 1999, 5.1 percent in 2000, 4.9 percent in 2001, 5.3 percent in 2002, and 5.0 percent in 2003.¹⁰

Determination 3: *Whether exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii).*

For the reasons set forth below, the Department has determined that exports of copper-based scrap are not as important as any other cause of the domestic price increase relative to demand found under Determination 2, above.

The petitioners allege that “there are no factors other than exports that serve to explain domestic shortages and increased prices for copper-based scrap in the United States.” See Petitioners’ Initial Comments (May 13, 2004), p. 14. The petitioners state that foreign buyers are “paying above market-levels and agreeing to preferential sales terms to U.S. scrap dealers in order to obtain” copper-based scrap. See Petition, pp. 19-20. The petitioners provided testimony and

¹⁰See Table 10, U.S. Geological Survey, Minerals Yearbook: Copper, 2000-2002. Preliminary 2003 data provided by U.S. Geological Survey.

articles from the trade press to substantiate these claims. The petitioners also state that increased copper-based scrap exports have led to higher domestic copper-based scrap prices by reducing available domestic supplies. Id., p. 20. The petitioners provided testimony and written comments to substantiate their assertions.

During the public hearing, the Department requested a copy of the petitioners' analysis that there were no factors, other than exports, that have caused the alleged shortage. See Hearing Transcript, pp. 83-84. The petitioners have not provided the requested data.

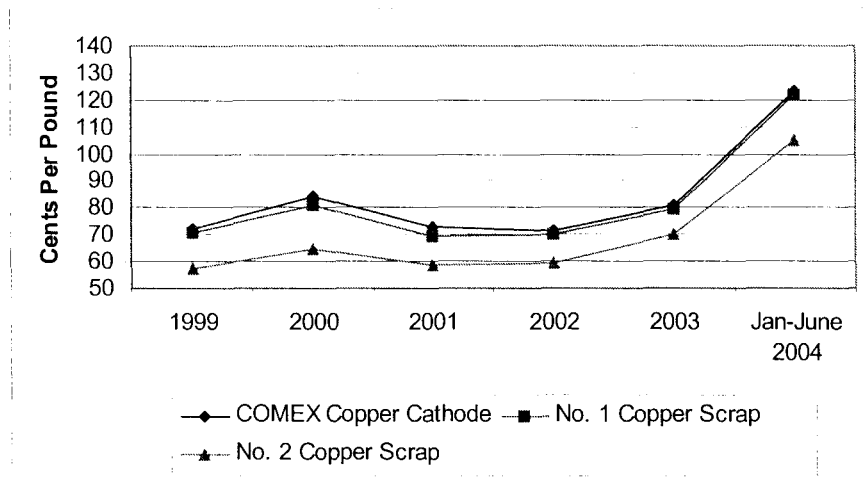
ISRI counters the petitioners' assertions by stating that "[a]ny impact that the increase in exports might have had on scrap prices is marginal at best and impossible to quantify." See ISRI Final Comments (June 7, 2004), p. 4. ISRI also states that "[t]he domestic price for copper scrap typically mirrors the world market price for such scrap, which is dictated by the global market price for copper metal." See ISRI Initial Comments (May 13, 2004), p. 2.

Based on evidence gathered during the course of the review, the Department concluded that the overall price of copper scrap tracks the price of copper cathode, as traded on global commodity exchanges. See Chart 7.¹¹ While the rise in exports in copper-based scrap has been a factor

¹¹See also Exhibit 6 to Petitioners' Initial Comments (May 27, 2004); testimony of Michael Kerwin, on behalf of petitioners ("the price of scrap essentially keys off of . . . the COMEX price"), Hearing Transcript, p. 61; testimony of Roy Allen, on behalf of petitioners ("these rising prices certainly reflect general increases in world copper prices that have taken place, as reflected by the commodity exchanges"), Hearing Transcript, p. 92; testimony of Jeffrey

influencing the increase in domestic copper scrap prices, it is the world supply and demand for copper that has been the most important cause of any increase in the price of copper-based scrap.

CHART 7
U.S. AVERAGE COPPER CATHODE AND COPPER SCRAP PRICES
1999-2004 (YEAR-TO-DATE)



Sources: U.S. Geological Survey compilation of New York Mercantile Exchange Commodities Division (“COMEX”) and American Metal Market published price data. Table 13, U.S. Geological Survey, Minerals Yearbook: Copper, 2001-2002; and Table 13, U.S. Geological Survey, Mineral Industry Surveys (Copper), December 2003-March 2004. April 2004-June 2004 data provided by U.S. Geological Survey.

The global market for copper cathode, in turn, is driven by factors such as copper mining developments (e.g., mine shutdowns or new investments), developments in the refining sector (e.g., changes secondary copper smelting and refining capacity), and copper demand. See ISRI

Burghardt, on behalf of petitioners (“copper-based scrap in the U.S. is priced at a negotiated discount or premium relative to the COMEX price for copper cathode”), Hearing Transcript, p. 122.

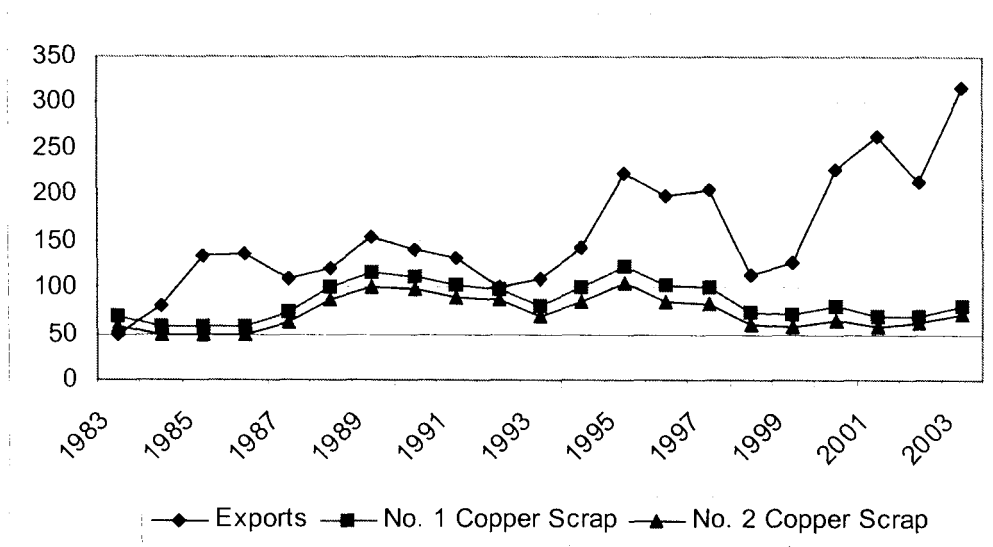
Initial Comments (May 13, 2004), pp. 10-11. The supply from copper mines, in particular, has been a critical factor in recent price fluctuations. During the past several years, prices for copper have been low and production was reduced as a result. See “Codelco sets copper production target of 1.6M tonnes, up 3.5%,” American Metal Market (March 20, 2003). More recently, the mining companies have suffered from labor problems and natural disasters that have impeded supply. See “A Strike here, a landslide there . . . behind the pinch in copper,” American Metal Market (February 9, 2004). Thus, global copper supplies were unable to respond quickly to increased global copper demand resulting from rapid growth in Asia and increased demand in the United States. See International Copper Study Group (“ICSG”), Press Release: Forecast 2004-2005 (May 19, 2004).¹² Accordingly, world market prices have seen a sharp increase that correlates to the increase in domestic prices. The ICSG also reports that Chile and the PRC are or will be releasing copper from stockpiles in 2004. In 2005, copper mines in Indonesia are anticipated to be operating at full capacity, and certain mines will be reopening in North America. Id.

In addition, historically the rate of copper scrap price increases does not correspond closely to the rate at which copper scrap exports increased. While the rate of the recent 1999-2003 rise in copper scrap prices is less than that experienced in earlier periods (e.g., 1986-1989 and 1993-1995), the rate of increase in export quantities from 1999-2003 appears to have occurred at the

¹²The International Copper Study Group, established in 1992, is an intergovernmental organization that serves to increase copper market transparency and promote international discussions and cooperation on issues related to copper.

same or greater level as the rate recorded in earlier periods. See Chart 8. This relationship undermines the claim that domestic copper scrap prices are highly related to the increase in export volumes and suggests that the recycling industry is searching for new markets for the scrap that can no longer be processed in the United States. Indeed, the overall level of global copper scrap consumption decreased approximately 15 percent from 1999-2003 according to unpublished ICSG data. Given the integration of global scrap trade, this decrease makes it unlikely that scrap consumption trends are responsible for the run-up in scrap prices.

CHART 8
U.S. UNALLOYED COPPER SCRAP EXPORTS
AND U.S. COPPER SCRAP AVERAGE PRICES
1983-2003
UNALLOYED EXPORTS (000MT)
NO. 1 AND NO. 2 COPPER SCRAP PRICES (CENTS PER POUND)



Source: Bureau of Industry and Security compilation of Bureau of the Census export data and American Metal Market published price data

Finally, there have been a number of foreign governmental actions that may have affected the price and supply of copper scrap, including Russia's export restriction on copper-based scrap. In 1998, Russia was the leading exporter of copper-based scrap, with exports totaling 357,000 MT. See Copper Development Association Inc., Table 3, Technical Report: The U.S. Copper-based Scrap Industry and Its By-products – 2003 (December 2003). However, in 1999, the Russian government imposed an export tax on copper scrap that effectively removed the country from the copper scrap export market. This export tax may have had an impact on global copper scrap prices and supply. As the export tax was phased in, Russian exports of copper scrap dwindled. See "Copper, nickel gains bring out supply," American Metal Market (February 11, 1999), and "Unpredictable Behavior: The Story of Copper and Brass," Recycling Today (April 2000). The Russian export tax was imposed at the beginning of the 1999-2002 time period when global demand for copper scrap increased at a rate of approximately 20 percent. See Copper Development Association Inc., Table 4, Technical Report: The U.S. Copper-based Scrap Industry and Its By-products – 2003 (December 2003). Russia's withdrawal from the copper scrap export market in 1999 may have influenced the global availability of copper-based scrap.

The petitioners also have cited several Chinese government practices that they allege are spurring scrap exports to China. First, the petitioners state that it is their understanding that the PRC applies a value-added tax ("VAT") of 17 percent on imports of copper-based scrap and then rebates 30 percent of this VAT to the importer. See Petitioners' Final Comments (June 7, 2004), p. 20. Second, the petitioners claim that "additional subsidies" beyond the VAT rebate are

provided to downstream Chinese products that incorporate copper-based scrap. Id. Third, they claim that copper-based scrap is either undervalued and/or assessed at a lower duty rate due to mis-classification when it is imported into China. Id., p. 21.

The Department, working with the Office of the United States Trade Representative and the Department of State, is continuing to gather information regarding these alleged practices, to examine whether they constitute unfair trade practices, such as subsidies or discriminatory treatment, that may be addressed under U.S. law or international rules. We note that the PRC will require that all companies seeking to ship scrap to China be licensed by China's General Administration of Quality Supervision, Inspection and Quarantine ("AQSIQ"). AQSIQ has announced that it will bar non-licensed vendors from unloading scrap in China on November 1, 2004. The application deadline for exporters is August 1, 2004. According to AQSIQ, the license requirement is intended to reduce the amount of dangerous contaminated scrap being imported into China.

Determination 4: Whether a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry.

For the reasons set forth below, the Department has determined that the domestic price increase relative to demand found under Determination 2, above, has not significantly adversely affected

and likely will not significantly adversely affect the national economy or any sector thereof, including a domestic industry.

The petitioners allege that the copper scrap price increase has caused higher material acquisition costs for primary brass mills and secondary fabricators of sheet, tube, plate, and rod. They state that these higher costs, in turn, reduce profit margins. See Petition, pp. 28-29.

National Economy

The primary industries that use copper-based scrap include four industries with the following North American Industry Classification System (“NAICS”) codes: (1) copper rolling, drawing, and extruding (NAICS 331421); (2) copper wire (except mechanical) drawing (NAICS 331422); (3) secondary smelting, refining, and alloying of copper (NAICS 331423); and (4) copper foundries (NAICS 331525). According to data published in the Census Bureau’s Annual Survey of Manufactures (2003), the sum of the value added by these four industry sectors was \$3 billion in 2001 (the most recent data available). These primary industries appear to have accounted for less than 1 percent of the \$10.1 trillion Gross Domestic Product of the United States. These economic data do not demonstrate that a significant increase in price or a shortage of copper-

based scrap relative to demand has significantly or will significantly affect the national economy.¹³

Sectoral Analysis

To demonstrate the adverse effect on their industry, the petitioners focus on trends in the price differentials (or “discounts”) that exist between copper scrap and copper cathode. This issue is of particular importance to the petitioners because the “pricing of copper and copper-alloy finished products by brass mills generally takes account of prevailing market prices for copper cathode.” See Petition, p. 28. This pricing mechanism, in part, limits the brass mills’ ability to “pass through” the increased costs of manufacturing associated with the rise in copper scrap prices. Brass mill products are often made with copper-based scrap, not just cathode, and if the

¹³Supporters of the petition note that copper-based scrap shortages could affect U.S. industry’s ability to support U.S. national security, citing copper’s use by the ammunition industry as an example. See Petitioners’ Final Comments (June 7, 2004), p. 16 and Letter from Senator Arlen Specter to Donald L. Evans, Secretary of Commerce (June 14, 2004), p. 2. The record does not demonstrate that the U.S. defense industry has been unable to satisfy national defense requirements to date due to a shortage of copper-based scrap. The Department administers the Defense Priorities and Allocations Systems (“DPAS”) regulations to ensure the timely availability of industrial products and materials to meet current national defense and emergency preparedness requirements. See 15 C.F.R. Part 700. The DPAS is maintained under the authority of Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. § 2061, et. seq.); Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5195, et. seq.); Section 18 of the Selective Service Act of 1948 (50 U.S.C. App. § 468); 10 U.S.C. § 2538; 50 U.S.C. § 82; Executive Order 12919, as amended (3 C.F.R., 1994 Comp. 901); Executive Order 12742, as amended (3 C.F.R., 1991 Comp. 309); and Executive Order 12656, as amended (3 C.F.R., 1988 Comp. 585).

price for copper scrap increases and the price for copper cathode does not exhibit a commensurate increase, profit margins are narrowed via a cost-price squeeze. Id., pp. 28-29.

The petitioners argue that the industry faced such a scenario from 2001-2003. The petitioners state that the discount for No. 1 copper scrap, relative to copper cathode prices, decreased from 2.95 cents per pound in 2001 to 1.21 cents per pound in 2003, a difference of 1.74 cents per pound.¹⁴ See Petition, p. 28. The petitioners note that this decrease in discounts was due to “increased exports and reduced scrap supply.” Id. Furthermore, the petitioners state that this narrowing discount “resulted in a direct cost to the brass mill industry of \$32,306,135 annually,” based on 2003 consumption levels. Id.

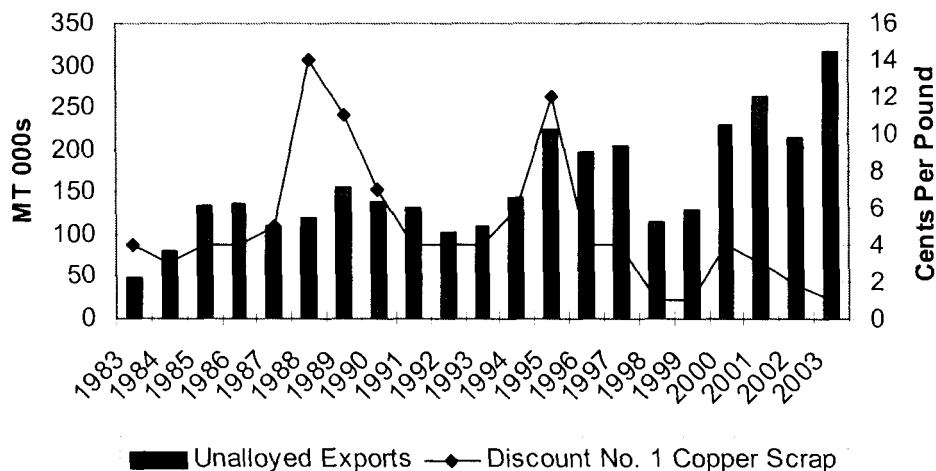
In its evaluation of this issue, the Department reviewed the change in price differentials between 1999-2003 and the first two quarters of 2004. The Department chose these periods for review due to the fact that the petitioners have argued that the overall increase in copper-based scrap exports began in 1999. See Petition, p. 10. For the 1999-2003 period, the Department determined that the price differential for No. 1 copper scrap decreased by only 3 percent, falling from 1.23 cents per pound in 1999 to 1.19 cents per pound in 2003. This period shows a significantly smaller decline in discounts than the 2001-2003 period highlighted by the petitioners (from 2001-2003 the discount for No. 1 copper scrap declined by 59 percent).

¹⁴According to U.S. Geological Survey data, No. 1 copper scrap accounted for approximately 45 percent of U.S. brass mills’ scrap consumption in 2003. See Table 10, U.S. Geological Survey, Copper in December 2003 (March 2004).

Further, during the first six months of 2004, the price differential for No. 1 copper scrap decreased by only 3 percent compared to the same period in 2003, falling from 1.21 cents per pound in January-June 2003 to 1.18 cents per pound in January-June 2004. See Table 2.

Moreover, there is insufficient evidence that the current discount levels for No. 1 copper scrap are caused by increased exports. Petitioners submitted data regarding historical discount levels. See Petitioners' Final Comments (June 7, 2003), pp. 4-7 and Exhibit 1. A decline in discount levels for No. 1 copper scrap occurred from the mid-1990s to the late-1990s. However, U.S. exports of unalloyed copper scrap did not increase significantly during this period. See Chart 9. The Department compared No. 1 copper scrap discounts with unalloyed copper scrap exports from 1983-2003 and determined that the discount for No. 1 copper scrap does not track U.S. exports of unalloyed copper scrap. Accordingly, the decline in discount levels does not appear to have been caused by any increase in exports, but by other factors.

CHART 9
U.S. UNALLOYED COPPER SCRAP EXPORTS
AND U.S. AVERAGE DISCOUNTS FOR NO. 1 COPPER SCRAP
1983-2003



Source: Bureau of Industry and Security compilation of Bureau of the Census export data and calculation of the discount for No. 1 copper scrap based on COMEX and American Metal Market published price data

The Department also reviewed the petitioners’ claim that the decrease in discounts has “resulted in a direct cost to the brass mill industry of \$32,306,135 annually.” See Petition, p. 28. In order to reach this number, the petitioners calculated the difference between the 2001 and 2003 discounts for No. 1 copper scrap (1.74 cents per pound) and multiplied that by the 2003 consumption level of copper-based scrap (1,856,674,437 pounds). Id. When this approach is

applied to the differences between 1999 and 2003 discounts (0.04 cents per pound), this number declines to \$742,669 annually.¹⁵

The Department also evaluated the discount for No. 2 copper scrap, as No. 2 copper scrap is an input for refiners and ingot makers. From 1999-2003, the discount for No. 2 copper scrap decreased by 25 percent, falling from 14.58 cents per pound in 1999 to 10.9 cents per pound in 2003. However, during the first six months of 2004, the price differential has increased by 62 percent compared to the same period in 2003, rising from 11.32 cents per pound from January-June 2003 to 18.36 cents per pound from January-June 2004. See Table 2. The current discount for No. 2 copper scrap is near the peak of average annual discount levels from 1999-2003. Id.

¹⁵Brass mills also negotiate arrangements with their customers to purchase new scrap generated during the customers' manufacturing operations through buy-back arrangements. There is no information in the record concerning the pricing structure for the brass mills' repurchase of new scrap from their customers. See Hearing Transcript, pp. 86-87, 146-150. Testimony of George Dykhuizen, on behalf of petitioners ("[t]here's a published price for the price of the mill return scrap which is not related to the COMEX. . . . Every mill has just a different, different arrangement, a different price for that buying arrangement, buy-sell arrangement, if you will."), Hearing Transcript, pp. 147-148. There are no published data on the volume of buy-back arrangements.

TABLE 2
AVERAGE COMEX COPPER CATHODE AND U.S. COPPER SCRAP PRICES
AND DISCOUNTS
CENTS PER POUND

	COMEX Copper Cathode	No. 1 Copper Scrap	No. 2 Copper Scrap	No. 1 Discount	No. 2 Discount
1999	72.11	70.88	57.53	1.23	14.58
2000	83.97	80.67	64.99	3.30	18.98
2001	72.57	69.57	58.90	3.00	13.67
2002	71.67	70.23	59.45	1.44	12.22
2003	81.05	79.86	70.15	1.19	10.90
Average Jan- June 2003	75.37	74.16	64.05	1.21	11.32
Average Jan- June 2004	123.29	122.11	104.93	1.18	18.36

Sources: U.S. Geological Survey compilation of American Metal Market published price data. Table 13, U.S. Geological Survey, Minerals Yearbook: Copper, 2000-2002; and Table 13 U.S. Geological Survey, Mineral Industry Surveys (Copper), December 2003-March 2004. April 2004-June 2004 data provided by U.S. Geological Survey.

The Department also concluded that price discounts for copper scrap have been determined not only by domestic supply, which can be influenced by exports, but also by domestic demand and transportation costs.¹⁶ Accordingly, the changes in the margins for No. 1 and No. 2 copper scrap exhibited between 1999-2003 and during the first two quarters of 2004 were caused not only by

¹⁶ The American Metal Market scrap prices include the cost of transportation of the scrap from the recycling facility to the processing facility's yard, "[e]stimated dealer buying prices, in ¢/lb, delivered to yard." See American Metal Market Nonferrous Scrap Prices.

changes in domestic supply of scrap, but also by fluctuations in U.S. demand and transportation costs.

In addition to addressing the impact of declining discounts, the petitioners provided aggregate financial information on six major brass mills (17 percent of the 35 brass mills operating in the United States) to help quantify the impact of increased exports and reduced supplies of copper-based scrap on the industry. This information partially responded to the Department's request for detailed information regarding such adverse effects. See Hearing Transcript, pp. 72, 133. The information supported the petitioners' allegations that declining sales values and rapidly increasing material input costs have reduced the operating profits for the six companies from 11 percent in 1999 to 2 percent in 2003. See Petitioners' Final Comments (June 7, 2004), Exhibit 5.

Accordingly, as to a specific sector of the national economy, there appears to be some evidence of reduced profits at the primary producer level. However, this evidence is from a limited sample that may not be representative of the entire industry. It is possible that other members of the industry have become more profitable over this time period. In addition, the petitioners did not estimate the six brass mills' share of the industry's total net sales. The Department has calculated that the 1999 revenues of the six brass mills accounted for 12.7 percent of the total shipments (revenues) for the four primary industries that used copper-based scrap, based on the

Census Bureau's Annual Survey of Manufactures.¹⁷ Although the Census Bureau has published data through 2001, the petitioners only provided a summary of financial data for 1999, 2002, and 2003. Accordingly, the Department was unable to perform further calculations. Moreover, petitioners have not provided information that the companies have been forced to shut down, or reduce employment, or have been unable to satisfy customer orders. Indeed, their responses indicate that these effects have not occurred. Thus, the evidence does not demonstrate the requisite adverse effects to satisfy the requirements of this determination.

Equally important, the evidence does not demonstrate that the reduced profitability experienced by some members of the brass mill industry was caused by a domestic price increase or shortage, as the statute requires. The reduced profitability may be due, in part, to other factors, such as a significant decline in sales values. In 1999, the year when the six brass mills' operating profits were 11 percent of net sales, their net sales value was \$1,263.4 million. See Petitioners' Final Comments (June 7, 2004), p. 17. In 2003, when their operating profits dropped to 2 percent of net sales, their net sales value was only \$1,012.7 million – a drop of over \$250 million, or approximately 20 percent. A 20 percent drop in sales may reduce operating profits, as it becomes more difficult for a company to cover its fixed costs. In addition, higher energy and transportation costs appear to have burdened the industry. Accordingly, the Department has

¹⁷Copper rolling, drawing, and extruding (NAICS 331421); copper wire (except mechanical) drawing (NAICS 331422); secondary smelting, refining, and alloying of copper (NAICS 331423); and copper foundries (NAICS 331525).

insufficient data to determine the extent to which the reduced profitability is due to a domestic price increase or shortage, versus other factors.

Petitioners further allege adverse effect to a sector of the national economy to the extent that they have been able to pass along higher material acquisition costs to their customers. They claim that such increases are resulting in higher prices for copper-based products. They allege that these higher prices for copper-based products are causing economic harm that calls into question the economic viability of their customers' continuing production in light of competition from lower cost imports and possible substitution of lower cost alternatives for copper products. See Petition, p. 29.

According to the Bureau of Labor Statistics, there have been increases in the prices for copper products (i.e., rod, bar, sheet, strip, and plate), but the data are insufficient to determine the percentage of such increases attributable to the rise in copper-based scrap prices as distinguished from other factors. See Bureau of Labor Statistics, Producer Price Indices, Copper & Alloy Rod, Bars & Shapes (NAICS 3314213); Copper & Alloy Sheet, Strip & Plate (NAICS 3314217); and Copper & Alloy Pipe and Tube (NAICS 3314219). These findings and the information available on the record do not demonstrate that material acquisition costs for copper-based scrap have translated into U.S. companies and consumers purchasing lower cost imported brass/copper fittings and related products or substituting lower cost alternatives for copper products.

Accordingly, while at least some petitioners have experienced reduced profit margins over the past several years, they have not established that the higher prices of copper-based scrap have had a significant adverse impact on their activities or those of their customers.

The statute also requires that the Department consider whether increased prices or shortages may, in the future, significantly adversely affect the domestic industry. As noted, exports of copper-based scrap are not as important as any other determinant in these current price increases and supply levels, and there are no indications at this time, based on the record, that significant adverse effects may result from current trends. Moreover, given the inherently predictive nature of this analysis, it is appropriate to proceed with caution.¹⁸

In sum, the record does not indicate that the price increases have significantly adversely affected or may significantly adversely affect the national economy or any sector thereof.

¹⁸By way of analogy, U.S. trade law provides that the U.S. International Trade Commission shall not base a finding of “threat” of material injury on “mere conjecture or supposition.” 19 U.S.C. § 1677(7)(F)(2) (2004). See also Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Annex 1A, Agreement Establishing the World Trade Organization, Apr. 15, 1994, reprinted in H.R. Doc. No. 316, 103d Cong., 2d Sess. 1453 (1994), Article 3.7 and Article 3.8 (threat cases “shall be considered and decided with special care.”).

Determination 5: *Whether monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act.*

For the reasons set forth below, the Department has determined that neither monitoring nor controls is necessary in order to carry out the policy set forth in Section 3(2)(C) of the EAA.

Section 3(2) of the EAA states that:

[i]t is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary –

...

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

As addressed in Determination 2, there is insufficient evidence to establish a shortage of copper-based scrap, and, as addressed in Determination 4, there is insufficient evidence to establish that exports of copper-based scrap are having a significant adverse effect on the domestic economy or a sector thereof. Accordingly, the Department has determined that it is not necessary to restrict exports of copper-based scrap in order to protect the domestic economy from the excessive drain

of scarce materials and to reduce the serious inflationary impact of foreign demand. For the same reason, it is not necessary to monitor such exports.

Furthermore, based on a review of the record, there is insufficient evidence to determine whether export controls would increase the supply of copper-based scrap or lower its domestic price.¹⁹

The Department therefore finds that it is appropriate to act with caution in imposing controls, absent a more precise understanding of the likely impact of these actions. We requested this information from interested parties, but did not receive any relevant analysis. See Bureau of Industry and Security, Copper and Brass Scrap Short Supply Petition: Additional Questions for Interested Parties, Supply and Demand Considerations, questions 15-19.²⁰

Regarding monitoring, the Department is concerned that imposing monitoring would result in significant record-keeping and reporting burdens on U.S. industry. The imposition of monitoring

¹⁹Indeed, there is some evidence that restricting exports will increase the price of copper-based scrap due to global supply and demand. See ISRI Final Comments, p. 20.

²⁰We note that ISRI has argued that imposing export controls would be a violation of Article XI of the General Agreement on Tariffs and Trade (GATT) 1994. See, e.g., Supplemental Comments of Patton Boggs LLP (May 27, 2004), pp. 3-5. Petitioners argue the contrary. See, e.g., Petitioners' Final Comments (June 7, 2004), pp. 21-24. Because the Department has determined that the standard for relief under U.S. law has not been met, we do not reach the issue of whether it would violate U.S. GATT 1994 obligations if export controls were imposed in this case. However, we consider it very important that the United States, and other countries that maintain or may consider imposing export controls for short supply reasons, act consistently with the relevant GATT 1994 obligations. GATT Article XI requires, in particular, that such controls (1) be "temporarily applied," (2) respond to "critical shortages," and (3) involve "products essential to the exporting contracting party."

would require that exporters of copper-based scrap report to the Department all actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand for such scrap. The Department would then be required to aggregate the information submitted and publish the aggregated statistics on a weekly basis.

DETERMINATIONS:

1. The volume of exports of copper-based scrap has increased significantly over the time period presented in the petition, 1999-2003 and year-to-date 2004. Decreased domestic consumption, including the closure of the last independent U.S. secondary smelter, has been an important factor in the rise of exports. Accordingly, the increase in exports is somewhat less significant when it is considered in relation to domestic demand, as required by the statute.
2. Copper scrap prices have increased significantly during the time period presented in the petition, 1999-2003 and year-to-date 2004. However, the evidence does not demonstrate the existence of a shortage.
3. The world market for copper cathode, not the level of U.S. exports of copper-based scrap, is the most important determinant in the fluctuation of domestic copper scrap prices.

4. The evidence does not demonstrate a significant adverse effect on the national economy or any sector thereof resulting from the domestic copper scrap price increase.

5. Monitoring, export controls, or both, are unnecessary at this time in order to achieve the policy of EAA Section 3(2)(C).

Under Section 7(c)(3)(A) of the EAA, the Department has determined that, in light of the determinations set forth above, neither export controls nor monitoring is necessary in order to carry out the policy set forth in Section 3(2)(C) of the EAA.

However, given the increase in prices and exports in the recent years, the Department will work with its Bureau of the Census to refine the Schedule B classifications for copper-based scrap in order to better delineate the varieties of scrap that are being exported. We will then review the new data in the coming year. Among other things, this data will allow us to determine the extent to which the copper-based scrap being exported is of a variety that could otherwise be utilized by the U.S. copper-based scrap consuming industry. We note that the petitioners requested that this data be obtained. See Hearing Transcript, p. 41.

In addition, the Department will work closely with the Office of the United States Trade Representative and the Department of State to address any foreign government practices that are distorting the trade in copper-based scrap. For instance, we will encourage Russia and Ukraine

to remove their restrictions on copper-based scrap exports. We will monitor China's implementation of its new licensing system for scrap metal imports, and will also evaluate and, as appropriate, respond to Chinese government practices that may be spurring exports of U.S. copper-based scrap to China.

DATED: 7/21/04



Kenneth I. Juster

Under Secretary of Commerce for Industry and Security