

# IDENTIFICATION OF IMPORT SURGES

# 2

## 2.1 Overview on the identification of import surges

Although there is no unique or conventional definition of the import surge, the use of the historical data on countries' imports and on the assessment of injuries helps identify an import surge. The identification process uses statistical measures but views from stakeholders are also important. The difficulty in the identification process is that there has been no agreement on a single best market indicator (import price, import volume, market share, or profit) to assess the presence of import surge and especially to distinguish a surge from a trend. An import surge is qualified as a sudden and often relatively short-lived increase in import, but it can easily be confounded with a long running and increasing trend or with other factors that cause changes in the market indicators. This chapter is built on the FAO studies by De Nigris (2005), Mosoti and Sharma (2005) and Sharma (2005) and deals with the theoretical and practical ways to identify import surges.

## 2.2 Quantitative threshold to define an import surge and its duration

### 2.2.1 Quantitative threshold

There is no unique quantitative threshold (in both prices and volume) to define an import surge. Article 2.1 of the ASG that sets forth the conditions for the application of a safeguard measure introduces a vague identification of an import surge:

"...A Member may apply a safeguard measure to a product only if that Member has determined ... that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces the like or directly competitive products...."

The ASG Article is however vague and is subject to various interpretations; some of these interpretations are presented and summarized in Table 2.1 and are useful in examining the framework in the identification of an IS.

In the United States Steel dispute, for instance, an open interpretation leads to the following provision:

"In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate ... the rate and amount of the increase in imports of the product concerned in absolute and relative terms ...

The Panel in the *United States Steel* case interpreted that Article 4.2(a) of the ASG sets forth the "operational requirements" for determining whether the conditions identified in Article 2.1 exist."

The operative word in Article 2.1 is "or", in "absolute or relative to domestic production" and

**TABLE 2.1**  
**Various concepts and definitions interpreted by different WTO safeguards Panels and ABs**

Topic/concept/issue	Which Panel and AB report addresses this topic substantially
<b>IMPORT SURGE</b>	
Increased imports (absolute, relative)	(1) United States – wheat gluten; (2) United States – line pipe; (3) Chile – price band; (4) Argentina – peach; (5) United States – steel
Unforeseen developments	(1) Korea – dairy; (2) Argentina – footwear; (3) United States – lamb; (4) United States – line pipe; (5) Chile – price band; (6) Argentina – peach
Article 2.1 “Under such conditions”	(1) Korea – dairy
<b>INJURY</b>	
Serious injury	(1) Korea – dairy; (2) United States – wheat gluten; (3) United States – line pipe; (4) United States – steel.
Threat of serious injury	(1) Argentina – footwear; (2) United States – lamb; (3) United States – line pipe; (4) Chile – price band; (5) Argentina – peach; (6) United States – steel
<b>INDUSTRY/LIKE PRODUCTS</b>	
Industry definition	(1) Korea – dairy; (2) United States – lamb; (3) Chile – price band; (4) Argentina – poultry; (5) United States – steel
Like products	(1) Argentina – footwear; (2) United States – steel
<b>REMEDY</b>	
	(1) Korea – dairy; (2) United States – line pipe; (3) Chile – price band.

Sources: Mosoti and Sharma (2005)

Note: Dates of various Panel reports issued: Korea – dairy June 1999; Argentina – footwear June 1999; United States – wheat gluten July 2000; United States – lamb December 2000; United States – line pipe October 2001; Chile – price band May 2002; Argentina – peach February 2003; Argentina – poultry April 2003 (Relevant AD case); and United States – steel May 2003 (Appellate Body report November 2003)

creates confusion. In the *United States steel*, of the ten products, the Panel chose to look at the relative surge data instead of the absolute data, and made a positive judgement on this basis. It noted that the ASG makes clear that increased import requirement is one of an increase in *either* absolute or relative terms. Moreover, the Panel explained:

“If absolute imports decrease, but imports, relative to domestic production, are on the rise, this means that the decrease of domestic production is stronger than that of imports (in absolute levels).”

In contrast, the AoA’s SSG had an exact definition of a surge. Thus, for volume trigger, then there is

a formula using actual data. It compares the actual monthly import data with a trend of three-year moving average import volume. The surge is then defined as an upward deviation of the actual data from the three-year moving average trend. Usually an import that is more than 20 or 30 percent above the three-year moving average trend qualifies as an import surge and prompts some actions (such as the safeguards), from policy-makers, to limit its effects. These percentage numbers, also known as thresholds or trigger points, may vary across country. Equivalently, under the SSG text, trigger point or threshold on prices (c.i.f) can be also used to define an import surge and justify the use of the safeguard.

### 2.2.2 Duration of the surge

It is not surprising either that there is no conventional benchmark on how long a surge should last before calling it a surge. In the Argentina–Footwear case, as described in Table 2.1 above, the increased import requirements were interpreted by the AB to mean “that the increase in imports must have been recent enough, sudden enough, sharp enough and significant enough, both quantitatively and qualitatively, to cause or threaten to cause ‘serious injury.’” In the United States Steel case, the United States had argued that these four standards do not appear in the ASG itself and so the threshold issue does not apply in relation to these four features.

In response, the *United States Steel* Panel clarified that the Panel’s “increased import” finding is a statistical matter, albeit reached in a subjective way. The finding of a surge is called “*the condition of the increase*”. However, the question of whether a particular increase is “sudden, sharp, recent and significant enough as to cause serious injury” is a question that is to be appropriately addressed in the context of *causation of serious injury*, not in the context of the *condition of the increase* alone.” Thus, the Panel’s increased imports finding “must be read together” with its subsequent findings on the other Article 2.1 conditions.

### 2.3 Length of time to be investigated and data use

The Panel stated in the *United States Steel* case that while the GATT and ASG are also silent on the *points in time that are to be compared*, as well as on the *length of the period to be investigated*, the determination of whether or not imports have increased “would normally call for a comparison of levels of imports in different periods or at different points in time.” In the *United States Steel* case, the complainants did not challenge the five-year period of investigation used by the United States International Trade Committee (USITC). So, in a way, this was accepted, adding, according to the Panel, that some of these parameters may vary on a case-by-case basis.

The Panel in *United States Line pipe* interpreted that “recent” does not mean that it must continue up to the period immediately preceding the investigating

authority’s determination, nor up to the very end of the period of investigation. While the most recent data must be the focus, it should not be considered “in isolation” from the data pertaining to the less recent portion of the period of investigation.

Nonetheless, the Panel emphasized that given the language “are being”, “there is an implication that imports, in the present, remain at higher (i.e. increased) levels.” As a result, it explained that whether a decrease at the end of the period would preclude a finding of “increased imports” will depend on whether a previous increase nevertheless results in the product still being imported in “increased quantities.” In short, in the case of a decrease at the end of the period of investigation, the Panel explained that the key factors that “must be taken into account are the duration and the degree of the decrease . . . , as well as the nature, for instance the sharpness and the extent, of the increase that intervened beforehand.”

The Panel also stated that “competent authorities are required to consider the *trends* in imports over the period of investigation, as suggested by Article 4.2(a).” However, it added that the rate of the increase need not always accelerate or need not always be positive at each point in time during the period of investigation. In addition, given the requirement in GATT Article XIX that the purpose of a safeguard measure is to address “unexpected events,” increased imports must therefore be “sudden.”

For practical purposes, the period of a study based on monthly observation should be a minimum of three years, to have enough observation to compute a three-year moving average trend. Besides, the choice of the point in time on which the study has to focus on depends on the purpose of the analysis. For decision-makers pressed to intervene for the occurrence of a surge, the most recent point in time in the data would serve as the best reference in order to minimize the risk of having some structural changes in the data affecting the prediction; structural changes are more likely the longer the lag between the time of intervention and the point of reference. However, if for instance the purpose is to analyse a particular event at some point in the past, then analysts may choose an earlier date as a reference.

**Box 2.1****Illustrations of the identification of surges in the United States steel dispute**

- The *United States Steel* dispute involves ten products or groups, and an account of the Panels' determination of a surge, or lack of it and illustrates a wide range of cases and issues. Of the ten product groups considered, the Panel found that the ITC failed to provide an "adequate and reasoned" explanation of increased imports in four instances (Figure 1). In the other six cases, a surge was established on the basis of absolute increase in three cases (Figure 1) and on a relative basis in the other three (Figure 2).
- *CCFRS*: the Panel found that the increase in imports, which occurred until 1998, "was no longer recent enough at the time of the determination," and thus there was no evidence that in October 2001 CCFRS "is being imported in ... increased quantities". The evidence was rejected. The AB agreed with the Panel.
- *Tin mill products*: the Panel concluded that the US International Trade Commission (ITC) did not come with "adequate and reasoned explanation" in respect of "increased quantities" because various ITC commissioners made conflicting conclusions, in part because they defined the like products differently. So this was a conclusion reached more on procedural reason than data analysis. The AB reversed the Panel's findings.

**2.4 Various identification issues:****2.4.1 Subproducts in a dispute involving a grouped product**

In the *United States Steel* case (see Box 2.1), with reference to the product category of CCFRS, the Panel refused to consider arguments by the

complainants with regard to the question of whether imports of the various products comprised in CCFRS, taken individually, have increased. In particular, the Panel noted that the USITC's determination addressed increased imports only with regard to a category defined as "CCFRS products" and it is that determination which is subject to review in this dispute. For similar reasons, the Panel refused to address arguments by certain complainants in the context of welded pipe that the ITC was supposed to make findings on specific products they referred to as "certain tubular products."

**2.4.2 Net versus gross import**

Ideally, net import, rather than gross import, is most desirable for import surge analysis, especially when the imported and domestic products are close substitutes or almost undifferentiated from one another. Indeed, when the imported product is later re-exported, net import becomes more relevant. But in the case where the imported product is differentiated from its domestic rival with little or no re-export taking place, the use of gross import figures in the analysis is preferable. Nevertheless data availability constrains the choice between the use of net and that of gross import figures.

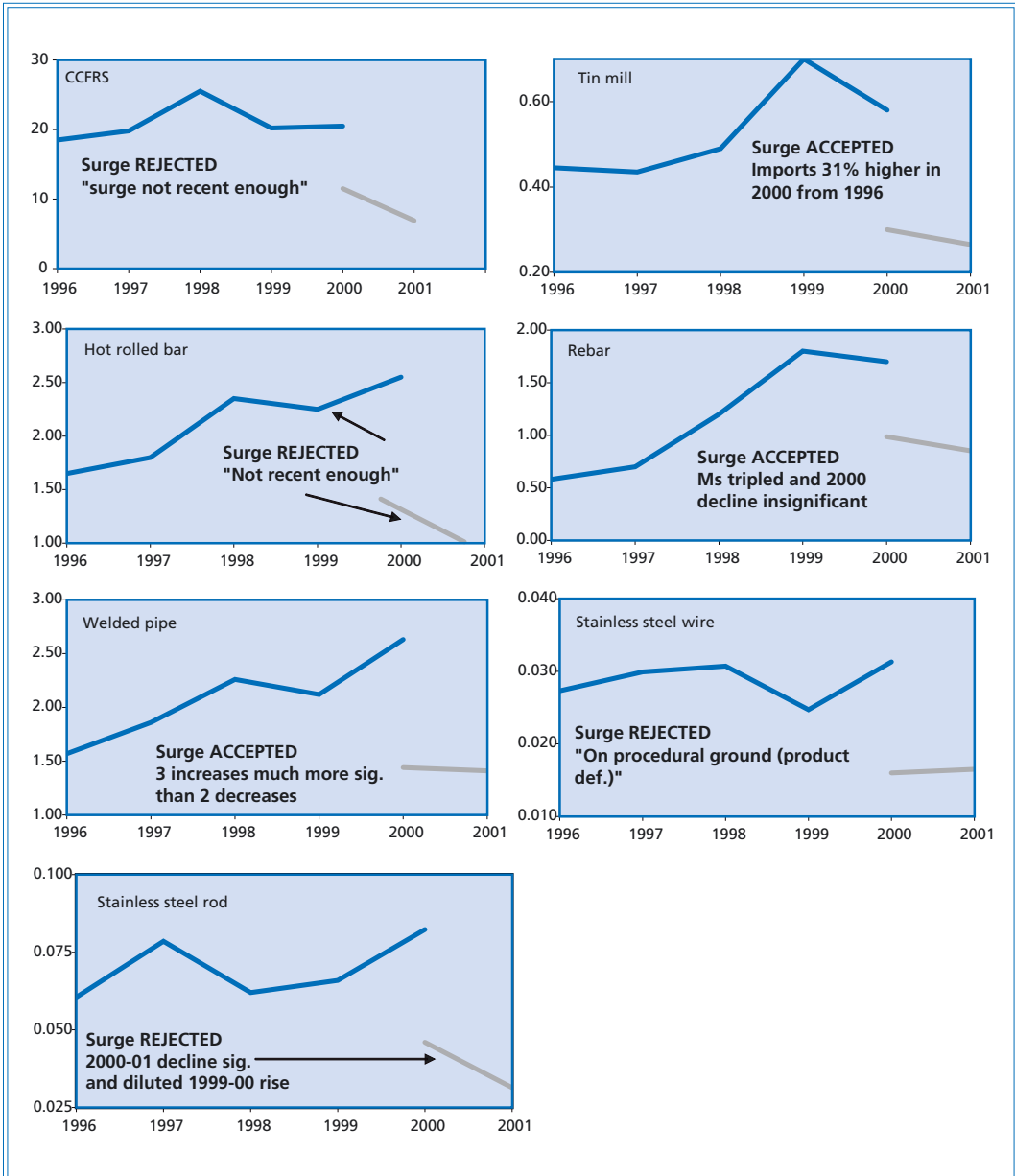
**2.5 Concluding remarks**

The determination of import surge suffers from the lack of or sometimes, vagueness of the conventional and legal frameworks underlying the trigger points or thresholds for volume, price and duration of the import surge. But with relevant data at hand, these deficiencies should not impede the analysis aimed at identifying an import surge. Past disputes at WTO level on import surge and some safeguard measures showed that some practical guidelines can be agreed upon as the identification process is specific to the commodity and the trading countries involved. The lack of strict definition on the thresholds and duration of the surge should not weaken the need to analyse the causes of an import surge and especially the estimation of its impacts on various stakeholders.

**FIGURE 2.1**

**Seven cases in the United States steel dispute where the Panel chose to determine the occurrence of an import surge based on data on absolute increase in imports**

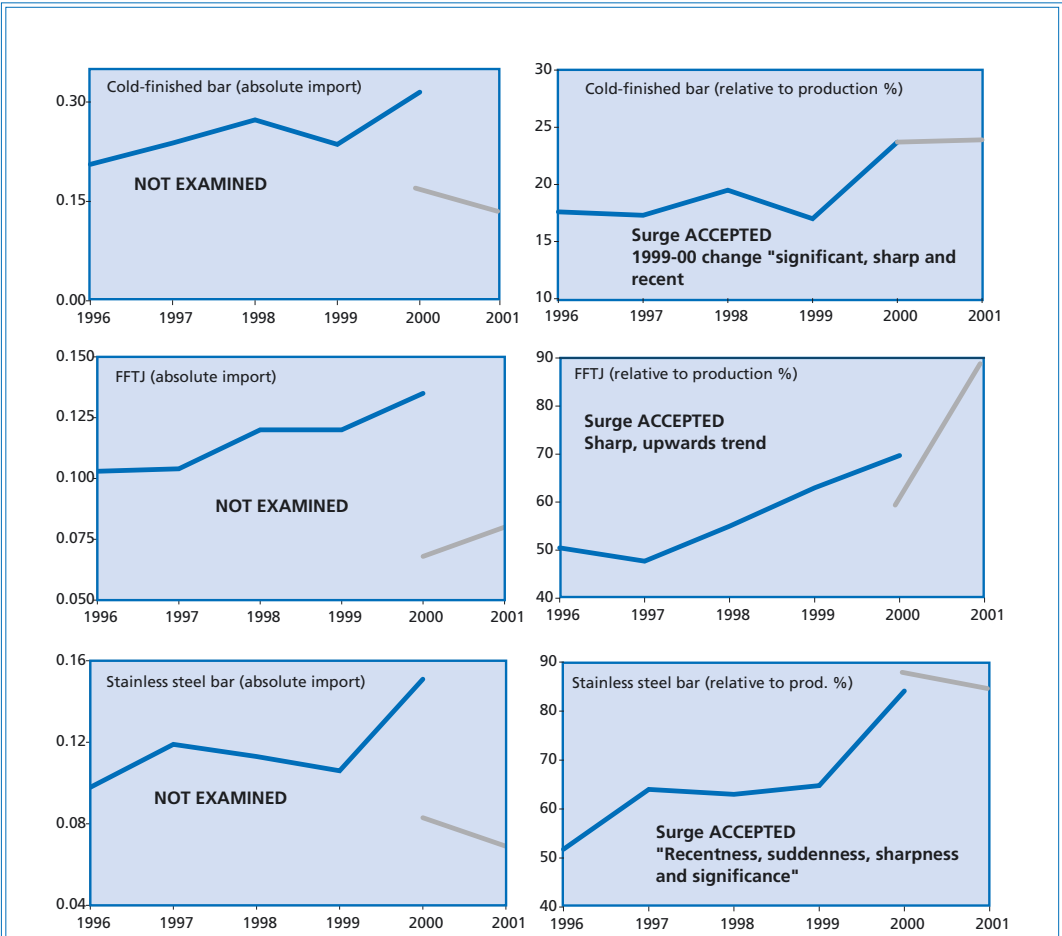
*(All import volumes in million short tonnes; one short tonne is about 0.907 tonnes)*



**FIGURE 2.2**

**Three cases in the United States steel dispute where the Panel chose to determine the occurrence of an import surge based on data on imports relative to domestic production**

(Graphs on left-side import volumes in million short tonnes (about 0.907 million tonnes); graphs on right side imports as % of production)



**Hot-rolled bar:** the Panel found that imports in most recent periods (since 1998 and in the interim 2000 and 2001) did not conform to “recent enough” criterion. So, the claim of a surge was rejected. The AB agreed.

**Cold-finished bar:** the Panel accepted a surge based on “relative import trends”. It noted that the data on relative imports demonstrated an “up-and-down” movement between 1996 and 1999, with a 41 percent increase occurring at the end of the period. The Panel found that there was “no need to make findings on absolute imports, as such findings could not change the overall result.”

**Rebar:** absolute imports more than tripled from 1996 to 1999 and then “declined relatively insignificantly” in 2000 and in the interim 2001. The Panel stated that “the increase until 1999 is recent enough and the subsequent decrease, in comparison, small enough in order to support” a finding of increased quantities. Thus, the surge claim was accepted, and there was no need for examining relative imports.

**Welded pipe:** the data demonstrated that absolute imports declined from 1998 to 1999 but increased for all other years. Moreover, the increases were more significant than the decreases, such that imports remained at “increased levels even in the most recent past.” Thus the Panel agreed to the surge claim.

Interestingly, the Panel rejected an argument by Switzerland that the increase of imports was not a case of a “surge” but one of “steady” and “gradual” rise in imports, and therefore the domestic industry had time to “adjust”, and so no Safeguard action was needed. The Panel held that this question should be addressed within the context of serious injury and causation, and not in surge determination.

FFTJ: the Panel chose the data on relative imports in this case. It considered that the following facts supported a finding of “increased quantities” in respect of relative imports:

- the amount by which relative imports increased during the entire period of investigation;
- the end of the period of examination showed the most significant increases;
- only the period from 1996-1997 showed a decrease and this decrease was less significant than each of the year-to-year increases; and
- the increase shows a “certain degree of sharpness, suddenness and significance, particularly
- in the very recent past.”

Given its finding regarding relative imports, the Panel did not consider it necessary to make findings on absolute imports.

**Stainless steel bar:** as in FFTJ, the data on relative imports were considered, and the Panel agreed with the USITC claim of a surge. The relative imports increased significantly during the overall period of investigation; the largest single percentage increase occurred in 2000; and the slight decrease in the most recent past was insignificant and did not detract from a finding that levels remained at high levels. The Panel was also “satisfied” that the sharp increase from 1999 to 2000 “shows a certain degree of recentness, suddenness and significance.” As elsewhere, given this finding, the Panel found no need to make findings on absolute imports.

**Stainless steel wire:** as in the tin mill products, the Panel rejected the surge claim on procedural grounds, stating that the conclusions were not reasoned and adequate because of different conclusions reached by ITC commissioners and mixing of products (some using a broader product category - namely, stainless steel wire and rope). The AB reversed the Panel's findings by stating that there needs to be “adequate and reasoned” explanation in each case.

**Stainless steel rod:** the Panel found the ITC's explanation in respect of both absolute and relative imports to be inadequate. In particular, while focusing on the increases that took place between 1996 and 2000, the ITC “acknowledged” but did not explain the sharp decline in absolute imports between interim 2000 and interim 2001, in relation to previous increases. The AB upheld the Panel's findings.

<sup>1</sup> There are some cases of this sort where a claim was accepted or rejected based on either absolute trend or a relative trend. It is not clear why a panel can choose to start with one of these. Where a case is established on the ground of a relative or an absolute surge, the other case is not examined stating that it is not necessary.

Source: Mosoti and Sharma (2005).

## References

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