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GAO

Report to Congressional Requesters

June 1989

INTERNATIONAL TRADE

Administration of Short Supply in Steel Import Restraint Agreements

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GAO

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National Security and
International Affairs Division

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To Congressional Requesters:

This report responds to your March 31, 1988, request that we review the Department of Commerce's process for evaluating short supply requests under the President's steel program of 1984 which limits steel imports. The program was established to provide the domestic steel industry with temporary protection from steel imports to adjust to import competition. As part of the program the U.S. Trade Representative negotiated 21 Voluntary Restraint Agreements (VRAS) covering steel exports of 29 countries. The VRAS provide domestic steel producers with relief by limiting steel imports into the U.S. market for 5 years. Short supply provisions in 16 VRAS are intended to protect U.S. steel consumers from hardship when steel supplies are inadequate to meet domestic demand. All VRAS will expire after September 1989 but the administration has stated its intent to renegotiate them, and the House and Senate have introduced legislation to extend the enforcement authority for another 5 years.

As you requested, we (1) examined the process for reviewing short supply requests, (2) obtained information on Commerce's criteria for making short supply decisions, and (3) analyzed short supply petitions from 1984 (the start of the program) through August 1988 to document the length of time Commerce has taken to make decisions on petitions. Appendix I contains the details of our work.

Results in Brief

Section 805(b)(3), Title VIII (The Steel Import Stabilization Act) of the Trade and Tariff Act of 1984, gave extensive discretion to the Secretary of Commerce to make decisions on short supply petitions. Commerce uses an informal administrative process to make its decisions. We found no regulations or comprehensive guidance on the program's operation. Petitioners and some producers said that without regulations or comprehensive guidance, the process lacks transparency, i.e. openess and clarity. This creates skepticism on the part of the users, who believe that decisions are made in a "black box". The criterion used by Commerce to make short supply decisions is whether the steel is available domestically. Commerce's general policy is not to consider a domestic price quotation in determining whether a specific steel product is in short supply. If a domestic producer offers the steel to a petitioner, the petition will be denied.

Our examination of short supply petitions showed that decisions were not timely from 1985 through the last part of 1987. Commerce has significantly reduced the time for making short supply decisions, from an average of 236 days in 1986 to 81 days in 1988, but the process still may take too long for some steel purchasers to use. Commerce does not have a standard, publicly known deadline for completing reviews nor a standard way of measuring timeliness. Although Commerce has a tracking system to measure the timeliness of the process, it does not track the full process from petition receipt to notification of decision, thereby overlooking the total time a petitioner waits for a response. For example, in some instances Commerce measures timeliness from publication of a Federal Register announcement to the signing of the notification letter while in others it measures timeliness from the approval of the Federal Register notice to submission of a decision memorandum to the deciding official. Our file examination also surfaced deficiencies in Commerce's documentation of the results of reviews.

Background

Commerce received 161 short supply petitions as of the end of 1988, of which

- 94 were approved,
- 36 were denied,
- 27 were withdrawn, and
- 4 were still in process.

Commerce gave approval for 1.4 million tons of additional imports for all VRA categories of steel through the end of 1988, 1.1 million tons of which consisted of semifinished steel. The 1.4 million tons represents about 2 percent of U.S. imports and 0.4 percent of U.S. consumption through 1988.

Short Supply Decision Process

Steel consumers petition the Department of Commerce to allow additional steel imports from a VRA country. When Commerce determines that a particular steel product is in short supply, additional imports beyond VRA limits can enter the United States. Commerce's International Trade Administration's Office of Agreements Compliance (OAC) conducts steel short supply reviews. The Assistant Secretary for Import Administration or a higher official makes final short supply decisions. For a graphic summary of the process see figure I.1.

With the possible extension of the VRA program, Commerce needs to address perceptions that the process lacks transparency. Users need to know from one easily accessible source the operating policies, procedures, requirements for filing petitions, decision criteria and waiting time for a decision. They also need to know the rationale for decisions. Although Commerce publishes a Federal Register notice and gives 10 days for public comment at the start of reviews, it does not make public the rationale and results of its reviews.

Slow Decisions and No Completion Deadline

Petitioners and domestic producers alike told us that in the past Commerce took too long to make short supply decisions. We found no rationale that fully explains why the decisions took so long, but we were told that Commerce's approach was to encourage steel purchasers to buy domestically produced steel and therefore to allow time for domestic consumers and producers to reach agreement. OAC has no standard deadline for completing its reviews and does not track the timeliness of the process from the time of petition filing to the date of decision notification. OAC's tracking does not accurately reflect the total time that petitioners wait for answers to their short supply petitions. Lack of timeliness could negatively influence petitioners' production schedules.

Documentation Is Deficient

We assessed management internal controls in OAC's conduct of steel short supply reviews, for compliance with the Federal Manager's Financial Integrity Act of 1982, and found serious documentation deficiencies. Almost half of the 143 petition files we examined were missing one or more pieces of information; for example, original documents containing signatures and dates documenting actions at key steps in the decision process were missing. For these petitions, we could not easily determine when decisions were made, the basis for them, or who made them. As a result we had to use secondary Commerce documentation or sources for this information.

Recommendations

If the VRAs are extended, we recommend that the Secretary of Commerce direct the Office of Agreements Compliance to

- provide more process transparency by issuing comprehensive guidance or regulations on the program's requirements, policies (including decision criteria), procedures, and detailed filing information for petitioners' use, and by publicizing the decisions made and reasons for them;

- establish and publicize in the guidance or regulations a standard deadline for processing short supply reviews and monitor timeliness through its tracking system on the full process from petition receipt to decision notification; and
- ensure that official short supply review files contain complete and official documentation, including a full case history and decision on each petition.

Officials of the Department of Commerce reviewed a draft of this report and provided written comments (see app. III) which are incorporated where appropriate. We will send copies of this report to the Secretary of Commerce and other interested parties.

This review was performed under the direction of Allan I. Mendelowitz, Director of International Trade, Energy, and Finance Issues. Other major contributors are listed in appendix IV.

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Contents

Letter		1
Appendix I Short Supply Process and Policies		8
	Background	8
	The Administrative Process	9
	Short Supply and Demand Forecasting	14
	Commerce Policies	15
	Analysis of Short Supply Reviews	19
Appendix II Objectives, Scope, and Methodology		31
Appendix III Comments From Department of Commerce		33
	GAO Comments	35
Appendix IV Major Contributors to This Report		36
	National Security and International Affairs Division, Washington, D.C.	36
Tables	Table I.1: Review Completion Times	20
	Table I.2: Phase Completion Times	27
Figures	Figure I.1: Steel Short Supply Request Decision Process and Average Percentage of Time Spend in Six Process Phases 1985 — 1988	10
	Figure I.2: Types of Steel Requested Through 1988	22
	Figure I.3: Short Supply Review Outcomes	24
	Figure I.4: Review Phase Completion Times	28
	Figure I.5: Review Completion Times	29

Abbreviations

DRI	Data Resources Incorporated/McGraw-Hill
GAO	General Accounting Office
OAC	Office of Agreements Compliance
VRA	Voluntary Restraint Agreement

Short Supply Process and Policies

Background

The President's Steel Program of 1984 was established to provide the domestic steel industry with temporary protection from steel imports. The 5-year program consists of Voluntary Restraint Agreements (VRAS) with steel exporting countries to limit steel imports to 18.5 percent (excluding semifinished steel) of the U.S. market. Steel exports to the United States are licensed by the steel producing countries to ensure that they do not exceed each VRA quota limit. In return, major domestic steel producers are required to invest their net cash flow (as defined by the Act) less 1 percent for worker retraining to modernize their operations and become competitive with foreign steel producers.

Beginning in 1984, 21 VRAS were negotiated covering the steel exports of 29 foreign countries (the European Community VRAS cover 10 countries). They are scheduled to expire after September 30, 1989. Eleven of the VRAS limit steel from the exporting countries to certain percentages of the U.S. market, and the remaining VRAS limit the exports to specified tonnages. Section 805, Title VIII (The Steel Import Stabilization Act) of the Trade and Tariff Act of 1984, gives the Secretary of Commerce wide discretion to enforce the terms of the VRAS. Commerce takes a forceful approach toward limiting steel imports entering the United States.

Sixteen of these VRAS include a provision which allows for increased exports under conditions of short supply in the United States. The Congressional Conference Report on the Trade and Tariff Act of 1984 states that

> "The purpose of (this) short supply provision is to permit existing restrictions on steel imports to be revised or temporarily altered... when supplies of certain steel products from domestic and other suppliers are unable to meet the market demand... by domestic purchasers. This provision is designed to protect domestic purchasers of steel products from undue hardship due to an inability to obtain adequate supplies from domestic sources...."

The provision was not expected to be used much because the steel industry operated at about 56 percent of capacity in 1983, the year preceding the steel program.

From 1985 through 1988, about 1.4 million tons of additional steel imports were approved through the short supply process, representing about 2 percent of U.S. imports and 0.4 percent of U.S. consumption. About 1.1 million tons, or 78 percent of it, was semifinished steel. Commerce approved 13,135 tons for 1985, 8,547 for 1986, 342,348 for 1987, and 1,031,159 for 1988.

Under the Trade and Tariff Act of 1984, the Secretary of Commerce has broad discretion in determining conditions of steel short supply. He delegated administration of the steel program to the Under Secretary of the International Trade Administration, who delegated it to the Assistant Secretary for Import Administration. Within Import Administration, the Office of Agreements Compliance (OAC) enforces the VRAS and their short supply provisions.

The Administrative Process

The short supply process consists of the following six phases (see fig I.1).

1. Commerce receives a petition and decides if it contains sufficient information.

2. Commerce announces the initiation of a review through a notice/ request for public comment in the Federal Register.

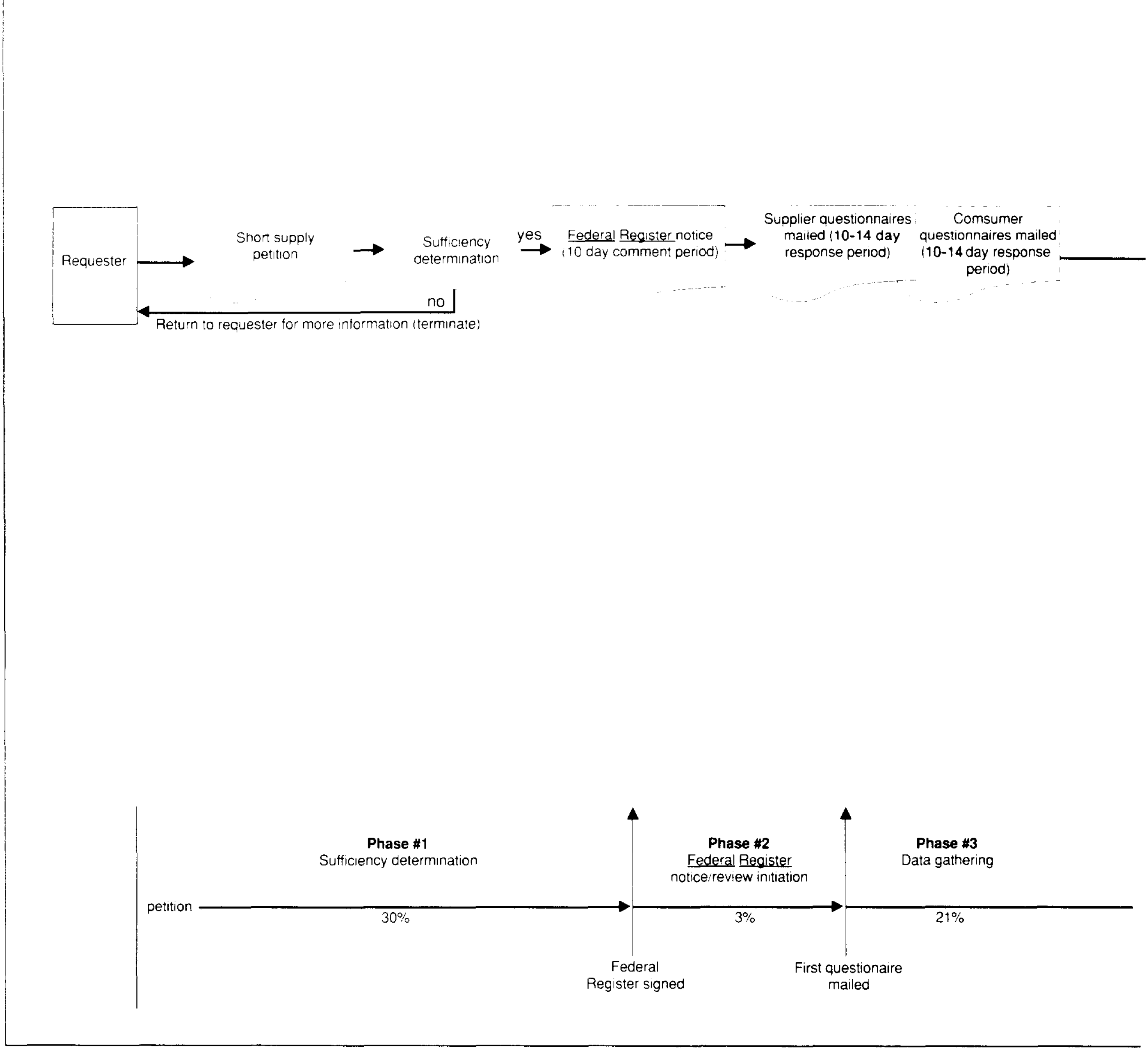
3. Commerce sends out questionnaires to potential domestic producers asking about their ability to supply the steel requested.

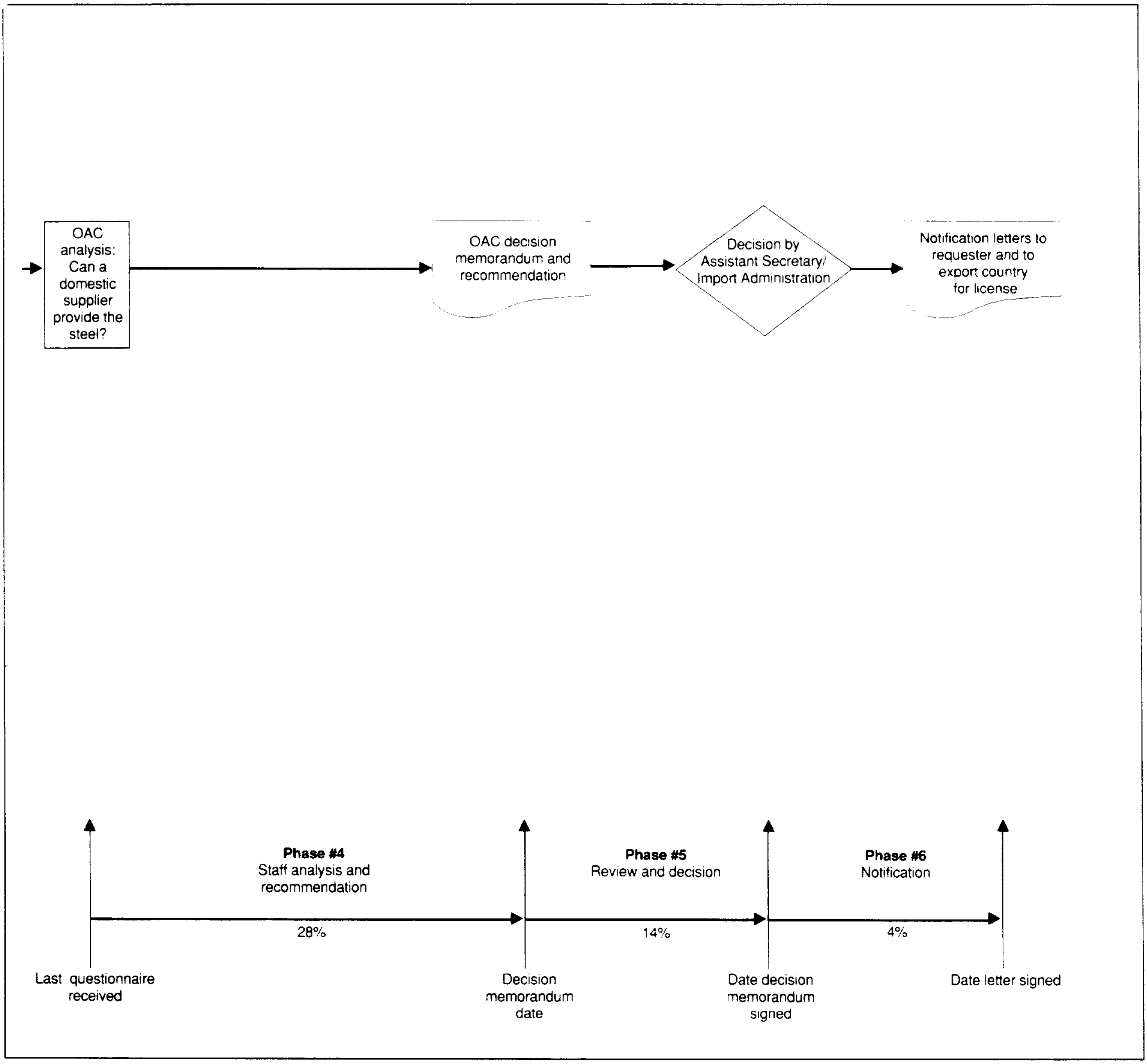
4. Commerce staff analyzes the data and makes a recommendation to the Assistant Secretary for Import Administration in a "decision memorandum."

5. The Assistant Secretary reviews the recommendation and makes a decision.

6. Commerce notifies the petitioner(s) of the decision and, if the petition is approved, the relevant VRA country is notified by letter to issue special export licenses.

Figure I.1: Steel Short Supply Request Decision Process and Average Percentage of Time Spend in Six Process Phases 1985 — 1988[a]





[a]Through August 1988.

Source: GAO, based on OAC documentation.

OAC administers short supply provisions through an informal review process and did not issue federal regulations for the program or comprehensive guidance for petitioner use. Petitioners complained that the process lacks transparency and suggested two approaches to make it more open and understandable: (1) maintain the informal process but prepare guidance providing instructions for filing; information on process steps, Commerce policies, and decision criteria; and a review completion deadline or (2) formalize the process through regulations.

The short supply process begins with a written petition from a U.S. company or a foreign company through its government to Commerce, requesting special licenses allowing a VRA country to export in excess of the ceiling. There is no single public statement of the requirements necessary to initiate a review. Instead, petitioners learn what information they must submit from the short supply section and Appendix E of the VRAS, public files on previous reviews, Commerce contacts, or trade law attorneys familiar with the process. Lawyers are not required for filing a short supply petition and we found that 64 percent of the reviews did not involve outside counsel to assist the petitioners.

The petition should show that an abnormal supply and demand condition exists for the particular product in the United States. Generally, petitions must include evidence of the steel specifications and tonnage needed, how the steel will be used, the petitioner's purchasing history, and failed efforts to find domestic supply. Commerce officials told us that virtually no petition is complete in the first submission. OAC contacts the petitioner by letter and telephone and requests any additional information it needs. While some reviews involve requests from more than one company for similar products, reviews are generally made for individual requests for specific products and quantities.

Once OAC decides it has sufficient information, it publishes a Federal Register notice announcing initiation of a review and requesting public comment. Although it is not required to do so, Commerce gives public notice with a 10-day comment period. Commerce's official files contained responses to the Federal Register notice for only 35 of 143 petitions.

When OAC initiates a short supply review, it opens two files: a public file and an official file. The public file contains the Federal Register notice, non-proprietary versions of the petition and questionnaire responses, and the notification letter. The official file contains these documents, proprietary documents, and internal Commerce records.

To gather information for its review, OAC sends questionnaires to domestic producers identified in the petition and through industry contacts. OAC usually gives 10 to 14 days for responses but generally includes any response received within a week after the deadline. The questionnaires ask whether the steel is produced domestically, whether there are substitute types of steel, and whether the steel is in short supply. In some cases, questionnaires are sent to other steel consumers and their responses are used to validate steel specifications. Respondents told us that OAC asks for all relevant information and that the questionnaires are not burdensome, despite some redundancy. OAC regularly asks questionnaire respondents for additional information and explanations by telephone or through a second questionnaire.

Although questionnaires ask producers about their ability to supply the type and amount of steel in the time required, Commerce does not require the producers to document this information. Some petitioners have questioned producers' claims. Petitioners complained that this creates an unbalanced burden of proof. They believe that the burden of proof should be more evenly shared by requiring producers to demonstrate their ability to produce and deliver the product when needed. They also suggested that evidence of ability to supply should be better defined. To ensure the petitioners' needs are genuine, producers suggested that petitioners should make a commitment to purchase the domestic steel if their petitions are denied.

The OAC staff assesses petitioners' needs for requested specifications, delivery times, and tonnages and compares them with the questionnaire responses of potential domestic producers to determine whether steel is available. At times, OAC acts as a middleman, bringing together petitioners and domestic producers. In some instances, conflicts about steel specifications, delivery capabilities, and tonnage requirements have led to dissatisfaction with the process. If a petition becomes contentious, petitioners suggest that OAC meet jointly with both parties to iron out differences and, hopefully, expedite the process. One petitioner also suggested a compromise when a new domestic source of supply or substitute product is found—Commerce could approve part of the tonnage requested while the petitioner tested alternative domestic steel. Petitioners also believe that a penalty should be assessed against a domestic producer for late or non-delivery of an order of steel obtained through an objection to a petition.

When its analysis is completed, the OAC staff prepares a decision memorandum documenting the facts and containing the analysis and staff recommendation. According to a Commerce official, the memorandum provides a record of administrative precedent to help prevent arbitrary and capricious decision making. These memoranda are the official records of Commerce's analyses and decisions, but they are considered internal documents containing business proprietary information and, therefore, are not publicly available.

After intradepartmental review, the Assistant Secretary of Commerce for Import Administration decides if the requested steel is in short supply. Then Commerce notifies the petitioner by letter, stating the decision but not the reasons for it. Petitioners believe that Commerce should provide the basis for the decision in its notification letters. If a condition of short supply is found, notification letters name the tonnages approved, time limits on the use of the special licenses, and any other limitations or conditions. Copies of these notification letters are placed in the public files. Commerce does not publish the results of its reviews, but petitioners believe that to improve the process's transparency the results, including an explanation of the decision, should be made public. OAC also notifies the applicable VRA country, or countries, to issue special export licenses. These licenses are required for Customs to allow entry of the steel shipments.

Short Supply and Demand Forecasting

The governments of VRA countries are responsible for issuing export licenses, totaling no more than the allowed annual tonnages, to their steel producers. Commerce calculates the export tonnages allowed under the 11 market share VRAs[1] using forecasts of U.S. demand. We were asked whether errors in forecasting could create conditions of short supply. As agreed in the VRAs, Data Resources Incorporated (DRI) prepares forecasts of domestic market consumption. After each of the forecasts, which are made 5 times for each year, Commerce recalculates the VRAs' export tonnage ceilings for the agreed steel categories. In theory, if DRI forecasts were too low, they would result in tonnage limits under the VRAs that were too low and thereby create shortages in the availability of imported steel. Such constrictions might exacerbate an existing shortage of a domestic steel product.

We found that fluctuations between forecasted and actual consumption in some steel categories could create shortages of allowable imports.

[1]The remaining VRAs' ceilings are based on fixed tonnages.

However, forecasts by their nature are imprecise. Since the forecasts are updated regularly and the VRAS' provisions for borrowing, carryover, and shifting steel categories provide flexibility, the adverse effect of forecasting errors can be mitigated. Neither Commerce nor DRI have ever studied forecasting errors and their impact on calculating export ceilings for the various steel categories. We have discussed this with Commerce officials and have encouraged them to make such studies.

Commerce Policies

The Trade and Tariff Act of 1984 does not define short supply. However the short supply provision in the VRAS states that

> "If...because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products by a special issue of licenses...."

Commerce policy is to base short supply decisions solely on the physical availability of a particular type of steel in the U.S. market. If the domestic industry is willing and able to make either the exact steel required or a suitable substitute type in sufficient quantities within a normal order-to-delivery period, Commerce judges that a condition of short supply does not exist.

Consideration of Price

According to Commerce policy, price is not normally a factor in short supply decisions. Commerce will consider price only if a petitioner raises the question of price and if, in OAC's judgment, the price is so high as to suggest an unwillingness to make the product physically available. Commerce officials believe this price policy is in keeping with the overall intent of the VRAS to limit steel imports.

Furthermore, Commerce officials believe that making short supply decisions on the basis of price would indirectly establish price controls, i.e., the maximum price established as "reasonable" would become a ceiling. If domestic prices rose above that ceiling, short supply petitions would be approved and the additional imports would impose downward pressure on prices. Even if a methodology to determine reasonable prices were to be established, Commerce officials believe there would be administrative difficulties in conducting any type of price analysis because price information is sensitive and difficult to obtain. Producers agree with Commerce's policy and would be concerned about the government being involved in judging prices set by commercial negotiations. Petitioners disagree with Commerce's policy and state that to make the process more responsive to market conditions, Commerce should consider price increases as one indicator of short supply.

Petitioners alleged high domestic prices as support for their requests for additional imports in 33 of the 143 short supply petitions we reviewed (24 percent). Commerce's decision memoranda showed that price was reviewed in 7 of the petitions that were denied and in one petition later approved on appeal for other reasons. Commerce approved no petitions on the grounds that domestic prices were so high as to suggest an unwillingness to make the products physically available.

When drafted, Article 8 of the first European Community Pipe and Tube Arrangement (upon which the other VRAs are modeled,) included "significant price increases" as one of the factors to be considered in determining whether short supply existed. The United States requested that the phrase be deleted from the draft because U.S. steel industry representatives strongly objected. The industry feared that a U.S. administration would use the threat of opening the gates to European imports as a means of limiting steel price increases. While the phrase was not included the United States and the European Community acknowledged that changes in price levels were appropriate to consider in determining whether a shortage of a particular product exists and should be considered, where appropriate, as an "other relevant factor."

Congress foresaw controversy over price in assessing the domestic availability of a product. Section 805(b)(3) of the Trade and Tariff Act of 1984 protects domestic steel producers against being forced to sell below their cost of production to match the price of foreign steel.[2] However, there is no converse provision protecting steel consumers who have been offered domestic steel at inflated prices. Such consumers could have their short supply petitions denied and be forced to buy steel at above market prices or not at all. Some petitioners have alleged such "price gouging" has been attempted. Producers alleged that petitioners use the short supply process to obtain additional imports of unfairly traded steel. Nonetheless, monopolistic situations may be created when there is

[2]Although the Act's limitation applies specifically to enforcement of one VRA, the European Community Pipe and Tube Arrangement, Commerce's policy is to enforce all arrangements uniformly.

only one domestic producer of the particular type of steel. When a producer is also a competitor with a petitioner in finished products, reviews are especially contentious.

Specifications and Substitutability

Commerce assesses whether the product requirements specified in a short supply petition can be met by similar but not identical domestic products. In some cases, Commerce has requested that the petitioner test an alternative domestically made steel before it will decide if a shortage exists.

Some petitioners told us that this policy has reduced the value of the short supply process to them. They assert that Commerce should not challenge steel specifications when contractually set between the steel purchaser and a customer. They agree that an advantageous product substitution should be made when possible but believe that the purchaser must agree to the substitution.

Some petitioners have tried to justify their requests by claiming that available domestic steel is less efficient to use than foreign materials. For example, steel of smaller dimensions cannot be used as efficiently in the manufacture of products without adjusting the machines that are designed to use a larger input nor can steel of lower quality be used without increased rejection rates.

Commerce's policy is that efficiency is another form of price argument, as both efficiency and price affect production costs. As a result, Commerce will decide that domestic supply does exist unless the loss of efficiency from using the different product has the same effect on production costs as a price that is so high as to suggest an unwillingness to make the product physically available. Commerce has never approved a short supply petition because it judged that the efficiency achieved in using the domestic steel would be too low. Although there are no established criteria, Commerce officials believe that such inefficiency, like prices that are too high, will be so extreme as to be self-evident.

Using a lower quality of steel lowers the quality of the finished goods. Some petitioners told us that the current policy prevents them from importing the quality of steel they need and has hampered their attempts to increase export sales. Conversely, without Commerce scrutiny, producers believe that unnecessary, unique specification claims could be used to circumvent the VRA limits.

Quantity Considerations

Only a portion of the additional steel imports requested is approved in many short supply decisions, because short supply petitions are considered on a calendar year basis that coincides with the calculation of each country's export ceilings. For example, if additional tonnage is requested for the fourth quarter of the current year and the first quarter of the next year, Commerce would approve only the former part of the request and the petitioner would have to file a separate request for tonnage needed in the next year.

To ensure that all steel imports requested are necessary, there are limits on the length of time a purchaser has to use the special export licenses and on the total amount of steel approved. Also, Commerce reduces requests according to the time of year the case is approved; e.g., if a company requests its entire next year's needs and its request is not approved until 90 days into that year, Commerce will reduce the tonnage it approves by a proportional amount. In some reviews involving large tonnages and volatile markets, Commerce considers requests on a quarterly basis. Producers are concerned about additional unfairly traded steel imports being approved for unnecessary and inflated petitions.

The amount of steel allowable through the short supply process is limited under the individual VRAs to 10 percent of a country's tonnage ceiling for a product. This limit addressed the domestic steel industry's concern that unrestricted use of the short supply provisions could be used to circumvent the VRA limits.

If Commerce makes a finding of "extraordinary circumstances," additional tonnages are allowed beyond the 10 percent "cap". Findings are generally based on "a unique combination of factors," such as increased demand, high domestic operating rates, production and delivery problems, and reduced domestic capacity. In 1988, Commerce declared extraordinary circumstances for four steel products—semifinished, hot rolled sheet, plate, and certain stainless steel rod. Such determinations are made as part of the short supply process, but separate decision memoranda are prepared.

According to petitioners, the cap should be eliminated because it creates an additional, time-consuming step in the process. When a steel product is in short supply, they believe caps on tonnages are unnecessary; otherwise, they suggest that Commerce expedite the process until the 10-percent cap is reached.

Analysis of Short Supply Reviews

OAC had received a total of 161 petitions as of December 31, 1988. We examined 143 official OAC files on short supply reviews completed from 1985 through August 1988. To address complaints about the lack of timeliness in Commerce's administration of the short supply process, we analyzed the length of time it took to complete a short supply review and each phase of the process.

Our analysis does not include petitions terminated by Commerce before reviews were formally initiated because OAC does not maintain files on terminated requests. We found evidence of at least 36 such petitions. These petitions were usually terminated because Commerce decided that not enough information was provided to support them and requests for additional information were not answered.

We found no direct relationship between the timeliness of reviews and characteristics, such as market conditions, type of steel, or size of request. In addition, we could not identify specific phases in the process that would explain why some reviews were completed more slowly than others.

Completion Time Reduced

The time to complete a review decreased significantly from an average of 236 days in 1986 to 81 days for petitions decided by August of 1988. However, these averages do not show the wide range of completion times for individual reviews. At the extremes, 10 percent of the reviews took over a year to complete and 13 percent took 60 days or less. From 1984 to 1987, over half of the reviews took longer than 180 days to complete. Requests received in 1988 were all finished in less than 180 days, but 37 percent took over 90 days to complete. Average review times are shown in table I.1. Even with the improved timeliness, some steel purchasers believe the process takes too long to use.

Table I.1: Review Completion Times

Number of days	Year Petition Submitted: 1985 Cases	1985 Percent	1986 Cases	1986 Percent	1987 Cases	1987 Percent	1988[a] Cases	1988[a] Percent
60 or less	6	13	3	9	0	0	10	37
61 to 90	2	4	2	6	6	17	7	26
91 to 120	2	4	2	6	6	17	6	22
121 to 180	9	19	4	13	11	31	4	15
Over 180	29[b]	60	21	66	13	36	0	0

[a]Reviews completed through August 1988.

[b]Includes one petition filed in 1984.

Petition filings generally fluctuate with market conditions, as indicated by the percent capacity utilization of the U.S. industry. Short supply review completion times were not clearly associated with the number of petitions submitted. In fact, beginning in late 1987 completion times consistently decreased while the number of petitions increased. Commerce officials stated that the improved timeliness of reviews was not due to a change in resources but rather to a higher priority given to short supply reviews among the staff's total duties.

To analyze whether market conditions had affected timeliness, we compared average completion times with percent capacity utilization in the steel industry at the time of the request. It did not appear that market conditions affected timeliness until the end of 1987, when industry capacity utilization rose above 80 percent and average completion times fell below 160 days for the first time.

Petitioners complained that short supply decisions are not responsive to market conditions. They believe that when the supply of steel is tight, the VRA safety valve needs to be more responsive. They suggested that Commerce link the process to more macroeconomic elements, such as a stated capacity utilization rate, i.e., once that level is reached in the industry or type of steel, reviews should be less stringent. Producers agree that Commerce's decisions should have been quicker, and they attribute recent timeliness complaints to the unusually high demand for semifinished steel.

Almost every type of steel was requested under the short supply provisions. The most requests were for cold rolled sheet steel, next was semifinished steel, and then hot rolled sheet. (See fig. I.2.) Requests for most types of steel were not limited to one period of time but recurred often.

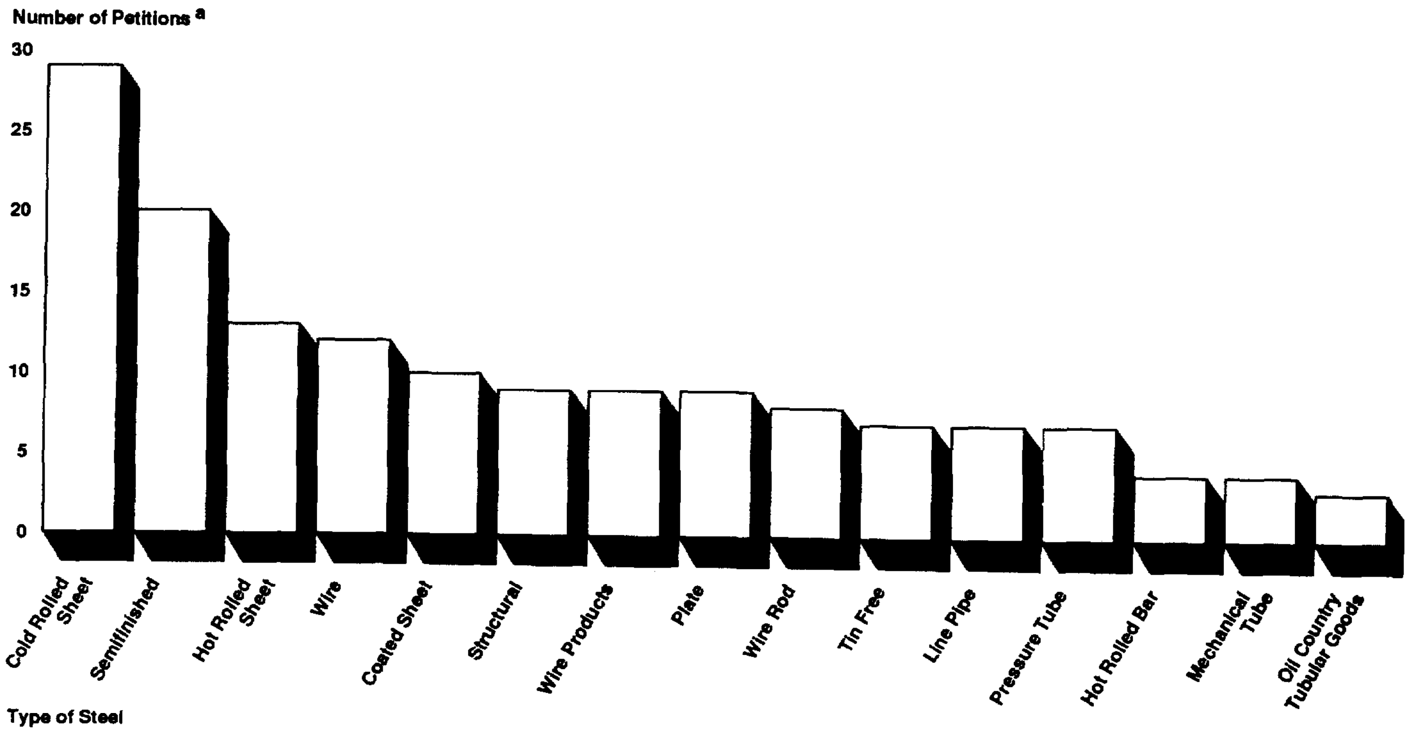
The average review completion times, by type of steel requested, varied significantly before 1988. For example, reviews for cold rolled sheet and semifinished steel took 288 and 237 days, respectively, whereas reviews for other types of steel, such as coated sheet and hot rolled sheet took 158 and 106 days, respectively. However, in 1988 all reviews were completed more quickly and there was no significant difference in completion time for different types of steel.

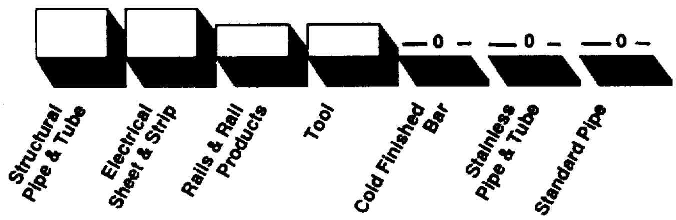
Through the end of 1988, 94 of 161 short supply petitions (58 percent) were approved, 36 (22 percent) denied, and 27 (17 percent) withdrawn; 4 cases were in process. Every year a smaller percentage of petitions has been denied. As figure I.3 shows, the percentage of petitions withdrawn before the short supply process was completed is fairly consistent. Petitioners withdrew requests when they no longer needed the steel due to cancelled orders or when the process identified suppliers.

We compared the outcomes of reviews with completion times. Denials averaged 243 days. Petitions were withdrawn, on average, after 237 days. Approvals averaged only 190 days. Prior to 1988, petitions that were denied took longer to complete than those approved or withdrawn. In 1988 no petitions had been denied as of August, so we could not determine whether this relationship still existed.

Consistent with current policy, for 77 approved petitions, Commerce cited the absence of domestic supply as a reason in the decision memoranda; other reasons for approval were cited in 13 reviews and predominantly involved domestic capacity constraints, as a result of which producers could not provide the product in time. For 32 of the denied petitions, Commerce cited domestic availability as a reason for the denial; for 4 reviews reasons such as availability of substitute steel or licenses becoming available in the exporting country were cited.

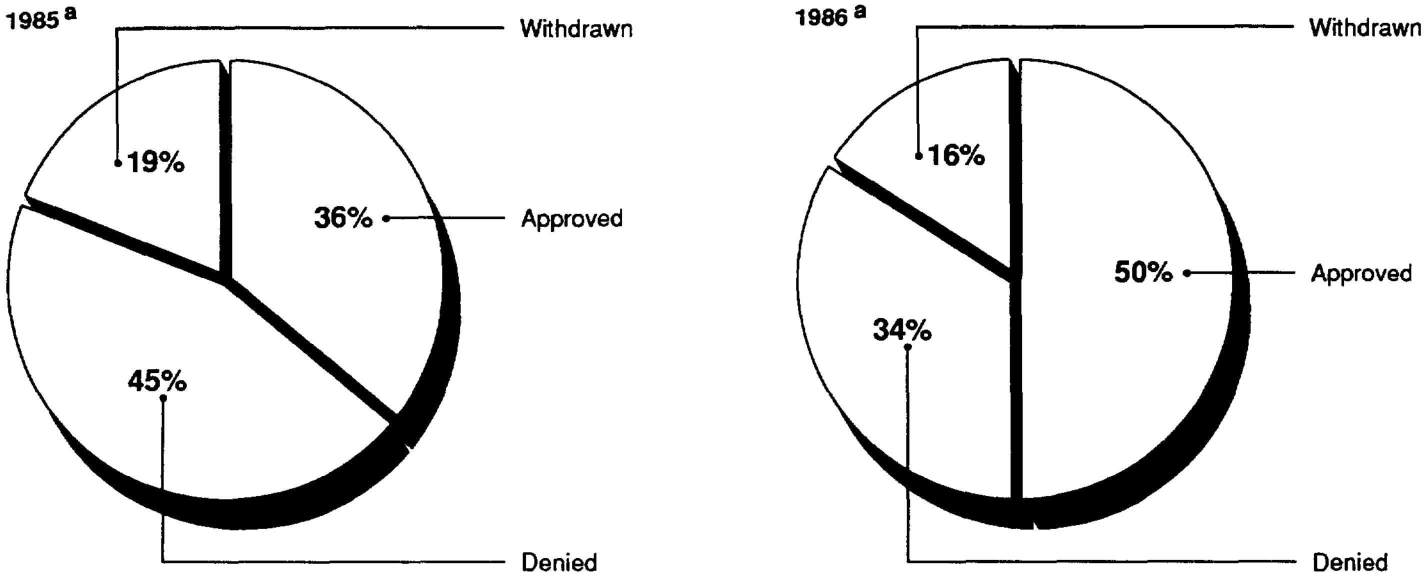
Figure I.2: Types of Steel Requested Through 1988





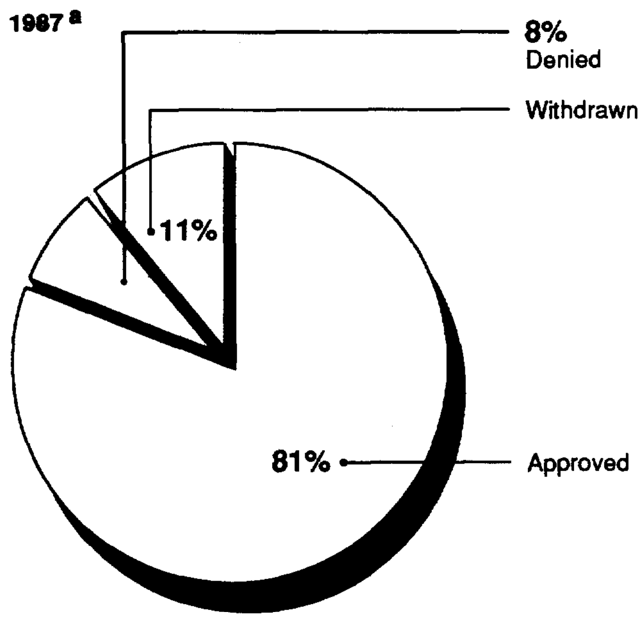
[a]Based on 161 petitions.

Figure I.3: Short Supply Review Outcomes

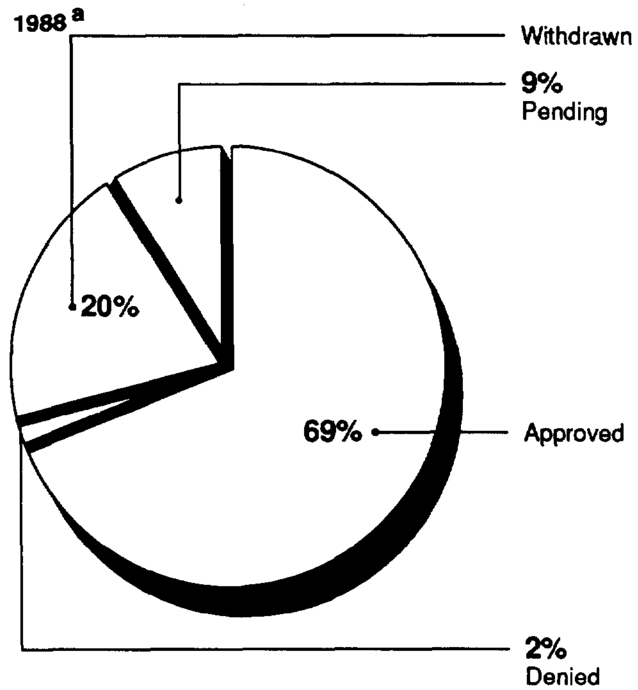


[a]Based on 47 Petitions.

[a]Based on 32 petitions.



[a]Based on 36 petitions.



[a]Based on 45 petitions.

Completion of reviews in which price was raised as an issue averaged 21 percent longer (36 days) than other reviews. Such reviews were also more likely to take over 6 months. Nine of the 33 petitions raising price issues involved semifinished steel. The longer completion times are evidence of the problems in analyzing price issues.

Overall, Commerce approved about 32 percent of the steel tonnage requested. About half of the approvals were for lesser amounts than requested (they averaged 70 percent of the tonnage requested). However, not all amounts approved were actually imported. Also, many petitions were approved in installments; about 33 percent of total tonnage was approved subsequent to the initial decision.

We found little evidence to suggest that the amount of tonnage requested affected the time it took to complete a review. In other words, there was no consistent pattern. Requests for smaller tonnages within a steel category were not answered faster than those for large tonnages. Many requests were for very small amounts; 14 percent were for 100 tons or less. If lesser tonnages could be absorbed by existing export licenses in the marketplace, Commerce could establish minimum tonnages for short supply reviews. Petitioners and producers suggested that very small tonnages under review should be expedited because they would not injure the steel industry.

Analysis of Short Supply Process Phases

We found that those reviews that took a long time to complete overall had no special characteristics, such as any one phase where the process "broke down." Generally, these reviews took a longer time in every phase, from reaching sufficiency to notification. Similarly, we found no special characteristics for reviews that were completed quickly.

To identify problems affecting timeliness of decisions, we analyzed how long it took to complete each phase of the short supply process.[3] Sufficiency determinations, from the date of the request to the initiation date of the review (when the Federal Register notice was signed) took an average of 55 days. Preparation and mailing of the questionnaires took an average of 7 days from the signing of the notice. Data collection took an average of 30 days until the date the last questionnaire response was received by Commerce. The analysis phase, from the last questionnaire response to the date on the decision memorandum, averaged 61 days. The review and decision phase, culminating with the date the decision is made, averaged 28 days, with another 9 days to send notification letters to the petitioners.

Sufficiency determinations and analyses are proportionally the most time-consuming phases of the short supply process. Figure I.1, shows the approximate time spent in each phase of the process for 1984 through August 1988. The dividing lines between phases are artificial and there is some overlap; for example, some analysis can be made before all questionnaire responses are received.

The reduction in average review completion times between 1985 and 1988 occurred because Commerce reduced the time of all phases across the board, not because of improvements in any single phase of the short supply process. (See table I.2 and fig. I.4.)

[3] If a withdrawn petition did not complete a review phase, we omitted it in calculating the time for that and following phases. As a result, the sum of individual phase averages may differ from the average total completion time.

Table I.2: Phase Completion Times

Figures in percent

	Year Petition Submitted				
Phase[a]	**1985**	**1986**	**1987**	**1988[b]**	**Overall**
Sufficiency	28	29	31	29	30
Public notice	7	7	0	0	3
Data gathering	18	16	20	29	21
Analysis	28	28	32	26	28
Decision	14	17	14	12	14
Notification	6	3	3	4	4

[a]Individual cases may omit some phases, so the proportions in each phase may not total 100 percent.

[b]Through August only.

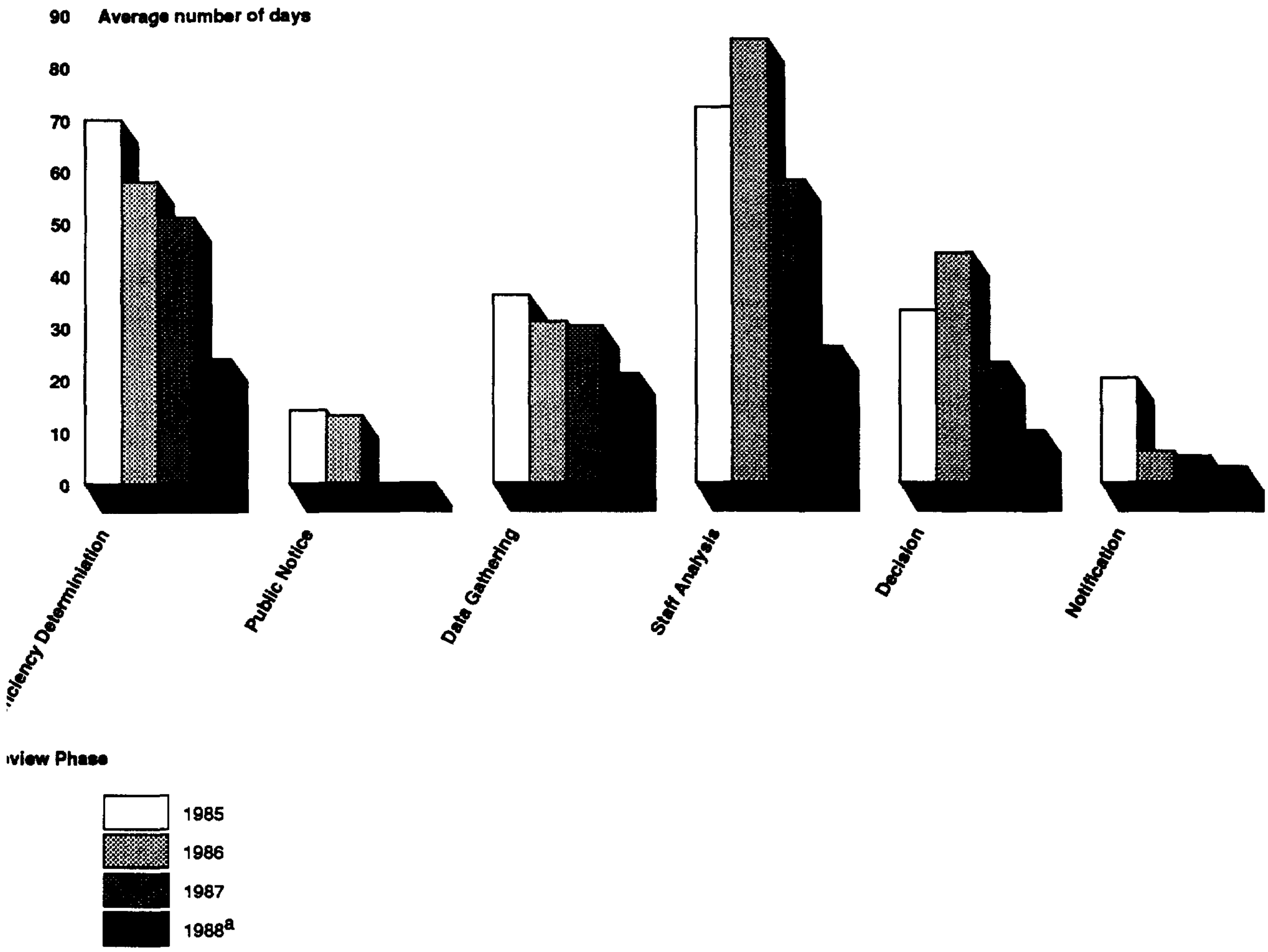
The proportion of each phase in an average review did not change much from year to year. An exception was the reduction in the public notice phase from 7 percent in 1985 to zero in 1987 and 1988. In fact, for some 1988 reviews this was a "negative time" because, contrary to procedures, questionnaires were sent out prior to the signing of the Federal Register notice initiating Commerce's review. In another exception, the data collection phase rose proportionally from 18 percent in 1985 to 29 percent in 1988; however the number of days in this phase was fairly constant from year to year, probably owing to the time limit put on questionnaire responses. We found that late Federal Register responses, the use of a second questionnaire by Commerce, or late questionnaire responses from domestic steel producers generally did not lengthen the completion time of reviews.

Commerce Needs to Improve Its Measurement of Timeliness

OAC maintains a system to monitor progress on all its reviews. However, this system does not include information on the entire administrative process from petition receipt to decision notification, so its use by management in monitoring and assessing timeliness is limited.

Commerce used different standards to assess the timeliness of its reviews. It used different deadlines, e.g. 30, 60, or 90 days, and measured timeliness from different points in the process. For example, OAC sometimes measured from publication of the Federal Register notice to

Figure I.4: Review Phase Completion Times

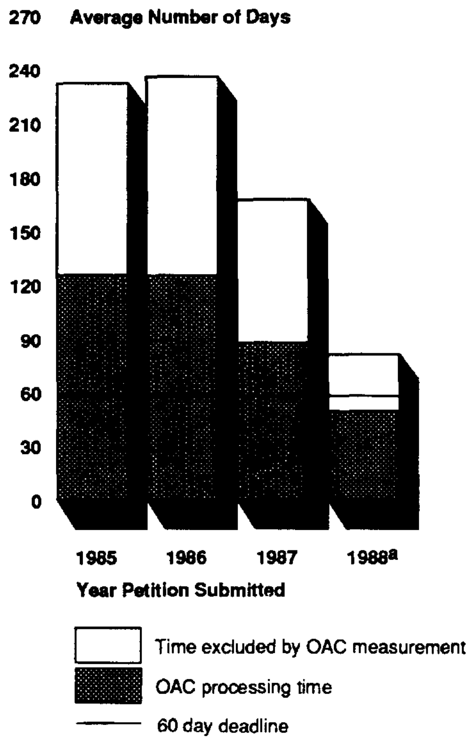


[a]Through August only.

the signing of the notification letter and sometimes from approval of the Federal Register notice to submission of the decision memorandum to the Assistant Secretary. None of OAC's timeliness measurements include all phases of the process. As a result, they do not accurately reflect the total time that petitioners wait to receive answers to their short supply petitions. Lack of a standard deadline creates uncertainty for petitioners on when a decision may be made and could disrupt their operations.

We analyzed whether OAC was meeting a 60-day deadline stated in its internal procedures, which measures only from initiation through analysis phases; it does not start when the petitioner makes a submission nor does it include the decision and notification phases. Figure I.5 shows the average total review time, the review time measured using OAC's internal procedures, and OAC's success in meeting this deadline. We found that over 36 percent of the reviews still failed to meet it. However, this was an improvement over the previous years, when 75 percent failed to do so. OAC on average began meeting its internal deadline in 1988.

Figure I.5: Review Completion Times



[a]Through August only.

Internal Control Analysis

We assessed management internal controls in OAC's conduct of steel short supply reviews for compliance with the Federal Manager's Financial Integrity Act of 1982, and found serious documentation deficiencies. Of the 143 files we examined for short supply petitions almost half were missing one or more pieces of information. For example, files were missing original documents containing signatures and dates documenting actions at key steps in the decision process. We found undated, unsigned copies of decision memoranda and notification letters in 41 and 15 files, respectively. Eleven files lacked petition letters and 8 were missing both the decision memoranda and notification letters. Therefore, we could not easily verify when decisions were made, the basis for them, or who made them. In these circumstances, we had to use secondary Commerce documentation or information sources.

Objectives, Scope, and Methodology

Our review focused on two objectives.

1. To document Commerce's steel short supply process for timeliness and decision criteria, including the extent to which factors such as price influence decisions.

2. To provide suggestions for improving the short supply review process.

To establish the short supply process requirements, we reviewed the Presidential order dated September 18, 1984; the Steel Import Stabilization Act, Title VIII of the Trade and Tariff Act of 1984 (P.L. 98-573), including its legislative history; and Department of Commerce internal documentation and guidance. We also interviewed officials of Commerce's OAC and Office of General Counsel and an official at the Office of the United States Trade Representative.

We documented the short supply review process through a comprehensive flow chart covering all steps from receipt of the petition to petitioner notification of the decision. For ease of understanding, we divided the process into 6 distinct phases: sufficiency determination, Federal Register notice/review initiation, data gathering, staff analysis and recommendation, review/decision, and notification. We measured and reported as a percentage of total time the average length of time required to finish each of the phases during the 4 years the process has been in place.

Documentation of the number of short supply petitions consisted of reviewing 143 files of reviews completed as of August 1988. We designed a data collection sheet (checklist) to collect petition process information, formatted for computer entry and analysis. The collection sheet contained 22 categories of information covering actual time frames at key steps, types of steel products, and other process-descriptive categories. Because of documentation deficiencies in OAC files, we obtained some of the time frame information at key steps from secondary Commerce documentation or sources. Our computerized analysis shows, through calculations of averages and variances, how long the process has taken each year. Yearly trends in short supply process time frames show whether improvements have occurred and provides information to suggest where additional improvements could be made. We arrayed the data in several ways, such as by year or by steel short supply product line, and prepared tables and graphs to present the results.

In addition to the petition documentation work, we talked with officials of steel trade groups; participants in the short supply process, including purchasers (petitioners); attorneys who filed the petitions; and producers, for their general views on the short supply program and suggestions for program improvements. We compiled the suggestions to assist in congressional deliberations on extending the steel program.

Officials of the Department of Commerce reviewed a draft of this report and provided written comments (see app. III) which are incorporated where appropriate. We conducted our work between May and December 1988 in accordance with generally accepted government auditing standards.

Comments From Department of Commerce

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION

MAY 26 1989

Mr. Allan I. Mendelowitz
Director
International Trade, Energy, and
Finance Issues
U.S. General Accounting Office
Room 5492
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Mendelowitz:

I would like to thank you for the opportunity to review the General Accounting Office's (GAO) draft report on the Department of Commerce's "Administration of Short Supply in Steel Import Restraint Agreements."

I found the report to be a balanced analysis of the program during the past few years, and I appreciate the advice you provided to improve this program. As you are aware, the Department has been making changes in its administration of the short-supply program that we feel will allow this program to more adequately address the needs of U.S. consumers and those of steel producers. For example, the Department has reduced the time for completion of short-supply reviews to an average of 40 days on cases filed for 1989. The Department is also proposing a number of changes, both procedural and substantive, that would be incorporated in any short-supply program included in any extended voluntary restraint agreements (VRA).

For your information, I would like to suggest some technical amendments to your report.

See comment 1.

a) You note there are 19 VRA's with a short-supply provision. The correct number should be 16.

See comment 2.

b) You state that 10 VRA's limit steel to a certain percentage of the U.S. market. The correct number is 11.

See comment 3.

c) You state that special short-supply licenses generally expire 180 days after issuance. The period before expiration of these licenses varies from three months to a year, depending on the U.S. supply situation for the individual product.

See comment 3.

d) You state that Article 8 pertains to the short-supply provision. In fact, it varies depending on the agreement. The short-supply provision is Paragraph 8 of the U.S.-Japan arrangement, and Article 7 of the U.S.-Romania and U.S.-Venezuela arrangements.

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See comment 4.

e) You state the Department declared "extraordinary circumstances" for semi-finished steel, plate, and hot-rolled sheet in 1988. I would add that "extraordinary circumstances" also were found for certain stainless steel rod.

See comment 3.

f) You state that "extraordinary circumstances" only will be found after every country's 10 percent cap has been reached. This has not been the case. We have declared this situation to exist in all cases well before the 10 percent cap for every country has been reached.

If you have any questions regarding these technical amendments, please contact me at (202) 377-1780.

Sincerely,

Eric I. Garfinkel

The following are GAO's comments on Commerce's letter dated May 26, 1989.

GAO Comments

1. Changed on pp. 1 and 8.

2. Changed on pp. 8 and 14.

3. We have deleted material from the report based on these comments.

4. Changed on p. 18.

Major Contributors to This Report

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