

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-753-756 (Final)

Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine

DETERMINATION

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury² by reason of imports from China, Russia, South Africa, and Ukraine of cut-to-length carbon steel plate,³ provided for in provisions of headings 7208 through 7212 of the Harmonized Tariff Schedule (HTS) of the United States,⁴ that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).⁵

BACKGROUND

The Commission instituted these investigations effective November 5, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by Geneva Steel Co., Provo, UT, and Gulf States Steel, Inc., Gadsden, AL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of cut-to-length carbon steel plate from China, Russia, South Africa, and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 20, 1997

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Commissioner Crawford determines that an industry in the United States is materially injured by reason of the subject imports. Pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. § 1673d(b)(4)(A)), Commissioner Crawford makes a negative determination regarding critical circumstances.

³ For purposes of these investigations, cut-to-length carbon steel plate is hot-rolled iron and nonalloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and nonalloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included in this definition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling"), such as products which have been bevelled or rounded at the edges. Excluded from this definition is grade X-70 plate.

⁴ Cut-to-length carbon steel plate is currently covered by the following statistical reporting numbers of the HTS: 7208.40.3030; 7208.40.3060; 7208.51.0030; 7208.51.0045; 7208.51.0060; 7208.52.0000; 7208.53.0000; 7208.90.0000; 7210.70.3000; 7210.90.9000; 7211.13.0000; 7211.14.0030; 7211.14.0045; 7211.90.0000; 7212.40.1000; 7212.40.5000; and 7212.50.0000.

⁵ The Commission further determines, pursuant to 19 U.S.C. § 1673d(b)(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

(62 FR 44287). The hearing was held in Washington, DC, on October 28, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in these antidumping duty investigations, we find that an industry in the United States is threatened with material injury by reason of imports of certain carbon steel plate from China, Russia, South Africa, and Ukraine that have been found by the Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”).¹

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of subject merchandise, the Commission must first define the “domestic like product” and the “industry.” Section 771(4)(A) of the Tariff Act of 1930 (“the Act”) defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of that product.”² In turn, the Act defines “domestic like product” as: “a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to an investigation”³

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁴ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.⁵

Congress has directed the Commission to look for “clear dividing lines among possible like products: and further that “[t]he requirement that a product be ‘like’ the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like each other. . . .’”⁶

¹ Commissioner Crawford finds that the domestic industry producing CTL plate is materially injured by reason of CTL plate imports from China, Russia, South Africa, and Ukraine that have been found to be sold at LTFV. *See* Views of Commissioner Carol T. Crawford, *infra*. Except as noted, she joins in sections I-III of these Views.

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(10).

⁴ *See, e.g., Nippon Steel Corp. v. United States*, 19 CIT ___, Slip Op. 95-57 at 11 (Apr. 3, 1995); *Torrington Co. v. United States*, 14 CIT 648, 652 n.3, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. *See The Timken Co. v. United States*, 20 CIT ___, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. *See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington*, 14 CIT at 651-2, 747 F. Supp. at 748-49.

⁵ *Hosiden Corp. v. Advanced Display Manufacturers*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 14 CIT at 651-6, 747 F. Supp. at 748-753 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

⁶ S. Rep. 249, 96th Cong., 1st Sess. 90-91 (1979).

B. Products Covered by the Scope of these Investigations

In its final determinations, Commerce defined the scope of merchandise subject to investigation as:

hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated nor coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.* products which have been “worked after rolling”) - for example, products which have been bevelled or rounded at the edges. Excluded from the subject merchandise within the scope of the petition is grade X-70 plate.⁷

Most cut-to-length carbon steel plate (“CTL plate”) is produced by U.S. mills on a reversing mill, a Steckel mill, or on a hot strip mill. The CTL plate produced on a reversing mill is never coiled,⁸ whereas the CTL plate produced from a hot-strip mill is always coiled, then uncoiled and cut to length.⁹ The CTL plate produced on a Steckel mill either can be produced in a conventional reversing style or coiled first, and then uncoiled and cut.¹⁰ In addition, some service centers buy coiled plate and cut it to length.

Of the CTL plate produced and sold by U.S. mills in 1996, approximately 79 percent was “discrete” plate that had never been in coil form, and 21 percent was cut from hot-rolled coils. When the product of U.S. service centers is considered as well as that of the mills, approximately 60 percent of the CTL plate produced in 1996 was “discrete” plate that had never been in coil form, and 40 percent was cut from hot-rolled coils.¹¹

In the preliminary phase of these investigations, the majority of the Commission did not include CTL plate cut at service centers in the domestic like product.^{12 13} But, given the significant similarities between CTL plate cut to length by service centers and U.S. mills, the Commission indicated that it would explore more closely in any final phase investigations whether to include plate in coil form cut to length by

⁷ 62 Fed. Reg. 61731 (November 19, 1997).

⁸ Confidential Report (“CR”) at I-5, Public Report (“PR”) at I-4.

⁹ CR at I-5-6, PR at I-4-5.

¹⁰ CR at I-6-7, PR at I-5.

¹¹ CR at I-7, PR at I-5.

¹² Preliminary Determination at 8.

¹³ Commissioner Crawford included CTL plate produced by service centers in the domestic like product, stating that in her view, it makes no difference what entity cuts the CTL plate so long as the CTL plate is “like” the subject imports. Preliminary Determination, Additional Views of Commissioner Carol T. Crawford at 27.

service centers in the like product.¹⁴ In addition, the Commission indicated that it intended to examine closely in any final phase investigations whether the like product should include all plate in coil form.¹⁵

In the following sections, we consider three domestic like product issues: (1) whether plate in coil form should be included in the domestic like product, regardless of whether it is shipped to a service center for cutting or used for other purposes; (2) whether “certain coil” *i.e.*, coiled product which is produced to the same specifications, chemistries, or widths as cut-to-length carbon steel plate and generally shipped to processors, service centers, or distributors,¹⁶ should be included in the domestic like product, and (3) whether CTL plate produced by service centers should be included in the like product.

1. Whether Plate in Coil Form Should be Included in the Domestic Like Product

Petitioners argue that the domestic like product does not include coiled plate, whether using the traditional analysis or the semifinished product analysis.¹⁷ Respondents do not address the issue.¹⁸

The domestic like product includes CTL plate made by more than one production process. It includes both plate that is coiled and decoiled during its production process (*i.e.*, plate produced on a hot strip or Steckel mill) and CTL plate produced on a reversing mill (and therefore never coiled and decoiled). Plate in coil form and CTL plate produced from a hot strip or Steckel mill process naturally share many more similarities overall than plate in coiled form and CTL plate produced on a reversing mill, because plate in coil form is the upstream input of CTL plate cut from coils. Most of the differences between plate in coil form and CTL plate produced on reversing mills also exist between CTL plate produced on a hot strip or Steckel mill and CTL plate produced on a reversing mill. No party argues, however, that CTL plate produced on hot strip or Steckel mills and CTL plate produced on reversing mills should be considered separate domestic like products.¹⁹ We address immediately below the traditional like product factors, taking into account the fact that CTL plate is produced both from coiled plate and as “discrete” plate.

a. Physical Characteristics and End Uses

We find that there are differences in physical characteristics and end uses between plate in coiled form and CTL plate. The physical characteristics of CTL plate differ from those of coiled plate consistently in form (CTL plate is a flat product while coiled plate is, as its name implies, in coiled form) and in length, and may differ in thickness.²⁰ The primary distinctions in the physical characteristics of CTL plate produced and sold by U.S. mills and coiled plate stem from each item’s method of manufacture

¹⁴ Preliminary Determination at 8.

¹⁵ Preliminary Determination at 6.

¹⁶ CR at I-15, PR at I-11.

¹⁷ Bethlehem Steel and U.S. Steel Group, unit of USX Corporation, non-petitioning members of the domestic industry, also argued that the domestic like product should not include plate in coils. *See* Prehearing Brief of Bethlehem Steel and USX at 4-12.

¹⁸ The South African respondents suggested, without argument, that the domestic market should be defined in terms of coiled plate and CTL plate. South African Prehearing Brief at 11. The Joint Respondents’ prehearing brief did not address this issue. Joint Respondents stated in their posthearing brief that throughout these investigations, they have been more concerned with the Commission including all CTL plate than with the Commission including plate in coil form. Joint Respondents’ Posthearing Brief, Attachment A, Answer to Commission Questions at 1, n.1.

¹⁹ Approximately 60 percent of domestic produced CTL plate is produced as discrete plate and 40 percent is produced from coiled plate (when the production of service centers is included). CR at I-7, PR at I-5.

²⁰ CR at I-18, PR at I-13.

and the form in which it is sold.²¹ Plate in coil form and CTL plate produced on a hot strip or Steckel mill share many of the same physical characteristics. However, all coiled plate shares the dimensional limitations of the hot-strip and Steckel mills, whereas these dimensional limitations are not shared by discrete CTL plate.²²

There are also some significant differences in end use between coiled plate and CTL plate. The principal uses of coiled plate (other than that sold to service centers) are the production of pipes and tubes and automotive applications.²³ The principal uses for CTL plate are for the production of machinery, industrial equipment, tools, construction and contractors' products, transportation equipment, oil and gas industry equipment, fabrication, storage tank production, barges and rail cars, and the manufacture of agricultural and mining equipment.²⁴

b. Interchangeability

The record indicates that there are some limitations on the interchangeability of CTL plate and coiled plate.²⁵ CTL plate is required for applications requiring thicker, wider, or flatter product including bridge work, critical structural applications, and part burning, whereas purchasers reported that CTL plate could not be used in tubular production processes and long-run stamping operations.²⁶ Both U.S. producers and end-users were split on the issue of whether coiled plate could be a substitute for CTL plate. Four mills (representing 38.9 percent of 1996 mill production of CTL plate) reported that coiled plate in general could be considered a substitute product for CTL plate.²⁷ Six end users reported that CTL plate and coiled plate could be used in the same applications, whereas seven end users reported that they could not be used in the same applications.²⁸ Five purchasers reported shifting purchases of CTL plate to coiled plate in the previous three years, while 44 reported that they had not.²⁹

c. Channels of Distribution

There is an overlap in the channels of distribution for CTL plate and coiled plate. In 1996, 47.5 percent of domestically produced CTL plate was shipped to distributors, processors, and service centers, whereas 52.5 percent was shipped to end users.³⁰ Similarly, in 1996, 36 percent of U.S. mill shipments of coiled plate went to intermediaries, whereas 64 percent went to end users.³¹ As discussed above, however, CTL plate is sold primarily to different end users than coiled plate.

²¹ CTL plate produced on a reversing mill has a greater range of thicknesses and widths than plate in coil form (or CTL plate produced on a hot strip or Steckel mill). CR at I-5-7, PR at I-4-5.

²² Petitioners' Posthearing Brief, Answer to Commission Questions at 70.

²³ CR at I-14-15, PR at I-11.

²⁴ CR at I-9, PR at I-7.

²⁵ While 32 responding purchasers reported that mill-produced CTL plate and coiled plate in general are used in the same application, 13 disagreed, citing thickness limitations, flatness and gauge problems, and product specifications. However, 20 of 42 U.S. purchasers reported that there were applications that required the use of CTL plate and other applications that required the use of coiled plate. CR at I-14, PR at I-10-11.

²⁶ CR at I-14, n.41, PR at I-11, n.41.

²⁷ CR at I-14, PR at I-10.

²⁸ CR at I-14, n.42, PR at I-11, n.42.

²⁹ CR at I-14, PR at I-11.

³⁰ Table I-1, CR at I-12, PR at I-9.

³¹ CR at I-14-15, PR at I-11.

d. Production Facilities, Processes, and Employees

There are some differences in production facilities, processes and employees between CTL plate and coiled plate, particularly when the production of “discrete” plate is considered. Reversing plate mills are usually separated from hot-strip mills and employ different production workers than coiled operations, even when located in the same facility.³² Approximately 60 percent of CTL plate production in the United States is discrete plate,³³ although there appears to be a trend by steel mills away from producing CTL plate on a reversing mill and towards production on combination Steckel mills that produce both plate in coils and CTL plate that has not been coiled.³⁴ In addition, we note that the manufacture of CTL plate from coiled plate requires the additional manufacturing step of decoiling and cutting to length the decoiled product, and therefore requires additional manufacturing equipment.

e. Customer or Producer Perceptions

The record is somewhat mixed as to whether CTL plate and coiled plate are perceived to be different products. As noted in the interchangeability discussion above, U.S. producers representing 38.9 percent of domestic production indicated that they viewed plate in coils and CTL plate to be substitutable. Purchaser responses were mixed, with some indicating that CTL plate and coiled plate were interchangeable, whereas others indicated that, for at least some applications, they were not interchangeable. In addition, we note that customers differentiate between CTL plate and coiled plate in their orders.³⁵

f. Price

There are differences in the average unit value of CTL plate and coiled plate. The average unit value of CTL plate produced by U.S. mills ranged from \$437 to \$465 per short ton during the POI, while the price of plate in coil produced in U.S. mills was considerably lower at \$322 to \$360 per short ton.³⁶ Plate in coil form that has been further cut by service centers generally sold at slightly lower prices than that produced in the mills -- \$389 to \$439 per short ton -- but still at a higher price than that for coiled plate.

Based on the different physical characteristics and end uses, limited interchangeability, different manufacturing facilities for the majority of CTL plate and coiled plate, and differences in price, we do not include coiled plate in the domestic like product in these final investigations.³⁷

³² CR at I-4, n.14, PR at I-4, n.14.

³³ CR at I-7, PR at I-6. During the period of investigation (“POI”), 5 producers produced CTL plate on reversing mills, 3 on strip mills, 1 on both a strip mill and a reversing mill, 1 on both a Steckel mill and a reversing mill, 2 on Steckel mills, and 2 on bar or structural mills. CR at III-1, n.2, PR at III-1, n.2.

³⁴ CR at I-7, n.22, PR at I-5, n.22.

³⁵ Petitioners’ Prehearing Brief at 18.

³⁶ Table I-2, CR at I-13, PR at I-9.

³⁷ We also find that the semifinished product analysis does not support inclusion of coiled plate in the domestic like product. The Commission has employed a semifinished product analysis rather than its traditional analysis when analyzing whether a product at an earlier stage of its production process is “like” a finished or further processed product. Under this analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article, or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the

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2. Whether “Certain Coiled Plate” Should be Included in the Like Product

The Commission also collected information on “certain coiled plate,” a subset of coiled plate which is produced to the same specifications, chemistries, or widths as CTL carbon steel plate and generally shipped to processors, service centers, or distributors.³⁸ Petitioners argue against the inclusion of “certain coiled plate” in the domestic like product. Respondents did not address inclusion of certain coiled plate in the domestic like product.

We determine that the domestic like product does not include “certain coiled plate” for the same reasons that we do not include all coiled plate in the domestic like product. We do not find any clear dividing line between “certain coiled plate” and all coiled plate, other than the product widths or ASTM specifications enumerated in the Commission questionnaires.

3. Inclusion of Domestic CTL Plate Cut by Service Centers

Petitioners argue that the Commission should limit the domestic like product to CTL plate produced by U.S. mills.³⁹ Respondents argue that CTL plate cut by service centers is the same as CTL plate cut at mills, and that there is no basis for excluding service center CTL plate from the domestic like product.⁴⁰ We determine that the domestic like product includes all CTL plate, whether produced in a mill by an integrated producer or in a service center.⁴¹

The Commission’s traditional six factor like product analysis weighs strongly in favor of inclusion of CTL plate cut by service centers in the like product. There is little evidence in the record that CTL plate cut by service centers differs from that which is cut to length by U.S. mills. Regardless of whether plate is cut from a coil at a mill or at a service center, such plate has the same physical characteristics and uses since it is essentially an identical product which has the same chemistry, metallurgy, and physical

³⁷ (...continued)

upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Invs. Nos. 731-TA 736 and 737 (Final), USITC Pub. 2988 (Aug. 1996) at 6 n.23. With respect to the first factor, there are independent uses for coiled plate other than in the manufacture of CTL plate. As to the second factor, the record suggests that while there is some overlap in markets for coiled plate and CTL plate, the major end-user markets for coiled plate, pipe and tube conversion and automotive uses, are not shared by CTL plate. As to the third factor, the physical characteristics of CTL plate differ from those of coiled plate consistently in form and in length, and may also differ in thickness. We note that the distinctions are greater between reversing mill CTL plate and coiled plate than for CTL plate that has been produced from coiled plate. As to the fourth and fifth factors, coiled plate can undergo a variety of transformation processes, typically linked to the designated end use. For example, steel service centers that operate cut to length processing lines level and shear coiled plate, converting it from a coiled to a flat product with a defined length. The costs and processes involved in transforming coiled plate to CTL plate are not trivial, as discussed below in the discussion of domestic industry.

³⁸ CR at I-15, PR at I-11.

³⁹ Hearing Transcript at p.18. Petitioners’ arguments in their prehearing brief pertaining to service centers, however, are primarily directed to the exclusion of service centers as domestic producers, rather than to the definition of the like product. Petitioners’ Prehearing Brief at 5-22.

⁴⁰ Respondents’ Joint Prehearing Brief at 5.

⁴¹ In the most recent 1993 CTL plate investigations, no party raised the issue of whether plate in coil form that has been cut by service centers should be included in the CTL domestic like product, and the Commission did not address the issue. Today, service centers are playing an increasingly significant role in the cutting and distribution of plate. In 1996, shipments of CTL plate cut by service centers from both imported and domestic coil accounted for 23.8 percent of all domestic CTL plate production. CR at I-7, PR at I-6.

dimensions. To the extent there are distinctions in the physical characteristics of CTL plate produced and sold by U.S. mills and CTL plate that is cut to length by service centers from coiled plate, these distinctions are derived from each item's method of manufacture, rather than the location of the manufacturing equipment. As discussed above, CTL plate produced by U.S. mills as "discrete" plate on reversing mills is available in wider widths and greater thicknesses, and may possess superior mechanical properties than plate cut from coil.⁴² These dimensional differences arise from the manufacturing process, and can limit the interchangeability of "discrete" plate with plate cut from a coil.⁴³ However, these dimensional differences also apply to plate produced by hot strip mills and, depending on the production method used, plate produced by Steckel mills. Moreover, 35 responding purchasers reported that mill-produced CTL plate and CTL plate that has been cut to length by a processor from coiled plate are used in the same applications, while 5 disagreed, in whole or in part, citing thickness limitations, flatness and general quality problems, and customer specifications.⁴⁴

The channels of distribution of CTL plate produced at a mill overlap to some extent with that of CTL plate cut by a service center. The former may go through a service center or a distributor prior to sale to the ultimate end user, or it may be shipped directly to an end user.⁴⁵ CTL plate cut by a service center is more likely to be sold directly to an end user than is CTL plate from a mill.

Twenty-one percent of CTL plate produced by U.S. mills utilizes the same manufacturing methods as CTL plate that is cut to length from coiled plate by U.S. service centers.⁴⁶ For this plate, regardless of whether it is cut to length by a mill or a service center, the process and equipment used to cut plate from coil are essentially the same.⁴⁷

Based on the similar physical characteristics and uses, interchangeability, manufacturing processes and equipment and overlapping channels of distribution, we include CTL plate cut from coiled plate by service centers in the domestic like product.

C. Domestic Industry

1. In General

The Commission is directed to consider the impact of the subject imports on the domestic industry, defined as "the producers as a [w]hole of a domestic like product."⁴⁸ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁴⁹ In light of our domestic like product determination, we define the domestic industry as all producers of CTL plate.

In defining the members of the domestic industry in these investigations, we address two issues: (1) whether production of CTL plate includes operations of processors such as steel service centers, which

⁴² CR at I-9, PR at I-7.

⁴³ *Ibid.*

⁴⁴ CR at I-11, PR at I-8. The distinction in thicknesses also applies to plate produced on a reversing mill versus a hot strip or Steckel mill, and does not reflect a broader distinction between service center CTL plate and plate cut to length by U.S. mills. Moreover, of the 11 responding end users that purchase CTL plate, only one reported that it could not use CTL plate converted from coil by a processor. CR at I-11, n.39, PR at I-8, n.39.

⁴⁵ Table I-1, CR at I-12, PR at I-9.

⁴⁶ CR at I-7, PR at I-5.

⁴⁷ CR at I-8-9, PR at I-6-7.

⁴⁸ 19 U.S.C. § 1677(4)(A).

⁴⁹ *See e.g., Large Newspaper Printing Presses*, USITC Pub. 2988 at 7-8.

purchase coiled plate and decoil it and cut it to length to produce CTL plate, and (2) whether any producers should be excluded from the industry pursuant to section 774(4)(B) of the Act.

2. Inclusion of Processors

There are three types of companies that could be considered members of the CTL plate industry: (1) integrated mill producers, which manufacture either discrete CTL plate or CTL plate from coiled plate that they also produce; (2) nontoll processors, primarily service centers, which purchase coiled plate and decoil it and cut it to length to form CTL plate; and (3) toll processors, which perform the same function as nontoll processors except that ownership of the coil is maintained by another entity, such as a mill or service center.

Petitioners argue that toll processors should be included in the domestic industry, but nontoll producers should be excluded. Respondents argue that all processors should be included in the domestic industry. We note at the outset that the processing performed by steel service centers — *i.e.*, using coiled plate as an input and decoiling and cutting it to length to form CTL plate — changes the product from one which we specifically found was not part of the domestic like product into a product that corresponds to the domestic like product.⁵⁰ More typically, when this issue is raised, the production-related activities involve further processing of a product that is already within the domestic like product definition.⁵¹

In deciding whether a processing firm qualifies as a domestic producer, the Commission generally has analyzed the overall nature of the firm's production-related activities in the United States to determine whether its production-related activities are sufficient to constitute domestic production.⁵² The Commission has not established a specific level of U.S. value added required to qualify as a domestic producer.⁵³ The Commission generally considers the following factors:

⁵⁰ Commissioner Crawford finds that the analysis to determine whether processors are producers of the domestic like product follows from the like product finding. The production related activity required to convert the plate in coil form into CTL plate is by definition sufficient to convert one like product into a different like product. Therefore, it follows that converting plate in coil form into CTL plate constitutes "production" of CTL plate. She therefore finds that the six factor test to analyze production-related activities does not apply and thus she does not join in the discussion of this test. For her complete analysis of this issue, *see* Views of Commissioner Carol T. Crawford, *infra*.

⁵¹ *See Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain*, Invs. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995).

⁵² *Ferrovandium and Nitrided Vanadium from Russia*, Inv. No. 731-TA-702 (Final), USITC Pub. 2904 (June 1995) at I-8.

⁵³ *See Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands*, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 at I-8-I-9 & n.34 (June 1994) ("no single factor -- including value added -- is determinative and . . . value added information becomes more meaningful when other production activity indicia are taken into account); *Low Fuming Brazing Copper Wire and Rod from New Zealand*, Inv. No. 731-TA-246 (Final), USITC Pub. 1779 (Nov. 1985) (the Commission concluded that twenty percent value added by flux coaters was sufficient); *see also Low Fuming Brazing Copper Wire and Rod from South Africa*, Inv. No. 731-TA-247 (Final), USITC Pub. 1790 (Jan. 1986) (value added in the United States was ten to twenty percent).

The Commission has also stated that a "modest percentage of domestically sourced parts or raw materials as a percentage of cost does not necessarily mean that a firm is not a domestic producer." *Certain All Terrain Vehicles from Japan*, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (Mar. 1989) at 13-14. Conversely, the Commission has decided not to include a firm in the domestic industry where its operations contributed only a "minor percentage of the total value" of the product. *Certain Radio Paging and Alerting Devices from Japan*, Inv. No. 731-TA-102 (Final), USITC Pub. 1410 (Aug. 1983) (operations involved assembly and soldering of foreign sourced parts involving little technical skill); *see also Color Television Receivers from the Republic of Korea and Taiwan*, Invs.

(continued...)

- (1) the source and extent of the firm's capital investment;
- (2) the technical expertise involved in U.S. production activities;
- (3) the value added to the product in the United States;
- (4) employment levels;
- (5) the quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the like product.⁵⁴

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation.⁵⁵

We find that all processors should be included in the domestic industry, whether the processing is done on a toll or nontoll basis. The record indicates that investment for cut-to length lines producing a combination of products, gauges, and widths may be as much as \$15 million to \$18 million.⁵⁶ Total capital investment by processors for their operations producing CTL plate ranged from \$17.9 million to \$19.4 million during the 1994-96 period.⁵⁷ While the total capital investment of the U.S. mills was significantly higher, we consider these investments to be significant.⁵⁸

Significantly, the manufacturing equipment and processes used by service centers to decoil and cut to length coiled plate is the same as that used by the domestic mills to produce CTL plate from coiled plate.⁵⁹ There is a range of opinion on the expertise required to perform processing operations, ranging from “not very high” to “moderate” to “high.” At a minimum, equipment operators require a high school education, with an emphasis on reading and math skills. Many processors prefer cut-to-length operators with mechanical skills, and most stress on-the-job training, typically for 90 days. Most processors emphasized the need to understand the principles of leveling and to record accurate dimensional measurements.⁶⁰

Although the number of operators in any given service center may be low, processors reported aggregate employment levels ranging from a low of 558 to a high of 692 from 1994 to January-March 1997. During the same period, U.S. mills reported employment ranging from 6,854 to 7,173 workers.⁶¹

⁵³ (...continued)

Nos. 731-TA-134 and 135 (Final), USITC Pub. 1514 (Apr. 1984) at 7-8 (Commission emphasized for the first time that no single factor--including value added--is determinative).

⁵⁴ See, e.g., Large Newspaper Printing Presses, USITC Pub. 2988 at 7-8.

⁵⁵ See Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Invs. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) at I-11 n.37; Silicon Carbide from The People's Republic of China, Inv. No. 731-TA-651 (Final), USITC Pub. 2779 (June 1994) at I-11 n.49.

⁵⁶ CR at I-8-9, PR at I-7.

⁵⁷ CR at III-8, PR at III-7. The most common source of capital investment for U.S. processors was internally-generated funds, followed by bank financing, foreign parent companies, domestic parent companies, and equity offerings. CR at III-8, PR at III-7.

⁵⁸ Total capital investment of U.S. mills ranged from \$188.9 million to \$308.1 million. Table VI-5, CR at VI-14, PR at VI-6. The mill investment is significantly larger than the processor investment in part because the data reported by integrated mills include allocated investment for operations such as slab casting and coiling, when these operations lead to the production of CTL plate by or on behalf of U.S. mills.

⁵⁹ CR at I-8, PR at I-6.

⁶⁰ CR at III-9, PR at III-7.

⁶¹ Table III-7, CR at III-13, PR at III-10. We note, however, that these data include information from U.S. processors engaged in tolling operations on behalf of U.S. mills producing CTL plate.

Therefore, the processors account for approximately 10 percent of all production workers in the CTL industry.

The value added to carbon steel plate by processing operations varies, depending on the operation performed by the processor. The value added (defined as the conversion costs (labor and factory overhead) divided by the total cost of goods sold) by the reporting nontoll processors of all coiled plate (of domestic and foreign origin combined) in 1996 ranged from 2.6 to 23.1 percent, and averaged 5.3 percent. Including SG&A expenses in the conversion costs increased the average value added to 11.1 percent.⁶² Processors source both domestic and imported coiled plate to produce CTL plate. However, the amount of CTL plate produced by processors from domestic coil significantly exceeded the amount produced from imported coil.⁶³

In addition to these traditional factors, we have also considered the fact that the processing activities in question impart the defining characteristic to the like product -- *i.e.*, by converting a non-like product (coiled plate) into the like product.

In our view, the facts support the inclusion of toll and nontoll processors of imported and domestic coil in the domestic industry.⁶⁴ They invest a significant amount of capital in relatively sophisticated processing operations, and account for a significant percentage of overall employment of the U.S. industry. While the value added is relatively small, this factor is not determinative of the outcome. Rather, we have placed considerable importance on the fact that the processing performed by the service centers involves changing a product that we have affirmatively decided not to include in the domestic like product -- coiled plate -- into the domestic like product.

Based on the foregoing, we include all producers of CTL plate in the domestic industry, whether toll producers, integrated producers, or processors.^{65 66}

⁶² CR at I-19-20, PR at I-14. The value added by reporting nontoll processors of domestic coil in 1996 ranged from 2.5 to 23.1 percent, and averaged 5.4 percent. Including SG&A expenses in the conversion costs increased the average value added to 11.6 percent. The value added by reporting nontoll processors of imported coil in 1996 ranged from 2.7 to 17.7 percent, and averaged 4.9 percent. Including SG&A expenses increased the value added to 9.6 percent. *Ibid.*

⁶³ In 1996, processors produced 1,226,405 short tons of CTL plate from domestic coil versus 426,230 short tons from imported coil. In terms of total U.S. CTL production, 17.7 percent was produced by processors from domestic coil and 6.1 percent was produced by processors from imported coil. CR at I-7, PR at I-6.

⁶⁴ We reject petitioners' argument that toll production should be included and nontoll production should not be included in the domestic CTL plate industry. A significant percentage of the processing of coiled plate is performed on a toll basis. *See, e.g.*, Table III-3, CR at III-7-8 and n.1, PR at III-5 and n.1. Other than ownership, there is no difference in the processing activity that takes place on a toll and nontoll basis. Moreover, we note that petitioners' assertion that toll producers are entirely dependent on U.S. mills is not supported by the record. Tolling for U.S. mills accounted for 49.9 percent of all tolling in 1996, tolling for service centers accounted for 48.2 percent, and tolling for other customers accounted for 1.9 percent of toll production. CR at I-20, n.62, PR at I-14, n.62.

⁶⁵ Chairman Miller and Vice Chairman Bragg note that the processors in these investigations are in a somewhat different position than the domestic mill producers of CTL plate with respect to their vulnerability to unfair import competition.

The processors are either toll processors, that charge their customers a fee for performing the processing, or are independent (nontoll) processors, which purchase either domestic or imported coiled plate and decoil it and cut it to length to manufacture CTL plate. Many nontoll producers also resell domestic or imported CTL plate that they have not produced in their processing operations. Accordingly, a significant number of processors appear to be insulated from the effects of dumped imports in a way that the operations of the domestic mills are not.

For the reasons given above, Chairman Miller and Vice Chairman Bragg believe that the processors should be included in the domestic industry. However, they believe that it is appropriate to take into account the greater vulnerability of the domestic mills to the effects of dumped imports in determining whether the domestic industry as a whole is experiencing material injury by reason of subject imports. Thus, while they have looked at the data for the

(continued...)

D. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B).

North Star Steel Co. (“North Star”) is a mill producer, and Cargill Steel & Wire Div. of Cargill, Inc. (“Cargill”) is a processor of the domestic like product. Both are wholly owned by Cargill, Inc., which also owns Cargill Ferrous International Div. of Cargill, Inc., a company that imports subject merchandise. In addition, Feralloy Corp. (“Feralloy”) is related through common ownership (Preussag North America) to importer Preussag International Steel Corp., which imports subject merchandise. Thus, North Star, Cargill, and Feralloy are related parties, and the Commission may exclude them from the domestic industry if “appropriate circumstances” exist.⁶⁷

None of these companies imported the subject product, and their interests therefore would appear to be in domestic production rather than importation of the subject merchandise.⁶⁸ Operating income data for *** are somewhat *** than the industry average. However, several other companies in the domestic industry that are not related parties had similar, or ***, operating margins. *** operating income margins, which ranged between ***, were *** than the industry average.⁶⁹ Also, *** accounts for only a *** of domestic CTL production in 1996.⁷⁰ Similarly, *** accounted for *** percent of processor production, which corresponds to *** percent of total domestic production (mills and processors) in 1996.⁷¹ Given these *** volumes, we conclude that neither exclusion nor inclusion of any of these producers’ data would

⁶⁵ (...continued)

entire domestic industry, they have placed particular emphasis on the condition of the domestic mills in reaching their finding that subject imports threaten the domestic CTL plate industry with material injury. They note, however, that this emphasis did not alter the outcome of their decision with respect to the CTL plate industry. Finally, their decision to include processors in the domestic industry producing CTL plate should not be construed as an indication that in any future investigations they will necessarily determine that processors will be included in the industry. An analysis of the facts specific to each investigation will govern their treatment of this issue.

⁶⁶ Commissioner Newquist considers the industry as a whole in evaluating whether the domestic industry is injured or threatened with material injury by reason of subject imports.

⁶⁷ 19 U.S.C. § 1677(4)(B). No party has argued that these companies should be excluded from the domestic industry. Factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the percentage of domestic production attributable to the importing producer; the reason the U.S. producer has decided to import the product subject to investigation; whether inclusion or exclusion of the related party will skew the data for the rest of the industry; the ratio of import shipments to U.S. production for related producers; and whether the primary interest of the related producer lies in domestic production or importation. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). *See also Engineered Process Gas Turbo-Compressor Systems from Japan*, Inv. No. 731-TA-748 (Final), USITC Pub. 3042 (June 1997) at 10 n.26.

⁶⁸ For this reason, Commissioner Crawford finds that these firms should not be excluded from the domestic industry. She does not join in the remainder of this discussion.

⁶⁹ ***’s operating income margins on its CTL plate operations ranged from *** percent during the POI, which is *** than the industry mill average of 2.2 to 5.5. Table VI-3, CR at VI-9, PR at VI-4. With respect to ***, operating income margins ranged from ***, which were *** compared to nontoll processors and to mills and processors combined.

⁷⁰ Table III-1, CR at III-3, PR at III-3; Table C-1, Table C-4, CR at C-6, C-12, PR at C-6. C-12.

⁷¹ *See* Tables III-1 and III-2, CR at III-3 and 7-8, PR at III-3 and 5-7; Table C-4, CR at C-12, PR at C-12, as adjusted for toll production.

skew data for the industry. On balance, we find that appropriate circumstances do not exist for excluding any of these producers from the domestic industry.

II. CONDITION OF THE INDUSTRY

In assessing whether a domestic industry is materially injured or threatened with material injury by reason of LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷² These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development.⁷³ No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁴

A condition of competition pertinent to our analysis is the growing importance of steel service centers in this industry. Service centers accounted for 23.8 percent of domestic production of CTL plate in 1996.⁷⁵

In addition, demand for CTL plate increased overall during the period of investigation. Producers, importers, and end-use purchasers attributed the increase in demand to a strong economy, and to such specific factors as low interest rates, increased spending on capital goods, and increased general construction spending.^{76 77 78}

The quantity of apparent U.S. consumption of CTL plate declined from 7.92 million short tons in 1994 to 7.75 million short tons in 1995, and then rose to 8.68 million short tons in 1996. Apparent U.S. consumption was 2.26 million short tons in interim (January-March) 1997 compared with 2.07 million short tons in interim 1996.⁷⁹ During the same period, U.S. producers’ share of consumption by quantity fell from 82.9 percent in 1994 to 82.6 percent in 1995 and to 79.4 percent in 1996. U.S. producers’ share of the quantity of U.S. consumption was 73.4 percent in interim 1997 compared with 84.9 percent in

⁷² 19 U.S.C. § 1677(7)(C)(iii).

⁷³ Commissioner Crawford joins her colleagues in these investigations in a discussion of the “condition of the industry” even though she does not make her determination based on industry trends. Rather, she views the discussion as a factual recitation of the data collected concerning the statutory factors.

⁷⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁷⁵ CR at I-7, PR at I-6.

⁷⁶ CR at II-2, PR at II-2.

⁷⁷ Respondents argue that these investigations warrant our consideration of data gathered in the preliminary investigation so that we can analyze four complete years of data. Joint Respondents’ Prehearing Brief at 19. We decline to consider four years of data in these final investigations. We note that it is not our standard practice to consider data from the preliminary phase of our investigations for the sole purpose of extending the period of our final investigation. Such an approach is particularly problematic in these investigations since we included processors in the industry, and such data were not obtained in the preliminary phase.

⁷⁸ Certain domestic producers internally transfer production of CTL plate for production of downstream products. Thus, we have considered whether the captive production provision applies in these investigations. The captive production provision may be applicable if, as a threshold matter, significant production of the domestic like product is internally transferred and significant production is sold in the merchant market. 19 U.S.C. § 1677(7)(C)(iv). In 1996, only *** of domestic production (including processors) was captively consumed. CR at III-11 and n.14, PR at III-9 and n.14; Tables C-1 and C-4, CR at C-6 and C-12, PR at C-6 and C-12. We find this level of captive consumption to be insignificant and therefore do not apply the captive production provision.

⁷⁹ Table C-4, CR at C-11, PR at C-11.

interim 1996.⁸⁰ U.S. producers' share of consumption by value fell from 84.3 percent in 1994 to 83.8 percent in 1995 and to 81.6 percent in 1996, and was 76.8 percent in interim 1997 compared with 85.8 percent in interim 1996.⁸¹

The domestic industry's capacity to produce CTL plate fell from 9.06 million short tons in 1994 to 8.96 million short tons in 1995, and rose to 9.22 million short tons in 1996. The domestic industry's capacity to produce CTL plate was 2.33 million short tons in interim 1997 compared with 2.27 million short tons in interim 1996.⁸² The domestic industry's production volume declined from 6.68 million short tons in 1994 to 6.53 million short tons in 1995, and then increased to 6.94 million short tons in 1996. The domestic industry's production volume was 1.70 million short tons in interim 1997 compared with 1.77 million short tons in interim 1996.⁸³ Capacity utilization fell from 73.6 percent in 1994 to 72.9 percent in 1995, and then rose to 75.3 percent in 1996. Capacity utilization was 72.7 percent in interim 1997 compared with 77.9 percent in interim 1996.⁸⁴

The domestic industry's total U.S. shipments of CTL plate, by volume, fell from 6.57 million short tons in 1994 to 6.39 million short tons in 1995, and rose to 6.89 million short tons in 1996. Total U.S. shipments were 1.66 million short tons in interim 1997 compared with 1.76 million short tons in interim 1996.⁸⁵ The U.S. industry's total U.S. shipments by value rose from \$2.84 billion in 1994 to \$2.93 billion in 1995, and to \$3.10 billion in 1996. The value of U.S. producers' U.S. shipments was \$745.18 million in interim 1997 compared with \$784.50 million in interim 1996.⁸⁶ The quantity of U.S. producers' end-of-period inventories fluctuated throughout the period examined, increasing from 313,570 short tons in 1994 to 336,100 short tons in 1995, and then declining to 317,594 short tons in 1996. End-of-period inventories were 347,744 short tons in interim 1997 compared with 328,779 short tons in interim 1996.⁸⁷

The average number of production and related workers (PRWs) employed by the domestic industry producing CTL plate declined from 7,489 in 1994 to 7,383 in 1995, and then increased to 7,778 in 1996. The number of PRWs was 7,474 in interim 1997 compared with 7,908 in interim 1996. Hours worked increased from 16.60 million in 1994 to 16.67 million in 1995, and to 17.33 million in 1996. Hours worked were 4.14 million in interim 1997 compared with 4.46 million in interim 1996.⁸⁸

The domestic industry's net sales by quantity fell from 6.34 million short tons in 1994 to 6.28 million short tons in 1995, and then rose to 6.71 million short tons in 1996. Net sales by quantity were 1.61 million short tons in interim 1997 compared with 1.72 million short tons in interim 1996. Net sales value rose from \$2.74 billion in 1994 to \$2.87 billion in 1995, and to \$3.02 billion in 1996. Net sales value was \$722.41 million in interim 1997 compared with \$767.60 million in interim 1996.⁸⁹ The domestic industry's gross profits rose from \$182.70 million in 1994 to \$264.62 million in 1995, and then fell to \$258.90 million in 1996. Gross profits were \$49.68 million in interim 1997 compared with \$63.60 million in interim 1996. Operating income followed a similar pattern, increasing from \$78.85 million in 1994 to \$159.68 million in 1995, and then declining to \$142.81 million in 1996. Operating income was

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

\$21.85 million in interim 1997 compared with \$35.96 million in interim 1996.⁹⁰ The industry's operating income margin rose from 2.9 percent in 1994 to 5.6 percent in 1995, and then fell to 4.7 percent in 1996. The operating income margin was 3.0 percent in interim 1997 compared with 4.7 percent in interim 1996. Unit cost of goods sold (COGS) followed the same trends, increasing from \$402.97 per short ton in 1994 to \$414.66 per short ton in 1995, and then declining to \$411.07 per short ton in 1996. Unit COGS was \$417.24 per short ton in interim 1997 compared with \$409.57 per short ton in interim 1996.⁹¹ Unit selling, general and administrative (SG&A) expenses increased from \$16.37 per short ton in 1994 to \$16.71 per short ton in 1995, and further increased to \$17.30 per short ton in 1996. Unit SG&A expenses were \$17.26 per short ton in interim 1997 compared with \$16.08 per short ton in interim 1996.⁹²

Capital expenditures rose from \$315.32 million in 1994 to \$325.17 million in 1995, and then fell to \$206.48 million in 1996. Capital expenditures were \$34.76 million in interim 1997 compared with \$57.18 million in interim 1996.⁹³ Research and development expenditures fell from \$5.36 million in 1994 to \$5.28 million in 1995, and rose to \$7.93 million in 1996. Research and development expenditures were \$1.96 million in interim 1997 compared with \$2.08 million in interim 1996.^{94 95}

III. CUMULATION

Section 771(7)(G)(I) of the Act provides the general rule for cumulation in determining material injury.⁹⁶ This rule requires the Commission to cumulate imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.⁹⁷

In assessing whether imports compete with each other and with the domestic like product,⁹⁸ the Commission has generally considered the following four factors:

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ Table VI-5, CR at VI-14, PR at VI-6. Service centers did not report any research and development expenditures. CR at III-9, PR at III-7.

⁹⁵ Based on the foregoing, Commissioner Newquist finds that the domestic industry is vulnerable to the continuing adverse effects of the dumped imports of CTL plate from China, Russia, South Africa, and Ukraine. He therefore proceeds directly to the discussion of whether there is a threat of material injury by reason of the subject imports.

⁹⁶ 19 U.S.C. § 1677(7)(G).

⁹⁷ The statute contains four exceptions to cumulation, none of which is applicable in these investigations. These concern imports from Israel, Caribbean Basin Initiative countries, countries as to which investigations have been terminated, and countries as to which Commerce has made preliminary negative determinations. 19 U.S.C. § 1677(7)(G)(ii). The Uruguay Round Agreements Act ("URAA") relocated the provisions concerning cumulation to new sections 771(7)(G) and 771(7)(H), 19 U.S.C. §§ 1677(7)(G) and (H). Section 771(7)(G) concerns cumulation for determining material injury; section 771(7)(H) concerns cumulation for threat. Cumulation for threat purposes is discussed below.

⁹⁸ The URAA Statement of Administrative Action ("SAA"), expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." H.R. Rep. 316, 103d Cong., 2d Sess., vol. I at 848 (citing Fundicao Tupy, S.A. v. United States, 12 CIT 6, 10-11, 678 F. Supp. 898, 902 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988)).

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
- (4) whether the imports are simultaneously present in the market.⁹⁹

Although no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.¹⁰⁰ Only a “reasonable overlap” of competition is required.¹⁰¹

In the preliminary phase of these investigations, we cumulated subject imports based on their interchangeability with the domestic like product and with each other, competition in the same geographical markets, substantial overlap in sales in the same channels of distribution, and the simultaneous presence of all of the subject imports in the U.S. market during the POI.¹⁰² We noted, however, that we intended to collect more information on the alleged “niche” CTL plate products produced in South Africa to analyze further the South African respondents’ arguments against cumulation.¹⁰³

In these final investigations, we again conclude that the statutory criteria for cumulation are met. The subject imports from China, Russia, South Africa, and Ukraine are generally fungible both with the domestic like product and with each other. U.S. producers’ standard CTL plate products often compete for sales with similar imports from the subject countries.¹⁰⁴ All U.S. mills producing and selling CTL plate reported that domestically-produced and imported CTL plate are broadly interchangeable. A majority of importers also reported that domestically-produced and imported plate are broadly interchangeable.¹⁰⁵ Importers that reported CTL plate from various sources to be interchangeable typically noted that imports met widely accepted ASTM or other standards.¹⁰⁶ While the quality of imports from South Africa is considered by some to be generally better than certain other subject imports,¹⁰⁷ questionnaire data also

⁹⁹ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff’d*, Fundicao Tupy, S.A. v. United States, 12 CIT 6, 678 F. Supp. 898 (Ct. Int’l Trade 1988), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988); Mukand Ltd. v. United States, 20 CIT __, 937 F. Supp. 910, 915 (Ct. Int’l Trade 1996).

¹⁰⁰ See, e.g., Wieland Werke, AG v. United States, 13 CIT 561, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

¹⁰¹ See Mukand, 937 F. Supp. at 915-16, Wieland Werke, AG, 13 CIT at 563, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 18 CIT 1190, 1199-1200, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994).

¹⁰² Preliminary Determination at 14-15.

¹⁰³ Preliminary Determination at 15, n. 94.

¹⁰⁴ CR at II-5, PR at II-4.

¹⁰⁵ CR at I-10-11, PR at I-8. However, while South African CTL plate was compared favorably with the domestic products by importers, imports from China, Russia, and Ukraine were usually described as inferior in one or more respects. In most cases, purchasers rated U.S.-produced plate either superior or comparable to the imported product in particular characteristics. CR at II-6-7, PR at II-4.

¹⁰⁶ CR at I-10-11, PR at I-8.

¹⁰⁷ Four out of four purchasers said that Chinese and South African CTL plate were comparable in quality; two out of five purchasers said that the Russian and South African CTL plate were comparable, and three out of five said that the Russian CTL plate was inferior; two out of five purchasers said that the South African and Ukrainian CTL plate

(continued...)

indicate that importers and U.S. producers find that all of the subject imports are broadly interchangeable.¹⁰⁸ Purchaser comparisons also do not support the South African respondents' claims that their product is of higher quality and more readily available than the domestic product.^{109 110}

With respect to imports from South Africa, the Commission requested specific data for the thin gauge product category (0.187"-0.250") that the South African respondents argued did not compete with either the domestic like product or subject imports from other countries. Between 41.0 and 67.4 percent of imports from South Africa were in this category. Each of the other countries subject to investigation reported imports of these products, ranging from 0.1 to 5.8 percent of reported U.S. shipments of imports from the subject country in any given year. In addition, sales of this product category constituted between 7.3 and 9.5 percent of U.S. mill shipments of CTL plate.¹¹¹ Therefore, there is a limited overlap of competition between imports from South Africa and imports from other countries and the domestic like product in the thin gauge category. However, imports of other CTL plate from South Africa accounted for between 32.6 and 59.0 percent of imports from that country which we find sufficient to constitute a reasonable overlap of competition.^{112 113}

There is no dispute that the domestic like product and the subject imports from all four countries compete in the same geographical markets nationwide.¹¹⁴ There is a fairly substantial overlap in channels of distribution of the subject imports and the domestic like product. Imports from China, South Africa, and Ukraine are sold predominantly to distributors, processors, and service centers. Domestic producers and importers of Russian CTL plate sell almost half of CTL plate to distributors, processors and service

¹⁰⁷ (...continued)

were comparable whereas three out of five said that the South African CTL plate was superior. Appendix E, Tables E-2, E-4, E-6, CR at E-3, 4, 5, PR at E-3, 4, 5.

¹⁰⁸ CR at I-10-11 and n.35, PR at I-7-8 and n.35.

¹⁰⁹ Purchaser responses indicate that 8 purchasers considered the South African product comparable to the domestic product, 2 purchasers considered the domestic product superior, and 1 purchaser considered the U.S. product to be inferior. With respect to availability, 5 purchasers reported the South African product and the U.S. product to be comparable, and 6 purchasers considered the U.S. product superior. With respect to reliability of supply, 5 purchasers considered the U.S. and South African product comparable, and 6 purchasers reported the U.S. product superior. Table II-3, CR at II-9, PR at II-6.

¹¹⁰ We note that the imports from South Africa oversold the domestic product in price comparisons for Product 3, which is a thin gauge product. Tables G-1 and G-2, CR at G-3 and G-4, PR at G-3 and G-4. While this could indicate a price premium dictated by perceptions the South African products were of higher quality than the domestic product, the Court of International Trade has affirmed the Commission practice of finding a reasonable overlap of competition even when there are perceived differences in quality of the products, and one product obtained a premium price in the marketplace. *See, e.g., Metallverken Nederland B.V. v. United States*, 728 F. Supp. 730, 740 (CIT 1989); *Wieland Werke, AG v. United States*, 718 F. Supp. 50, 54 (CIT 1990); *Granges Metallverken AB v. United States*, 716 F. Supp. 17, 22 (CIT 1989).

¹¹¹ Table IV-4, CR at IV-8-9, PR at IV-7-8.

¹¹² South Africa reported that between 3.7 and 12.4 percent of its imports during the POI were of "specialty product" between 2.0"-6.0" in thickness. However, significant shipments of this product were also reported by all subject countries and by the domestic mills. Table IV-4, CR at IV-9, PR at IV-8.

¹¹³ With respect to South African respondents' argument that the share of South African shipments in the United States is too small to support a finding of competition with the domestic like product, we note that we rejected this argument in the preliminary phase of these investigations, and we do so in these final investigations for the same reasons. Preliminary Determination at 15, n.92.

¹¹⁴ Table IV-2, CR at IV-6, PR at IV-5.

centers, with the remaining sales directly to end users.¹¹⁵ The parties do not dispute that imports from the subject countries have been present in the U.S. market throughout the period of investigation.¹¹⁶

Based on the general fungibility between the subject imports and the domestic like product and with each other, competition in the same geographical markets, substantial overlap in sales in the same channels of distribution, and the simultaneous presence of all of the subject imports in the U.S. market during the period of investigation, we find a reasonable overlap of competition between imports from China, Russia, South Africa, and Ukraine and the domestic like product in these final investigations. Therefore, we find that subject imports compete with each other and with the domestic like product. Consequently, we cumulate the subject imports from China, Russia, South Africa, and Ukraine for purposes of analyzing whether the domestic industry is materially injured by reason of the LTFV imports from these countries.

IV. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM CHINA, RUSSIA, SOUTH AFRICA, AND UKRAINE¹¹⁷

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the LTFV imports under investigation.¹¹⁸ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹¹⁹ Although the Commission considers causes of injury to the industry other than the LTFV imports, it is not to weigh causes.¹²⁰ For the reasons discussed below, we determine that the domestic industry producing CTL plate is not materially injured by reason of cumulated subject imports from China, Russia, South Africa, and Ukraine.

A. Volume of Subject Imports

Section 771(7)(C)(I) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹²¹ The volume of cumulated subject imports rose from 650,038 short tons in 1994 to 972,368 short tons in 1995, and to 1,263,389 short tons in 1996, an overall increase of 94.4 percent. Cumulated imports were 429,437 short tons in interim 1997 compared with 243,607 short tons in 1996, an increase of 76.3 percent.¹²² The cumulated market share by volume rose from 8.2 percent in 1994 to 12.6 percent in 1995, and to 14.6 percent in 1996, and was 19.0

¹¹⁵ Table I-1, CR at I-12, PR at I-9.

¹¹⁶ Table IV-3, CR at IV-7, PR at IV-6.

¹¹⁷ Commissioner Crawford determines that the CTL plate industry is materially injured by reason of the subject imports, and therefore does not join the remainder of this opinion. *See* Views of Commissioner Carol T. Crawford.

¹¹⁸ 19 U.S.C. § 1671d(b). The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.” 19 U.S.C. § 1677(7)(A).

¹¹⁹ 19 U.S.C. § 1677(7)(B)(I). The Commission “may consider such other economic factors as are relevant to the determination,” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

¹²⁰ *See, e.g., Gerald Metals, Inc. v. United States*, 937 F. Supp. 930, 936 (Ct. Int’l Trade 1996), *appeal pending*; *Citrosuco Paulista, S.A. v. United States*, 704 F. Supp. 1075, 1101 (Ct. Int’l Trade 1988).

¹²¹ 19 U.S.C. § 1677(7)(C)(I).

¹²² Table IV-1, CR at IV-4, PR at IV-3.

percent in interim 1997 compared with 11.8 percent in interim 1996.¹²³ We find this increase in volume and market share, both in absolute terms and relative to U.S. consumption, to be significant.

Respondents argue that the increase in the volume of subject imports is not significant because of an alleged shortage of domestic product in 1995 and, in particular, 1996. In our view, the record does not support the conclusion that the significant increase in the volume of subject imports should be discounted due to a short supply of domestic product.¹²⁴ We note that although consumption increased significantly in 1996, capacity utilization reported by U.S. mills rose only to 80.3 percent in 1996 from 77.0 percent in 1995. Capacity utilization was 75.4 percent in interim 1997 compared with 84.3 percent in interim 1996.¹²⁵ Capacity utilization reported by processors and mills combined was 72.9 percent in 1995 and 75.3 percent in 1996, and was 72.7 percent in interim 1997 compared with 77.9 percent in interim 1996.¹²⁶ While capacity utilization was higher in 1996 than other years of the investigative period, there remained some degree of excess capacity in the domestic industry.¹²⁷ We also note that subject imports increased by 49.6 percent from 1994 and 1995, and increased 76.3 percent in interim 1997 compared with the same period in 1996, which is both before and after the alleged domestic supply shortage had occurred.

B. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether — (I) there has been significant price underselling by the imported merchandise as compared with the price of the domestic like products in the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹²⁸

The record confirms that price is a significant factor for purchasers of CTL plate, which is essentially a commodity-type product. The majority of purchasers indicated that the lowest priced CTL plate would usually win the sale.¹²⁹ As discussed above, although there were some perceptions of quality differences between imports from several of the subject countries and the domestic like product, virtually all purchasers indicated that the subject imports were broadly interchangeable with the domestic like product. Similarly, a majority of importers reported that domestically produced and imported CTL plate

¹²³ Table C-4, CR at C-11, PR at C-11.

¹²⁴ The domestic industry denies that there have been shortages of supply during the POI. While conceding that U.S. producers extended lead times at some time during the POI, petitioners argue that extended lead times should not be confused with supply shortages that would account for the massive quantities of imports during the POI. Petitioners' Posthearing Brief, Response to Commission Questions at 8. In addition, Bethlehem Steel admits that in response to increased orders, it adopted a sales plan wherein it supplied all of its regular customers per either their historical requirements, or if necessary, at higher requirements. Bethlehem contends that in October 1996 the sales plan was discontinued, and that by the fourth quarter of 1996 and throughout 1997, the domestic industry was trying to fill their mills. Bethlehem Steel's Posthearing Brief, Answer to Commission Questions at 1-2.

¹²⁵ Table C-1, CR at C-6, PR at C-6.

¹²⁶ Table C-4, CR at C-12, PR at C-12.

¹²⁷ In fact, excluding Inland and Oregon Steel (which closed CTL plate mills between 1995 and 1996), six of twelve mills reported higher production volumes in 1994 and/or 1995 than they did in 1996. This includes *** whose 1994 and 1995 production volumes exceeded 1996 production by *** and *** short tons, respectively. In addition, all fully operational CTL plate mills reported available capacity in 1996. See Questionnaire responses of U.S. mills, especially ***.

¹²⁸ 19 U.S.C. § 1677(7)(C)(ii).

¹²⁹ CR at II-4-5, PR at II-3.

are broadly interchangeable.¹³⁰ Thus, large or rapidly increasing volumes of low-priced imports can have significant adverse price effects in this industry.

The subject imports undersold the domestic product in the overwhelming majority of comparisons, with margins of underselling ranging from 0.3 to 36.2 percent.¹³¹ In addition, prices obtained by domestic producers for sales to distributors of all three pricing products peaked in early 1995, as did prices for two of three pricing products sold to end users, before declining through early 1996. Prices generally recovered between the first and third quarters of 1996, only to stabilize and decline in the fourth quarter of 1996 and the first quarter of 1997, coincident with the sharp increase in subject imports. We note that underselling was particularly prevalent in pricing products 1 and 2, which are typically produced by U.S. mills rather than by U.S. processors. Underselling was much less frequent in pricing product 3, thin-gauge plate produced and sold in relatively large quantities by U.S. processors.^{132 133 134}

C. Impact of Subject Imports

Section 771(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry,” as described above in section II.^{135 136 137} As discussed above, we find

¹³⁰ CR at I-10-11, PR at I-7-8.

¹³¹ Imports from China were priced lower than the domestic mill product in 69 of 78 quarters by margins ranging from 0.3 to 25.9 percent; imports from Russia undersold the domestic mill product in 54 of 55 quarters where comparisons could be made by margins ranging from 2.1 to 36.2 percent; imports from Ukraine undersold the domestic mill product in all 59 quarters where comparisons were possible by margins ranging from 0.7 to 29.8 percent, and imports from South Africa undersold the domestic mill product in 25 of 45 quarters where comparisons were possible by margins ranging from 0.3 to 13.3 percent. Tables V-7, 8, 9, CR at V-24-26, PR at V-16-18. Pricing for product 3 was the only product for which both mill and processor pricing data were provided. The subject imports undersold the domestic mill and processor product in 34 of 61 pricing comparisons. The Chinese product undersold the domestic product in 21 out of 26 quarters by margins ranging from 1.3 to 15.7 percent; the Russian product undersold the domestic product in all 7 quarters where comparisons could be made by margins ranging from 6.3 to 34.9 percent, and the Ukrainian product undersold the domestic product in 6 out of 10 quarters for which comparisons could be made by margins ranging from 0.6 to 19.5 percent. The South African product oversold the domestic product in all 18 quarters for which pricing comparisons could be made. Table G-3, CR at G-5, PR at G-5.

¹³² Tables V-1-V-3, CR at V-9-V-12, PR at V-8-10.

¹³³ Chairman Miller finds that subject imports are having significant adverse price effects. She notes that CTL plate is a commodity product and price is considered the most important factor in purchasing decisions. The record shows that domestic prices declined or were flat in 1996-97 despite significantly increased demand and relatively high capacity utilization rates. These adverse price trends coincided with a substantial increase in lower-priced subject imports. Chairman Miller concludes that the presence of a significant and increasing volume of lower-priced imports prevented price increases, which otherwise would have occurred, to a significant degree.

¹³⁴ Vice Chairman Bragg does not find the price effects of the subject imports to be significant. She takes note of the consistent underselling by subject imports. But she also notes that domestic prices rose over most of the POI, and that domestic producers remained profitable, suggesting that over that time period subject imports have not depressed or suppressed prices to a significant degree. However, the data from late 1996 and interim 1997 indicates that dumped imports are likely to have significant price effects in the near future.

¹³⁵ 19 U.S.C. § 1677(7)(C)(III). The statute specifies that the Commission is to consider “the magnitude of the margin of dumping” in its evaluation of the impact of imports on the domestic industry. 19 U.S.C. § 1677(7)(C)(iii)(V); *see also* 19 U.S.C. § 1677(35)(C); SAA at 850 (this provision “does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive of the Commission’s

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that it is appropriate to take into account the greater vulnerability of the domestic mills to the effects of LTFV imports in determining whether the domestic industry as a whole is experiencing material injury by reason of subject imports. Thus, while we have examined data for the entire domestic industry, we have placed particular emphasis on the condition of domestic mills in determining whether the domestic industry as a whole is experiencing material injury. We note, however, that the trends for the mills alone and the trends for processors and mills combined were similar.

Although the volume and market penetration of subject imports rose during the period of investigation, the data on the condition of the domestic industry was mixed. Many important indicators of the domestic industry's condition improved overall during the first three years of the investigative period. Specifically, production, capacity, capacity utilization, U.S. shipments, net sales, gross profit and operating income all increased from 1994 to 1996.¹³⁸ However, several important financial indicators, such as gross profit, operating income, capital expenditures, and unit operating income began to decline in 1996 from 1995 levels.¹³⁹ By interim 1997, most of the industry indicators had declined sharply. Specifically, production and capacity utilization fell, as did production-related employment. U.S. shipment unit values remained stagnant as shipment volume and value fell and inventories rose relative to interim 1996. In the face of increasing unit costs, operating income declined noticeably in absolute terms, on a unit basis, and as a ratio to sales.¹⁴⁰ The declines in late 1996 and the first quarter of 1997 coincided with a sharp increase

¹³⁵ (...continued)

material injury analysis"). The statute further states that the dumping margins that the Commission is to consider in making a final determination are those "most recently published by the administering authority prior to the closing of the Commission's administrative record." 19 U.S.C. § 1677(35)(C)(ii). The dumping margins identified by Commerce in its final determinations are as follows: for China, 30.68 (Anshan); 34.44 (Baoshan); 17.33 (Liaoning); 38.16 (Shanghai Pudong); and 128.59 (WISCO and China-wide) 62 Fed. Reg. 61964 (Nov. 20, 1997); for Russia, 53.81 (Severstal) and 185.00 (Russia-wide) 62 Fed. Reg. 61787 (Nov. 19, 1997); for South Africa, 26.01 (Highveld); 50.87 (Isacor); and 38.36 (all other) 62 Fed. Reg. 61731 (Nov. 19, 1997); and for Ukraine, 81.43 (Azovstal); 155.00 (Ilyich); and 237.91 (Ukraine-wide). 62 Fed. Reg. 61754 (Nov. 19, 1997)

¹³⁶ Chairman Miller notes that CTL plate is a commodity product for which price is the most significant factor in purchasing decisions. In considering whether the domestic industry is materially injured or threatened with material injury, Chairman Miller has taken note that the margins of dumping are large. Without placing great weight on this factor, Chairman Miller concludes that the magnitude of the margins of dumping in this case supports an affirmative determination that the domestic industry is threatened with material injury.

¹³⁷ Vice Chairman Bragg notes that she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See *Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China*, Inv. No. 731-TA-73 (Final), USITC Pub. 2968 (June 1996).

¹³⁸ Table C-4, CR at C-12, PR at C-12.

¹³⁹ For mills and processors combined, gross profit declined by 2.2 percent between 1995 and 1996, capital expenditures declined by 36.5 percent, operating income declined by 10.6 percent, and unit operating income declined by 16.3 percent. Table C-4, CR at C-12, PR at C-12. The decline is even more pronounced when the domestic mill data is considered. Gross profit for domestic mills declined by 9.0 percent between 1995 and 1996, capital expenditures declined by 38.7 percent; operating income declined by 17.2 percent, and unit operating income declined by 20.0 percent. Table C-1, CR at C-6, PR at C-6.

¹⁴⁰ In interim 1997 compared with interim 1996 the data for mills and processors combined indicates that production declined 4.3 percent, capacity utilization declined by 5.2 percentage points, employment declined by 5.5 percent; U.S. shipments, in terms of quantity and value declined by 5.3 and 5.0 percent respectively; and inventories increased by 5.8 percent. Gross profit declined by 21.9 percent, total operating income declined by 39.2 percent, unit operating income declined by 35.2 percent, and operating income as a ratio to sales declined by 1.7 percentage points. Table C-4, CR at C-12, PR at C-12. When the mill data is considered, the data indicates steeper declines in

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in subject imports. The domestic industry's market share also declined significantly in the face of substantially increased imports in the interim period.

Taking all factors into account, we do not believe that the adverse impact of the subject imports on the domestic industry is sufficient in magnitude to conclude that the domestic industry is currently materially injured by reason of subject imports. As noted, the deterioration in the domestic industry's condition is reflected primarily in the interim 1997 data. In general, the Commission places less weight on post-petition data due to a concern that market conditions may be affected by the filing of the petition and, therefore, the data may be less representative than pre-petition data. Moreover, the Commission generally is careful in the weight it accords to interim data covering a single quarter. Here, the dramatic increase in subject imports in interim 1997 may reflect, in part, a desire to avoid the possible imposition of antidumping duties. We are reluctant in these circumstances to make an affirmative finding primarily on the basis of this single quarter of data. We therefore determine that the domestic industry producing CTL plate is not materially injured by reason of imports of CTL plate from China, Russia, South Africa, and Ukraine. We find, however, as set forth in the next section, that the deteriorating condition of the domestic industry supports a finding that the domestic industry producing CTL plate is threatened with material injury by reason of imports of CTL plate from the subject countries.

V. THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

A. Cumulation for Purposes of Threat Analysis

In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more countries, the Commission has discretion to cumulate the volume and price effects of such imports if they meet the requirements for cumulation in the context of present material injury.¹⁴¹ In deciding whether to cumulate for purposes of making our threat determinations, we have in the past also considered whether the subject imports are increasing at similar rates and have similar pricing patterns.¹⁴² The Court of International Trade has held, however, that the Commission is not required to consider divergent volume and pricing trends in exercising its discretion to cumulate for purposes of its threat analysis.^{143 144}

All of the respondents have urged the Commission not to cumulate for purposes of a threat analysis. The South African respondents, in particular, argue that their different volume and pricing trends warrant a decision not to cumulate imports from South Africa with imports from the other subject countries.

¹⁴⁰ (...continued)

many indicators. In interim 1997 compared with interim 1996, production declined by 8.9 percent; capacity utilization declined by 8.9 percentage points; employment declined by 6.6 percent, and U.S. shipments, in terms of quantity and value, declined by 10.3 and 9.3 percent respectively. Gross profits declined by 31.6 percent, total operating income declined by 51.3 percent, unit operating income declined by 45.6 percent, and operating income as a ratio to sales declined by 2.0 percentage points. Table C-1, CR at C-6, PR at C-6.

¹⁴¹ 19 U.S.C. § 1677(7)(H).

¹⁴² See Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

¹⁴³ Kern Liebers USA, Inc. v. United States, Slip Op. 95-9 at 49-50 (Ct. Int'l Trade, January 27, 1995).

¹⁴⁴ Commissioner Newquist notes that in assessing whether to cumulate for purposes of a threat of material injury analysis, he places little weight on whether imports from various subject countries are increasing at similar rates or have similar margins of underselling and pricing patterns. Nowhere does the statute require that these "factors" be examined in determining whether to cumulate for a threat analysis.

We have determined to cumulate the LTFV imports from China, Russia, South Africa, and Ukraine for purposes of our threat analysis. We determined in section III above that the requirements for cumulation for material injury are satisfied, and we conclude for the same reasons to exercise our discretion to cumulate LTFV imports for our threat analysis.¹⁴⁵ Notwithstanding the respondents' arguments, we conclude that any differences in volume and price trends do not warrant a decision not to cumulate. In this regard, we note that most of the subject imports exhibited significant increases in volume during the period of investigation.¹⁴⁶ Also, as discussed above, imports from each of the subject countries consistently undersold the domestic like product.¹⁴⁷

B. Statutory Factors¹⁴⁸

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁴⁹ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.¹⁵⁰ In making our determination, we have considered all statutory factors¹⁵¹ that are relevant to these investigations.¹⁵²

¹⁴⁵ Although Commissioner Newquist did not join sections III and IV of the opinion, he agrees that the subject imports compete with each other and the domestic like product. He notes that, in his view, once a like product determination is made, that determination establishes an inherent level of fungibility within that like product. Only in exceptional circumstances could Commissioner Newquist find products to be “like” and then turn around and find that, for purposes of cumulation, there is no “reasonable overlap of competition” based on some roving standard of substitutability. *See* Additional and Dissenting Views of Chairman Newquist in Flat-Rolled Carbon Steel Products, USITC Pub. 2664 (August 1993).

¹⁴⁶ Table IV-1, CR at IV-4, PR at IV-3. Regarding South Africa, we note that the volume of imports from South Africa was significant throughout most of the POI and increased fairly significantly in the first three quarters of 1996. The sharp decline in imports from South Africa that occurred in late 1996 and interim 1997, when other subject imports increased, appears to reflect a different reaction to the filing of the petition.

¹⁴⁷ CR at V-22, PR at V-15; Table V-7-9, CR at V-24-26, PR at V-16-18; Table G-3, CR at G-5, PR at G-5. Regarding South Africa, the overselling cited by the South African respondents was limited to product 3. For product 1 and 2, sales of which occurred in all but two quarters, imports from South Africa consistently undersold the domestic product.

¹⁴⁸ Commissioner Newquist notes that, in his analytical framework, “evaluation of the magnitude of the margin of dumping” is not generally helpful in answering the questions posed by the statute: whether the domestic industry is threatened with material injury; and if so, whether such threat of injury is by reason of the dumped subject imports.

¹⁴⁹ 19 U.S.C. § 1671b(a) and 1677(7)(F)(ii).

¹⁵⁰ 19 U.S.C. § 1677(7)(F)(ii). While the language referring to imports being imminent (instead of “actual injury” being imminent and the threat being “real”) is a change from the prior provision, the SAA indicates the “new language is fully consistent with the Commission’s practice, the existing statutory language, and judicial precedent interpreting the statute.” SAA at 854.

¹⁵¹ The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the WTO Antidumping Agreement and Subsidies and Countervailing Measures Agreement, although “[n]o substantive change in Commission threat analysis is required.” SAA at 855.

¹⁵² 19 U.S.C. § 1677(7)(F)(I). Factor I regarding consideration of the nature of the subsidies is inapplicable because there have not been any subsidies alleged. Factor VII regarding raw and processed agriculture products is

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For the reasons discussed below, we determine that the domestic industry is threatened with material injury by reason of subject imports from China, Russia, South Africa, and Ukraine.

The record indicates that there has been a significant rate of increase of the volume of subject merchandise imported into the United States, indicating the likelihood of substantially increased imports in the near future. As discussed above, the volume of cumulated subject imports of certain CTL plate from China, Russia, South Africa, and Ukraine rose from 650,038 short tons in 1994 to 972,368 short tons in 1995, and to 1,263,389 short tons in 1996, an overall increase of 94.4 percent. Cumulated imports were 429,437 short tons in interim 1997 compared with 243,607 short tons in 1996, an increase of 76.3 percent.¹⁵³ In particular, we find that the dramatic surge of subject imports in interim 1997 demonstrates the ability of respondents to ship very large volumes of subject imports to the United States and the likelihood that respondents would do so in the absence of an affirmative determination.

This rate of increase in subject imports far outpaced growth in domestic demand, resulting in increased market share for the subject imports. The cumulated market share of subject imports by volume rose from 8.2 percent in 1994 to 12.6 percent in 1995, and to 14.6 percent in 1996, and was 19.0 percent in interim 1997 compared with 11.8 percent in interim 1996.¹⁵⁴

We are not persuaded by the arguments of the Chinese, Russian, and Ukrainian respondents that expanding home market shipments will expand to the extent necessary to lead to a significant decrease in the volumes exported to the United States. Specifically, Chinese respondents argue that rapid economic growth in China will absorb Chinese CTL plate production leaving little, if any, production for export to the U.S. market. We note, however, that Chinese exports to the United States *** during the period of investigation, notwithstanding strong economic growth in China during this period. The Russian and Ukrainian respondents argue that anticipated oil and gas pipeline projects will divert CTL plate shipments from the United States to local markets. We find that the effect these potential projects would have on respondents' exports to the United States to be too speculative to persuade us that imports from Russia and Ukraine would decline significantly in the near future.

Moreover, while the degree of unused capacity varies among the subject countries, we find that there is current excess capacity to allow exports to the United States to increase greatly.¹⁵⁵ For example, in 1996 when cumulated subject imports held 14.6 percent of the U.S. market, the subject countries possessed unutilized capacity equivalent to an additional 2,889,234 short tons, or 33.3 percent of the U.S.

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also inapplicable to the products at issue.

¹⁵³ Table IV-1, CR at IV-4, PR at IV-3.

¹⁵⁴ Table C-4, CR at C-11, PR at C-11.

¹⁵⁵ Chinese capacity ***, and is projected *** in 1997 and 1998. Chinese capacity utilization *** from *** percent in 1994 to *** percent in 1995 and *** to *** percent in 1996, and was *** percent in interim 1997 compared with *** percent in interim 1996. Chinese capacity utilization is projected to be *** percent for 1997 and *** percent in 1998. Table VII-1, CR at VII-2, PR at VII-1. Russian capacity *** from 1994 to 1996, and is projected to *** in 1997 and 1998. Russian capacity utilization *** from *** percent in 1994 to *** percent in 1995, and to *** percent in 1996, and was *** percent in interim 1997 compared with *** percent in interim 1996. Russian capacity utilization is projected to be *** percent in 1997 and *** percent in 1998. Table VII-2, CR at VII-3, PR at VII-2. South African capacity *** from 1994 to 1996, and is expected to *** in 1997 and 1998. South African capacity utilization *** from *** percent in 1994 to *** percent in 1995, and to *** percent in 1996, and was *** percent in interim 1997 compared with *** percent in interim 1996. South African capacity utilization is projected to be *** percent in 1997 and *** percent in 1998. Table VII-3, CR at VII-5, PR at VII-3. Ukrainian capacity *** over the POI. Ukrainian capacity utilization *** from *** percent in 1994 to *** percent in 1995, and to *** percent in 1996, and was *** percent in interim 1997 compared with *** percent in interim 1996. Ukrainian capacity utilization is projected to be *** percent in 1997 and *** percent in 1998. Table VII-4, CR at VII-7, PR at VII-3.

market. In addition, we note that although projected exports to the United States from each of the subject countries *** in 1997, Chinese, Russian, and South African respondents expected exports to the United States to *** in 1998.¹⁵⁶

We also consider it significant that each of the subject countries is facing at least one, and in some cases, several, antidumping duty findings, investigations, or quantitative restrictions in other major export markets indicating that export markets other than the United States are and may be further restricted.¹⁵⁷

Inventories of the subject product rose significantly during the three full years of the period of investigation. U.S. inventories rose from *** short tons in 1994 to *** short tons in 1996, an increase of 149.8 percent. While inventories were *** short tons in interim 1997 compared with *** short tons in interim 1996, at the same time, inventories of purchased CTL plate from the countries subject to these investigations held by two of the largest U.S. distributors, Ranger and Thyssen, *** during the period of investigation, and were *** in interim 1997 than interim 1996.¹⁵⁸

We also find evidence that increased subject imports will enter at prices likely to depress or suppress domestic prices to a significant degree. As noted previously, most CTL plate must meet the same ASTM or other standard specifications.¹⁵⁹ The record confirms that price is a significant factor in purchasing decisions for CTL plate, which is essentially a commodity-type product. The subject imports undersold the domestic product in the overwhelming majority of comparisons, with margins of underselling ranging from 0.3 to 36.2 percent.¹⁶⁰ In addition, the beginnings of price depression and suppression are indicated by the fact that sales to distributors of products 1, 2, and 3, the categories with the greatest volume among products investigated, started to show declines in price in mid-to-late 1996, and continuing through early 1997, notwithstanding a strong growth in demand. The decline coincided with a sharp increase in imports. At the same time that sales prices were declining, the cost of goods sold and SG & A expenses on a per unit basis were increasing, rising by 1.9 and 7.4 percent respectively in interim 1997, indicating that the domestic industry was unable to raise its prices in response to increasing costs.

We believe that, in the absence of an affirmative determination, the volume of subject imports and the price pressure exerted by these imports would increase, resulting in further reductions in prices or suppression of price increases, which, in turn, would lead to declines in domestic industry revenues and profitability. We consider the declines in the industry's financial performance at the end of the POI as a strong indication that the industry's condition would further deteriorate in the near future if the escalating volume and price pressure exerted by the subject imports continues. We note in this regard that most mills and processors reported that they anticipated negative effects from subject imports in the future.¹⁶¹

Finally, we do not find that but for the suspension of liquidation, we would have found the domestic industry to be experiencing material injury. The record does not indicate that, absent suspension of liquidation in June 1997, the domestic industry would have been materially injured by reason of subject imports.

¹⁵⁶ Tables VII-1 to VII-4, CR at VII-2-7, PR at VII-1-3.

¹⁵⁷ CTL plate from China is currently subject to an antidumping finding in Canada. CR at VII-2, PR at VII-1. CTL plate from Russia is subject to an antidumping finding in Canada, faces quantitative restrictions in the European Union, and is currently the subject of antidumping investigations in Mexico and Indonesia. CR at VII-4, PR at VII-2. CTL plate from South Africa is subject to an antidumping finding in Canada. CR at VII-6, PR at VII-3. CTL plate from Ukraine is subject to an antidumping finding in Canada, faces quotas in the EU, and is the subject of an antidumping investigation in Mexico. CR at VII-7, PR at VII-4.

¹⁵⁸ CR at VII-8, PR at VII-4. Total inventories held by these two companies *** from *** short tons in 1994 to *** short tons in 1996, and were *** short tons in interim 1997 compared with *** short tons in interim 1996. *Ibid.*

¹⁵⁹ CR at II-5, PR at II-3.

¹⁶⁰ Tables V-7, 8, 9, CR at V-24-26, PR at V-16-18 and Table G-3, CR at G-5, PR at G-5, and discussion *supra*.

¹⁶¹ CR at H-6-7, PR at H-3.

In sum, based on the rapid increases in the volume and market share of the subject imports, unused foreign production capacity, the existence of antidumping duty orders, active investigations, and quantitative restrictions in other countries, inventories of the subject product in the United States, the significant underselling by the subject imports, and the adverse trends in the condition of the domestic industry in the latter part of the period of investigation, we find that the domestic industry producing CTL plate is threatened with material injury by reason of subject imports from China, Russia, South Africa, and Ukraine.

VI. DETERMINATION REGARDING CRITICAL CIRCUMSTANCES

In its final determination, Commerce made affirmative findings of critical circumstances with respect to imports of CTL plate from Russia, Ukraine, and China (other than Liaoning).¹⁶²

In investigations pre-dating the URAA, the Commission did not reach the issue of critical circumstances when it made a determination of threat of material injury on the ground that “a finding that retroactive imposition of antidumping duties is necessary to prevent recurrence of material injury would be inconsistent with [a] finding that the domestic industry is threatened with material injury at this time.”¹⁶³ The Commission has previously concluded that the URAA’s amendments to the critical circumstances provision were not intended to alter the Commission’s prior practice of rendering critical circumstances determinations only when it made an affirmative determination of material injury by reason of subject imports.¹⁶⁴ Accordingly, we decline to consider whether critical circumstances exist because we do not find that the domestic industry is presently experiencing material injury by reason of the subject imports from China, Russia, and Ukraine.

CONCLUSION

For the reasons stated above, we determine that the domestic industry producing CTL plate is threatened with material injury by reason of subject imports from China, Russia, South Africa, and Ukraine.

¹⁶² 62 Fed. Reg. 61967-9 (Nov. 20, 1997); 62 Fed. Reg. 61793 (Nov. 19, 1997); 62 Fed. Reg. 61757 (Nov. 19, 1997).

¹⁶³ *E.g.*, Stainless Steel Flanges from India and Taiwan, Inv. No. 731-TA-639-640 (Final), USITC Pub. 2724 at I-21 n.112 (Feb. 1994).

¹⁶⁴ Collated Roofing Nails from China and Taiwan, Invs. Nos. 731-TA-757 and 759 (Final), USITC Pub. 3070 (Nov. 1997) at 24-25.

VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in these investigations, I determine that the industry in the United States producing cut-to-length plate (“CTL plate”) is materially injured by reason of imports of CTL plate from China, Russia, South Africa, and Ukraine that are sold in the United States at less-than-fair-value (“LTFV”). I join my colleagues in the findings with respect to like product and the decision to cumulate subject imports from all four countries, and I join their discussion of the condition of the domestic industry. In addition, I concur in their conclusion that processors are properly included in the domestic industry, although for different reasons as discussed below. However, I do not concur in the majority’s determination that an industry in the United States is threatened with material injury by reason of the subject imports. Rather, I determine that the industry in the United States producing CTL plate is materially injured by reason of the LTFV imports of CTL plate from China, Russia, South Africa, and Ukraine. Because my analysis and determination differ from the majority, my separate views follow.

I. ANALYTICAL FRAMEWORK

In determining whether a domestic industry is materially injured by reason of the LTFV imports, the statute directs the Commission to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation,
- (II) the effect of imports of that merchandise on prices in the United States for like products, and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . .¹

In making its determination, the Commission may consider “such other economic factors as are relevant to the determination.”² In addition, the Commission “shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³

The statute directs that we determine whether there is “material injury by reason of the dumped imports.” Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other “factors” that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether any injury “by reason of” the dumped imports is material. That is, the Commission must determine if *the subject imports* are causing material injury to the domestic industry. “When determining the effects of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if *unfairly traded imports are materially injuring the domestic industry*.”⁴ It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without

¹ 19 U.S.C. § 1677(7)(B)(i).

² 19 U.S.C. § 1677(7)(B)(ii).

³ 19 U.S.C. § 1677(7)(C)(iii).

⁴ S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added).

the dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury. Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports.⁵

In my analysis of material injury, I evaluate the effects of the dumping⁶ on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,⁷ I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales, and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (*e.g.*, employment, wages, *etc.*) is derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales, and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, the domestic industry is materially injured by reason of the dumped imports.

For the reasons discussed below, I determine that the domestic industry producing CTL plate is materially injured by reason of LTFV imports of CTL plate from China, Russia, South Africa, and Ukraine.

II. LIKE PRODUCT AND DOMESTIC INDUSTRY

As discussed previously, I concur in my colleagues' finding that plate in coil form and CTL plate should not be included in the same like product. I also concur in their conclusions that the like product includes all CTL plate, regardless of who produces it, and that all processors are producers of CTL plate and thus properly included in the domestic industry. I join these conclusions for the same reasons that I made these findings in the preliminary determinations, and adopt that analysis and reasoning and those findings here.⁸

While I concur in the conclusion that all processors are producers of CTL plate, my conclusion follows from the like product finding, not by the analysis used by my colleagues. On the surface, the issue of whether processors perform sufficient production-related activity to make them “producers” of CTL plate may seem complicated. However, in my view the analysis is actually quite straightforward, and follows from the like product finding. Plate in coil form and CTL plate are either part of the same like product, or they are separate like products. If they are part of the same like product, then by definition the products are so similar that the production-related activities of processors must be so small that there is no clear dividing line between the products. In these investigations, on the other hand, we have found that

⁵ United States Steel Group v. United States, 96 F.3rd 1352, at 1361 (Fed.Cir. 1996), *aff'g* 873 F.Supp. 673, 694-695 (Ct. Int'l Trade 1994).

⁶ As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding “the magnitude of the margin of dumping.” 19 U.S.C. § 1677(7)(C)(iii)(V).

⁷ In examining the quantity sold, I take into account sales from both existing inventory and new production.

⁸ “Additional Views of Commissioner Carol T. Crawford” in *Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine*, USITC Pub. No. 3009, Dec. 1996, pp. 26-28.

plate in coil form and CTL plate are separate like products, and thus the production-related activity required to convert the plate in coil form into CTL plate is, by definition, sufficient to convert one like product into a different like product. Therefore, it follows that converting plate in coil form into CTL plate constitutes “production” of CTL plate. While this analysis is straightforward, it is not simplistic. Rather, the analysis is definitional: the like product finding serves to define the amount of activity that constitutes production of the like product.

The definitional nature of this analysis is apparent when the integrated mills and processors are compared. No party has suggested that the integrated mills are not producers of CTL plate or that their production-related activity should be analyzed separately. As discussed above, integrated mills that account for 21 percent of CTL plate production use the same manufacturing methods, processes and equipment as the processors that produce CTL plate from coiled plate. The only difference is that processors purchase coiled plate to use as the input, whereas integrated mills manufacture the coiled plate they use as the input. However, the production-related activity *to produce CTL plate* is the same for both integrated mills and processors. Therefore, if the integrated mills’ activity is “production,” then so is the processors’ activity. If they perform the same activity, then the analysis should be the same for both.

Based on the facts and findings in these investigations, the six-factor analysis of production-related activity that the Commission has used in other investigations simply does not apply to the circumstances present here. In final determinations, the Commission has always employed this six-factor analysis only when an upstream product and a downstream product *are both included in the same like product*. In those circumstances, the six-factor analysis serves as a surrogate definition for the amount of activity that constitutes production of one part of the like product, the downstream product.⁹ However, the Commission has never employed the six-factor analysis in final determinations where, as here, the like product includes only the downstream product. Since the like product serves to define the activity that constitutes production of the downstream product, it is neither necessary nor appropriate¹⁰ to apply the six-factor analysis here.

In sum, I believe that it is analytically inconsistent to find that plate in coil form and CTL plate are so different that they are separate like products and, at the same time, to question whether the production-related activity required to convert one into the other is -- or may be -- too small to constitute production of one of the separate like products. So long as they are separate like products, the conversion from plate in coil form into CTL plate must constitute “production” of CTL plate. Therefore, under the statutory scheme, processors that cut CTL plate are producers of CTL plate. Consequently, they are members of the domestic industry producing CTL plate.

III. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment

⁹ In such circumstances, the activity to convert the upstream product into the downstream product is apparently so small that it does not create a clear dividing line between the two. It is therefore necessary to analyze whether the activity that converts one part of the like product (the upstream product) into another part of the like product (the downstream product) is sufficient to constitute “production” of the like product. The six-factor analysis seems a reasonable approach in these circumstances.

¹⁰ Modifying the six-factor test to include as a factor the fact that the production-related activity converts one like product into another like product does not make the test applicable to the circumstances here. Since the six-factor test is a surrogate definition for whether the conversion is “production,” if the conversion into a separate like product is added as an additional factor, it would subsume the original six factors and make them superfluous. In addition, it does not alter the fact that only the downstream product is included in the like product.

in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (*e.g.*, how large a cost factor), whether they have options that allow them to avoid the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the overall demand for CTL plate is moderately inelastic.

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of an intermediate product (*e.g.*, an input), the importance will depend on its cost relative to the total cost of the downstream product in which it is used. When the price of the input is a small portion of the total cost of the downstream product in which it is used, changes in the price of the input are less likely to alter demand for the downstream product, and, by extension, demand for the input.

Record evidence indicates that the cost share of CTL plate in downstream products varies widely, accounting for as little as 5 percent but also up to 50 percent, 70 percent, 75 percent, and even 80 or 90 percent of some of the downstream products in which it is used.¹¹ The high cost shares indicate that demand would likely be elastic.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Information on the record indicates that alternative products that can substitute for CTL plate are available for a limited number of the most common applications. However, the record also indicates that there are practical and functional limits on the substitutability of the alternative products. Substitution is often limited by factors affecting the end use, *e.g.*, width, thickness, or strength. Coiled plate is most often cited as a substitute for CTL plate. However, coiled plate is available only in thicknesses of less than one inch, while CTL plate is available in larger thicknesses.¹² The limited availability and substitutability of alternative products indicate an inelastic demand for CTL plate.

Notwithstanding the significant cost share of CTL plate in downstream products, the limited availability of alternative products reduces the elasticity of demand. For this reason, I find that the demand for CTL plate is moderately inelastic. That is, purchasers will not reduce significantly the amount of CTL plate they buy in response to a general increase in the price of CTL plate.

B. Substitutability

¹¹ CR at II-3, PR at II-2.

¹² *Ibid.*

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, *etc.*; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations, and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand for CTL plate is moderately inelastic, overall purchases will not decline significantly if the overall prices of CTL plate increase. However, purchasers can avoid price increases from one source by seeking other sources of CTL plate. In addition to any changes in overall demand for CTL plate, the demand for CTL plate from different sources will decrease or increase depending on their relative prices and their substitutability. If CTL plate from different sources is substitutable, purchasers are more likely to shift their demand from one source when the products from that source (*i.e.*, subject imports) experience a price increase. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers have three potential sources of CTL plate: domestically produced CTL plate, subject imports, and nonsubject imports. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among CTL plate from different sources as follows.

Based on the evidence in the record, I find that subject imports, nonsubject imports, and domestic CTL plate are all at least moderate substitutes for each other. Thus, a shift in demand away from subject imports likely would increase demand for both nonsubject imports and domestic CTL plate.

Overall, there is a basic level of substitutability among subject imports, nonsubject imports, and the domestic like product because all three generally must meet ASTM specifications. In addition, evidence indicates that some form of certification applies to 90 to 100 percent of all CTL plate, a further indication of basic substitutability among all sources.¹³

Nonprice factors reduce the substitutability among subject imports and between subject imports and the domestic like product only somewhat. Among the four sources of subject imports, CTL plate from China, Russia, and Ukraine are the most substitutable for each other, while imports from South Africa are only moderately substitutable for the other subject imports. The majority of purchasers rated the countries comparable to each other, with subject imports from Russia and Ukraine rated very closely to each other.¹⁴ In addition, only a minority of importers reported differences between subject imports from Russia and Ukraine. For these reasons, subject imports from these two countries are quite good substitutes for each other. Similarly, only a minority of importers indicated that Chinese subject imports are differentiated from subject imports from Russia and Ukraine by nonprice factors.¹⁵ Therefore, subject imports from these three countries are fairly good substitutes for each other. Subject imports from South Africa, on the other hand, are only moderate substitutes for subject imports from the other three countries. A majority of purchasers indicated that subject imports from Russia and Ukraine were inferior in quality to South

¹³ CR at II-5, PR at II-3.

¹⁴ Tables E-1 through E-6, CR at E-3-E-5, PR at E-3-E-5.

¹⁵ CR at II-10, n. 12, PR at II-7, n. 12.

African subject imports, and many importers indicated that nonprice factors differentiated subject imports from these sources.¹⁶ With respect to comparisons of subject imports from China and South Africa, all four reporting purchasers indicated that the two were comparable in quality, and only a minority of importers indicated that they were differentiated by nonprice factors,¹⁷ suggesting that they are fairly good substitutes for each other. However, as discussed previously, a considerable portion of subject imports from South Africa consists of thin gauge products that are not imported in significant quantities from the other countries, thus reducing the substitutability between subject imports from South Africa and the other countries. For these reasons, I find that subject imports from China, Russia, and Ukraine are good substitutes for each other, but only moderately substitutable with subject imports from South Africa.

Nonprice factors also reduce the substitutability between the domestic product and the subject imports. Nonprice factors were reported to be significant by 6 of 17 importers with regard to subject imports from China; by 10 of 18 importers with regard to subject imports from Russia; by 14 of 24 importers with regard to subject imports from Ukraine; and by 7 of 16 importers with regard to subject imports from South Africa.¹⁸ When compared on the basis of nonprice factors such as product quality and consistency, availability, delivery time, and reliability of supply, the domestic like product was most often rated superior to subject imports from China, Russia, and Ukraine by purchasers.¹⁹ The domestic like product was also often rated superior to the subject imports from South Africa in such categories as product range, availability, delivery time, and reliability of supply,²⁰ although not as often as compared to subject imports from the other three countries. Finally, only about *** percent of Bethlehem's product mix consists of the commodity grades that comprise most of the subject imports.²¹ Therefore, some *** percent of Bethlehem's products, which represents about *** percent of total domestic production, consists of different grades than subject imports. Thus, a not inconsiderable portion of the domestic like product is not very substitutable with subject imports. For these reasons, I find that subject imports and the domestic like product are moderately substitutable for each other.

The information concerning nonsubject imports is somewhat limited, but indicates that nonprice differences between nonsubject imports and the domestic like product and subject imports are not significant. Record evidence indicates that producers, importers, and purchasers all consider nonsubject imports overall to be comparable to subject imports and the domestic like product.²² For these reasons, I find that nonsubject imports are at least moderately substitutable for subject imports and the domestic like product.

For these reasons, I find that subject imports, nonsubject imports, and domestic CTL plate are all at least moderate substitutes for each other. Therefore, I find that purchasers would have switched from purchases of subject imports to purchases of both nonsubject imports and domestic CTL plate had subject imports been fairly priced.

C. Supply Conditions

¹⁶ Tables E-4 and E-6, CR at E-4-E-5, PR at E-4-E-5. Also, CR at II-10, n. 12, PR at II-7, n. 12.

¹⁷ Table E-2, CR at E-3, PR at E-3. Also, CR at II-10, n. 12, PR at II-7, n. 12.

¹⁸ CR at II-6, n. 9, PR at II-4, n. 9.

¹⁹ Tables II-1, II-2, and II-4, CR at II-8 to II-9, PR at 5-6.

²⁰ Table II-3, CR at II-9, PR at 6.

²¹ Bethlehem's Posthearing Brief at 10.

²² CR at II-11, PR at II-8.

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives, and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of CTL plate is quite low.

Capacity Utilization and Capacity. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have the available capacity and are willing to sell more at a lower price. In 1996, the domestic industry's capacity utilization stood at 75.3 percent. Therefore, nearly 25 percent of capacity was unused and thus apparently was available to increase production.²³ The capacity utilization rates for U.S. mills and processors were 80.3 percent and 62.7 percent, respectively.²⁴ Based on these rates, it would appear that both U.S. mills and processors have considerable unused capacity that could have been used to supply the demand for subject imports. However, a closer examination of the underlying facts demonstrates that unused capacity is, in fact, quite limited.

In my view, the evidence demonstrates that U.S. mills effectively were operating at or near full capacity in 1996. Their capacity utilization rate of 80.3 percent was the highest full-year rate during the period of investigation, and is substantially higher than the historical rates from 1977 to 1992, except for one year.²⁵ In addition, the record contains ample evidence that U.S. mills were not able to meet the heavy demand for CTL plate in 1996, for a number of reasons. First, some purchasers indicated that CTL plate was in limited supply²⁶ and that some producers put customers on allocation because of supply shortages.²⁷ Second, the record shows that supply was affected by start-up problems with Geneva's new equipment²⁸ and a 55-day outage at USX's blast furnace.²⁹ Finally, even U.S. mills acknowledged the supply shortage. Both Geneva and Gulf States testified that their lead times were extended,³⁰ while Bethlehem testified that it had established reservation systems to accommodate its normal customer base³¹ and that the situation was "full operation for everybody" in 1996.³² These four mills accounted for over *** percent of U.S. mill production in 1996,³³ and thus they dominate the U.S. mill production of the domestic industry. All of this evidence indicates that the elasticity of supply for U.S. mills is very low. That is, U.S. mills could not have increased their production much, if at all, to supply the demand for subject imports.

²³ Table C-4, CR at C-12, PR at C-12.

²⁴ Tables C-1 and C-4, CR at C-6 and C-12, PR at C-6 and C-12.

²⁵ Memoranda INV-T-086.

²⁶ CR at V-29, PR at V-19.

²⁷ CR at V-31-V-32, PR at V-21.

²⁸ *Hearing Transcript*, p. 177, testimony of Robert A. Moore, Vice President, Newco Steel Trading Co.

²⁹ *Hearing Transcript*, pp. 106-108, testimony of Chris Navetta, General Manager/Plate Products, USX.

³⁰ *Hearing Transcript*, pp. 55-56, testimony of Lester Bridges, Senior Manager/Marketing, Gulf States Steel, and Robert Grow, President and COO, Geneva Steel.

³¹ *Hearing Transcript*, pp. 100-102, testimony of Richard Cochran, Marketing Manager/Plate Products, Bethlehem Steel.

³² *Hearing Transcript*, p. 104, testimony of Richard Cochran, Marketing Manager/Plate Products, Bethlehem Steel.

³³ Table III-1, CR at III-3, PR at III-3.

Record evidence demonstrates that processors also had only a limited ability to increase their output to supply the demand for subject imports. Processors' capacity utilization in 1996 was 62.7 percent, which would indicate that 37.3 percent of their capacity was unused. However, this apparent unused capacity is overstated due to constraints on the availability of the input processors require to produce CTL plate. Processors' apparent unused capacity was equivalent to 983,370 short tons in 1996. However, the unused capacity of the suppliers of the input (*i.e.*, coils in plate thicknesses) that processors need to produce CTL plate was only equivalent to 577,245 short tons. Therefore, the *actual* amount of processors' unused capacity was only 577,245 short tons, which represents about 22 percent of processors' reported capacity.³⁴ Since the volume of subject imports was 1,263,389 short tons in 1996, processors' unused capacity was significantly less than the amount of subject imports.³⁵ The input constraints on processors' unused capacity indicate that the elasticity of supply for processors is fairly low. That is, processors could have increased their production only somewhat to supply the demand for subject imports.

U.S. mills account for about three-quarters of domestic production, and thus are the dominant factor in the elasticity of domestic supply. Since U.S. mills could not have increased their production much, if at all, any increase in production would have had to come from processors. However, processors also were limited in their ability to increase production. Therefore, the domestic industry as a whole could have increased its production only slightly to supply the demand for subject imports, which indicates that the elasticity of domestic supply is quite low.

Inventories and Exports. The domestic industry had 317,594 short tons of CTL plate in inventories available at the end of 1996 which it could have shipped into the U.S. market.³⁶ However, the vast majority of these inventories was held by U.S. mills, the largest of which, as discussed above, were placing customers on allocation and reservation in 1996. Therefore, it is unlikely that much of the mills' inventories actually could have been made available to ship into the market. In addition, the domestic industry's exports are quite small, and thus do not represent a significant source of supply of CTL plate.³⁷ For these reasons, the domestic industry had only limited inventories and exports that could have filled the demand supplied by subject imports.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. In the U.S. market, there are 14 mills and 21 processors that produce CTL plate, and thus there is significant competition within the domestic industry. Nonsubject imports are not a substantial source of competition in this market, accounting for only 6.0 percent of consumption in 1996.³⁸ Even though the competition from nonsubject imports is limited, there is significant competition among domestic producers. Consequently, I find that there is a significant level of competition in the U.S. market for CTL plate.

Notwithstanding the significant level of competition in the U.S. market, I find that the elasticity of supply is quite low, based on the domestic industry's very limited ability to increase the supply of domestic CTL plate from existing actual unused capacity, inventories and exports.

IV. MATERIAL INJURY BY REASON OF LTFV IMPORTS OF CTL PLATE FROM CHINA, RUSSIA, SOUTH AFRICA, AND UKRAINE

³⁴ Tables C-1, C-2, and C-4, CR at C-6, C-8, and C-12, PR at C-6, C-8, and C-12.

³⁵ Table IV-1, CR at IV-4, PR at IV-3.

³⁶ Table C-4, CR at C-12, PR at C-12.

³⁷ *Ibid.*

³⁸ *Ibid.*; CR at C-11, PR at C-11.

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

A. Volume of Subject Imports

Cumulated subject imports increased from 650,038 short tons in 1994, to 972,368 short tons in 1995, and to 1,263,389 short tons in 1996. In the first three months of 1997, subject imports were 429,437 short tons. The value of subject imports was \$206.0 million in 1994, \$344.1 million in 1995, \$433.7 million in 1996 and \$146.4 million in interim 1997.³⁹ By quantity, subject imports held a market share of 8.2 percent in 1994, 12.6 percent in 1995, 14.6 percent in 1996 and 19.0 percent in interim 1997. Their market share by value was 6.1 percent in 1994, 9.8 percent in 1995, 11.4 in 1996, and 15.1 percent in interim 1997.⁴⁰ While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price and volume effects. Based on the market share of cumulated subject imports and the conditions of competition in the domestic market, I find that the volume of subject imports is significant in light of its price and volume effects.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the CTL plate market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether unused capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

If the subject imports had not been dumped, their prices in the U.S. market would have increased significantly. Thus, if subject imports had been fairly priced, they would have become more expensive relative to domestic CTL plate. In such a case, if subject imports are good substitutes with other CTL plate, purchasers would have shifted towards the relatively less expensive products.

In these investigations, the dumping margins for subject imports generally are quite large, ranging from 26.01 percent to 50.87 percent for South Africa; 17.33 percent to 128.59 percent for China; 53.81 percent to 185.00 percent for Russia; and 81.43 percent to 237.91 percent for Ukraine. Therefore, subject imports would have been priced significantly higher had they been fairly traded. Subject imports and domestic CTL plate are at least moderate substitutes for each other, and thus some of the demand for subject imports would have shifted to domestic CTL plate had subject imports been fairly traded. However, nonsubject imports and subject imports also are at least moderate substitutes for each other, and thus some of the demand for subject imports likely would have shifted to nonsubject imports as well.

At fairly traded prices, all or nearly all of the demand supplied by subject imports from Russia and Ukraine likely would have shifted away from these sources of CTL plate. Since these two sources account for nearly 70 percent of the cumulated subject imports in 1996,⁴¹ the shift in demand away from subject imports from Russia and Ukraine likely would have been quite large. It is likely that very little of this

³⁹ Table IV-1, CR at IV-4, PR at IV-3.

⁴⁰ Table C-4, CR at C-11, PR at C-11.

⁴¹ Table IV-1, CR at IV-4, PR at IV-3.

demand would have shifted to the other subject imports because they too, at fairly traded prices, would have been priced significantly higher. In addition, it is likely that at fairly traded prices some, and perhaps most, of the demand supplied by subject imports from China and South Africa also would have shifted away from these sources of CTL plate. Consequently, demand would have shifted away from subject imports from all four sources. Since subject imports held a cumulated market share of 14.6 percent by quantity in 1996,⁴² the shift in demand away from subject imports would have been fairly large. Nonsubject imports accounted for only 6.0 percent of the market in 1996,⁴³ and thus represent only limited competition for the domestic industry. Therefore, most of the demand for subject imports would have shifted to the domestic product.

The elasticity of demand indicates that domestic suppliers should have been able to increase prices in response to this shift in demand. Given the conditions of competition in the market, domestic price increases in response to the shift in demand would have been successful. Although there is significant competition among producers within the domestic industry, the domestic industry has little unused production capacity, inventories or exports with which producers would have competed for sales, had demand shifted away from subject imports. Because competition from nonsubject imports is limited, it is likely that nonsubject imports would have supplied only a portion of the demand for subject imports. In these circumstances, the shift in demand and the limited availability of supply from other sources would have allowed the domestic industry to raise its prices for CTL plate. Overall demand for CTL plate would not have changed much in response to higher prices because demand is moderately inelastic. However, the elasticity of supply is quite low, and thus the domestic industry would have increased its prices significantly had the subject imports been fairly traded. Consequently, I find that subject imports are having significant effects on prices for domestic CTL plate.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.⁴⁴ These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

As I have discussed above, competition from nonsubject imports is limited, and thus, had subject imports not been dumped, most of the demand satisfied by subject imports would have shifted to domestic CTL plate. The increase in demand for the domestic product would have been substantial, and the domestic producers would have increased their prices significantly in response to the increased demand. However, the elasticity of domestic supply is quite low, and so the domestic industry would not have been able to increase its production and output significantly in response to the shift in demand. As discussed above, the processors would have been able to increase their output somewhat, while the integrated mills would not have been able to increase their output much, if at all. Since the processors account for about one-fourth of domestic production, any increase in their output would have been limited, and thus small when considered in the context of the domestic industry as a whole. Therefore, the domestic industry would not have increased its output and sales significantly. Overall, the domestic industry would have increased its output and sales only slightly, but would have increased its prices, and therefore its revenues,

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ 19 U.S.C. § 1677(7)(C)(iii).

significantly had subject imports not been dumped. Consequently, the domestic industry would have been materially better off if the subject imports had been fairly traded.

V. NO CRITICAL CIRCUMSTANCES WITH RESPECT TO SUBJECT IMPORTS FROM CHINA, RUSSIA, AND UKRAINE

Because Commerce made affirmative findings of critical circumstances with respect to imports of CTL plate from Russia, Ukraine, and China (other than Liaoning)⁴⁵ and I have found that the domestic industry producing CTL plate is materially injured by reason of the subject imports, the statute requires a determination of “whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping order to be issued.”⁴⁶ Under current law, as under prior practice, a separate material injury determination regarding the surge in imports is not required.⁴⁷

Suspension agreements have been signed for all three countries for which affirmative critical circumstances determinations have been made. The Commission has made a final affirmative determination, but the suspension agreements, not antidumping duty orders, will be in effect. Commerce’s final determinations indicate that suspension of liquidation of subject imports will be terminated and that cash deposits of entries of the subject merchandise shall be refunded and bonds released.⁴⁸ Therefore, any consideration of critical circumstances may be moot at this point. Nonetheless, I make the finding required by the statute, but note that the lapse of time since the suspension agreements were signed may make a critical circumstances determination moot because any imports affected by the determination likely will have been liquidated. For the following reasons, I make a negative critical circumstances determination with respect to all three countries.

In finding “massive imports” in connection with its affirmative critical circumstances determination, Commerce compared import quantities for the three month period following the filing of the petition (November 1996-January 1997) to import quantities for the three months preceding the filing of the petition (August 1996-October 1996). The record indicates that, for all three countries, the quantity of imports in the post-petition period exceeded the quantity of such imports in the pre-petition period.⁴⁹

⁴⁵ 62 Fed. Reg. 61967-9 (Nov. 20, 1997); 62 Fed. Reg. 61793 (Nov. 19, 1997); 62 Fed. Reg. 61757 (Nov. 19, 1997).

⁴⁶ 19 U.S.C. § 1673d(b)(4)(A)(I). The statute further provides that in making this determination: the Commission shall consider, among other factors it considers relevant--

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

19 U.S.C. § 1673d(b)(4)(A)(ii).

⁴⁷ SAA at 877, citing ICC Industries, Inc. v. United States, 632 F. Supp. 36, 40 (Ct. Int’l Trade 1986), aff’d, 812 F.2d 694 (Fed. Cir. 1987).

⁴⁸ 62 Fed. Reg. 61998 (Nov. 20, 1997); 62 Fed. Reg. 61794 (Nov. 19, 1997); 62 Fed. Reg. 61794 (Nov. 19, 1997).

⁴⁹ In the pre-petition period, there were 110,575 short tons of subject imports from China (including Liaoning); 65,445 short tons of subject imports from Russia; and 195,488 short tons of subject imports from Ukraine. In the post-petition period, there were 143,200 short tons of subject imports from China (including Liaoning); 153,166

(continued...)

The statute also requires the Commission to consider whether there has been a rapid increase in inventories of the subject imports. Although the Commission did not collect data specific to Commerce's post-petition period, it did collect data for interim (January-March) 1997. The data indicate that inventories were lower in interim 1997 for China and Ukraine when compared to interim 1996, and thus were not stockpiled by U.S. importers. On the other hand, inventories were higher in interim 1997 for Russia when compared to interim 1996. However, Russian inventory levels, both in absolute terms and as a percentage of shipments, were not significantly higher than they were in the same period in 1996.⁵⁰ Thus, the record does not support a conclusion that the imports from these three countries were stockpiled by U.S. importers.

I find no other circumstances indicating that the remedial effect of any antidumping duty orders will be seriously undermined. Therefore, notwithstanding the timing of the imports, I find that the imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of any antidumping duty orders. Consequently, I make a negative critical circumstances determination.

VI. CONCLUSION

On the basis of the foregoing analysis, I determine that the domestic industry producing CTL plate is materially injured by reason of LTFV imports of CTL plate from China, Russia, South Africa, and Ukraine. Further, I make a negative determination with respect to critical circumstances.

⁴⁹ (...continued)

short tons of subject imports from Russia; and 285,571 short tons of subject imports from Ukraine. Figure IV-1; CR at IV-3, PR at IV-2. The Commission data include data for a Chinese exporter not subject to Commerce's critical circumstances determination. However, since I have concluded that critical circumstances do not exist based on data with this exporter included, the same result would necessarily follow if the exporter were excluded from the data.

⁵⁰ Table VII-5, CR at VII-9, PR at VII-4. Russian inventories were *** short tons in interim 1997 compared with *** short tons in interim 1996. As a percentage of shipments, Russian inventories were *** percent in interim 1997 compared with *** percent in interim 1996. *Ibid.*