UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STRUCTURAL STEEL BEAMS FROM GERMANY, JAPAN, KOREA, AND SPAIN

Investigations Nos. 701-TA-401 (Preliminary) and 731-TA-852-855 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3225, September 1999)

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DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Korea of certain structural steel beams,[2] provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Korea.

The Commission further determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan and Korea of certain structural steel beams,[3] provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

The Commission further determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Germany and Spain of certain structural steel beams,[4] provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at LTFV.

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of

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[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] Vice Chairman Marcia E. Miller makes a negative determination on allegedly subsidized imports from Korea. Commissioner Carol T. Crawford makes an affirmative determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from Korea.

[3] Vice Chairman Marcia E. Miller makes a negative determination on imports from Japan and Korea allegedly sold at LTFV. Commissioner Carol T. Crawford makes an affirmative determination that there is a reasonable indication that an industry in the United States is materially injured by imports from Japan and Korea allegedly sold at LTFV.

[4] Chairman Lynn M. Bragg and Commissioner Carol T. Crawford dissenting.

the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On July 7, 1999, a petition was filed with the Commission and the Department of Commerce by Northwestern Steel & Wire Co., Sterling, IL; Nucor-Yamato Steel Co., Blytheville, AR; TXI-Chaparral Steel Co., Midlothian, TX; and The United Steelworkers of America AFL-CIO, Pittsburgh, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of certain structural steel beams from Korea and alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain structural steel beams from Germany, Japan, Korea, and Spain. Accordingly, effective July 7, 1999, the Commission instituted countervailing duty investigation No. 701-TA-401 (Preliminary) and antidumping investigations Nos. 731-TA-852-855 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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 July 16, 1999 (64 FR 38476). The conference was held in Washington, DC, on July 28, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 23, 1999. The views of the Commission are contained in USITC Publication 3225 (September 1999), entitled *Certain Structural Steel Beams from Germany, Japan, Korea, and Spain: Investigations Nos. 701-TA-401 (Preliminary) and 731-TA-852-855 (Preliminary)*.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of structural steel beams from Korea that are allegedly subsidized and by reason of imports of structural steel beams from Japan and Korea that are allegedly sold in the United States at less than fair value ("LTFV").[1] [2] We find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of structural steel beams from Germany or Spain that are allegedly sold in the United States at LTFV.[3] [4]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[5] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[6]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[7] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product

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[1] Commissioner Crawford determines that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from Korea and allegedly LTFV imports from Korea, Japan, Germany and Spain. See Views of Commissioner Carol T. Crawford. She concurs in section I. - V.A. of these views, except as otherwise noted.

[2] Vice Chairman Miller dissents, finding no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of allegedly subsidized imports from Korea or allegedly LTFV imports from Korea, Japan, Germany or Spain.

[3] Chairman Bragg dissents, finding a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports from Korea and allegedly LTFV imports from Korea, Japan, Germany, and Spain. She concurs in section I. - V.D. and VI.B.

[4] Commissioner Crawford dissents. See Views of Commissioner Carol T. Crawford.

[5] 19 U.S.C. § 1671b(a); 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT____, Slip Op. 96-51 at 4-6 (March 11, 1996).

[6] American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[7] 19 U.S.C. § 1677(4)(A).

constitutes a major proportion of the total domestic production of the product."[8] 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 . . . ."[9]

The 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.[10] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[11] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[12] Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[13]

B. Product Description

In its notices of institution, Commerce described the merchandise within the scope of these investigations as follows:

> doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products ("Structural Steel Beams") include, but are not limited to, wide-flanged beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.[14]

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[8] 19 U.S.C. § 1677(4)(A).

[9] 19 U.S.C. § 1677(10).

[10] See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int'l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 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) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[11] See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

[12] Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard 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, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration".)

[13] Hosiden Corp. v. Advanced Display Mfrs., 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, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[14] Structural Steel Beams from Germany, Japan, South Korea, and Spain (Initiation of AD Investigations), 64 Fed. Reg. 42084, 42085 (Aug. 3, 1999); Structural Steel Beams from Germany, Japan, South Korea, and Spain (Initiation of CVD Investigation), 64 Fed. Reg. 42088, 42089 (Aug. 3, 1999).

Commerce also explained that:

> The following products are outside and/or specifically excluded from the scope of the investigation: Structural steel beams greater than 400 pounds per linear foot or with a web section height (also known as depth) over 40 inches.[15] [16]

Structural steel beams were included in the scope of prior antidumping and countervailing duty investigations concerning the broader category of structural steel shapes and were found to be part of the structural steel shapes domestic like product.[17] The Commission must base its domestic like product determination on the record in these investigations, however, and is not bound by prior determinations concerning the same imported products.[18]

C. Domestic Like Product Issues

As noted above, the subject merchandise is doubly-symmetric shapes, with cross-sectional dimensions exceeding 3.2 inches. The merchandise is described as structural (or heavy) beams.[19] Structural steel beams can most simply be described as having cross-sectional profiles that are in the form of an "H" or an "I," two parallel "flanges" connected by a "web." They are known, however, as either "W" shapes, "HP" shapes, "S" shapes or "M" shapes, depending on the web and flange dimensions. Petitioners submit that all of these variants of doubly-symmetric structural shapes constitute a single domestic like product. None of the parties oppose that definition of the domestic like product.

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[15] Id. The petitioners note that there is no production in the United States of structural steel beams greater than 400 pounds per linear foot or with a web section height over 40 inches.

[16] Commerce identified the merchandise subject to investigation as classified in the Harmonized Tariff Schedules of the United States ("HTSUS") at subheadings (statistical reporting numbers) 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Id. Commerce also noted that it is considering the petitioners' request that certain special section I-shapes be excluded from the scope of its investigations and that it is attempting to define the request using physical, mechanical, and chemical criteria (rather than the end use criteria specified in the petition). Id. Specifically, the petitioners seek exclusion from the scope of beams destined for use as masts in forklift trucks.

[17] *Carbon Steel Structural Shapes from Norway*, Inv. No. 731-TA-234 (Final), USITC Pub. 1785 (Nov. 1985); *Cold-Rolled Carbon Steel Sheet and Carbon Steel Structural Shapes from Korea*, Invs. Nos. 701-TA-218, 219 (Preliminary), USITC Pub. 1785 (Aug. 1984).

[18] Nippon Steel, 19 CIT at 455; Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1088 (Ct. Int'l Trade 1988). However, in the event that the Commission finds a different domestic like product or products than it has in prior investigations, it should provide a reasoned explanation of its decision. Id.

[19] Confidential Report (CR) at I-3 and n.6, Public Report (PR) at I-2 - I-3 and n.6; ASTM A 6/A 6M § 3 (petition exhibit I-4). Steel structural shapes, including beams, with cross-sectional dimensions exceeding 3.2 inches are described as "heavy shapes" or "structural-size shapes," whereas those with cross-sectional dimensions less than 3.2 inches are described as "light shapes" or "bar-size shapes." Light or bar-size shapes are not covered by the petition and, therefore, are not within Commerce's scope. Typically, the producers and end use applications of light or bar-size shapes are different from those of structural size shapes. E.g., Conference Transcript at 62-63. Commerce's scope also has upper weight and dimensional limits. Petitioners' witnesses stated that structural steel beams above those upper dimension limits are not manufactured in the United States.

1. Physical Characteristics and Uses

All structural steel beams have doubly-symmetric (web and two flanges) cross sections. Structural steel beams are available in a range of overlapping sizes and cross-sectional profiles and are used as load bearing components in structures, principally buildings, bridges, towers, pre-manufactured homes, railroad rolling stock, ships, and original equipment manufacturing applications.[20] Structural steel beams are produced to both the general ASTM requirements, common to a number of structural steel products, and to certain ASTM metallurgical composition specifications for steel used in structural applications.[21]

Structural steel beams, however, may differ with respect to specific cross sectional profile, dimensions, and metallurgical compositions. There are also different applications to which beams with specific dimensions and composition are best suited.

2. Interchangeability

There is some degree of interchangeability among various cross sections and sizes of structural steel beams, especially at the design stage for a given structure.[22] Petitioners assert that once a structure is designed, there is still some flexibility to substitute one type of structural steel beam for another by making adjustments to the overall project design.

On the other hand, it appears that each of the cross-sectional profiles has a fairly specialized use, limiting overall interchangeability. Selection of a particular profile is determined largely by the architect or engineer,[23] and interchangeability is limited by the dimensions and load-bearing capabilities required to meet a project's precise engineering specifications.[24]

3. Channels of distribution

All configurations and compositions of structural steel beams are sold by U.S. producers to service centers, fabricators, and end users (builders and original equipment manufacturers (OEMs)).[25] U.S. producers report an even split between shipments to distributors and shipments to end users.[26]

4. Common Manufacturing Facilities, Employees, and Methods

The basic manufacturing process for all structural steel beams consists of three stages: (1) melting or refining raw steel; (2) casting raw steel into semifinished forms; and (3) hot rolling semifinished forms into structural steel beams.[27] Because structural steel beams have similar cross-sectional shapes, different types can be produced on the same basic equipment by substituting rolls and making other necessary changes to the configuration of the production process.[28] Likewise, a limited size range of the same cross-

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[20] CR at I-4, PR at I-3.

[21] CR at I-5 and n.20, n.21, n.22, PR at I-4 and n.20, n.21, n.22.

[22] Petitioners' Postconference Brief at 10-11.

[23] Conference Transcript at 67.

[24] Petition at 9.

[25] CR at I-9, PR at I-7.

[26] CR at I-9 - I-10, PR at I-7.

[27] CR at I-5 - I-6, PR at I-4 - I-5.

[28] CR at I-7, PR at I-5 - I-6.

sectional shape can be produced by increasing or decreasing the spacing between the rolls.[29] Accordingly, within limits, structural steel beams can be manufactured in common manufacturing facilities, by the same methods, and with the same employees.[30]

5. Producer and Customer Perceptions

Structural beams are perceived as a commodity-type, load-bearing product used in structures, available in a range of overlapping sizes and cross-sectional profiles. They are produced to ASTM (or equivalent) specifications regarding dimensions, flange shape, and metallurgic content.[31] Petitioners argue that producers and customers perceive the differing profiles and sizes of structural steel beams as part of a family of products.[32]

6. Price

Although there are some price variations based, e.g., on whether a specific size beam is more or less costly to produce, there is a great degree of price commonality on a per-pound basis among the various structural steel beam configurations.[33]

7. Conclusion

All structural steel beams have a doubly-symmetric profile (two flanges and a web), are used as load bearing components of structures, and are produced in conformity with specific ASTM standards. They are perceived as a continuum of sizes and cross sectional profiles. They can be produced in the same facilities, on the same machinery by the same employees; are sold through the same channels of distribution; and are generally priced within the same range, relating significantly to beam weight. While producers and consumers distinguish structural steel beams on the basis of specific cross sectional profiles, among which there is only limited interchangeability in specific end use, we find one domestic like product consisting of all structural steel beams.

D. Domestic Industry

1. Generally

The domestic industry is defined as "the producers as a [w]hole of a domestic like product . . . ."[34] In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[35] Based on our finding that the domestic like

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[29] CR at I-7, PR I-6.

[30] Conference Transcript at 67-69 (domestic producer witness noted that structural beam size capabilities may vary from plant to plant).

[31] CR at I-4 - I-5, PR at I-3 - I-4.

[32] Petition at 7-10.

[33] Conference Transcript at 70-71.

[34] 19 U.S.C. § 1677(4)(A).

[35] See United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int'l Trade 1994), aff'd, 96 F.

(continued...)

product consists of all structural steel beams within the scope of these investigations, for purposes of these preliminary determinations, we find that the domestic industry consists of all domestic producers of these products.

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[36] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[37]

In this investigation, Nucor-Yamato (*** owned by a producer of structural steel beams in Japan and a purchaser of subject imports) and TXI Chaparral (a purchaser of subject imports) are candidates for a "related party" analysis.

a. Nucor-Yamato

Nucor-Yamato, a petitioner, is *** owned by Yamato Kogyo, a Japanese producer of subject merchandise.[38] In 1998, Nucor-Yamato also purchased *** short tons of steel beams produced by Yamato Kogyo and imported by ***.[39]

Yamato Kogyo's *** ownership interest raises the question whether Yamato Kogyo necessarily controls, i.e., is "legally or operationally in a position to exercise restraint or direction over," Nucor-Yamato.[40] However, there are few facts on the record on this issue.

Nucor-Yamato may also be deemed a related party if its purchases of imports are sufficient to amount to "control" of a large share of subject imports. The Commission has found such control to exist

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[35](...continued)
3d 1352 (Fed. Cir. 1996).

[36] 19 U.S.C. § 1677(4)(B).

[37] Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., *Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

[38] CR at III-1, III-4 - III-5, PR at III-1, III-3 - III-4.

[39] CR at III-4; PR at III-3.

[40] 19 U.S.C. § 1677(4)(B). Neither the statute nor the legislative history establishes a numerical percentage requirement for determining control. In the past, the Commission has found that control does not exist, absent evidence to the contrary, if the ownership interest is less than that necessary, in and of itself, to establish control. E.g., *Engineered Process Gas Turbo-Compressor Systems from Japan*, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 at 8 (July 1996).

where the domestic producer was responsible for a predominant portion of an importer's purchases and the importer's purchases were substantial.[41] Nucor-Yamato's 1998 purchases of *** imports represented only *** of U.S. imports from Japan in the period. This relatively small volume does not support a finding that Nucor-Yamato controlled a large share of imports (both because the importer's purchases were not substantial and because Nucor-Yamato was not responsible for a predominant portion of the importer's purchases).[42]

Even if Nucor-Yamato were found to be a related party, we do not believe appropriate circumstances exist to exclude it from the domestic industry. Nucor-Yamato's U.S. production in 1998 represented *** percent of total U.S. production.[43] The record indicates that Nucor-Yamato purchased the subject imports to enable it to meet demand in the U.S. market rather than to benefit from the LTFV sales. Nucor-Yamato purchased the imported beams in the first quarter of 1998 to ***.[44] According to Nucor-Yamato, it discontinued purchasing imports after ***.[45] Additionally, Nucor-Yamato's 1998 purchases of imports amounted to only *** percent of its domestic production. This low ratio, the fact that the company's purchase of subject imports was limited to one quarter, and its participation as a petitioner strongly suggest that the company's primary interest lies in domestic production rather than in purchase and sale of imports.

b. TXI Chaparral Steel

TXI Chaparral, a petitioner, accounted for *** percent of domestic production in 1998. It purchased *** short tons of subject structural steal beams imported by *** from ***.[46] These purchases represent ***.[47] In our view, these quantities are insufficient to conclude that TXI Chaparral controlled a large share of imports or, therefore, that it should be viewed as a related party.

Moreover, even if TXI Chaparral were found to be a related party based on its purchase of imported beams, we do not believe appropriate circumstances exist to exclude it from the domestic industry. The company explains that it purchased imported structural steel beams ***. This explanation indicates the purchase of subject imports ***. Moreover, the company's participation as a petitioner, the absence of objection to its inclusion in the domestic industry, and the relatively *** ratio of TXI Chaparral's imports of subject merchandise to its total production indicate that the true interest of the firm lies in production rather than in importing.

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[41] See, e.g., *Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia*, Invs. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (Apr. 1999); *Certain Brake Drums and Rotors from China*, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (Apr. 1997).

[42] CR at III-4, PR at III-3. Even if Nucor-Yamato were viewed itself as the importer (as noted above, the SAA explains that the Commission will apply a sufficiently broad definition to the term "importer" to "encompass domestic producers who are not formally importers of record") this percentage would not appear sufficient to indicate Nucor-Yamato controls a large share of imports.

[43] CR at Table III-1, PR at Table III-1.

[44] CR at III-4, PR at III-3.

[45] CR at III-4 - III-5, PR at III-3.

[46] CR at III-5, PR at III-3 - III-4.

[47] CR at Table IV-1, PR at Table IV-1.

IV. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(I) of the Act requires the Commission to cumulate subject 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 U.S. market.[48] In assessing whether subject imports compete with each other and with the domestic like product,[49] the Commission has generally considered four factors, including:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;[50]

(2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

(4) whether the subject imports are simultaneously present in the market.[51]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.[52] Only a "reasonable overlap" of competition is required.[53]

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[48] 19 U.S.C. § 1677(7)(G)(I).

[49] The SAA (at 848) 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," citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[50] Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. In these investigations, she finds there is sufficient substitutability to conclude there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. Therefore, she concurs with her colleagues that the subject imports should be cumulatively assessed for purposes of determining present material injury. See Dissenting Views of Commissioner Carol T. Crawford in *Stainless Steel Bar from Brazil, India, Japan, and Spain*, Invs. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

[51] 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, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[52] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[53] See Goss Graphic System, Inc. v. United States, ___ CIT ____, slip op. 98-147 at 8 (Oct. 16, 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

B. Analysis

For purposes of these preliminary determinations, we find that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product.

1. Fungibility

Structural steel beams are perceived as commodity-type products.[54] Both domestically produced and imported structural steel beams are available in standard cross-sectional shapes and sizes, meet the same quality certification (ASTM or equivalent) standards, and do not exhibit any major technical differences in product quality.[55] The subject imported product is generally considered fully substitutable with domestic structural steel beams: steel service centers and fabricators can purchase and deliver mixed lots, containing both domestic beams and the subject imports.[56] However, some purchasers may prefer the domestic product over imports to a certain extent, based on perceptions regarding customer service and appearance.[57] U.S. producers reported a high degree of interchangeability between domestically produced and imported structural steel beams.[58] Importers also acknowledged broad interchangeability between the U.S.-produced beams and the subject imports.[59]

Most U.S. producers report that nonprice differences between domestically produced structural steel beams and subject imports are not a significant factor in purchasing decisions.[60] Importers were more

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[54] CR at I-8, PR at I-6.

[55] CR at I-7, PR at I-6.

[56] CR at I-7 - I-8, PR at I-6; Conference Transcript at 12, 31, 35, 40.

[57] CR at I-8, PR at I-6 - I-7. Examples of domestic mills' customer service advantages include greater reliability of production and delivery schedules, fewer logistical and handling problems, easier management and resolution when ordering or delivery problems do arise, substantially shorter lead times for scheduling delivery, and ability to purchase smaller lots. With respect to product appearance, purchasers cited less damage in transit and less visible surface rust.

[58] CR at II-6 and n.11, PR at II-4 - II-5 and n.11. Five of the eight U.S. producers whose responses included views on the issue reported that domestically-produced structural steel beams are always interchangeable with the subject imports, one reported that structural steel beams are "all interchangeable," without specifying the degree of interchangeability (i.e., "always," "frequently," or "sometimes"), and two reported that the U.S. product and the subject imports are frequently interchangeable. One of the companies reporting frequent interchangeability could compare only U.S. manufactured, Japanese, and Korean product; a ninth producer had no information for the purpose of comparison.

[59] CR at II-7, PR at III-5. Ten importers reported the subject imports to be always interchangeable with U.S. produced beams (three of the ten had information and views only on imports from Japan and Korea); four reported they are frequently interchangeable (two of the four provided information only with respect to imports from Germany, Japan, and Korea); three reported they are sometimes interchangeable (one of these importers referred only to Japan and another only to Korea); three indicated nonuniform interchangeability; one reported beams from Japan are always interchangeable with U.S. produced beams, whereas beams from Korea are only frequently interchangeable; one reported that imports from Japan are never interchangeable with U.S. produced beams and those imported from Korea are only sometimes interchangeable with the U.S. product; and one reported U.S. beams are frequently interchangeable with beams from Germany and Japan but only sometimes interchangeable with imports from Korea.

[60] CR at II-6 - II-8, PR at II-5 - II-6. Two producers stated that differences other than price are sometimes significant, one of them noting that its customers frequently prefer the ongoing advantages it provides through readily available stock, short delivery times, and "hands on" product application advice.

likely to find non-price differences to be significant.[61]

Most producers reported that beam imports from any subject country are always interchangeable with imports from the other subject countries,[62] and a majority of importers reported they are always or frequently interchangeable.[63] U.S. producers generally found that non-price differences among subject imports are not significant.[64] Importers generally find domestic products, subject imports, and nonsubject imports always or frequently interchangeable.[65]

2. Geographic Overlap

Both domestically produced structural steel beams and subject imports from each of the subject countries are sold to service centers, fabricators, and end users throughout the United States, the domestic product going directly to fabricators and end users more frequently than do the imports.[66] U.S. importers of structural steel beams are primarily located in New York (7), California (4), New Jersey (3), and Texas (3); other geographic locations include Georgia, Illinois, Pennsylvania, Oregon, and Connecticut,[67] as well as several others.[68] Although the subject countries accounting for fewer imports over the period examined also had relatively small shares of total subject imports entering specific regions, there was significant, multiregional presence of those imports along with domestic product and other subject imports during the period examined.[69]

3. Channels of Distribution

Domestically produced structural steel beams were sold both directly to end users (builders and OEMs) and to distributors (service centers and fabricators) in about equal proportions; i.e., shipments to

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[61] CR at II-7 - II-8, PR at II-5 - II-6. Ten of the importers who responded stated that those factors are sometimes significant, three indicated that such factors are frequently, and four indicated that factors other than price are never significant. One importer noted that product availability and delivery time is better from U.S. producers, and U.S. customers demand a price incentive to order from offshore suppliers. Another importer asserted that "availability due to domestic allocations in recent years" is a factor that affected purchase of imports rather than domestic product, as are inland transportation costs for U.S. customers near a port that would prefer to buy imports from near the port rather than pay transportation costs from a distant domestic mill. This importer notes that product range is also a factor in deciding between domestic purchases and imports.

[62] CR at II-8, PR at II-6. Five producers reported that subject imports are always interchangeable between each other, another producer states simply that all structural steel beams are interchangeable (without stating to what degree), and two producers report that the subject imports are frequently interchangeable with each other.

[63] CR at II-8, PR at II-6.

[64] CR at II-8, PR at II-6. The same five U.S. producers that reported factors other than price are never significant in importing from the subject countries reported that non-price differences among subject imports are not significant. Another producer reported (in general, rather than with regard to the subject imports specifically) that factors other than price are never important in beam trade. Apparently focused on trade abroad, one company commented that factors other than price are sometimes significant in subject countries' trade among themselves, and one reported that factors other than price are frequently significant in beam trade between Japan and Korea. Id. at II-8 - II-9.

[65] CR at II-10, PR at II-7.

[66] CR at I-9 -I-10, PR at I-7; Petitioners' Postconference Brief at 13-14 and Exhibit 3.

[67] CR at IV-1, PR at IV-1.

[68] E.g., Petitioners' Postconference Brief at Exhibit 3.

[69] Id.

end users were 49.1 percent of total domestic shipments and shipments to distributors were 50.9 percent of total domestic shipments.[70] Subject imports also were sold directly to end users and to distributors, albeit in proportions different from the domestic producers; namely 11.0 percent to end users and 89.0 percent to distributors.[71]

4. Simultaneous Presence

Domestically produced structural steel beams were present throughout the United States throughout the period of investigation.[72] Imports from the four subject countries entered every year of the period of investigation, including the first quarter of 1999.[73]

5. Conclusion

Based on the analysis above, we cumulate imports of structural steel beams from all of the subject countries for purposes of our analysis of present material injury. There is a high degree of fungibility between the imports from different countries and between imports and the domestic like product. There also were sales or offers to sell in the same geographical markets of imports from the different countries and the domestic like product, common or similar channels of distribution for imports from the different countries and the domestic like product, and simultaneous presence of the imports in the market.

V. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND/OR LTFV IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[74] [75] In making this determination, the Commission

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[70] CR at I-9 - I-10, PR at I-7.

[71] CR at I-10, PR at I-7.

[72] CR at Tables III-3 and IV-2, PR at Tables III-3 and IV-2.

[73] CR at Table IV-2, PR at Table IV-2; see also Petitioners' Postconference Brief at Exhibit 7 (with reference to official statistics, presence of each subject country's imports in each quarter of the period).

[74] 19 U.S.C. § 1671b(a) and 1673b(a).

[75] Commissioner Crawford notes that the statute requires that the Commission determine whether there is a reasonable indication that a domestic industry is "materially injured by reason of" the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury "by reason of" the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on

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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.[76] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[77] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[78] 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."[79]

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing structural steel beams is materially injured by reason of subject imports from Korea that are allegedly subsidized and subject imports from Germany, Japan, Korea, and Spain that are allegedly sold in the United States at less than fair value.[80]

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in these investigations. During the period examined, apparent domestic consumption grew significantly (by 26.1 percent), before beginning to decline in the interim period.[81] Moreover, overall construction, the largest use of structural

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the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford's analytical framework, see *Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, & Venezuela*, Invs. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and *Steel Concrete Reinforcing Bars from Turkey*, Invs. No. 731-TA-745(Final), USITC Pub. 3034 at 35 (April 1997). 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 Commissioner Crawford's mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), aff'g, 873 F. Supp. 673, 694-95 (Ct. Int'l Trade 1994).

[76] 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 . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[77] 19 U.S.C. § 1677(7)(A).

[78] 19 U.S.C. § 1677(7)(C)(iii).

[79] 19 U.S.C. § 1677(7)(C)(iii).

[80] Commissioner Crawford determines that there is a reasonable indication that the domestic industry producing structural steel beams is materially injured by reason of allegedly subsidized imports form Korea and allegedly LTFV imports from Germany, Japan, Korea, and Spain. See Views of Commissioner Carol T. Crawford.

[81] Total U.S. consumption increased from 4.53 million short tons in 1996 to 5.72 million short tons in 1998. Consumption in the first quarter of 1999 was 1.26 million short tons, compared with consumption in the first quarter of 1998 of 1.40 million short tons. CR at Table C-1, PR at Table IV-3. Building constructions are estimated to account for 75-80 percent of demand, premanufactured homes for 10 percent of demand, OEMs for 5-10 percent of demand, and bridges for 5 percent of demand. CR at II-1, PR at II-1. Producers and importers cited increases in nonresidential and residential construction and the strong economy, in general, as the major reasons for increased demand. CR at II-4, PR at II-3.

steel beams, expanded between 1996 and 1998 by 28 percent.[82] Apparent consumption exceeded domestic capacity throughout much of the period examined. In addition, less efficient production facilities were closed and domestic production capacity actually declined.[83] In fact, there was a serious shortage in the supply of structural steel beams in the U.S. market in the fourth quarter of 1997 and the first two quarters of 1998 as apparent consumption outstripped domestic capacity. This supply shortage resulted in some domestic producers' placing customers on allocations beginning in the fourth quarter of 1997 and, as acknowledged by the U.S. producers, in the need for increased subject imports to meet U.S. demand.[84] Throughout the period, however, U.S. producers have expended significant capital in new facilities and in plant modernizations that have come on line toward the end of the period of investigation or will come on line within the next few years.[85] We also note that raw material costs and overall cost of goods sold declined during the period of investigation.[86]

While steel service centers and fabricators (distributors) generally can purchase a mix of both domestic and foreign products, some service centers and fabricators perceive the domestic product, when compared with subject imports, as more desirable because of the level of customer service provided and better product appearance.[87] In addition, while the vast majority of subject imports are sold to service centers or distributors, about half of the domestic product is sold directly to end users. The end users place great value on reliable and timely deliveries because work schedules and work crews can be greatly affected by such factors. These differences can affect the relative prices of the domestic product vis-a-vis subject imports.[88]

During the early phases (e.g., design) of a construction project, similar customer service factors can play a role in the competitive position of steel beams relative to substitute materials, especially concrete (i.e., reinforced concrete and poured-in-place concrete). Architects and engineers will take into account steel beam availability, delivery lead times, and relative costs in project designs.[89]

B. Volume

Section 771(C)(I) of the Act provides that the "Commission shall consider whether the volume of

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[82] CR at II-4, PR at II-3 (measured in billions of square feet).

[83] CR at II-2, III-2 and Table C-1, PR at II-1 - II-2, III-1 - III-2; Postconference Brief on behalf of German and Spanish producers at 11-18 and Exhibits 6, 7 and 8; Conference Transcript at 99-101.

[84] Id.

[85] CR at III-2, Table VI-4, PR at II-2, Table VI-4.

[86] CR at VI-5, PR at VI-1.

[87] CR at I-8, PR at I-6 - I-7. Reported examples of the domestic product's customer service advantages included fewer delivery, logistical and handling problems, shorter lead time for scheduling delivery, and the possibility of purchasing smaller lots. Concerning appearance, it was reported that imports can be damaged in transit or have visible surface rust.

[88] CR at I-10, PR at I-8. A representative of a structural steel service center testified at the conference that imported structural beams traditionally cost between 3 to 7 percent less than domestically produced beams due to imported steel's disadvantages. Another testified that most steel service centers and their customers would not purchase imported structural steel beams when the price difference compared to the domestic product is less than $20 per ton, but will buy imports when the price difference widens to about $30 per ton. Conference Transcript at 27-34.

[89] E.g., CR at II-5 and n.10, PR at II-4 and n.10; Petitioners' Postconference Brief at 8-9; Conference Transcript at 17-18, 64-65. The economic consultant for respondents estimates that concrete and steel compete head to head in 45 percent of all construction projects, excluding single-family homes. CR at II-5. We will collect more information on competition between concrete and steel beams in any final phase of these investigations.

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."[90]

The volume of U.S. shipments of subject imports increased from 258,959 short tons in 1996 to 272,740 short tons in 1997 and to 1,387,913 short tons in 1998. Shipments of subject imports rose from 246,817 short tons in the first quarter of 1998 to 374,343 short tons in the first quarter of 1999.[91] Shipments of the subject imports also grew as a share of apparent U.S. consumption, from 5.7 percent in 1996 to 5.8 percent in 1997 and 24.1 percent in 1998.[92] The market share continued to rise in the interim period, from 17.7 percent of apparent U.S. consumption in the first quarter of 1998 to 29.6 percent of consumption in the first quarter of 1999.[93] Thus, virtually all of the increase in subject import volume and virtually all of the increase in market share occurred since 1997. We determine that the volume of subject imports at the end of the period, when viewed in isolation, was significant.[94]

C. 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 domestic like products of 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.[95]

As noted above, there is a significant degree of substitutability between the domestic like product and the subject imports, and price is an important consideration for purchasers.[96] However, we note that certain nonprice considerations, including such factors as shorter delivery time, service advantages, and differences in the size of orders favor the domestic like product.[97]

Prices for the domestic like product generally remained steady over most of the period of

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[90] 19 U.S.C. § 1677(7)(C)(I).

[91] CR at Table IV-2, PR at Table IV-2.

[92] CR at Table C-1, PR at Table IV-3.

[93] CR at Tables IV-2 and IV-3, PR at Tables IV-2 and IV-3.

[94] Chairman Bragg finds that, although subject import volumes could be deemed significant when viewed in isolation, in the context of the instant preliminary investigations they are not significant in the analysis of present material injury to the domestic industry.

[95] 19 U.S.C. § 1677(7)(C)(ii).

[96] E.g., CR at I-7, I-8, II-6, II-7 and II-8; PR at I-6, I-7, and II-4 - II-6; Conference Transcript at 12, 31, 35 and 40.

[97] CR at II-6 - II-8, PR at II-4 - II-6. Accordingly, part of the underselling appearing in Tables V-1 - V-4 of the staff report may be explained, as already discussed, by distributors' testimony that imported structural beams traditionally cost between 3 to 7 percent less, and perhaps as much as $20 to $30 less, per short ton than domestically produced beams, due to these nonprice factors. CR at I-10, PR at I-8. We also note that pricing data included in the underselling/overselling comparisons do not distinguish between sales by producers to end users versus service centers, and fabricators. Accordingly, underselling margins may be distorted due to differences in levels of trade. We intend to explore these issues fully in any final phase of the investigations.

investigation. The average unit value of U.S. shipments remained fairly constant between 1996 and 1998,[98] even while the average unit values of certain subject imports declined[99] and the cost of goods sold declined.[100] The specific pricing data obtained for the four products specified in Commission questionnaires also show that, while domestic prices fluctuated within a narrow range over the period examined, prices in the third quarter of 1998 were higher than those reported for the beginning of the period of investigation even while there was underselling by subject imports.[101] Thus, prices were highest during the shortage, which indicates that subject imports did not supress domestic prices to a significant degree.[102] The pricing data do indicate some decline in pricing in the fourth quarter of 1998 and the first quarter of 1999.[103] We note, however, that demand declined in the first quarter of 1999 relative to the first quarter of 1998.[104] In addition, unit cost of goods sold steadily declined over the period of investigation, due mainly to a decline in the prices of raw materials.[105] Despite lower productivity, this trend appears to have accelerated in the first quarter of 1999.[106] The ratio of cost of goods sold to net sales remained generally steady over the period, except in the first quarter of 1999.[107]

We find that the decline in average unit value and reported prices of the U.S. product toward the end of the period resulted from, and was consistent with, the downward trend in the cost of goods sold over the period. In addition, the observed price trends are attributable in part to the decline in consumption and the significant changes in the domestic industry's capacity structure, as inefficient lines were shuttered and new efficient production began to come on stream toward the end of the period examined.[108] Accordingly,

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[98] The average unit value of U.S. producers' domestic shipments was $405.50 per short ton in 1996, $397.19 per short ton in 1997, and $407.04 per short ton in 1998, a 1996-1998 increase of 0.4 percent. CR at Table C-1 and Table III-3, PR at Table C-1 and Table III-3. The average value of U.S. producers' net sales on a per-short-ton basis, similarly, was $400.22 in 1996, $400.70 in 1997 and $393.23 in 1998, a 1996-1998 decrease of only 1.7 percent. CR at Table C-1, VI-1; PR at Table VI-1.

[99] CR at Table IV-1.

[100] Cost of goods sold on a per-short-ton basis declined at the same time, from $316.98 in 1996 to $312.35 in 1997 and to $312.11 in 1998, a 1996-1998 decline of 1.5 percent. CR at VI-5 and Table C-1, PR at VI-1.

[101] CR at Tables V-1 - V-4, PR at Tables V-1 - V-4.

[102] CR at V-6, V-7, Tables V-1and V-2, PR at Tables V-1 and V-2.

[103] CR at Tables V-1 - V-4, PR at Tables V-1 - V-4.

[104] U.S. consumption was 1,397,778 short tons in the first quarter of 1998 and 1,264,234 in the first quarter of 1999, a decrease of 9.6 percent. CR at Table IV-3, PR at Table IV-3.

[105] The decline in raw material prices accelerated in April 1998 and December 1998. CR at VI-1, VI-4. Costs of raw materials were $186 per short ton in 1996, $176 per short ton in 1997, and $167 per short ton in 1998. CR at VI-5. Raw materials accounted for 59.0 percent of U.S. producers' costs of goods sold in 1996, 56.0 percent in 1997, and 54.0 percent in 1998. CR at V-1, PR at V-1.

[106] Cost of goods sold per short ton was $283.19 in the first quarter of 1999, a 10 percent decrease from the first quarter of 1998, in which cost of goods sold per short ton was $314.74. CR at Table C-1, Table VI-1; PR at Table VI-1.

[107] The cost of goods sold as a percentage of sales was 79.2 percent in 1996, 78.0 percent in 1997, 79.4 percent in 1998, and 84.0 percent in the first quarter of 1999. CR at Tables C-1 and VI-1; PR at Tables C-1 and VI-1.

[108] Five of the nine U.S. producers reported changes in capacity during the period of investigation. Between 1996 and 1997, Bethlehem Steel closed two mills producing structural steel beams, Northwestern Steel & Wire closed one mill, and ***. At the same time, ***; Nucor Corp's South Carolina plant began producing structural steel beams in December 1998; TXI-Chaparral is bringing online a new mill in Petersburg, Virginia, with structural steel beam production capacity of *** short tons; ***; and Steel Dynamics, Inc. committed to a $305 million investment in a mill it anticipates bringing online in the second half of 2000, which will have a structural steel production capacity of 900,000 short tons. CR at III-2, PR at III-2. U.S. producers' capital expenditures

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we find that subject imports have not depressed or suppressed prices of the domestic products to a significant degree during the period examined.

D. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[109] 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. 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."[110] [111] [112]

We do not find the subject imports had a material adverse impact on the domestic industry. Subject imports increased significantly only toward the end of the period examined, and much of this increase met demand that domestic producers could not supply. We recognize that there may have been an overreaction to the 1997-1998 supply shortage on the part of subject imports. However, any adverse impact from that supply imbalance has not manifested itself in the record before us.

Indeed, the data show a domestic industry that performed well over the period of investigation. The industry reported operating income of $311.2 million in 1996, $338.8 million in 1997, and $257.9 million in 1998, which, in the context of declining capacity and production, represented unit operating income of $72.01 per ton in 1996, $75.80 per ton in 1997, and $66.76 per ton in 1998.[113] The industry-wide net operating income as a percentage of sales was robust throughout the period examined, with margins of 18.0 percent in 1996, 18.9 percent in 1997, and 17.0 percent in 1998.[114]

While subject imports increased their share of the expanding U.S. market from 1996 to 1998, the bulk of this increase was not at the expense of the domestic industry, which maintained high capacity

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[108](...continued)
increased significantly over the period of investigation, from $50.67 million in 1996 to $176.33 million in 1997 and $570.65 million in 1998 and, in the first quarter of 1999, to $133.34 million, compared with $97.14 million in the first quarter of 1998. CR at Table VI-4, PR at Table VI-4.

[109] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

[110] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and *Live Cattle from Canada and Mexico*, Invs. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

[111] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce stated that the estimated dumping margins were as follows: Japan, 1.58 to 23.13 percent; Germany, 67.78 and 88.83 percent; Korea, 89.67 to 107.07 percent; Spain, 66.94 percent. 64 Fed. Reg. at 42086-88 (Aug. 3, 1999). It did not estimate the countervailing duty margin. 64 Fed. Reg. 42088 (Aug. 3, 1999).

[112] Chairman Bragg notes that she does not ordinarily consider the magnitude of 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-731 (Final), USITC Pub. 2968 (June 1996).

[113] CR at Tables C-1 and VI-1, PR at Tables C-1 and VI-1.

[114] CR at Tables C-1and VI-1, PR at Tables C-1 and VI-1. The slight decline in operating income margins also reflects certain costs and charges entirely unrelated to subject imports. CR at IV-2, Table VI-1.

utilization throughout this period.[115] While U.S. production capacity decreased by 13.7 percent from 1996 to 1998, in large part as a result of temporary and permanent plant closings,[116] there was a 5.3 percentage point increase in capacity utilization during the period. Even with the influx of subject imports, the domestic industry's capacity utilization rate was a relatively high 86.4 percent in 1998.[117] Shipments relative to capacity increased and inventories as a percent of production and shipments declined during this period.[118] All parties agree there was a supply shortage in 1997 and 1998 and that the industry significantly restructured productive capacity over the period.

In addition, as discussed above, we find that subject imports have not depressed prices of the domestic products or suppressed increases in those prices to a significant degree during the period of investigation.[119] Nor have subject imports adversely affected the industry's investment in productive facilities as capital expenditures increased tenfold, from $50 million in 1996 to over $570 million in 1998.[120]

As discussed below, the interim data as well as certain anecdotal information in the record provide some indication that the domestic industry's fortunes may have very recently turned downward.[121] [122] [123] Nevertheless, based on the record in these investigations, we find that there is no reasonable indication that an industry in the United States is presently materially injured by reason of imports of structural steel beams from Korea that are allegedly subsidized and imports of structural steel beams from Japan, Korea, Germany, and Spain that are allegedly sold in the United States at less than fair value.

VI. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS

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

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[115] Capacity utilization was 81.1 percent in 1996, 88.1 percent in 1997, and 86.4 percent in 1998. CR at Table III-2, PR at Table III-2.

[116] CR at III-2 - III-4, PR at III-2. None of the parties claims that any of the plant closings were in any respect the result of competition from the subject imports.

[117] CR at Table III-2, PR at Table III-2 . Capacity utilization increased from 81.1 percent in 1996 to 86.4 percent in 1998. Id. The capacity utilization rate of 86.4 percent must be viewed as quite high in the context of this industry because, when there was short supply in the first quarter of 1998 due to the industry's inability to produce enough structural steel beams to meet domestic demand, the industry was operating at 92 percent capacity utilization. CR at Table III-2, PR at Table III-2.

[118] CR at Tables III-4 and C-1, PR at Tables III-4 and C-1.

[119] Domestic prices remained generally steady over the period of investigation despite significant decreases in unit costs. CR at Tables V-1 - V-4, PR at Tables V-1 - V-4. Indeed, shipment unit values were higher in 1998 than in 1996. CR at Tables III-3 and C-1, PR at Tables III-3 and C-1.

[120] CR at VI-7, Table VI-4, PR at Table VI-4.

[121] For example, capacity utilization in the first quarter of 1999 stood at 68.9 percent. However, we note that during this interim period domestic capacity increased and domestic consumption declined. CR at III-5, Table III-4.

[122] Chairman Bragg, in looking at interim industry performance, notes an indication of an imbalance between capacity, capacity utilization, and inventory build-up. She also notes that it appears that the relatively high level of capacity utilization from 1996 through 1998 may have been maintained in part due to an increasing share of production being carried in domestic inventories.

[123] Vice Chairman Miller does not join this statement.

order is issued or a suspension agreement is accepted."[124] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."[125] In making our determination, we have considered all factors that are relevant to this investigation.[126]

Based on an evaluation of the relevant statutory factors, we find a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of structural steel beams from Korea that are allegedly subsidized and by reason of imports of structural steel beams from Japan and Korea that are allegedly sold in the United States at less than fair value.[127] We find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of structural steel beams from Germany or Spain that are allegedly sold in the United States at less than fair value.

A. Cumulation for Purposes of Threat Analysis[128]

Cumulation for threat analysis is treated in Section 771(7)(H) of the Act.[129] This provision leaves to the Commission's discretion cumulation of imports in analyzing threat of material injury. In deciding whether to cumulate the subject imports for purposes of making threat determinations, the Commission has often considered whether the imports are increasing at similar rates, whether the imports have similar margins of underselling, and whether the imports have similar pricing patterns.[130]

Based on an evaluation of the relevant criteria, we have exercised our discretion to cumulate the subject imports from Japan and Korea.[131] We do not exercise our discretion to cumulate the subject

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[124] 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

[125] 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

[126] 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).

[127] Vice Chairman Miller dissenting. See Separate Views of Vice Chairman Marcia E. Miller. She joins her colleagues with respect to the determination on Germany and Spain.

[128] Chairman Bragg determines that the U.S. structural steel beam industry is threatened with material injury by reason of imports of structural steel beams from Korea that are allegedly subsidized and by reason of imports of structural steel beams from Japan, Korea, Germany and Spain that are allegedly sold in the United States at less than fair value.

[129] 19 U.S.C. § 1677(7)(H).

[130] See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); 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).

[131] Chairman Bragg finds that the same analysis justifying cumulation of all subject imports for purposes of the Commission's assessment of present material injury applies equally to an assessment of threat of material injury. In this regard, Chairman Bragg places particular importance on the significant degree of fungibility among imports for all subject countries and between subject imports and the domestic like product. Chairman Bragg adds that upon review of the entire period of investigation she found similar volume and pricing trends among all subject countries and that these trends further support cumulation. Accordingly, Chairman Bragg exercises her

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imports from Germany and Spain, either with subject imports from Japan and Korea or with each other. As indicated above, subject imports from Germany and Spain each constituted a relatively small portion of subject imports in 1998.[132] Not surprisingly, the market share held by imports from Germany and Spain as a percentage of domestic consumption in 1998 was extremely low, as both returned to the levels held at the beginning of the period of investigation.[133] Moreover, there are significant differences in the trends for the volume, unit value, and reported pricing for imports from Germany and Spain as compared to those for imports from Japan and Korea.[134]

The rate at which the volume of subject imports from Japan and Korea increased at the end of the period examined is several orders of magnitude greater than the rates at which the volume of subject imports from Germany and Spain increased during this same period. Specifically, U.S. shipments of imports from Japan increased by 1,605 percent, from 54,408 short tons in 1997 to 927,669 short tons in 1998.[135] Subject imports from Korea increased by 9,447 percent, from 1,704 short tons in 1997 to 162,685 short tons in 1998.[136] Subject imports from Germany, in contrast, increased only slightly from 87,386 short tons in 1997 to 90,644 short tons in 1998, an increase of 3.7 percent, while subject imports from Spain increased 53 percent, from 129,242 tons in 1997 to 197,915 short tons in 1998.[137] The trends for the interim periods show an even starker contrast; whereas imports from Japan and Korea each increased, imports from Germany and Spain dropped substantially.[138]

Likewise, the average unit values for imports from Spain and Germany do not correlate with those for imports from Japan or Korea. The average unit values for imports from Korea rose slightly from 1996 to 1997 before declining in 1998.[139] The average unit value of imports from Japan declined in each year of the period of investigation.[140] Average unit values of U.S. shipments of imports from both Germany and Spain increased in 1998 after declining from 1996 to 1997.[141] Finally, there are significant differences in the price levels and pricing trends reported in questionnaire responses for imports from Germany and Spain

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[131](...continued)
discretion to cumulate all subject countries in analyzing threat of material injury.

[132] CR at Table C-1, Tables IV-1 and IV-2; PR at Tables IV-1 - IV-2.

[133] CR at Table C-1, PR at Tables IV-3. Although the share held by imports from Spain in 1998 was slightly higher than that held by imports from Korea, the trend for imports from Korea stands in sharp contrast with the trend for imports from Spain. Imports from Korea as a percent of apparent consumption were nil in 1996 and 1997 and then rose substantially in 1998. Id. Imports from Spain were 3.5 percent of apparent consumption in 1996 and 1998. CR at IV-5, Table IV-3; PR at IV-3.

[134] CR at Table C-1, Tables IV-1, IV-2, V-1 - V-4; PR at Tables IV-1, IV-2, V-1 - V-4.

[135] CR at Table IV-2, PR at Table IV-2.

[136] CR at Table IV-2, PR at Table IV-2.

[137] CR at Table IV-2, PR at Table IV-2. As a result of these divergent trends, imports from Germany and Spain as a percent of total imports declined substantially. CR at IV-2 - IV-3, Table IV-1; Table IV-2 (interim period decline), PR at Tables IV-1 and IV-2.

[138] U.S. shipments of subject imports from Japan were 172,116 short tons in the first quarter of 1998 and 190,393 short tons in the first quarter of 1999; shipments of subject imports from Korea were zero in the first quarter of 1998 and 140,686 in the first quarter of 1999. In contrast, shipments of subject imports from Germany fell from 16,722 short tons in the first quarter of 1998 to 7,688 short tons in the first quarter of 1999; shipment of subject imports from Spain fell from 57,979 short tons in the first quarter of 1998 to 35,576 short tons in the first quarter of 1999. CR at Table IV-2, Table C-1; PR at Table IV-2.

[139] CR at Table IV-2, Table C-1, PR at Table IV-2.

[140] CR at Table IV-2, Table C-1, PR at Table IV-2.

[141] CR at Table IV-2, Table C-1, PR at Table IV-2.

as compared to Japan and Korea.[142]

Under these circumstances, we decline to cumulate the imports from Germany and Spain with each other or with those from Japan and Korea for purposes of considering the threat of material injury for those countries. However, we exercise our discretion to cumulate imports from Japan and Korea due to their similar volume and price trends.

[142] See CR at Tables V-1 - V-4, PR at Tables V-1 - V-4.

B. Reasonable Indication of Threat of Material Injury by Reason Of Allegedly Subsidized Imports from Korea and Allegedly LTFV Imports from Japan and Korea

Subject imports from Japan and Korea grew by over 2,000 percent from 1996 to 1998, totaling 1,090,354 short tons in 1998.[143] Imports from these two countries increased to 331,079 short tons in the first quarter of 1999, compared with 172,116 short tons in 1998.[144] U.S. shipments of the subject imports from Japan and Korea captured significant market share beginning in 1998, rising from only 1.1 percent of total U.S. consumption in 1996 and 1.2 percent in 1997 to 19.0 percent in 1998. Their market share rose from 12.3 percent in the first quarter of 1998 to 26.2 percent in the first quarter of 1999.[145] We find that this rate of increase in cumulated subject import volume, both in absolute terms and as a share of apparent consumption, provides an indication that subject imports are likely to increase significantly in the imminent future.[146]

Although we do not have full reporting on production capacity and capacity utilization in Korea for the interim period, excess production capacity exists in Japan and Korea[147] and indicates an ability to increase exports to the United States significantly. Further, Japan and Korea have a demonstrated ability, even when their capacity utilization levels were fairly constant, to dramatically increase shipments to the United States.[148] In addition, the record data show inventories in Japan and Korea at the end of the first quarter of 1999 totaled *** short tons,[149] representing an ability to increase exports to the United States significantly even without further production. Finally, we note that Japanese producers of structural steel beams are currently subject to an antidumping duty investigation in Taiwan, one Korean producer is subject to an antidumping order in Taiwan, and both Korean producers are subject to an antidumping order in Thailand.[150] Although the record does not indicate the volume of foreign production likely to be affected by these orders, there is the possibility that they could cause producers in Japan and Korea to divert exports to other markets, including the United States.[151]

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[143] CR at Table IV-1, PR at Table IV-1.

[144] CR at Table IV-1, PR at Table IV-1.

[145] CR at Table IV-3, Table C-1, PR at Table IV-3.

[146] We note, however, that the official statistics of the U.S. Customs Service for January through June, 1998 appear to present a different picture; one of declining cumulated subject imports. See INV-W-195. We could not on the current record discern the extent to which the official statistics correlate with the scope of subject merchandise in these investigations. Accordingly, our determination is based on the questionnaire data. Of course, we will closely examine subject import volume trends in any final phase of these investigations.

[147] Capacity utilization of producers in Japan was 64.4 percent in the first quarter of 1999, *** the *** percent capacity utilization in Korea in 1998, the most recent period for which full capacity information is available. CR at Table VII-4, PR at Table VII-4; see also CR at Table VII-4 n.1, PR at Table VII-4 n.1. (only one of the producers in Korea reported capacity data for the first quarter of 1999).

[148] In this regard, we note that capacity utilization rates were relatively stable over the period of investigation while shipments to the U.S. from both of the cumulated subject countries increased significantly. This fact suggests that other factors, such as relative price levels and even exchange rates, may determine import levels independent of capacity utilization rates. Thus, we will examine the extent to which capacity utilization is probative of likely future subject import volumes in any final phase of these investigations.

[149] CR at Tables VII-3 and VII-4, PR at Tables VII-3 and VII-4.

[150] CR at VII-9, PR at VII-5.

[151] Petitioners have argued that antidumping duty orders on other steel products will result in product shifting. Petitioners' Postconference Brief at 41. In general, production of steel beams requires certain specialized

(continued...)

Subject merchandise from Japan and Korea undersold domestic product in *** comparisons.[152] Although there was no significant effect on U.S. producers' prices during most of the period of investigation, U.S. producers' reported prices for all four pricing products declined significantly toward the end of the period,[153] as did the industry-wide average unit value.[154] We find that, given the recent decline in apparent consumption, the likely significant increase in subject import volume is likely to enter the United States at prices that would have a significant depressing or suppressing effect on domestic prices of structural steel beams.[155]

We also find that the imports from Japan and Korea will have a significant adverse impact upon the performance of the United States industry. Although the industry remained profitable throughout the period of investigation, its operating income -- in absolute terms, on a per-unit basis, and as a percentage of sales -- declined significantly in the interim period.[156] Additionally, end-of-period inventories of U.S. producers as a ratio to their total shipments increased substantially from 6.2 percent during the first quarter of 1998 to 11.7 percent during the corresponding period of 1999.[157] We note that we cannot conclude that these interim data are fully representative of the likely condition of the industry in the imminent future.[158] In addition, we are mindful that the interim data represent a comparison of the first quarter of 1999 with the exceedingly robust first quarter of 1998. Moreover, productivity declined substantially in the first quarter of 1999, thereby significantly raising unit costs and lowering profitability.[159] Nevertheless, we find that all performance indicators declined substantially during the interim period. We therefore conclude that significantly increasing imports of subject merchandise allegedly subsidized or sold at LTFV prices likely will adversely impact the domestic industry's performance in the imminent future.[160]

Therefore, based on the record in the preliminary phase of these investigations, we find there is a reasonable indication that the U.S. industry producing structural steel beams is threatened with material

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[151](...continued)
equipment. CR at I-6 - I-7, PR at I-4 - I-6. We determine that the data regarding the capacity utilization for the Japanese and Korean producers do not indicate product shifting in response to the other orders. CR at Tables VII-3, VII-4, PR at Tables VII-3, VII-4.

[152] CR at Tables V-1 - V-4, PR at Tables V-1 - V-4. We note that the consistent underselling occurred even during the period of short supply in the U.S. market. We intend to further examine in any final phase of these investigations whether nonprice factors, such as possible differences in levels of trade, delivery times, and service may minimize or even eliminate the underselling, or the significance of the underselling.

[153] CR at Tables V-1 - V-4, PR at Tables V-1 - V-4.

[154] CR at Table C-1, PR at Table C-1.

[155] We reiterate, however, that the interim data show a significant decline in raw material costs and overall unit costs of goods. CR at VI-5, PR at VI-1. We intend to examine the effect on domestic prices of these cost declines as well as the effect of changes in reported capacity in any final phase of these investigations.

[156] CR at Table C-1, Table VI-1; PR at Table C-1, Table VI-1.

[157] CR at II-3, PR at II-3.

[158] For example, the interim data for two large producers, accounting for *** percent of net sales value, did not reconcile with shipment data and another producer ***. CR at VI-2, VI-3, Table VI-1 note, Table VI-2, PR at Tables VI-1 note, VI-2.

[159] CR at III-6, Table III-5; PR at Table III-5.

[160] We have also examined the statutory criterion concerning the actual and potential negative effects on the existing development and production efforts of the domestic industry. 19 U.S.C. § 1677(7)(F)(I)(VIII). As indicated above, the domestic producers have made significant capital expenditures to increase and modernize production capacity. Much of this rationalization of productive capacity, which was undertaken without regard for subject imports, has already taken place. We do not find that the subject imports are likely to have a significant adverse impact on the industry's further production and development efforts.

injury by reason of imports of structural steel beams from Japan and Korea.[161]

C. No Reasonable Indication of Threat of Material Injury by Reason of Allegedly LTFV Imports from Germany or Spain[162]

Based on an evaluation of the relevant statutory factors, we find do not find a reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports from Germany or Spain. We find that the volume, rate of increase of the volume, and the market penetration of imports of the subject merchandise do not indicate the likelihood of substantially increased imports.[163] U.S. shipments of imports from Germany increased only 3.7 percent from 1997 to 1998, from 87,386 short tons to 90,644 short tons.[164] U.S. shipments of subject imports from Germany declined substantially in the first quarter of 1999 to 7,688 short tons, compared with 16,722 short tons in the first quarter of 1998.[165] Shipments of imports from Germany represented an exceedingly small portion of apparent consumption throughout the period of investigation, increasing from only 1.2 percent of apparent U.S. consumption 1996 to 1.9 percent in 1997, before declining to 1.6 percent in 1998. As a share of apparent consumption, shipments of imports from Germany were 0.6 percent in the first quarter of 1999, compared with 1.2 percent in the first quarter of 1998.[166] Thus, imports from Germany, which were not significant throughout the period examined, have already returned to historical levels.

Similarly, U.S. shipments of subject imports from Spain increased from 159,035 short tons in 1996 to 197,915 short tons in 1998, then declined substantially in the first quarter of 1999 to 35,576 short tons compared with 57,979 short tons in the first quarter of 1998.[167] Shipment of imports from Spain represented only 3.5 percent of apparent U.S. consumption in 1996, 2.7 percent in 1997, and 3.5 percent in 1998, and then declined to 2.8 percent in the first quarter of 1999 compared with 4.1 percent in the first quarter of 1998.[168] Thus, imports from Spain also have returned to their historically low levels in the market.

Much of the marginal increases in volumes for both imports from Germany and imports from Spain were attributable to the short supply situation in the U.S. market in 1997 and 1998. We find that the evidence does not indicate the likelihood of substantially increased structural steel beam imports from Germany or Spain now that the supply shortage has eased.[169] In addition, importers held no inventories of subject merchandise from Germany and only a minuscule quantity of product from Spain at the end of 1998 and in the first quarter of 1999.[170]

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[161] Chairman Bragg finds that there is a reasonable indication that the U.S. industry producing structural steel beams is threatened with material injury by reason of imports of structural steel beams from Japan, Korea, Germany, and Spain.

[162] Chairman Bragg refers to her earlier discussion in footnote 131 and further finds that the addition of Germany and Spain to the threat analysis would only serve to reinforce the data supporting an affirmative threat determination in these preliminary investigations.

[163] 19 U.S.C. § 1677(7)(I)(III).

[164] CR at Table IV-2, PR at Table IV-2.

[165] CR Table IV-2, PR at Table IV-2.

[166] CR at Table IV-3, Table C-1, PR at Table IV-3.

[167] CR Table IV-2, PR at Table IV-2.

[168] CR at Table IV-3, Table C-1; PR at Table IV-3.

[169] We also note that exports to the United States are projected to decline for both Germany and Spain. CR at Table VII-2, Table VII-5, PR at Tables VII-2 and VII-5.

[170] CR at Table VII-6, PR at Table VII-6.

Capacity utilization is relatively high for both the Spanish and German producers of subject merchandise, at *** percent and *** percent. Indeed, capacity utilization for the three German producers increased by *** over the period of investigation. In any event, there does not appear to be a strong correlation between foreign production capacity and exports to the United States. Indeed, the ratios of total shipments destined for the home markets, the U.S. market, and third country markets were remarkably constant for both Germany and Spain throughout the period of investigation.[171] Inventories as a ratio of production were flat over the period examined in Germany and *** in 1998 compared to 1996 for the Spanish producer. Accordingly, we find no likelihood of increased imports due to unused production capacity and existing inventories in either of those subject countries.[172]

We also find that the subject imports are not likely to have a significant depressing or suppressing effect on domestic prices. As we explained in the above discussion of present material injury, we find that the cumulated subject imports did not have significant effects on the price of domestic merchandise. We do not believe that the small and likely declining volume of imports from either Germany or Spain will depress or suppress domestic prices to a significant degree in the imminent future.

Finally, as discussed above in the present material injury determinations, we do not find that the subject imports from Germany or Spain will have an actual or potential negative effect on the existing development and production efforts of the domestic industry. Nor does the record in these investigations indicate any other demonstrable adverse trends that indicate a probability that the subject imports from Germany or those from Spain will likely cause material injury to the domestic industry.[173]

For the foregoing reasons, we find no reasonable indication that the U.S. industry producing structural steel beams is threatened with material injury by reason of allegedly LTFV imports of structural steel beams from either Germany or Spain.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing structural steel beams is threatened with material injury by reason of imports of structural steel beams from Korea that are allegedly subsidized and by reason of imports of structural steel beams from Japan and Korea that are allegedly sold in the United States at less than fair value.[174] We also determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of structural steel beams from Germany or Spain that are allegedly sold in the United States at less than fair value.[175]

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[171] Id.

[172] We note that producers in Germany and Spain are operating at high capacity utilization rates and therefore product shifting is not likely. CR at Tables VII-2 and VII-5, PR at Tables VII-2 and VII-5. In general, production of steel beams requires certain specialized equipment. CR at I-6 - I-7, PR at I-4 - I-6.

[173] 19 U.S.C. § 1677(7)(F)(I)(IX).

[174] Chairman Bragg determines that there is a reasonable indication that the domestic industry producing structural steel beams is threatened with material injury by reason of imports of structural steel beams from Korea that are allegedly subsidized and by reason of imports of structural steel beams from Japan, Korea, Germany, and Spain that are allegedly sold in the United States at less than fair value.

[175] Chairman Bragg dissenting.

SEPARATE VIEWS OF VICE CHAIRMAN MARCIA E. MILLER

NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM JAPAN AND KOREA

I depart from the views of my colleagues as to whether a reasonable indication exists that the domestic structural steel beam industry is threatened with material injury by reason of subject imports from Japan and Korea. I find no such threat. I join the views of the majority on cumulation of subject imports from Japan and Korea for these threat determinations.

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."[1] 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 of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued. In making my determination, I have considered all statutory factors[2] that are relevant to these investigations.[3]

For the reasons discussed below, I determine that the domestic industry is not threatened with material injury by reason of allegedly LTFV imports from Japan and LTFV and subsidized imports from Korea.

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[1] 19 U.S.C. §§ 1673(d)(b) and 1677(7)(F)(ii).

[2] 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.

[3] 19 U.S.C. § 1677(7)(F)(I). Factor VII regarding raw and processed agriculture products is inapplicable to the products at issue. Countervailable subsidies have been alleged against Korea.

I find no likelihood that subject imports from Japan and Korea will increase substantially in the imminent future. To the contrary, the most recent import statistics suggest an important reversal in previous trends. The volume of subject imports from Japan and Korea grew sharply from 1996 to 1998, with virtually all growth occurring in 1998. Data for January-June 1999 show sharp declines in these cumulated subject imports.[4] From January to June 1999, subject cumulated imports from Japan and Korea fell by over 70 percent.[5]

Respondents argue that the increase in 1998 was in response to the supply shortage in the U.S. market that existed in 1997 and 1998. I believe that this was an important factor in the increase. As apparent consumption in the U.S. market increased in 1996 and 1997, import volumes from Japan and Korea held a low and steady share of the U.S. market, at about 1 percent. Increases in the market shares held by these countries increased in 1998 and interim 1999, reaching about 19 percent for 1998, and about 26 percent in the interim period. These increases occurred as the U.S. industry was reducing capacity and production, undertaking an expansion and modernization program, and putting customers on allocation. U.S. demand increased by 21 percent in 1998 and followed sharp drops in U.S. domestic industry capacity (almost 14 percent during 1996-98) and production rates (8 percent during 1996-98). However, based on the recent substantial declines in subject cumulated imports, I do not find the likelihood of substantially increased imports.

Available data on capacity, capacity utilization, and inventories suggest some ability to increase production and thus shipments to the U.S. market. Capacity utilization in Japan, while at moderate levels, has been steady throughout the period, while the two Korean producers show widely fluctuating rates. Although capacity increased somewhat in Japan and Korea, production fell in both 1998 and January-March 1999. Inventories held in Japan have been relatively unchanged throughout the period while those in Korea increased somewhat from 1997 to 1998, whether considered as a ratio to production or shipments. However, I note that the United States has not been a traditional export market for either Japanese or Korean structural steel beams. Data for 1999 suggest that Japanese producers are returning to a more

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[4] Cumulated export data reinforce this decline. Comparing cumulated interim data shows subject exports to the United States in interim 1999 substantially below such exports in interim 1998. CR at VII-5, VII-6.

[5] U.S. Census data for January-June 1999 show that imports for consumption from Japan and Korea for the three primary HTS numbers under which structural steel beams enter, fell as follows (in thousand short tons):

January	145.3	April	32.0
February	112.5	May	31.2
March	71.0	June	42.6

Because these data may not include all subject imports that enter as structural steel beams, they are not directly comparable to questionnaire data. I note, however, that a comparison of questionnaire and U.S. Census data for January-March 1999 subject imports show questionnaire-reported imports from Japan and Korea totaling 333,571 short tons while the short ton equivalent of U.S. Census-reported imports totaled 328,788 short tons. This suggests that the official import statistics provide a solid indication of the magnitude and direction of change, and therefore I am comfortable relying on these data. In addition, the Commission has on numerous occasions relied on census data when questionnaire data has been known to be flawed.

traditional supply pattern, with January-March 1999 shipments to the Japanese home market returning to a level above 80 percent, as occurred in 1996 and 1997, and exports to third countries also returning to past levels. Comparable data for Korea are not available, although projections and the above-noted declines in imports from Korea suggest that these producers are also moving away from the U.S. market. Thus, I conclude that neither Japanese nor Korean capacity, capacity utilization, nor inventories suggest the likelihood of substantially increased imports.[6]

I note that there has been consistent underselling by all subject imports during the investigation period. Nevertheless, the domestic industry during 1996-98 showed no significant impact from this underselling, and was able to institute price increases despite the constant availability of imports. I also note that raw material prices, and total cost of goods sold, dropped sharply toward the end of the period, contributing in part to the price decreases in 1998 and 1999. I cannot conclude, based on the three-month data for January-June 1999, that the subject imports from Japan and Korea are likely to have a significant depressing or suppressing effect on domestic prices or are likely to increase demand for further imports from these countries in the imminent future.

Throughout the period, the domestic structural steel beam industry reported relatively healthy operating margins. The domestic industry has undertaken an extensive expansion and modernization program, which continues today. The industry acknowledges that these efforts affected their ability to supply the domestic market during the period,[7] and resulted in virtually all purchasers being placed on allocation by October 1997, continuing into 1998.[8] Thus, I do not find actual or potential negative effects on the existing development and production efforts of the domestic industry.

Despite a decrease in operating margins reported for the three-month period, January-March 1999, I cannot conclude, given the sharp volume decrease in imports from Japan and Korea, that material injury by reason of subject imports from Japan and Korea would occur in the absence of an order.[9]

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[6] Despite petitioners' argument that antidumping duty orders on other steel products would lead to product shifting, data do not suggest that this has occurred or will occur in the imminent future.

[7] Transcript, p. 29.

[8] Transcript, p. 100.

[9] I note that Japanese producers of structural steel beams are subject to an antidumping investigation in Taiwan (Petitioners Postconference Brief, Attachment 19). There is no indication that any findings or remedies have been announced in that case. The two Korean producers are subject to an antidumping order in Thailand, and one is subject to an order in Taiwan. These orders may suggest the likelihood of diverting export shipments to the United States, although there is no indication of the volume of structural steel beams that may be affected.

VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in these preliminary investigations, I determine that there is a reasonable indication that the industry in the United States producing structural steel beams is materially injured by reason of imports of structural steel beams from Korea that allegedly are subsidized and imports of structural steel beams from Germany, Japan, Korea and Spain that allegedly are sold in the United States at less-than-fair-value ("LTFV"). I join my colleagues in their discussion of the appropriate legal standard for preliminary investigations and with their findings concerning the like product, domestic industry and cumulation for purposes of present material injury. I also join the majority in their discussion of the conditions of competition that are distinctive to the domestic industry. However, I do not concur in the majority's determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports. Rather, I determine that there is a reasonable indication that the industry in the United States producing structural steel beams is materially injured by reason of the allegedly subsidized and LTFV imports of subject merchandise from Germany, Japan, Korea and Spain. Because my analysis and determination differ from the majority, my separate views follow.

I. ANALYTICAL FRAMEWORK

In determining whether there is a reasonable indication that a domestic industry is materially injured by reason of the allegedly subsidized and 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 a domestic industry is materially injured "by reason of" the unfairly traded imports. Thus we are called upon to evaluate the effect of subsidized and 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 subsidies and dumping. However, the statute does not require us to weigh or prioritize the factors that independently are causing material injury. Rather, the Commission is to determine whether any injury "by reason of" the unfairly traded 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 unfairly traded imports

[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. 100-71 at 116 (1987)(emphasis added); Gerald Metals, Inc. v. United States, 132 F.3d 716 (continued...)

in a way that distinguishes those effects from the effects of other factors unrelated to the subsidies and dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without subsidies and dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury.[5]

In my analysis of material injury, I evaluate the effects of the subsidies and dumping[6] on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of subsidies and dumping on domestic prices, I compare domestic prices that existed when the imports were subsidized and dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of subsidies and dumping on the quantity of domestic sales,[7] I compare the level of domestic sales that existed when imports were subsidized and 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 effects on the statutory impact factors[8] (*e.g.*, employment, wages, *etc*.) are 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 subsidies and 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 subsidized and dumped imports.

For the reasons discussed below, I determine that there is a reasonable indication that the domestic industry producing structural steel beams is materially injured by reason of allegedly subsidized and LTFV imports of structural steel beams from Germany, Japan, Korea and Spain.

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

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[4] (...continued)
(Fed. Cir. 1997)(rehearing denied).

[5] 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. United States Steel Group v. United States, 96 F.3d 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] 19 U.S.C. § 1677(7)(C)(iii).

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 elasticity of demand for structural steel beams is relatively high. Therefore, purchasers are likely to reduce their purchases if prices for these products increase.

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. Record evidence in these investigations shows that the cost share of structural steel beams in downstream production varies widely, from a low of 3 percent to as high as 50-75 percent, depending on the end use.[9] In general, however, the cost share appears to be quite low. This low cost share is evidence of a fairly low elasticity of demand.

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 in the short term, it appears that there are few, if any, alternative products that may substitute for structural steel beams. In the long term, however, the available evidence suggests that for certain construction projects cement (concrete) may be a viable substitute for structural steel beams. Yet, this substitutability would appear valid only up to a point, because these products have quite different physical characteristics. Thus, in general, it appears that there are only limited substitute products available. The limited availability of alternative products is evidence of a relatively lower elasticity of demand.

Overall, based on the low cost share and the limited availability of substitutable alternative products, I find that the elasticity of demand for structural steel beams is relatively low. That is, purchasers likely will not reduce significantly the amount of structural steel beams they buy in response to a general increase in prices for this products.

B. Substitutability

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

[9] CR at II-5; PR at II-5.

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

Purchasers have three potential sources of structural steel beams: the domestic product, 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. According to the facts available on this record, there appear to be only minor differences between these sources of merchandise. These variations may be related to the measurement form in which the merchandise may be sold (*i.e.*, metric versus English standards), or certain superficial imperfections. Overall, however, the quality of the domestic and subject merchandise appears to be nearly identical. In addition, in each case where a direct comparison was made between structural steel beams from any two of the subject countries, the majority of both producer and importer responses indicates that the products are always or frequently interchangeable. There was less agreement on the level of substitutability between domestic and subject merchandise as compared with nonsubject merchandise, although there appears to be at least a general level of interchangeability among these sources.[10]

Non-product issues may play a role in assessing substitutability. Importers of structural steel beams reported that factors other than price were important purchasing considerations, including delivery times, product availability, and transportation costs. For example, the average reported lead time for U.S.-produced merchandise was 28 days, while the average lead time for imported merchandise was 112 days. However, delivery times ranged from one day to six months for both sources.[11] In general terms, these factors appear to favor the domestic product. In addition, inclusion of foreign steel in construction projects involving a government contract may require a domestically-produced product. However, service centers and fabricators reportedly purchase a mix of both domestic and foreign products, as price appears to be the greatest concern driving a purchasing decision.[12]

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[10] CR II-8-9; PR at II-6-7.

[11] CR II-6-8; PR at II-5-6.

[12] CR at I-8; PR at I-7.

In summary, based on the available record, I find that there is a relatively high level of substitutability between and among domestic, subject and nonsubject merchandise.

C. Supply Conditions

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 current record suggests that the elasticity of domestic supply is moderate.

Capacity Utilization and Capacity. Unused capacity can exercise discipline on prices. If there is a competitive market, no individual producer can make a price increase stick. Any attempt at a price increase by one producer would be beaten back by competitors who could produce more product to sell at the prevailing price. Here, the domestic industry operated at rather high levels of capacity utilization throughout the period of investigation. Domestic capacity dropped 13.7 percent through the period of investigation from 5.4 million short tons in1996 to 4.6 million short tons in 1998. Its capacity utilization was 81.1 percent in 1996, 88.1 percent in 1997, and 86.4 percent in 1998. Based on the high capacity utilization rates, domestic supply appears to have been fairly inelastic over the period of investigation. However, the data for interim 1999 indicate that supply is significantly more elastic than in 1998 with capacity utilization at 68.9 percent.[13]

Inventories and Exports. Export shipments do not constitute a particularly significant portion of the domestic industry's operations, accounting for 3.2 percent of total shipments in 1996, 3.5 percent in 1997, and 2.8 percent in 1998. However, the domestic industry's inventories are significant. In 1996 inventories were 0.4 million short tons, decreasing to 0.3 million short tons in 1997, and then increasing back to 0.4 million short tons in 1998. As a ratio to total shipments, such inventories were 10.0 percent in 1996, 6.4 percent in 1997 and 9.0 percent in 1998. Moreover, the data for interim 1999 also indicate that inventory supply is significantly more elastic than in 1998, both in absolute terms and as a ratio of 11.7 percent to total shipments.[14] Thus, the domestic industry's available inventories and export shipments represent a significant source of supply that could have been used to fill 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 two dominant producers of structural steel beams. Although the domestic industry appears to be competitive with nine U.S. producers of the subject merchandise, two large producers, Nucor-Yamato and TXI-Chaparrel, account for *** percent of domestic production.[15] In addition, nonsubject imports account for only a moderate source of competition in the domestic market with 9.4 percent of U.S. consumption in 1998.[16] Overall, therefore, there is not a significant level of competition in the U.S. market.

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[13] CR and PR at Table III-2.

[14] CR and PR at Table II-4.

[15] *See* CR and PR at Table III-1.

[16] CR and PR at Table IV-3.

Notwithstanding the level of competition in the U.S. market, I find that the domestic industry's ability to supply the demand for subject imports is moderately elastic. That is, domestic producers would have been able to increase somewhat their output and sales in response to an increase in demand for the domestic product.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS OF CERTAIN STRUCTURAL STEEL BEAMS FROM GERMANY, JAPAN, KOREA AND SPAIN

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 more than four-fold from 0.3 million short tons in 1996 to 1.4 million short tons in 1998. The value of subject imports was $95.4 million in 1996, $96.5 million in 1997, and $470.5 million in 1998.[17] By quantity, subject import market share of U.S. consumption increased from 5.7 percent in 1996, to 5.8 percent in 1997, and then to 24.1 percent 1998. Their market share by value was 6.0 percent in 1996, 5.4 percent in 1997, and 24.1 percent in 1998.[18] 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 the 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 impact as discussed below.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of the subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been subsidized and dumped. As discussed, both demand and supply conditions in the domestic 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 available 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 subsidized and 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 structural steel beams. In such a case, if subject imports are good substitutes with other structural steel beams, purchasers would have shifted towards the relatively less expensive products.

In this investigation, no subsidy margins have been calculated, but the alleged dumping margins for the subject imports generally are quite large, ranging from 1.58 percent to 107.07 percent. Therefore, subject imports likely would have been priced significantly higher had they been fairly traded and they would have become more expensive relative to the domestic product and nonsubject imports. In such a case, because these

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[17] CR and PR at Table IV-1.

[18] CR and PR at Table IV-3.

products appear to be good substitutes, demand would have shifted away from subject imports and towards the relatively less-expensive products. Since the market share of the subject imports is substantial at 24.1 percent, and nonsubject imports represent only moderate competition, the shift in demand away from the domestic product likely would have been substantial.

In response to this substantial shift in demand toward the domestic product, the domestic industry likely would have been able to increase its prices. The domestic industry has some limited unused production capacity available (particularly with respect to the available interim 1999 data), as well as some inventories and a small amount of export shipments, with which it would have competed for sales, had demand shifted away from the subject imports. Although the domestic industry appears to be competitive with nine domestic producers of the subject merchandise, two large producers, Nucor-Yamato and TXI-Chaparrel, account for *** percent of domestic production. Thus, the increase in prices to fairly traded levels for the large volume of subject imports likely would have resulted in an overall increase in the prices in the U.S. market. This is because the two largest domestic producers likely would have increased their prices significantly in response to the increase in demand for the domestic product. Given their dominant market presence, these two producers likely would have the ability to enforce a price increase. Therefore, significant effects on domestic prices can be attributed to the unfair pricing of these subject imports. Consequently, I find that the subject imports are having significant effects on prices for domestic structural steel beams.

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.[19] These factors together either encompass or reflect the volume and price effects of the subsidized and dumped imports, and so I gauge the impact of subsidies and dumping through those effects.

As discussed above, a significant share of the demand for the subject merchandise imports would have shifted to the domestic industry, had the subject imports been sold at fairly traded prices. In response, the domestic industry would have been able to increase its prices significantly if the subject imports had been sold at fairly traded prices.

As I have discussed above, competition from nonsubject imports is moderate, and thus, had the subject imports not been unfairly traded, only some of the demand satisfied by the subject imports would have shifted to that source. Thus, the increase in demand for the domestic product likely would have been significant, and the domestic producer could have increased its production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for subject imports that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been subsidized and dumped. Consequently, the domestic industry likely would have been materially better off if the subject imports had been fairly traded.

IV. CONCLUSION

On the basis of the foregoing analysis, I find that the domestic industry would have increased its prices, and its output and sales significantly, and therefore its revenues, had the subject imports been fairly traded.

[19] 19 U.S.C. § 1677(7)(C)(iii).

Therefore, I find that the domestic industry would have been materially better off if the subject imports had not been subsidized and dumped. Consequently, I determine that there is a reasonable indication that the domestic industry producing structural steel beams is materially injured by reason of allegedly subsidized and LTFV imports of certain structural steel beams from Germany, Japan, Korea and Spain.