UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN COLD-ROLLED STEEL PRODUCTS FROM ARGENTINA, BRAZIL, JAPAN, RUSSIA, SOUTH AFRICA, AND THAILAND

Investigations Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3283, March 2000)

VIEWS OF THE COMMISSION

Based on the record[1] in these investigations, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of certain cold-rolled steel from Brazil the Department of Commerce ("Commerce") found to be subsidized and by reason of imports of certain cold-rolled steel from Argentina, Brazil, Japan, Russia, South Africa, and Thailand that Commerce found to be sold in the United States at less than fair value ("LTFV").[2]

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[3] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[4] 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."[5]

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.[6] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[7] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[8] Although the Commission must accept Commerce's determination as to the scope of the imported

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[1] Petitioners have asked us to strike respondents' final comments from the record on the ground that respondents' comments are not limited to comments on new information released by the Commission after the deadline for posthearing briefs as set forth in Commission rule 207.30, 19 CFR § 207.30. See Letter from Roger Schagrin, March 1, 2000. When the Commission adopted rule 207.30, it specifically stated that responses to new factual information contained in other parties' posthearing briefs and affidavits attached thereto are an appropriate use of final comments. The Commission also stated that while comments not directed to new factual information were "strongly discouraged," only "new factual information" contained in final comments would be disregarded. 61 Fed. Reg. 37818, 37827 (July 22, 1996). Respondents' final comments do not contain new factual information.

[2] Chairman Bragg dissenting. See Dissenting Views of Chairman Lynn M. Bragg.

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(10).

[6] See, e.g., NEC Corp., et al. v. Dep't of Commerce and U.S. Int'l Trade Comm'n, 36 F. Supp. 2d 380 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). 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 Steel at 11, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[7] See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[8] Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

merchandise subsidized and sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[9]

B. Product Description

The scope of these investigations covers a range of cold-rolled steel products.[10] In cases such as the present one, where the domestically manufactured merchandise is made up of a continuum of similar products, the Commission generally does not consider each item of merchandise to be a separate domestic like product that is only "like" its counterpart in the scope, but considers the continuum itself to constitute the domestic like product.[11]

C. Domestic Like Product Issues

In the preliminary phase of these investigations, the Commission found a single domestic like product, certain cold-rolled steel, corresponding to the description of the scope of the subject merchandise.[12] The Commission considered like product issues with respect to five specific types of cold-rolled steel: tin mill black plate, cold-rolled motor lamination and nonoriented electrical steels, cold-rolled strip, non-rectangular shapes ("blanks"), and hardened and tempered high-carbon steel.[13] The Commission found that each of the five products was properly included in the one like product of certain cold-rolled steel, though it stated an intention to seek additional information regarding cold-rolled motor lamination and nonoriented electrical steels, blanks, and hardened and tempered high-carbon steel.[14]

In the final phase of these investigations, petitioners support the finding of one like product, consisting of all certain cold-rolled steel. However, various respondents have renewed their arguments regarding cold-rolled motor lamination and nonoriented electrical steels and hardened and tempered high-carbon steel. Further, a new like product argument, regarding a particular grade of steel coated with DOS (dioctyl sebacate) oil was made by respondents for the first time in the final phase of these investigations. Blanks have been removed from the scope of these investigations and are no longer under consideration as a separate like product.[15]

As discussed below, we determine for the final phase of these investigations that there is one domestic like product consisting of all certain cold-rolled steel products.

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[9] Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a 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).

[10] CR at I-1, n.2, PR at I-1, n.2.

[11] Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Invs. Nos. 701-TA-368-371 (Final), USITC Pub. 3075 (Nov. 1997) at 7.

[12] Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, Invs. Nos. 701-TA-393-396 and 731-TA-829-840 (Preliminary), USITC Pub. 3214 (July 1999) (hereinafter "Preliminary Determination") at 6.

[13] Preliminary Determination at 6-10. The Commission also considered applying a semi-finished product analysis to blanks. Id. at 9, n.46.

[14] Preliminary Determination at 8-10.

[15] CR at I-13, PR at I-10.

1. Cold-Rolled Motor Lamination and Nonoriented Electrical Steels

Respondents argue that cold-rolled motor lamination and nonoriented electrical steels with guaranteed core loss of less than 0.2 watts per pound per mil are a separate like product, clearly divided from other certain cold-rolled steel.[16] Petitioners claim that the 0.2 watts per pound per mil is not, in fact, a clear dividing line, and that all cold-rolled motor lamination and nonoriented electrical steels contained in the scope are properly considered part of the single domestic like product of certain cold-rolled steel.[17]

Cold-rolled motor lamination steel and nonoriented electrical steel are used to produce laminated magnetic cores for electrical equipment.[18] These steels derive their special magnetic qualities from the presence of silicon, although other alloying elements may also be present.[19] Both products are produced to guaranteed maximum core loss.[20] Core loss is the power (watts) expended in a magnetic circuit that is energized by alternating current.[21]

Respondents have argued that cold-rolled motor lamination and nonoriented electrical steels should be treated as a separate like product based on the existence of physical differences, differences in end uses, price differences, manufacturing differences, differences in customer perceptions, and differences in the channels of distribution.[22]

We note that differences do in fact exist between cold-rolled motor lamination and nonoriented electrical steels and other certain cold-rolled steel. However, both cold-rolled motor lamination and nonoriented electrical steel are typically produced on the same equipment, in the same sequence, using the same workers, as other certain cold-rolled steel.[23] The special properties of these steels are typically imparted very early in the process, by adding small amounts of alloy materials, and subsequent processing is virtually identical to that used for other certain cold-rolled steel.[24] There are some differences in the channels of distribution, with cold-rolled motor lamination steel and nonoriented electrical steel more often sold on the open market directly to end users.[25] However, petitioners have given actual examples of interchangeability.[26] While interchangeability is limited, and price differences do exist,[27] the differences

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[16] Japanese Prehearing Brief at 9-10.

[17] Prehearing Brief of Petitioners Bethlehem Steel Corporation, Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group at 8 (hereinafter "Bethlehem Prehearing Brief"); Posthearing Brief of Bethlehem Steel Corporation, Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group at Exhibit 5, question 2 (hereinafter "Bethlehem Posthearing Brief").

[18] CR at I-12, PR at I-9.

[19] CR at I-12, PR at I-9.

[20] CR at I-12, PR at I-9.

[21] CR at I-12, PR at I-9.

[22] CR at I-13, PR at I-10.

[23] CR at I-12, PR at I-10.

[24] Bethlehem Prehearing Brief at 9.

[25] CR at I-13, PR at I-10.

[26] Bethlehem Posthearing Brief at Exhibit 5, Affidavit of ***, ¶¶ 14-18.

[27] Cold-rolled motor lamination and nonoriented electrical steels typically are sold directly to manufacturers of small motors or electrical transformers at prices above those of common cold-rolled sheet. CR at I-11-I-12 and App. E, PR at I-9 and App. E. The difference in average unit values between cold-rolled motor lamination and nonoriented electrical steels and cold-rolled steel in general is about *** per short ton. We note that other cold-rolled products sold in the open market to end users are priced at levels much nearer to cold-rolled motor lamination and nonoriented electrical steels. End user prices for drawing quality steel (pricing item 3) were only *** per short ton lower than average unit values for cold-rolled motor lamination and nonoriented electrical steels. Compare CR at App. F with CR at App. E, PR at App. F with PR at App. E.

between cold-rolled motor lamination steel and nonoriented electrical steel and all other certain cold-rolled steel appear no greater than the differences existing between other products within the continuum of cold-rolled steel products.[28]

2. Hardened and Tempered High-Carbon Steel

One respondent, Mangels, has argued that hardened and tempered high-carbon steel should be a separate like product. Hardened and tempered high-carbon steel, as defined by that respondent, has a carbon content of more than 0.74 percent, substantially higher than that of most certain cold-rolled steel products.[29] Hardened and tempered high-carbon steel has greater tensile strength and a greater ability to resist fatigue than other certain cold-rolled steel, but it is also less ductile than other certain cold-rolled steel.[30]

Respondent describes differences in physical characteristics, channels of distribution, manufacturing facilities, producer and customer perceptions, and price.[31] According to respondent, hardened and tempered high-carbon steel is significantly harder and less formable than other certain cold-rolled steel, is more likely to be sold to end users, may cost as much as five times more than other certain cold-rolled steel, and is processed through a special continuous heat-treating line.[32] Petitioners agree that the heat treatment required to produce hardened and tempered high-carbon steel is different from the process used on other certain cold-rolled steel products.[33] Petitioners, however, claim that the same types of rolling and finishing for specific tolerances are used for other certain cold-rolled steel products as well as for hardened and tempered high-carbon steel.[34] Morever, one of the U.S. producers of hardened and tempered steel products argued that interchangeability as well as differences in pricing reflected the option that end users often have when deciding whether to buy hardened and tempered product or to buy standard cold-rolled steel and to include heat treatment as part of their own production process.[35] While we note that differences do exist, we find that those differences are no greater than those existing between other products within the continuum of certain cold-rolled steel. We therefore find that hardened and tempered high-carbon steel is properly included in a single domestic like product of certain cold-rolled steel.

3. <u>DOS Steel</u>

The product in question is a cold-rolled steel coated with a fine, evenly applied coating of DOS oil. According to respondent Greif, the DOS steel in question has a very fine, thin coat of oil to prevent rust.[36] DOS steel imported from Japan can be painted without undergoing an electric cleaning process.[37] It is manufactured to either A366-97-B or A366-97 standards. DOS steel is used for creating steel drums for

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[28] Bethlehem Prehearing Brief at 11 n.32.
[29] Mangels Prehearing Brief at 3 (hereinafter "Mangels").
[30] Mangels at 6.
[31] Mangels at 8-13.
[32] Mangels at 8-13.
[33] Association of Cold Rolled Strip Steel Producers' Prehearing Brief at 11-12 (hereinafter "ACRSSP").
[34] ACRSSP at 12.
[35] Submission by American Steel Works, Feb. 10, 2000, at 1-2.
[36] Greif Posthearing Brief at 8 (hereinafter "Greif").
[37] Greif at 8.

use by industries in oil-producing states such as Texas and Louisiana.[38] The steel must be of particularly high quality, as even a small leak may cause the rejection of an entire lot of drums.[39]

Respondent claims that differences exist on every factor. Petitioners, who make DOS steel and in fact supply DOS steel to the purchaser who raised the issue, deny the existence of significant differences.[40] The primary distinguishing feature of DOS steel is not the steel itself but the application of the DOS oil finish.[41] We find this difference to be no greater than other differences existing between other products within the continuum of certain cold-rolled steel. Therefore, we find that DOS steel is properly included in the single domestic like product of certain cold-rolled steel.

D. Domestic Industry and Related Parties

Section 771(4) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[42] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.[43] Based on our finding that the domestic like product consists of all certain cold-rolled steel included within the scope of these investigations, we define the corresponding domestic industry as consisting of all domestic producers of certain cold-rolled steel.

Related Parties

We must 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.[44] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[45]

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[38] Greif at 8.

[39] Greif at 3.

[40] Bethlehem Posthearing Brief at Exhibit 12, Affidavit of ***, ¶ 2.

[41] ASTM-A-366 is a very common grade of steel. See, e.g., CR at Table IV-4, PR at Table IV-4.

[42] 19 U.S.C. § 1677(4)(A).

[43] See, e.g., DRAMs From Taiwan ("DRAMS"), Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry). See generally, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain ("OCTG"), Invs. Nos. 701-TA-363-364 (Final) and Invs. Nos. 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (not including threaders in the casing and tubing industry because of "limited levels of capital investment, lower levels of expertise, and lower levels of employment").

[44] 19 U.S.C. § 1677(4)(B).

[45] 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

Several domestic producers in these investigations fall within the statutory definition of related parties. The Commission in the preliminary phase found that appropriate circumstances did not exist to exclude any of these producers from the domestic industry.[46] In the final phase, no party has argued for the exclusion of any producer under the related parties provision, and no new evidence warrants changing this finding.

1. Ownership Interests

National Steel Corp. is two-thirds owned by NKK, a Japanese producer and exporter of subject merchandise.[47] Despite its partial foreign ownership, National does not import subject merchandise. National operates basic oxygen furnace mills in Ecorse, Michigan; Granite City, Illinois; and Portage, Indiana.[48] Its share of U.S. production in 1998 was *** percent.[49] National Steel is a petitioner in all of these investigations except for Japan.[50]

We consequently consider whether "appropriate circumstances" exist to exclude National Steel from the domestic industry. Given its *** level of domestic production and the absence of any imports of subject merchandise by National Steel and the lack of objection from any party, we determine that National Steel is primarily focused on domestic production. National Steel has not obtained any special advantage from its related party status, as evidenced by the fact that its financial performance was *** than that of the industry as a whole.[51] We do not find that appropriate circumstances exist to exclude this producer from the domestic industry.

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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 at 14, n.81 (Feb. 1997).

[46] USITC Pub. 3181 at 10-12.

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

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

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

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

[51] CR at Table VI-2, PR at Table VI-2.

2. Importers of Subject Imports

Two producers imported subject merchandise during the period for which data were collected.[52] One, ***, imported subject merchandise from *** in 1996 and from *** in 1997. Total subject imports were *** in 1996 and *** in 1997. Its share of 1998 domestic production was ***.[53]

In 1998 *** imported *** of subject merchandise from ***. Its share of 1998 domestic production was ***; in 1998 its ratio of subject imports to domestic production was ***.[54]

The ratio of imports of subject merchandise to total production was relatively *** for each of the two importing companies and was especially *** for ***. The *** level of imports to production indicates that the primary interest of these firms lies in production rather than in importing or purchasing. No party has recommended that either of these producers be excluded on related party grounds. Accordingly, we do not find that appropriate circumstances exist to exclude either domestic producer as a related party for the final phase of these investigations.

Accordingly, we define the domestic industry to consist of all domestic producers of certain cold-rolled steel.

III. NEGLIGIBLE IMPORTS

According to the statute, imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.[55] The statute further provides that imports from a single country which comprise less than three percent of total imports of such merchandise shall not be negligible if the aggregate volume of imports of the subject merchandise from all countries that each comprise less than three percent of total imports exceeds seven percent of the volume of all such merchandise imported into the United States during the applicable 12-month period.[56]

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volumes of imports from the several countries with negligible imports will

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[52] Four firms, ***, were either purchasers or consignees of subject imports. These companies would be "related parties" only if their purchases were so large that they would amount to "direct or indirect control" of an importer or exporter of subject imports within the statute. Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387-392 (Preliminary) and 731-TA-815-822 (Preliminary), USITC Pub. 3181 (April 1999) at 12. The quantities of purchases of each of these four firms do not appear large enough to warrant such a finding. See CR at Tables III-1 and IV-1, PR at Tables III-1 and IV-1. Consequently, these firms do not appear to be related parties.

[53] CR at Tables III-1 and IV-1, PR at Tables III-1 and IV-1.

[54] CR at Tables III-1 and IV-1, PR at Tables III-1 and IV-1.

[55] 19 U.S.C. § 1677(24)(A)(i).

[56] 19 U.S.C. § 1677(24)(A)(ii).

imminently exceed seven percent of all such merchandise imported into the United States.[57] By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.[58]

To evaluate negligibility in these investigations, we considered official import statistics for the 12-month period beginning on June 1, 1998, and ending on May 31, 1999, adjusted by data gathered by the Commission in the course of the final phase of these investigations.[59] The import share of six subject countries is below three percent of total imports: China, with an import share of 2.8 percent; Indonesia at 2.7 percent; Slovakia at 1.7 percent; Taiwan at 2.4 percent; Turkey at 2.7 percent; and Venezuela at 2.9 percent.[60] However, the combined import share of these countries, 15.2 percent, exceeds the seven percent statutory negligibility threshold. We therefore find that subject imports from these six subject countries are not negligible for purposes of our present material injury or threat of material injury analysis for these investigations.

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 the domestic like product in the United States market.[61] In assessing whether subject imports compete with each other and with the domestic like product, 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;

(2) the presence of sales or offers to sell in the same geographical 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.[62]

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[57] 19 U.S.C. § 1677(24)(A)(iv).

[58] 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1). The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility. 19 U.S.C. § 1677(24)(C). See also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) ("SAA").

[59] CR at IV-9, PR at IV-7.

[60] CR at Table IV-3, PR at Table IV-3.

[61] 19 U.S.C. § 1677(7)(G)(i).

[62] 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).

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.[63] Only a "reasonable overlap" of competition is required.[64]

Because the petitions in these investigations were filed on the same day, the first statutory criterion for cumulation is satisfied. In addition, none of the four statutory exceptions to the general cumulation rule applies in the final phase of these investigations.[65] Therefore, we are required to determine whether there is a reasonable overlap of competition both between the domestic like product and subject imports from each of the subject countries, as well as among the subject imports from all 12 of the subject countries.

B. Analysis

In the preliminary phase of these investigations, the Commission cumulated subject imports from all countries, finding a sufficient degree of fungibility of the subject imports with each other and the domestic merchandise, overlap of geographic markets, common or similar channels of distribution, and simultaneous presence in the U.S. market.[66] In the final phase of these investigations, we again find that each of the criteria for cumulation is met with respect to all the subject countries.[67]

1. Fungibility

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

[64] See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (Ct. Int'l Trade 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[65] These exceptions concern imports from Israel, countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

[66] Preliminary Determination at 19.

[67] According to respondents from Argentina, Indonesia, Slovakia, and Venezuela, the Commission is barred from cumulating the subject imports of countries whose imports are deemed to be individually negligible. See, e.g., Venezuelan Prehearing Brief at 12. Respondents note that Article 3.3 of the Antidumping Agreement prohibits cumulation of imports from "each" country whose imports are negligible. See, e.g., Venezuelan Prehearing Brief at 13 n.16. Respondents claim that the SAA explicitly endorses this interpretation of the agreement, allowing cumulation if "the volume from each country is not negligible." See, e.g., Venezuelan Prehearing Brief at 14. Although Article 5.8 of the Agreement includes the same definitions of negligibility found in 19 U.S.C. 1677(24)(A)(i) and (ii), respondents claim that Article 5.8 does not supersede the cumulation prohibition in Article 3.3. See, e.g., Venezuelan Prehearing Brief at 21-23. They argue that contrary interpretations would render moot Articles 3.3 and 15.3 of the Agreement. See, e.g., Venezuelan Prehearing Brief at 23.

The pertinent question for the Commission in these investigations is how to construe the Act. See 19 U.S.C. § 3512; Suramerica de Aleaciones Laminadas, C.A. v. United States, 966 F.2d 660, 667 (Fed. Cir. 1992); Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Invs. Nos. 701-TA-368-371 (Final), USITC Pub. 3075 (November 1997) at n.105. The Act's exception to cumulation refers to those subject countries as to which the investigation has been terminated. See 19 U.S.C. § 1677(7)(G)(ii)(II). As discussed above, imports from none of the subject countries are eligible for termination under the negligible imports provision; hence the statutory cumulation exception does not apply. Moreover, the SAA, which by statute is the United States' authoritative interpretation of the Uruguay Round Agreements, does not support respondents' interpretation of the negligibility provisions of the WTO Antidumping and Subsidies Agreements. 19 U.S.C. § 3512(d) (role of the SAA); see SAA at 669-670 (the URAA fully implements U.S. obligations under the WTO); see SAA at 847 (stating that former negligibility exception to cumulation has been repealed because Section 771(24) of the Act implements pertinent provisions of the Agreements concerning negligible imports).

According to domestic producers, domestically produced cold-rolled steel and imported cold-rolled steel are broadly interchangeable.[68] *** reported that the Chinese industry does not manufacture standard coil sizes and that the poor quality of Russian subject imports makes them competitive only with minimill output.[69]

Importers also reported that domestically produced and imported cold-rolled steel products are broadly interchangeable, but importers identified more limitations.[70] *** reported that the inferior quality of Russian subject imports limits their interchangeability with the domestic like product, while *** noted that Russian subject imports have quality or delivery problems that limit the market for those imports.[71] *** noted limited interchangeability between the superior products imported from Japan and Thailand and lower-quality Russian imports, while another noted a lack of interchangeability between the domestic product and subject imports from Argentina, Brazil, Indonesia, Russia, and Venezuela because of the superior quality of the domestic product.[72] In addition, *** claimed that the superior quality, custom design, and specialized nature of subject imports from Japan limit interchangeability with the domestic product, especially since some Japanese imports are of products not produced in the United States.[73] Arguments were also presented by respondents that subject imports did not compete with each other, particularly with respect to Argentina, Brazil, Japan, Slovakia, and Venezuela, and particularly with respect to quality differences.[74]

Purchasers of cold-rolled steel products were asked whether they had actually substituted product from one country for those from another country for the same end use. Seventeen of 40 had substituted product from two or more different countries. The results show a mix of substituted product, including substitutions between domestic, Russian, and Japanese product, and a mix of applications, including automotive.[75]

Although the scope of these investigations (and the corresponding domestic like product) covers a wide variety of cold-rolled products, imports from all subject countries are concentrated in a few sizes and commercial grades of cold-rolled steel.[76] Over 80 percent of all subject imports are concentrated in only two HTS categories containing the most common dimensions of certain cold-rolled steel.[77] Both domestically produced cold-rolled steel bound for the open market and subject imports are concentrated in thicknesses greater than 0.020 inches and less than or equal to 0.060 inches.[78] By grade, most imports of the subject merchandise were certified to ASTM A-366, with the exception of subject imports from Slovakia and Venezuela.[79] A *** of concentration exists even for subject imports from Japan, argued to contain the highest share of more specialized products.[80] In 1998, for example, approximately *** of all

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[68] CR at II-8, PR at II-5.
[69] CR at II-8-II-9, PR at II-5.
[70] CR at II-9, PR at II-5.
[71] CR at II-9, PR at II-5-II-6.
[72] CR at II-10, PR at II-6.
[73] CR at II-9, PR at II-6.
[74] Argentine Prehearing Brief at 12-13, Indonesian Prehearing Brief at 11-12, Slovakian Prehearing Brief at 12, Venezuelan Prehearing Brief at 30.
[75] CR at II-18-II-19, PR at II-12.
[76] CR at IV-9, PR at IV-8.
[77] Joint Respondents' Posthearing Brief at Vol. I, p.17.
[78] CR at Table IV-4, PR at Table IV-4.
[79] CR at Table IV-4, PR at Table IV-4.
[80] Japanese Prehearing Brief at 48; CR at II-9-II-10, PR at II-5-II-6.

subject imports from Japan were of ASTM A-366, the most common commercial grade of steel.[81] Subject imports were more concentrated in a few common grades than were commercial shipments of domestic product.[82]

2. Geographic Overlap

Domestically produced cold-rolled steel is shipped nationwide.[83] Subject imports from 10 of the 12 countries entered every region between January 1996 and September 1999.[84] The exceptions were Thailand, with no subject imports entering the Great Lakes region, and Venezuela, with no subject imports entering the West region.[85] Thailand and Venezuela were also the most concentrated, with over 90 percent of subject imports from each country entering the Gulf region.[86] Subject imports from Argentina and South Africa were also concentrated, with more than half of all subject imports entering the Gulf region and very little entering the West region.[87] Relatively small shares of subject imports from Slovakia and Turkey entered the West region.[88] The Gulf region was the leading destination for subject imports from eight of the 12 countries, although less than eight percent of subject imports from Taiwan entered that region.[89]

3. Channels of Distribution

The domestic industry internally consumes a large volume of its production of certain cold-rolled steel in the process of producing downstream products such as tin mill black plate and coated products.[90] Of the domestic product sold in the merchant market in 1998, approximately *** percent was sold to distributors, processors, and service centers.[91] The remainder was sold to end users, with automotive and appliance applications accounting for *** percent respectively.[92]

U.S. importers sell the subject merchandise on the open market, primarily to distributors, processors, and service centers. In 1998, the share of subject imports shipped to that segment ranged from a low of *** percent for Japanese subject imports to a high of *** percent for Slovakia.[93] Only subject imports from *** were sold to the automotive sector, and only subject imports from *** were sold to the appliance sector.[94]

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[81] CR at Table IV-4, PR at Table IV-4.
[82] CR at Table IV-4, PR at Table IV-4.
[83] CR at IV-9, PR at IV-8.
[84] CR at Table IV-5, PR at Table IV-5.
[85] CR at Table IV-5, PR at Table IV-5.
[86] CR at Table IV-5, PR at Table IV-5.
[87] CR at Table IV-5, PR at Table IV-5.
[88] CR at Table IV-5, PR at Table IV-5.
[89] CR at Table IV-5, PR at Table IV-5.
[90] CR at Table I-2, PR at Table I-2.
[91] CR at Table I-2, PR at Table I-2.
[92] CR at Table I-2, PR at Table I-2.
[93] CR at Table I-2, PR at Table I-2.
[94] CR at Table I-2, PR at Table I-2.

4. Simultaneous Presence

Cold-rolled steel products produced in the United States were present in the market throughout the period under investigation.[95] Subject imports from nine of the 12 subject countries were present for a large majority of the period.[96] Subject imports from Argentina, Brazil, China, Japan, Russia, Slovakia, South Africa, Taiwan, and Turkey were present in at least three-quarters of the 45 months.[97] Subject imports from Venezuela were present for 23 of the 45 months, including eight of nine months in the interim period of January through September, 1999.[98] Subject imports from Indonesia were present in each year, including eight months of 1998 and four of the first nine months in 1999.[99] Subject imports from Thailand entered the U.S. market in 1998 and was present for five of the first nine months in 1999.[100]

5. Conclusion

Based on the evidence in the record of the general fungibility among the subject imports and the domestic like product, broad geographic distribution, similar channels of distribution, and the simultaneous presence of subject imports in the U.S. market, we find a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. With respect to fungibility, there are some quality differences perceived by both purchasers and importers between certain subject imports and the domestic product, as well as some degree of differentiation in the product mix from each country and the domestic like product. Nonetheless, we find that the record reveals that the merchandise imported from all the subject countries to the United States was generally fungible with each other and with the domestic like product. We note that additional differences do exist when the factors of geographic overlap and simultaneous presence are considered, most notably the limited geographic concentration of subject imports from Thailand and Venezuela, as well as the absence of subject imports from Thailand, in particular, for a portion of the period under investigation. However, cumulation is appropriate when there is a reasonable overlap of competition and cumulation is not dependent on a perfect match on all factors. Therefore, we find a reasonable overlap of competition among subject imports and with the domestic like product in the U.S. market. Consequently, we cumulate subject imports from all 12 of the subject countries for the purpose of analyzing whether the domestic industry has been materially injured by reason of the subject imports.

III. NO MATERIAL INJURY BY REASON OF SUBSIDIZED AND LTFV IMPORTS

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.[101] In making this determination, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers

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[95] CR at IV-10, PR at IV-8.
[96] CR at Table IV-6, PR at Table IV-6.
[97] CR at Table IV-6, PR at Table IV-6.
[98] CR at Table IV-6, PR at Table IV-6.
[99] CR at Table IV-6, PR at Table IV-6.
[100] CR at Table IV-6, PR at Table IV-6.
[101] 19 U.S.C. §§ 1671d(b) and 1673d(b).

of the domestic like product, but only in the context of U.S. production operations.[102] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[103] In assessing whether 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.[104] 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."[105]

For the reasons discussed below, we determine that the domestic industry producing certain cold-rolled steel is not materially injured by reason of subsidized imports from Brazil or by LTFV imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in these investigations.

1. Captive Consumption

The domestic industry captively consumes a significant share of its production of the domestic like product in the manufacture of downstream articles.[106] Thus, we have considered whether the statutory captive production provision requires us to focus our analysis primarily on the merchant market when assessing market share and the factors affecting the financial performance of the domestic industry.[107]

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[102] 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).

[103] 19 U.S.C. § 1677(7)(A).

[104] 19 U.S.C. § 1677(7)(C)(iii).

[105] 19 U.S.C. § 1677(7)(C)(iii).

[106] CR at I-10, PR at I-9.

[107] The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), provides:

> (iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that --
>
> > (I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,
> >
> > (II) the domestic like product is the predominant material input in the production of that downstream article, and
> >
> > (III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,
>
> then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

We find that the threshold provision of the captive production provision has been met, as domestic producers internally transfer a significant share of their domestic production for captive consumption and sell a significant share on the merchant market. We find that the first statutory criterion is met. The record reflects that virtually all of the certain cold-rolled steel transferred for processing was in fact processed into downstream articles.[108] [109] [110] We also find that the second statutory criterion has been met, as certain cold-rolled steel is the predominant material input for the relevant downstream articles.[111] However, we find that the record evidence in these investigations does not satisfy the third statutory criterion (a lack of general overlap between downstream products produced captively and those produced in the merchant market).[112]

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[108] Bethlehem Prehearing Brief at 20-21, Joint Respondents' Posthearing Brief at Vol. II, Tab C, p.2.

[109] Commissioner Askey finds that the first statutory criterion is not met in this proceeding because the record indicates that the domestic industry sells some of the same types of cold-rolled merchandise in the merchant market that it captively consumes. Commissioner Askey notes that the language of the first statutory criterion is straightforward: it provides that the captive production provision is only applicable where the "domestic like product produced that is internally transferred for processing into...[a] downstream article" does not enter the merchant market for the domestic like product. 19 U.S.C. §1677(7)(C)(iv)(I). The highlighted phrase simply indicates that, when the same products are both captively consumed by the industry and enter the merchant market, the industry's production of those products competes with subject imports in the merchant market and should therefore not be excluded from the Commission's injury analysis. Thus, the language of the first criterion requires that the Commission assess whether the type or category of domestic like product that is internally transferred by the domestic industry enters the merchant market for the domestic like product. See Certain Hot-Rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at 25-30 (June 1999).

This interpretation of the criterion is consistent with the policy underlying the captive production provision. As stated in the SAA, the captive production provision is intended to allow the Commission to focus on the industry's merchant market operations only when imports "compete primarily with sales of the domestic like product in the merchant market, not with the inventory internally-transferred for processing into a separate downstream article." SAA at 852 (emphasis added). Clearly, the grades or types of domestic like products that are captively consumed can be said to be competing with the subject imports when the industry sells those same grades or types on the open market. Moreover, when the industry ships the same types of merchandise in the open and captive market, this indicates the industry has the ability to shift significant production of these products between its captive operations and the merchant market. In these situations, an injury analysis that focused solely on the industry's merchant market operations would be incomplete because it would ignore the fact that the industry's captive production operations actually produce merchandise that competes (or has the potential to compete in a significant manner) with the subject merchandise.

[110] Commissioner Okun does not reach the question of whether the first statutory criterion is satisfied in these investigations.

[111] CR at II-7, PR at II-4.

[112] Commissioner Askey notes that she has previously outlined her analytical framework for examining the statutory captive production provision. See Certain Hot-Rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at 25-30 (June 1999). With regard to the third prong of the provision, she notes that in these investigations the petitioners and respondents are in disagreement regarding how the Commission should treat transfers of certain cold-rolled steel by a domestic producer to a joint venture in which the domestic producer holds some interest. Respondents argue that such transfers should be deemed merchant market sales if the domestic producer holds less than a controlling interest in the joint venture, while petitioners argue that such transfers should be deemed internal transfers. Upon review, Commissioner Askey notes that she need not decide this issue because under either approach, the third prong of the captive production provision is not satisfied under her analysis.

Specifically, Commissioner Askey notes that if the disputed transfers are deemed internal transfers, then roughly *** percent of merchant market purchases and *** percent of internal transfers are used in the production of the same downstream articles. If, on the other hand, the disputed transfers are deemed merchant market sales,

At the outset, we note that we are faced with a novel issue in these investigations. A significant portion of the production identified by the domestic industry as internal transfers in fact was sold to joint ventures and other related entities. Petitioners argue that these transactions should be considered internal transfers for purposes of the captive production provision.[113] The statute simply refers to "internal" transfers.[114] The SAA does not provide clear guidance on classifying transfers to related companies. Although the SAA defines merchant market sales as sales to "unrelated customers,"[115] it defines captive production as being processed into higher-valued downstream articles by "the same producer."[116]

We interpret this provision to draw generally a distinction between transfers within the same corporate entity and sales to other corporate entities, such as joint ventures. Absent evidence that the separate corporate structure of the related entity should be disregarded or evidence that these transactions are treated by the domestic producer and the related entity in the same manner as production that is transformed internally and processed into a downstream product by the domestic producer, we find it inappropriate to consider these transactions to be internal transfers for purposes of applying the captive production provision.

As to corporate structure, none of the related entities are under the sole control of a single domestic producer.[117] Several, in fact, are jointly owned with foreign producers of subject imports.[118] These related entities may have the authority to purchase inputs from other sources and domestic producers may not have distribution rights to all of the coated products for which they provided the substrate.[119] Finally, the record evidence regarding the valuation of sales to the related entities shows that, in at least some instances, those sales are valued differently from transfers for further processing by the domestic producer.[120] In the absence of contrary evidence, we therefore find that these transactions, accounting for approximately ***, should not be considered internal transfers for purposes of applying the captive production provision.[121]

Virtually all captive production is processed into assorted coated products and tin mill products[122] Coated products account for approximately *** percent of merchant purchases and tin mill products account for an additional *** percent for a total of approximately *** percent.[123] We find these figures large enough to indicate that the domestic like product sold in the merchant market is in fact generally used

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then roughly *** percent of merchant market purchases and *** percent of internal transfers are used in the production of the same downstream articles. Thus, Commissioner Askey concludes that under either methodology, there is a sufficient overlap in end-uses such that the domestic like product sold in the merchant market is generally used in the production of the same downstream articles resulting from captive production. Accordingly, she finds that the third prong of the captive production provision is not satisfied in these investigations.

[113] Bethlehem Posthearing Brief at 27-28.

[114] 19 U.S.C. § 1677(7)(C)(iv).

[115] SAA at 852.

[116] SAA at 852.

[117] Joint Respondents' Posthearing Brief at Vol. II, Tab B, p.11.

[118] Joint Respondents' Posthearing Brief at Vol. II, Tab B, p.11.

[119] Joint Respondents' Posthearing Brief at Vol. II, Tab B, pp.14-15. For example, Bethlehem owned *** percent of Walbridge and supplied *** percent of its cold-rolled steel requirements, but had marketing rights to only *** percent of the output. Id. At least one joint venture, ***, purchased certain cold-rolled steels from producers besides its owners. Id.

[120] See, e.g., *** Verification Report, January 24, 2000, at 3-4. See also Joint Respondents' Posthearing Brief at Vol. II, Tab B, pp.12-15.

[121] Joint Respondents' Posthearing Brief at Vol. II, Tab B, p.22; Questionnaire Response of *** at pp.4, 18, 26.

[122] CR at Table I-2, PR at Table I-2.

[123] INV-X-048, n.2.

in the production of the same downstream articles, and that the captive production provision does not apply in these investigations.

However, even when the captive production provision is not applied, we may take into consideration the existence of a significant volume of captive production as a relevant condition of competition.[124] We do so for purposes of these final determinations.

2. Other Conditions of Competition

There are a number of other conditions of competition that we have taken into account in analyzing whether the domestic industry is materially injured by reason of subject imports. First, demand for certain cold-rolled steel products has been strong and growing during the period under investigation. Overall apparent U.S. consumption increased 8.6 percent between 1996 and 1998, rising from 34.6 million short tons in 1996 to 37.6 million in 1998.[125] Consumption was 2.2 percent higher in the interim period from January to September 1999 than in the same time period in 1998.[126] Apparent open market consumption of certain cold-rolled steel increased 10.1 percent between 1996 and 1998, rising from 15.9 million short tons in 1996 to 17.5 million by in 1998.[127] Demand in the interim 1999 period showed a slight decline from interim 1998.[128]

Second, at present purchasers of certain cold-rolled steel have few substitute products available to them. Both producers and importers find that other products may be substituted for certain cold-rolled steel only under certain limited conditions.[129] Moreover, most responding purchasers report there are no substitutes for certain cold-rolled steel that they purchase for their applications.[130]

Third, a fair degree of stability exists in the relationships between suppliers and purchasers, which in turn reflects the importance of non-price considerations to purchasers. When seeking a cold-rolled steel supplier, purchasers generally are motivated primarily by quality concerns, with price being a secondary concern.[131] This is especially true for larger purchasers, such as automobile manufacturers.[132] Purchasers change suppliers infrequently.[133] Some purchasers prefer to transact business with domestic producers because of shorter lead times and fewer delivery problems.[134] These non-price considerations mitigate the interchangeability between subject imports and domestic merchandise.

Fourth, domestic producers dominate the market for certain cold-rolled steel. Total domestic shipments, including internal transfers, rose throughout the period, increasing from 32.2 million short tons

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[124] See, e.g., Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico, Invs. Nos. 731-TA-794-796 (Final), USITC Pub. 3190 (May 1999) at 14.

[125] CR at Table IV-7, PR at Table IV-7.

[126] CR at Table IV-7, PR at Table IV-7.

[127] CR at Table IV-8, PR at Table IV-8.

[128] CR at Table IV-8, PR at Table IV-8.

[129] CR at II-6, PR at II-4.

[130] CR at II-7, PR at II-4. Thin gauge hot-rolled steel has been mentioned as a potential rival for certain cold-rolled steel, but a majority of responding purchasers reported that thin gauge hot-rolled could not be used as a substitute at this time. CR at II-7, PR at II-4.

[131] CR at Table II-1, PR at Table II-1.

[132] See, e.g., Bethlehem Posthearing Brief at Exhibit 5, General Motors Corporation submission of October 26, 1998, at 7-8 ("GM is far more focused on the quality of service and product...than it is in spot market developments").

[133] CR at II-8, PR at II-5.

[134] CR at II-10, PR at II-6.

in 1996 to 34.0 million short tons by 1998, an increase of 5.4 percent. Shipments also increased by 3.0 percent in interim 1999 over interim 1998.[135] The share of total domestic consumption accounted for by domestic production slipped between 1996 and 1998, but remained above 90 percent. The domestic share rebounded somewhat in interim 1999, rising to 91.8 percent compared to 91.1 percent in interim 1998.[136] Domestic shipments to the merchant market increased from 13.5 million short tons in 1996 to 13.9 million short tons in 1998, with most of the increase occurring between 1997 and 1998.[137] Domestic merchant market shipments declined slightly between interim 1998 and interim 1999.[138] Although the share of open market consumption accounted for by domestic production dropped from 85.1 percent in 1996 to 79.3 percent in 1998, it improved in interim 1999 to 81.7 percent from 80.7 percent in interim 1998.[139]

Fifth, domestic production capacity increased over the period under investigation. Total domestic certain cold-rolled steel capacity increased from 37.1 million short tons in 1996 to 39.5 million short tons by 1998, an increase of 6.4 percent.[140] Domestic capacity increased one percent in interim 1999 over the same time period in 1998.[141] This increase in capacity included the ***.[142] ***.[143] The domestic industry was able to maintain high capacity utilization rates throughout the period. Capacity utilization reached a low of 85.9 percent in 1997 before rising to 86.4 percent in 1998.[144] The capacity utilization rate was 88.8 percent in interim 1999, compared to 87.2 percent in interim 1998.[145]

Sixth, the extent of competition between domestic production and subject imports is somewhat limited, given the domestic producers' large volume of internal transfers and contractual sales. The majority of all domestic production of certain cold-rolled steel is destined for further downstream processing by the producer, with such transfers not sold in direct competition with subject imports.[146] Moreover, most subject imports do not compete significantly with the domestic product for certain important segments of the merchant market, such as for sales to domestic automobile purchasers.[147] Approximately *** percent of all open market sales are made directly to end users, and automotive applications, from which subject imports are typically excluded, account for approximately *** percent of all open market sales.[148] The domestic production sold into the merchant market is more commonly sold by contract than are subject imports.[149] Of all domestic sales to the merchant market, *** percent were sold by contract, compared to *** percent of subject imports.[150] Contracts for the sale of domestic product

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[135] CR at Table IV-7, PR at Table IV-7.
[136] CR at Table C-1, PR at Table C-1.
[137] CR at Table IV-8, PR at Table IV-8. For purposes of the following injury discussion, we have relied on data that classifies transactions with related entities as internal transfers. We note that the domestic market shipment data are therefore understated because of the significant volume of sales to related entities.
[138] CR at Table IV-8, PR at Table IV-8.
[139] CR at Table C-2, PR at Table C-2.
[140] CR at Table C-1, PR at Table C-1.
[141] CR at Table C-1, PR at Table C-1.
[142] CR at III-4, PR at III-1.
[143] CR at II-3, PR at II-2. Other outages include a blast furnace failure at ***. CR at III-4-III-5, PR at III-1.
[144] CR at Table III-2, PR at Table III-2.
[145] CR at Table III-2, PR at Table III-2.
[146] CR at II-1, PR at II-1.
[147] Tr. at 145 (Mr. Schagrin).
[148] CR at Table I-2, PR at Table I-2.
[149] CR at V-8, PR at V-8.
[150] CR at V-8, PR at V-8.

are typically for a year, while contracts for sales of subject imports are shorter, typically three to six months.[151]

Seventh, we note that the prices of the three principal flat carbon steel products–hot rolled, cold rolled, and corrosion resistant–have tended to track each other closely over time.[152] During the period under investigation, prices for both hot-rolled steel, the major input for certain cold-rolled steel, and corrosion-resistant steel, the major downstream product, have declined.[153]

Eighth, domestic producers have made significant productivity gains[154] and are typically shipping more varied grades of cold-rolled steel to the merchant market than are subject foreign producers. Domestic products sold into the merchant market are less likely to be of common commercial grades than are subject imports. While subject imports are heavily concentrated in one common commercial grade, that grade accounted for about *** percent of domestic merchant shipments.[155]

Finally, we note the existence of an agreement signed on July 12, 1999, between Commerce and the Ministry of Trade of the Russian Federation, which limits subject imports from Russia to approximately half the level of 1998 imports.[156] Unlike a suspension agreement, this comprehensive agreement will limit subject imports from Russia notwithstanding the Commission's negative determination in the investigation regarding Russia.[157] We note that this agreement already appears to have had a significant effect on the level of subject imports, with subject imports from Russia during the interim period of 1999 falling more than one third relative to its interim 1998 levels.[158]

B. Volume of Cumulated Subject Imports

Section 771(7)(C)(I) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[159]

The volume of subject imports increased between 1996 and 1998, rising from 1.1 million short tons in 1996 to 2.2 million short tons in 1998.[160] Most of the increase occurred between 1996 and 1997, when subject imports rose by over 700,000 short tons, an increase of 67 percent.[161] Subject imports declined 7.7 percent in interim 1999 compared to interim 1998.[162] As a share of total domestic consumption, including internal transfers, subject imports rose from 3.0 percent in 1996 to 5.9 percent in 1998.[163] The share of total domestic consumption held by subject imports in interim 1999 was 5.0 percent,

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[151] CR at V-8, PR at V-8. Morever, prices and quantities are usually fixed in domestic contracts, and these contracts do not usually contain meet-or-release provisions. CR at V-8-V-9, PR at V-8.

[152] Tr. at 54-55, 64 (Mr. Bouchard).

[153] See, e.g., Joint Respondents' Prehearing Brief at Vol. I, Exhibit 2.

[154] CR at Table III-6, PR at Table III-6.

[155] CR at Table IV-4, PR at Table IV-4.

[156] This agreement is in addition to the suspension agreement under 19 U.S.C. § 1673c(c)(l), which was signed on January 13, 2000, too late to affect the data collected in these investigations. 65 Fed. Reg. 5500 (Feb. 4, 2000).

[157] See Joint Respondents' Prehearing Brief at Vol. I, Exhibit 29 for text.

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

[159] 19 U.S.C. § 1677(7)(C)(i).

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

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

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

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

compared to 5.5 percent for interim 1998.[164] The share of open market consumption accounted for by subject imports rose from 6.6 percent in 1996 to 12.7 percent in 1998.[165] Their share of open market consumption slipped from 11.9 percent in interim 1998 to 11.2 percent in interim 1999. [166]

While the volume of subject imports increased between 1996 and 1998, subject imports remained small in comparison to overall domestic consumption. The increases occurred at a time when domestic capacity utilization rates remained high despite increasing domestic capacity. Furthermore, these increases occurred primarily in the early portion of the period under investigation when the domestic industry's performance was very strong. In addition, most of the increases in subject imports occurred while ***.[167] The actual increase in subject import volume between 1997 and 1998, approximately 457,000 tons, was one percent of total apparent domestic consumption.

In 1999, subject imports declined. To some extent this decline may, as petitioners argue, reflect the filing of the petitions in June 1999. This decline also likely reflects expanding domestic production capacity and the impact of the comprehensive agreement with Russia, which reduced the volume from the largest source of subject imports.

We find that the volume of subject imports is too small to be considered significant when viewed in light of the conditions of competition in this industry, especially in light of the attenuated competition between subject imports and the domestic like product, and in light of our discussion of price effects below.

C. Price Effects of the Cumulated 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.[168]

Domestic prices for each of the three products for which pricing data was collected declined during the period of investigation, although the domestic prices typically remained well above subject import prices.[169] Prices of subject imports also declined throughout most of the period under investigation.[170] Domestic prices showed some recovery in the second and third quarters of 1999, while subject import prices continued to fall.[171]

The central issue in these investigations is the extent to which subject imports caused the price declines in the domestic market. One consistent feature of the U.S. certain cold-rolled steel market between 1996 and 1999 was the differences in prices of the subject merchandise and the domestic like product. Out of a total of 268 price/product comparisons, subject imports undersold the domestic like product in 211

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[164] CR at Table C-1, PR at Table C-1.
[165] CR at Table C-2, PR at Table C-2.
[166] CR at Table C-2, PR at Table C-2.
[167] ***. CR at II-3, PR at II-2. ***. CR at III-4, PR at III-1.
[168] 19 U.S.C. § 1677(7)(C)(ii).
[169] CR at Tables F-1-F-6, PR at Tables F-1-F-6.
[170] CR at Tables F-1-F-6, PR at Tables F-1-F-6.
[171] CR at Tables F-1, F-3, and F-5, PR at Tables F-1, F-3, and F-5.

quarters between 1996 and 1997.[172] Similarly, out of a total of 319 price/product comparisons, subject imports undersold the domestic like product in 287 quarters between 1998 and the third quarter of 1999.[173] However, in light of the conditions of competition in this industry, we do not find underselling by the imported merchandise to be significant, nor do we find that subject imports contributed to a significant degree to price suppression or depression.

While underselling has existed throughout the period, we find that the persistent price gap between subject imports and domestic prices is largely due to various differences between the domestic and imported products or sellers of those products. According to purchasers, quality, availability, and delivery are the most important non-price factors when choosing a supplier,[174] and when purchasers find a reliable supplier, they rarely change.[175] Purchasers rely on the domestic producers' ability to deliver product reliably and on a short lead time, factors of particular importance to producers operating on just-in-time inventory practices.[176] The purchase of domestic products was also found to present less risk of loss through damage than subject imports.[177] Furthermore, domestic products are generally more specialized than are the subject imports. Only *** percent of all commercial shipments of domestic certain cold-rolled steel are of the common commercial grade ASTM A-366, compared to nearly *** percent of subject imports.[178]

Domestic producers make most of their open market sales to end users and by contract.[179] The stability of supplier-purchaser relationships in the certain cold-rolled steel market, even in the face of price fluctuations, can be seen in the prevalence of the honoring of contracts, especially by larger purchasers. While petitioners claim that some contracts were abandoned or renegotiated because of the price pressure from imports, the record indicates that the vast majority of those contracts, and especially the largest of those contracts, were kept despite underselling by imports.[180]

The lack of a causal connection between the subject imports and the price declines in the market is reflected in the fact that subject import prices have generally continued to decline in 1999, while domestic prices have recovered in certain important segments. The recent recovery in domestic prices in service center sales indicates further the lack of significant price effects from subject imports, given that approximately *** percent of all subject imports are sold to service centers.[181] Moreover, no respondent purchaser mentioned any subject importer or subject producer as a price leader in the U.S. market. Instead, purchasers generally regard domestic producers as being the price leaders in the market, with *** mentioned most frequently.[182] This is further indication that subject imports do not in fact lead or significantly affect domestic prices. We also note the lack of confirmed lost sales or lost revenue allegations.[183] Total alleged lost sales amounted to only 25,100 short tons over the entire period of

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[172] CR at V-16, PR at V-11.
[173] CR at V-16, PR at V-11.
[174] CR at II-10, PR at II-5. We note that purchasers overwhelmingly listed quality as the most important factor in purchasing decisions. CR at II-6-II-7; PR at II-5. Five purchasers ranked availability first. Price was listed most important by only three of the 30 and was even listed as third most important by 11 purchasers. CR at II-6-II-7, PR at II-5.
[175] CR at II-8, PR at II-5.
[176] CR at II-10, PR at II-5.
[177] CR at II-10, PR at II-6.
[178] CR at Table IV-4, PR at Table IV-4.
[179] CR at I-10, V-8, PR at I-9, V-8.
[180] CR at V-9, PR at V-8.
[181] CR at Table I-2, PR at Table I-2.
[182] CR at V-9-V-10, PR at V-8.
[183] CR at V-16, PR at V-16.

investigation, at a time when apparent domestic consumption exceeded 30 million tons per year.[184] While we are mindful of the limitations of anecdotal lost sales and revenue information, we find the near absence of confirmed lost sales and revenues provides additional support for a general lack of significant price effects by subject imports.[185]

We find, instead, that the decline in domestic prices in 1998 and 1999 reflects a number of competitive conditions in the market and that the contribution of the small volume of subject imports was not material. Most importantly, the large and growing number of domestic participants in this market has increased competition within the domestic industry, which has been sharpened to some extent by the competitive advantages accruing to minimills and the decline in scrap prices during the period under investigation. While we recognize the relatively small size of minimills in this market, as well as some quality differences and differences in channels of distribution between minimills and integrated producers, we note that *** is regarded by some as a price leader and that Steel Dynamics, Inc., has become the first minimill to gain a contract with a major domestic automobile producer.[186]

We note that hot-rolled steel is the major input for certain cold-rolled steel.[187] Hot-rolled prices have declined throughout most of the period under investigation.[188] Falling hot-rolled prices have been particularly beneficial to re-rollers, who purchase, rather than produce, hot-rolled steel for cold-rolling.[189] While we recognize that re-rollers represent a relatively small segment of domestic production,[190] we believe that the decline in hot-rolled prices likely put downward pressure on the domestic industry's cold-rolled prices. This downward pressure is likely not only because of the presence of re-rollers but also because of the historic relationship between hot-rolled costs and prices and cold-rolled prices, whereby the market has tolerated only modest deviations from a fairly steady price margin between hot-rolled and cold-rolled steel products.[191] [192]

Another factor contributing to the price declines was the strike lasting from June 5, 1998 to July 30, 1998 at General Motors Corporation (GM).[193] GM is one of the largest consumers of carbon steel flat-rolled products in the world. Approximately 80 percent of overall GM purchases are of cold-rolled and corrosion-resistant steel.[194] As a result of the work stoppage, GM estimates that 685,000 tons of flat-rolled steel products were not purchased by GM or its suppliers.[195] We note that the majority of responding

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[184] Confirmed lost sales allegations involved a total of ***. CR at Table V-9, PR at Table V-9.

[185] In addition, respondents produced an econometric model, the results of which suggest that the subject imports had little impact on domestic prices for cold-rolled steel. Joint Respondents' Prehearing Brief, Vol. II. We closely examined the model and note that the results are consistent with our findings, and also consistent with the findings of the COMPAS model.

[186] CR at V-9-V-10, PR at V-8 (price leadership); Joint Respondents' Posthearing Brief at Vol. II, p. 27 (Steel Dynamics, Inc., automotive contract).

[187] CR at I-8, PR at I-8.

[188] See, e.g., Joint Respondents' Prehearing Brief at Vol. I, Exhibit 2.

[189] CR at V-1, PR at V-1.

[190] See CR at Table III-1, PR at Table III-1.

[191] Tr. at 54-55, 64 (Mr. Bouchard). Among other evidence, respondents pointed to a Nucor price list showing a relatively stable price gap of $110 to $120 per ton. Joint Respondents' Prehearing Brief at Vol. I, Exhibit 7.

[192] In evaluating price trends for hot-rolled and cold-rolled steel, Commissioner Okun places greater emphasis on the common costs associated with the production of hot-rolled and cold-rolled steel.

[193] Bethlehem Posthearing Brief at Exhibit 5, General Motors Corporation submission of October 26, 1998, at 4-5.

[194] Bethlehem Posthearing Brief at Exhibit 5, General Motors Corporation submission of October 26, 1998, at 2.

[195] Bethlehem Posthearing Brief at Exhibit 5, General Motors Corporation submission of October 26, 1998, at 5-6.

domestic producers (10 of 19) and importers (20 of 33) reported that the strike had a significant effect on the market in 1998, temporarily reducing demand and causing an oversupply of cold-rolled steel products.[196] The timing of the GM work stoppage corresponds more closely with the drop in domestic prices than does the largest increase in subject imports.

In sum, while the small volume of subject imports may have contributed to some extent to the price declines in the market, we conclude that the contribution of subject imports to those price declines was minimal.

D. Impact of Cumulated Subject Imports on the Domestic Industry[197]

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[198] 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 industry."[199]

We recognize that the financial condition of the industry weakened in late 1998 and into 1999. Operating income declined in 1998 and was negative for interim 1999.[200] These same results occurred for open market transactions and for the total market.[201] The deterioration in the financial condition of the industry was caused by price declines, which affected revenue.[202] However, we do not find that subject imports suppressed or depressed domestic prices to a significant degree. Accordingly, we do not find that subject imports are a cause of material injury to the domestic industry.

Moreover, despite the decline in the financial condition of the domestic industry in the latter part of the period under investigation, other factors that we are required to consider are more positive. Although

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[196] CR at II-6, PR at II-4. See also Respondents' Prehearing Brief at Vol. I., Exhibit 23, pp.7-8.

[197] 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 subject imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce's final antidumping duty margins are as follows: Argentina, 24.53 percent; Brazil, 46.68 to 63.32 percent; Japan, 39.28 to 53.04 percent; Russia, 73.98 percent; South Africa, 16.65 percent; and Thailand, 67.97 to 80.67 percent. CR at I-5, PR at I-5. Preliminary dumping margins for other countries subject to these investigations are as follows: China, 8.84 to 23.72 percent; Indonesia, 49.28 percent; Slovakia, 32.83 percent; Taiwan, 4.72 to 14.80 percent; Turkey, 8.81 to 32.91 percent; and Venezuela, 42.93 percent. CR at I-5, PR at I-5.

Only one country, Brazil, is also subject to a countervailing duty investigation. Commerce's final net subsidy margins for Brazil ranged from 7.14 percent to 10.60 percent. CR at I-5, PR at I-5. We did not take into consideration revised subsidy margins issued by Commerce on March 1, 2000, because by then the record in these investigations had closed and the parties had not had an opportunity to comment on that revised information. See 19 U.S.C. § 1677m(g). We do note that the changes were minor and in no way would affect our determinations in these investigations.

[198] 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).

[199] 19 U.S.C. § 1677(7)(C)(iii).

[200] CR at Tables VI-2 and VI-6, PR at Tables VI-2 and VI-6.

[201] CR at Tables VI-2 and VI-6, PR at Tables VI-2 and VI-6.

[202] CR at VI-6-VI-7 and Table VI-4, PR at VI-8 and Table VI-4.

the domestic industry experienced some loss of market share, domestic shipments grew in both 1997 and 1998 and are up 3.0 percent in interim 1999, as compared to interim 1998.[203]

While employment in the industry has declined, productivity has risen sharply, especially in the latter part of the period.[204] Hourly wages rose from $25.56 in 1996 to $28.55 in 1998, and rose from $28.46 to $29.88 between the interim periods.[205] Despite the wage increases, unit production costs declined from 1997 to 1998 and showed a further drop in the interim period.[206]

The industry has been able to attract capital and has made significant investments over the period. ***, for an increase in production capacity of over 2 million short tons.[207] Although declining somewhat between 1996 and 1998, capital expenditures remained significant at over $500 million in this period, and showed strong growth in interim 1999.[208]

In light of our conclusion that the volume and price effects of subject imports are not material, we do not find material injury to the domestic industry by reason of the subject imports.

IV NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

A. Cumulation for Purposes of Threat Analysis

In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more countries, the Commission has the discretion to cumulate the volume and price effects of such imports if they meet the requirements for cumulation in the context of present material injury.[209] In deciding whether to cumulate, we also consider whether the subject imports are increasing at similar rates and have similar pricing patterns.[210]

Petitioners have argued that all subject imports should be cumulated for purposes of a threat determination. Various respondents have argued against cumulation.

In these investigations, we note that the volume of subject imports from all 12 countries were higher in 1998 than in 1996.[211] The volume of subject imports declined overall in interim 1999 compared to interim 1998, but trends in the interim period were mixed, with subject imports from seven of the 12 countries declining while subject imports from the remaining five countries were increasing.[212] Prices, as shown by average unit values, declined for every country between 1996 and 1998 except for Slovakia and

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

[204] CR at Table III-6, PR at Table III-6. The number of production and related workers fell by 908, or four percent, between 1996 and 1998. In the interim period, the number of production and related workers fell by 1,101, or five percent. CR at Table III-6, PR at Table III-6. Productivity increased by 15.7 percent between 1996 and 1998. Between the interim periods productivity increased by 14.4 percent. CR at Table III-6, PR at Table III-6.

[205] CR at Table III-6, PR at Table III-6.

[206] CR at Table III-6, PR at Table III-6.

[207] CR at III-4 and Table III-2, PR at III-1 and Table III-2.

[208] CR at Table VI-8, PR at Table VI-8.

[209] 19 U.S.C. § 1677(7)(H).

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

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

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

Turkey, and the increase in average unit values of subject imports from Turkey was small.[213] Declines occurred in AUVs for subject imports from all 12 countries in interim 1999 compared to interim 1998.[214] Similar pricing patterns are shown for most countries and products, with price declines throughout the period under investigation.[215] Subject imports from most countries showed similar average margins of underselling.[216]

We recognize that, at least for some of the countries, there are factors that argue against cumulation for purposes of our threat analysis. However, on balance, we find enough overlap of conditions of competition and similarities in price and volume trends to warrant exercising our discretion to cumulate all subject imports. We therefore cumulate the dumped and subsidized imports from all countries subject to these investigations in assessing the threat of material injury to the industry by subject imports.

B. Statutory Factors

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."[217] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.[218] In making our determination, we have considered all statutory factors that are relevant to these investigations.[219] We have also taken into account the current condition of the domestic industry.[220]

While subject imports and their share of the U.S. market did increase over the period, they remained at modest levels relative to consumption in both the merchant and total market.[221] Interim period data in fact reflect a decline, and not an increase in subject imports, and the same pattern is reflected for inventories of subject merchandise in the U.S.[222] Further, the comprehensive agreement between Russia

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

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

[215] CR at Tables F-1 to F-6, PR at Tables F-1 to F-6.

[216] CR at Tables V-5 and V-6, PR at Tables V-5 and V-6.

[217] 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

[218] 19 U.S.C. § 1677(7)(F)(ii).

[219] 19 U.S.C. § 1677(7)(F)(I). Factor VII regarding raw and processed agriculture products is inapplicable to the products at issue.

Factor I requires the Commission to consider such information presented by Commerce regarding any countervailable subsidies involved, including the nature of the subsidy and whether imports are likely to increase. 19 U.S.C. § 1677(7)(F)(I). Brazil is the only country subject to a countervailing duty investigation. Commerce found that none of the subsidies in question are contingent on exports. 65 Fed. Reg. 5536, 5546-48 (Feb. 4, 2000).

[220] Suramerica de Aleaciones Laminadas, C.A. v. United States, 44 F.3d 978 (Fed. Cir. 1994). The Federal Circuit held that 19 U.S.C. § 1677(7)(F)(i) requires the Commission to consider "all relevant factors" that might tend to make the existence of a threat of material injury more probable or less probable, including domestic industry support for the petition and the views of other interested parties such as consumers. 44 F.3d at 984. The court stated that the Commission "may use its sound discretion in determining the weight to afford these and all other factors, but . . . cannot ignore them." Id. at 984. The Commission cannot limit its analysis to the enumerated statutory criteria when there is other pertinent information in the record. Id.

[221] CR at Tables C-1 and C-2, PR at Tables C-1 and C-2.

[222] CR at Table IV-2 and Table VII-13, PR at Table IV-2 and Table VII-13.

and the U.S. will limit subject imports from Russia in the imminent future, which is significant because imports from Russia accounted for 40 percent in the overall increase in subject imports between 1996 and 1998.[223] While there were outstanding orders by U.S. purchasers for subject steel from 8 of the 12 countries after September 1999, the amount was small and only two of the countries had outstanding orders for more than 10,000 tons.[224]

The subject countries are all operating at generally high rates of capacity utilization, in excess of *** for some of the subject countries in interim 1999, even while subject imports into the United States were falling.[225] There are no reported substantial increases of capacity planned in the subject countries.[226]

Most shipments from the subject countries are destined for home markets rather than for export, with less than 20 percent of total shipments being exported in 1998, the year of highest subject import volume to the United States.[227] Further, demand in the home markets is forecast to grow, lessening the likelihood of significantly increased shipments to the U.S.[228] Exports to markets other than the United States are also likely to increase, as steel consumption is forecast to grow significantly in such countries as Korea, China, Brazil, and other Asian and South American markets.[229]

The existence of outstanding antidumping duty orders in other markets as well as the recent issuance of U.S. antidumping duty orders against hot-rolled steel from Japan, Brazil, and Russia do not undermine our finding of no threat of material injury by reason of subject imports here. Most of the outstanding orders concern steel from Russia,[230] and, as noted above, Russian steel exports to the United States will be limited by the agreement between the two governments. U.S. orders on hot-rolled imports from Japan and Brazil have not led to product shifting by means of increased certain cold-rolled steel imports from those countries.[231]

In general, prices and average unit values of subject imports have continued to fall, especially in the most recent period. For the reasons outlined above, however, we find it unlikely that subject imports will have significant suppressive or depressive effects on prices or increase demand for subject imports in the imminent future. We note that domestic prices for some products and channels, especially sales to service centers, already showed some recovery in the latter part of 1999, while subject import prices continued to fall.[232]

The evidence also indicates little likelihood of other negative effects by the subject imports. While the industry experienced a decline in its financial condition, it has expanded capacity and maintained relatively high levels of capacity utilization.[233]

Thus, we do not find that the domestic industry is threatened with material injury by reason of the subject imports.

CONCLUSION

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[223] CR at Table IV-2, PR at Table IV-2.
[224] CR at VII-24, PR at VII-10.
[225] CR at Tables VII-1-VII-12, PR at Tables VII-1-VII-12.
[226] CR at Tables VII-1-VII-12, PR at Tables VII-1-VII-12.
[227] CR at Tables VII-1-VII-12, PR at Tables VII-1-VII-12.
[228] See, e.g., Joint Respondents' Prehearing Brief at 111-114.
[229] Joint Respondents' Prehearing Brief at Vol. I, Exhibit 32.
[230] CR at VII-12, PR at VII-4.
[231] CR at Tables IV-11 and IV-12, PR at Tables IV-11 and IV-12.
[232] CR at Tables F-1-F-6, PR at Tables F-1-F-6.
[233] CR at Table III-2, PR at Table III-2.

For the foregoing reasons, we determine that the domestic industry producing certain cold-rolled steel is not materially injured or threatened with material injury by reason of imports of certain cold-rolled steel from Brazil that Commerce found to be subsidized or by imports of certain cold-rolled steel from Argentina, Brazil, Japan, Russia, South Africa, and Thailand that Commerce found to be sold in the United States at less than fair value.

DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG

Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 836, and 838 (Final)

For the reasons set forth below, I determine that the domestic cold-rolled steel industry is materially injured by reason of subject imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand. Accordingly, I respectfully dissent from the negative determination of the majority.

Before proceeding to a discussion of my analysis, I would like to make some preliminary observations. A novel element present in these investigations is an econometric model proffered by respondents as "evidence" that subject imports have not caused significant price depression because the average unit value of subject imports did not significantly affect price levels for cold-rolled steel in the U.S. market during the period of investigation. As I discuss below, I am unpersuaded by respondents' "evidence." Moreover, given the apparent tension between the results of respondents' model and actual data on the record of pervasive underselling by subject imports, I find no compelling reason to depart from the Commission's traditional injury analysis, an analysis which has been employed and accepted in numerous prior investigations of steel products. In my view, the analysis necessary to address the questions posed by the statute is neither novel, nor particularly complicated or intuitive; application of the traditional injury criteria required by the statute leads readily and definitively to straightforward affirmative determinations of present material injury in these investigations.

I. Domestic Like Product and Industry:

In the preliminary determination, I joined an unanimous Commission in defining a single domestic like product comprised of all certain cold-rolled steel products.[1] Since the Commission rendered its preliminary determination, the Department of Commerce has amended the scope definition. Chief among the amendments to the scope are the exclusions of both non-rectangular shapes not in coils ("blanks"), and shadow mask steel; as a result, these products need not be considered for inclusion in the like product definition at this time. As for the remaining questions raised in the preliminary determination regarding like product,[2] in my view, the information developed in these final phase investigations reinforces the Commission's preliminary definition; therefore, I again define a single domestic like product coextensive with the scope of the subject merchandise.[3]

With regard to the definition of the domestic industry, in the preliminary determination I joined the Commission majority in defining the domestic industry as all domestic producers of certain cold-rolled steel products included within the scope of the investigations.[4] As a result, I included domestic processors of blanks within the definition of the domestic industry. Because I no longer include blanks within the

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[1] Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, Invs. Nos. 701-TA-393-396 and 731-TA-829-840 (Preliminary), USITC Pub. 3214 at 6 (July 1999) ("Preliminary Determination").

[2] Preliminary Determination at 7-8, 10 (discussing cold-rolled motor lamination steels and nonoriented electrical steels, as well as hardened and tempered high-carbon steel).

[3] I note in this regard that during the Commission's hearing, respondents argued for the first time that DOS-coated steel should be defined as a separate like product. Upon review, I am satisfied that the product in question lies within a continuum of certain cold-rolled steel products, and therefore is properly included within the definition of a single domestic like product in these investigations.

[4] Preliminary Determination at 10.

definition of a single domestic like product (following the exclusion of blanks from the scope of the subject merchandise), I no longer define the domestic industry to include domestic processors of blanks.

I further note that in the preliminary determination I joined a unanimous Commission in declining to exclude any domestic producers from the definition of the domestic industry under the related parties provision of the statute. In my view, none of the additional evidence adduced in these final phase investigations warrants a departure from that determination. Accordingly, I define a single domestic industry comprised of all domestic producers of the like product, without exclusion.

II. Negligibility:

With regard to the antidumping investigations, I note that subject imports from six countries, *i.e.* China, Indonesia, Slovakia, Taiwan, Turkey, and Venezuela, each fall below the individual negligibility threshold of 3 percent. Certain respondents argue that the Commission must assess whether imports from any one of these six subject countries are likely to imminently exceed the 3 percent threshold; if so, respondents argue that imports from such a country should not be added with imports from the other countries for purposes of assessing whether these countries together exceed the aggregate negligibility threshold of 7 percent.[5] I find this argument to be a misreading of the statute; specifically, I find that an assessment of whether imports from a particular subject country are likely to imminently exceed the 3 percent negligibility threshold is limited solely to a threat analysis under the statute, and does not find application in an analysis of present material injury. Because subject imports from the six aforementioned countries together exceed the 7 percent aggregate negligibility threshold, I find that subject imports from all countries subject to these investigations are not negligible.

III. Cumulation:

In the preliminary determination, I joined a unanimous Commission in cumulating subject imports from all twelve countries subject to these investigations.[6] Based upon the record in these final phase investigations, I again find a reasonable overlap of competition among imports from each of the twelve subject countries, and between subject imports and the domestic like product. Accordingly, I again cumulate subject imports from all twelve countries for purposes of assessing material injury to the domestic industry.

I note that certain respondents argue that the Commission is barred from cumulating the subject imports from those countries whose import volumes are below the 3 percent individual negligibility threshold.[7] I disagree. The statute does not contain an exception to the cumulation provision for imports from individual subject countries whose import volumes are below the 3 percent threshold; rather, the statute excepts imports from subject countries as to which investigations have been terminated.[8] As discussed above, I find that imports from none of the subject countries are negligible, and thus none of the instant investigations are eligible for termination; hence, the statutory exception to cumulation does not apply.

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[5] *See, e.g.,* Venezuelan Prehearing Brief, at 11-12; Venezuelan Posthearing Brief, Response to Commission Questions, at 1-4.

[6] Preliminary Determination at 19-22.

[7] *See, e.g.,* Venezuelan Prehearing Brief at 12.

[8] 19 U.S.C. § 1677(7)(G)(ii)(II).

IV. Material Injury by Reason of Subject Imports:

Captive Production–

Nearly 60 percent of domestic cold-rolled production is transferred internally for the production of downstream articles, thus satisfying the threshold criterion of the statutory captive production provision.[9] I have previously outlined my analytical framework for examining the captive production provision.[10] With regard to the third prong of the provision, I note that in these investigations the petitioners and respondents are in disagreement regarding how the Commission should treat transfers of certain cold-rolled steel by a domestic producer to a joint venture in which the domestic producer holds some interest. Respondents argue that such transfers should be deemed merchant market sales if the domestic producer holds less than a controlling interest in the joint venture, while petitioners argue that such transfers should be deemed internal transfers. Upon review, I find that I need not decide this issue because under either approach, prong three of the captive production provision is not satisfied under my analysis.

Specifically, I note that if the disputed transfers are deemed internal transfers, then roughly *** percent of merchant market purchases and *** percent of internal transfers are used in the production of the same downstream articles. If, on the other hand, the disputed transfers are deemed merchant market sales, then roughly *** percent of merchant market purchases and *** percent of internal transfers are used in the production of the same downstream articles. I conclude that under either methodology, there is a sufficient overlap in end-uses such that the domestic like product sold in the merchant market is generally used in the production of the same downstream articles resulting from captive production. Accordingly, I find that the third prong of the captive production provision is not satisfied in these investigations.

However, even in circumstances in which the captive production provision does not apply, I note that the Commission has the discretion to consider the significant volume of captive production as a condition of competition. I do so in these investigations. Accordingly, I have begun my analysis with an examination of the domestic industry and the domestic market as a whole. I have then further examined whether merchant market data, standing alone, corroborates my assessment of the domestic industry and the domestic market as a whole. Based upon both analyses, I conclude that the domestic cold-rolled steel industry is materially injured by reason of cumulated subject imports.

Other Conditions of Competition–

There are several additional conditions of competition relevant to my analysis. First, I note that U.S. consumption of certain cold-rolled steel generally increased throughout the period of investigation. Total U.S. consumption increased roughly 8.6 percent between 1996 and 1998, and 2.2 percent between interim 1998 and interim 1999, while apparent domestic consumption in the U.S. merchant market increased roughly 10.1 percent between 1996 and 1998, but declined 1.4 percent between interim 1998 and interim 1999.[11]

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[9] Confidential Report ("CR") and Public Report ("PR") Table I-2.

[10] *See* Certain Hot-Rolled Steel Products from Japan, *Views of Chairman Lynn M. Bragg, Commissioner Carol T. Crawford, and Commissioner Thelma J. Askey Regarding the Captive Production Provision*, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at 25-30 (June 1999).

[11] CR and PR Tables C-1 and C-2; *see also* Office of Investigations Memorandum INV-X-048 (March 2, 2000) (amending Table C-2). Total apparent U.S. consumption rose from roughly 34.6 million short tons in 1996 to 35.6 million short tons in 1997 and 37.6 million short tons in 1998. Between interim periods, total apparent U.S. consumption increased from roughly 28.1 million short tons in interim 1998 to 28.7 million short tons in interim 1999.

With regard to U.S. merchant market sales, apparent U.S. consumption also increased, rising from roughly

The total production capacity of the domestic industry expanded modestly, increasing 6.4 percent between 1996 and 1998, and 1.0 percent between interim 1998 and interim 1999.[12] Although production levels also increased, they did not keep pace with net capacity expansions; as a result, capacity utilization for the domestic industry declined slightly, from 87.7 percent in 1996 to 86.4 percent in 1998; between interim periods, however, capacity utilization increased slightly from 87.2 percent in interim 1998 to 88.8 percent in interim 1999. Thus, overall capacity utilization among domestic producers remains relatively high for this industry.

The record indicates that domestically produced and imported certain cold-rolled steel products are broadly interchangeable, and that as a result, competition is largely on the basis of price, although non-price factors such as quality, availability, and delivery, are also important and may limit interchangeability in particular instances.[13]

A significant portion of cold-rolled steel sold in the U.S. merchant market is sold pursuant to contracts; almost two-thirds of domestic producers' sales are made on the basis of longer-term contracts rather than on a spot basis, while importers tend to sell slightly more product on a spot rather than contract basis and even then, their contracts tend to be of shorter duration.[14]

The domestic industry is characterized by both basic oxygen furnace mills and electric arc furnaces ("EAF mills") which rely on scrap as their primary raw material. One new EAF mill commenced operation during the period of investigation.[15]

Finally, I note that a suspension agreement between the U.S. Department of Commerce and the Ministry of Trade of the Russian Federation regarding imports of cold-rolled steel from the Russian Federation was signed on January 13, 2000.[16] The data collected by Commission staff in these investigations was for the period beginning in the first quarter of 1996 through the third quarter of 1999; consequently, none of the data I considered in rendering affirmative determinations of present material injury are affected by the suspension agreement.[17]

Volume of the Subject Imports–[18]

It is apparent from the record that increasing volumes of cumulated subject imports resulted in a near doubling of subject import market share in the U.S. market between 1996 and 1998–an increase which came at the expense of the domestic industry's market share, thereby preventing domestic producers from benefitting from increasing demand, particularly in the U.S. merchant market.

15.9 million short tons in 1996 to 16.7 million short tons in 1997, and to 17.5 million short tons in 1998. Between interim periods, apparent U.S. consumption in the merchant market declined slightly, from roughly 13.0 million short tons in interim 1998 to 12.8 million short tons in interim 1999.

[12] CR and PR Table C-1.

[13] *See* CR and PR at II-8 to II-22.

[14] CR and PR at V-8.

[15] CR at III-4, PR at III-1.

[16] 64 Fed. Reg. 5500 (Feb. 4, 2000).

[17] *Accord* Certain Hot-Rolled Steel Products from Brazil and Russia, Invs. Nos. 701-TA-384 (Final) and 731-TA-806 and 808 (Final), USITC Pub. 3223 at 4 (August 1999). I further note that this suspension agreement is in addition to a comprehensive agreement dated July 12, 1999, which also set limits on imports of cold-rolled steel from the Russian Federation. Although consideration of the impact of the comprehensive agreement in these investigations is, in my view, best left to a threat analysis, I note that by the third quarter of 1999 price levels in the U.S. market began to recover from lows evidenced earlier in the period of investigation. *See* CR and PR at V-12. The comprehensive agreement thus does not implicate my finding of material injury to the domestic industry, experienced prior to the third quarter of 1999, by reason of cumulated subject imports.

[18] All data referred to in this section is derived from CR and PR Table C-1 and Table C-2 (as amended).

The volume of cumulated subject imports increased from roughly 1.1 million short tons in 1996 to 1.8 million short tons in 1997 and 2.2 million short tons in 1998; in other words, subject imports roughly doubled between 1996 and 1998. Between interim periods, subject import volumes declined modestly, from roughly 1.5 million short tons in January-September 1998 to 1.4 million short tons in January-September 1999.

The U.S. market share held by cumulated subject imports almost doubled as well, rising from 3.0 percent in 1996 to 4.9 percent in 1997, and 5.9 percent in 1998. Between interim periods, subject import market share declined modestly, from 5.5 percent in interim 1998 to 5.0 percent in interim 1999.

Total non-subject import market share increased from 3.8 percent in 1996 to 4.0 percent in 1997, before declining to 3.7 percent in 1998. Between interim periods, non-subject import market share declined from 3.4 percent in interim 1998 to 3.2 percent in interim 1999. Thus, non-subject imports do not appear to have played a significant role in the U.S. market during the period of investigation.

The domestic producers' total U.S. market share declined from 93.2 percent in 1996 to 91.1 percent in 1997 and 90.4 percent in 1998. Between interim periods the domestic producers' market share increased modestly, rising from 91.1 percent in interim 1998 to 91.8 percent in interim 1999. It is thus apparent that the near doubling of subject import market share in the U.S. market between 1996 and 1998 came entirely at the expense of the domestic industry.

The foregoing trends are corroborated by an examination of the U.S. merchant market, as the merchant market share held by cumulated subject imports also almost doubled, rising from 6.6 percent in 1996 to 10.6 percent in 1997, and 12.7 percent in 1998. Between interim periods, the share of the U.S. merchant market held by subject imports declined somewhat, from 11.9 percent in interim 1998 to 11.2 percent in interim 1999.

The share of the merchant market held by total non-subject imports increased from 8.3 percent in 1996 to 8.5 percent in 1997, before declining to 8.0 percent in 1998. Between interim periods, the share of the U.S. merchant market held by non-subject imports declined, from 7.3 percent in interim 1998 to 7.2 percent in interim 1999. Again, non-subject imports do not appear to have played a significant role in the U.S. market during the period of investigation.

The domestic producers' share of the merchant market declined from 85.1 percent in 1996 to 80.9 percent in 1997, and 79.3 percent in 1998. Between interim periods, the share of the U.S. merchant market held by domestic producers increased, rising from 80.7 percent in interim 1998 to 81.7 percent in interim 1999. Thus, it is apparent that the near doubling of subject import market share in the U.S. merchant market between 1996 and 1998 came almost entirely at the expense of the domestic industry.

As noted previously, total apparent U.S. consumption increased throughout the period of investigation, but domestic producers were prevented from benefitting from the increasing demand as subject imports increased their U.S. market share. Domestic producers' total U.S. shipments stood at 32.2 million short tons in 1996, rising to 32.4 million short tons in 1997 and 34.0 short tons in 1998; between interim periods, domestic producers' total U.S. shipments increased from 25.6 million short tons in interim 1998 to 26.3 million short tons in interim 1999. With regard to the merchant market, however, domestic producers' merchant market shipments stood at 13.5 million short tons in both 1996 and 1997, rising to only 13.9 million short tons in 1998. In both interim 1998 and interim 1999, domestic producers' merchant market shipments stood at 10.5 million short tons.

Significantly, even as total apparent U.S. consumption increased 8.6 percent between 1996 and 1998, domestic producers' U.S. shipments increased by only 5.4 percent. This disparity is even more pronounced when one examines merchant market data, as domestic producers' merchant market shipments increased only 2.6 percent between 1996 and 1998 while apparent merchant market consumption increased 10.1 percent during the same period.

In light of all the foregoing, I find that both the volume and increase in volume of cumulated subject imports were significant.

Price Effects of the Subject Imports–

As noted previously, domestically produced and subject imported cold-rolled steel products are broadly interchangeable, and competition is largely on the basis of price.[19] Commission staff collected pricing data for three products, accounting for roughly one-third of U.S. commercial shipments and between roughly one-fifth and 100 percent of U.S. shipments of subject merchandise from each of the subject countries during the period of investigation.[20] With few exceptions, prices generally declined over the period of investigation; for U.S. producers, prices tended to decline the most during 1998 and the first quarter of 1999, before recovering somewhat by the third quarter of 1999.[21] For the most part, available comparisons with country-specific pricing data collected for these three products imported from the twelve subject countries show declines of much greater magnitude than the percentage declines evidenced for domestic producers, and at prices which often resulted in substantial margins of sustained underselling; moreover, in most instances, the actual declines in the prices of subject imports did not begin to occur until the first quarter of 1998.[22]

Overall, the data permit 588 quarterly price comparisons between subject imports from the twelve countries under investigation and the domestic like product. I find significant the fact that subject imports undersold the domestic like product in 498 quarters, *i.e.* in roughly 85 percent of the price comparisons.[23] Of the twelve subject countries, only Japan presents a less compelling case, having oversold the domestic like product in a majority of price comparisons; however, even subject imports from Japan undersold the domestic like product in a majority of the price comparisons for a relatively higher volume of sales to end users.[24]

Although average unit value data are less probative due to differences in product mix among countries and over time, such data in these investigations do corroborate the trends evidenced in the pricing data collected by staff. First, I note that average unit values for imports from each of the subject countries declined during the period of investigation,[25] as did the average unit values for domestic producers[26] and for

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[19] *See* CR and PR at II-8 to II-22.

[20] *See* CR and PR at V-11.

[21] CR and PR at V-12. For example, with regard to sales to end users over the period of investigation, between the first quarter of 1996 and the third quarter of 1999 domestic producers' prices for Product 1 declined *** percent, while prices for Product 2 declined *** percent and prices for Product 3 declined *** percent; with regard to sales to service centers/converters during this period, domestic producers' prices for Product 1 declined *** percent, while prices for Product 2 declined *** percent and prices for Product 3 declined *** percent. *See* CR and PR Appendix F. Notably, these declines reflect some recovery from even lower price levels evidenced during 1998 and early 1999.

[22] *See* CR and PR Appendix F.

[23] *See* CR and PR at V-16.

[24] In sales to service centers, subject imports from Japan undersold the domestic like product in 10 out of 41 quarters, *i.e.* in roughly 24 percent of comparisons, while in sales to end users, subject imports from Japan undersold the domestic like product in 25 out of 45 quarters, *i.e.* in roughly 56 percent of comparisons. *See* CR and PR Table V-5 and V-6. This results in an overall incidence of underselling by subject imports from Japan of roughly 41 percent, *i.e.* 35 out of 86 price comparisons. I note, however, that at least during 1998, roughly *** percent of the volume of U.S. commercial shipments of subject imports from Japan were sold to service centers while roughly *** percent were sold to end users. *See* CR and PR Table I-2. I find that the overall incidence of overselling by subject imports from Japan thus masks the impact of predominant underselling by relatively higher volumes of sales to end users. In addition, I note that even sales of subject imports from Japan to service centers evidenced an average margin of underselling during interim 1999. *See* CR and PR Table V-5.

[25] The declines in the average unit values of subject imports between 1996 and interim 1999 for ten of the twelve subject countries are as follows: Argentina, 23.2 percent; Brazil, 29.0 percent; China, 30.0 percent;

total non-subject imports.[27] During the period 1996 through 1998, the average unit values of subject imports from each of the subject countries generally were lower in comparison to domestic producers' average unit values; in interim 1999, only the average unit value of subject imports from Japan was higher than that of domestic producers.[28]

Non-subject imports do not appear to have negatively impacted price levels in the U.S. market. In 1996, 1997, 1998, and both interim 1998 and interim 1999, the average unit value of total non-subject imports remained substantially higher than the average unit value of domestic producers' total U.S. shipments; with regard to the U.S. merchant market, the average unit value of total non-subject imports remained higher than the average unit value of domestic producers' merchant market shipments in 1996, 1997, and 1998, as well as interim 1998.[29] In interim 1999, the average unit value of total non-subject imports was roughly the same as that for domestic producers' merchant market shipments. Notably, in the vast majority of instances, the average unit value of non-subject imports was substantially higher than the average unit value of subject imports from each of the twelve subject countries.

The availability of low-priced subject imports affected the market in two ways. As noted, domestic producers tend to sell on a longer-term contract rather than spot basis, while importers tend to sell slightly more product on a spot rather than contract basis and even then, their contracts tend to be of shorter duration. Importantly, a majority of purchasers responding to the Commission's questionnaire indicated that the increased availability of subject imports at prices which substantially undersold the domestic like product would have a significant effect on price negotiations with suppliers, tending to lower prices or limit suppliers' ability to raise prices.[30] Given the broad interchangeability between subject imports and the domestic like product, the availability of low-priced subject imports provided leverage with which contract prices could be negotiated downward. In addition, the record indicates that domestic producers were required by purchasers to prematurely renegotiate almost one-fifth of their contract sales since the beginning of 1996 due to lower spot market prices, even though contracts do not usually contain meet-or-release provisions.[31] Thus, domestic producers were not shielded by longer-term contracts from the negative price effects of increasing volumes of low-priced imports.[32]

Indonesia, 27.5 percent; Japan, 20.7 percent; Russia, 26.2 percent; Slovakia, 17.3 percent; South Africa, 16.9 percent; Turkey, 21.4 percent; Venezuela 23.0 percent. *See* CR and PR Table C-1. With regard to Taiwan and Thailand, the average unit values of subject imports in 1996 and 1997 do not appear comparable; however, I note that between 1998 and interim 1999, the average unit values of subject imports from these two countries declined as follows: Taiwan, 18.8 percent; Thailand, 8.9 percent. *See* CR and PR Table C-1.

[26] This is true of both total U.S. shipments and merchant market shipments only. With regard to total U.S. shipments, domestic producers' average unit value declined 10.1 percent between 1996 and interim 1999. *See* CR and PR Table C-1. With regard to merchant market shipments only, domestic producers' average unit value declined 11.0 percent during the same period. *See* CR and PR Table C-2 (as amended).

[27] Between 1996 and interim 1999, the average unit value of total non-subject imports declined *** percent. *See* CR and PR Table C-1.

[28] *See* CR and PR Table C-1 and Table C-2 (as amended).

[29] *See* CR and PR Table C-1.

[30] CR and PR at V-9. I note that less than half of the responding purchasers identified either a specific firm or group of firms as price leader(s) in the U.S. market, and that among those purchasers that did respond, an array of domestic firms was identified. *See* CR and PR at V-9 and V-10.

[31] CR and PR at V-9.

[32] I note in this regard that, not only did subject import volumes increase significantly during the period of investigation, but inventories of subject imports in the United States increased significantly as well, more than tripling between 1996 and 1998. *See* CR and PR Table C-1. Thus, low-priced unfairly traded subject imports were well-positioned to negatively affect the pricing of increasing consumption in the U.S. market.

It has been argued by respondents in these investigations that declining prices for hot-rolled steel and resulting competition among domestic cold-rolled steel producers are a primary cause of price declines evidenced in the U.S. market for cold-rolled steel over the period of investigation. In my view, this argument is clearly contradicted by the record evidence in these investigations. Although the unit cost of goods sold ("COGS") for domestic producers' total U.S. shipments declined 0.3 percent between 1996 and 1998, over the same period the average unit value of domestic producers' total U.S. shipments declined 3.6 percent, while the net sales unit value declined 3.4 percent; between interim periods, domestic producers' unit COGS declined 3.6 percent while the average unit value of their total U.S. shipments declined 9.8 percent and the net sales unit value declined 9.1 percent.[33] It is thus apparent that significantly increasing imports of broadly interchangeable subject merchandise, at prices which predominantly undersold the domestic like product, are largely the cause of significant price declines in the U.S. market, rather than declines in raw materials costs which contributed to the relatively minimal declines in domestic producers' cost of goods sold evidenced on the record.

Yet respondents proffer the results of an econometric model indicating that the average unit value of subject imports did not significantly affect price levels for cold-rolled steel in the U.S. market during the period of investigation, as "evidence" that subject imports have not caused significant price depression.[34] I remain unpersuaded by respondents' argument for a number of reasons.

First, I note that in every Title VII investigation, the Commission is bound by statute to examine whether there has been significant price underselling by subject imports as compared to the domestic like product.[35] The underselling evidenced in the record in these investigations is pervasive, indeed substantially exceeding levels that have been found to be significant in previous steel investigations.[36] The model results proffered by respondents simply fail to account for such extensive underselling, nor do respondents attempt to reconcile their results with evidence of underselling in the record. Perhaps the tension between the model results and the actual data on the record is attributable in part to the fact that the model entails an analysis of average unit values. The Commission has, in prior investigations, only resorted to average unit value data as a proxy for the prices of commodity-type products where actual pricing data is either unavailable or of questionable reliability; importantly, the Commission routinely acknowledges that the probative value of such data is diminished when the data encompass a range of product types and specifications falling on a

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[33] *See* CR and PR Table C-1.

[34] Joint Prehearing Brief of Respondents, Vol. II, Econometric Study of Thomas J. Prusa, Ph.D. The study indicates that the average unit value of hot dip galvanized steel, production capacity for galvanized steel, the average unit value of domestic hot-rolled sheet, and the average unit value of imported hot-rolled sheet, have all directly affected the domestic average unit value of cold-rolled steel.

With regard to galvanized steel, respondents argue that the near doubling in galvanizing capacity between 1991 and 1999 resulted in overcapacity and that such capacity currently exceeds demand, thereby driving down the price of galvanized steel; respondents further argue that this decline in galvanized prices exerted negative pressure on prices for cold-rolled steel, which is used as the input in the production of galvanized steel. Joint Prehearing Brief of Respondents, Vol. I, at 13-16 & Vol. II, Tab A, at 27. Upon review, I do not find conclusive evidence in the record of a downstream price effect negatively pressuring cold-rolled steel prices in the U.S. market; to the contrary,

I note that while such an effect, if it exists, should more readily impact the pricing of captively consumed cold-rolled steel, the record instead indicates that the decline in the average unit value of domestic producers' merchant market shipments <u>exceeded</u> the decline in the average unit value of domestic producers' total U.S. shipments. *See* CR and PR Table C-2 (as amended).

[35] 19 U.S.C. § 1677(7)(C)(ii).

[36] *See, e.g.,* <u>Certain Hot-Rolled Steel from Japan</u>, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at 14-15 (July 1999) (incidence of underselling by subject imports from Japan increasing to 45 out of 67 comparisons, or 67.2 percent, in 1998, found to be consistent with the price depressing effects of subject imports that year).

continuum which comprises the domestic like product. I believe this is precisely the situation confronting the Commission in these investigations. Moreover, as I have discussed, to the extent AUV data have probative value in these investigations, such data in fact corroborate the trends evidenced in the product pricing data collected by Commission staff.

In the end, putting aside questions regarding the probative value of AUV comparisons as well as other limitations in the underlying data set,[37] I am satisfied that respondents' model does not show that subject imports have not affected domestic prices.[38] As a result, I find that respondents' model does not help me to answer the questions that I am required to answer pursuant to the statute. To the extent that there is a tension in these investigations between the results of a novel econometric model and record evidence of pervasive underselling (the type of data collected and relied upon by the Commission in each Title VII investigation, pursuant to the statute), I believe the analysis required of me by the statute compels reliance upon the evidence of pervasive underselling, and the conclusions to be drawn therefrom.

Indeed, if respondents' model is to be believed, then prices for certain cold-rolled steel in the U.S. market declined as a result of declining prices for hot-rolled steel and negative pricing pressure exerted by the downstream galvanized steel industry; yet this explanation leaves unanswered a compelling and fundamental question; that is, whether it was a matter of sheer coincidence that significantly increasing volumes of broadly interchangeable cumulated subject imports undersold the domestic like product in 85 percent of quarterly pricing comparisons, often by substantial margins of underselling, and purportedly without significant effect on price levels in the U.S. market. I reject the conclusion that such aggressive price-based competition from increasing volumes of subject imports was a matter of sheer coincidence with declining price levels in the U.S. market. In sum, I find that respondents' explanation is not credible because it fails to explain away the nature and extent of the actual and documented competition confronted by domestic producers from subject imports.

Accordingly, for all the foregoing reasons, I find that apart from any other contributing factors, pervasive underselling by subject imports throughout the period of investigation caused significant price depression in the U.S. market for certain cold-rolled steel.

Impact of the Subject Imports–

Notwithstanding the increases in apparent U.S. consumption and U.S. shipments by domestic producers over the period of investigation, the data depict a sharp deterioration in the financial health of the domestic industry, resulting from significant declines in U.S. price levels and shrinking U.S. market shares that I have found were by reason of subject imports. The deterioration in the financial condition of the domestic industry is evident both in total U.S. market data and in merchant market data.

First, as noted previously, the domestic cold-rolled steel industry lost market share throughout the period of investigation, at the same time that subject imports roughly doubled in both absolute volume and market share. In terms of total apparent U.S. consumption, the increase in subject import volume between 1996 and 1998 accounted for roughly 39 percent of the increase in total apparent U.S. consumption between those years.[39] In terms of merchant market sales only, the increase in subject import volume

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[37] *See* Office of Economics Memorandum EC-X-014 (March 2, 2000) (*e.g.*, possible contamination of domestic cold-rolled pricing series with subject import prices; a less than "high" correlation among subject import prices for Product 1 from the twelve subject countries).

[38] *See* CR and PR at II-23 and II-24.

[39] *See* CR and PR Table C-1. All data and comparisons referred to in this discussion concerning total U.S. market operations for the domestic industry are found at CR and PR Table C-1.

between 1996 and 1998 captured roughly 72 percent of the increase in U.S. merchant market sales between those years.[40]

With regard to total U.S. market operations, financial indicators for domestic producers evidence that between 1996 and 1998, gross profits declined 31.4 percent, while operating income declined 70.0 percent. Net sales quantity increased 4.5 percent during this period, while the net sales unit value declined 3.4 percent. As the number of firms posting operating losses increased from 4 out of 18 in 1996 to 6 out of 19 in 1998, the operating margin realized by the domestic industry declined from 5.0 percent in 1996 to 1.5 percent in 1998. Capital expenditures declined 10.9 percent between 1996 and 1998. A comparison of interim data shows that gross profits declined 81.0 percent between interim 1998 and interim 1999, while operating income declined over threefold, resulting in an operating loss of over $380 million in interim 1999. Net sales quantity increased 2.8 percent between these periods, while the net sales unit value declined 9.1 percent. Notably, the number of firms posting operating losses increased from 6 out of 19 in interim 1998 to 11 out of 19 in interim 1999. The operating margin realized by the domestic industry declined from 2.5 percent in interim 1998 to negative 3.6 percent in interim 1999.

With regard to merchant market operations, financial indicators for domestic producers evidence that between 1996 and 1998, gross profits declined 33.2 percent, while operating income declined 66.4 percent. Net sales quantity increased 2.3 percent during this period, while the net sales unit value declined 4.0 percent. The operating margin realized by the domestic industry declined from 5.4 percent in 1996 to 1.9 percent in 1998. In addition, domestic producers' U.S. market share declined from 85.1 percent to 79.3 percent, and the unit cost of goods sold declined by only 0.8 percent.

A comparison of interim data shows that gross profits declined 71.4 percent between interim 1998 and interim 1999, while operating income declined over 100 percent, resulting in an operating loss of over $120 million in interim 1999. Net sales quantity declined 0.7 percent between these periods, while the net sales unit value declined 8.1 percent. The operating margin realized by the domestic industry declined from 2.6 percent in interim 1998 to negative 2.7 percent in interim 1999. In addition, domestic producers' U.S. market share increased slightly from 80.7 percent to 81.7 percent, and the unit cost of goods sold declined by only 3.3 percent.

I further note that between 1996 and 1998, the number of U.S. production workers declined 4.0 percent, while domestic producers' inventories increased 4.4 percent and inventories of subject imports in the U.S. market more than tripled. A comparison of interim data shows that the number of U.S. production workers declined 4.9 percent between interim 1998 and interim 1999, while domestic producers' inventories increased 0.3 percent and inventories of subject imports in the U.S. market declined roughly 31 percent.

Importantly, the adverse impact of subject imports on the domestic industry was not limited to the integrated domestic producers. For example, Nucor, a mature and efficient minimill, experienced a *** percent decline in operating income between 1996 and 1998 with regard to total U.S. shipments, and a *** percent decline with regard to U.S. merchant market shipments during the same period.[41] With regard to either measure, Nucor's operating margin in interim 1999 was roughly *** that evidenced during 1996.[42]

In sum, the foregoing data demonstrate that the domestic industry, including both integrated producers and minimills, suffered a significant broad-based financial deterioration notwithstanding

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[40] *See* CR and PR Table C-2 (as amended). All data and comparisons referred to in this discussion concerning U.S. merchant market operations for the domestic industry are found at CR and PR Table C-2, as amended by Office of Investigations Memorandum INV-X-048 (March 2, 2000).

[41] *See* CR and PR Tables VI-2 and VI-6. These declines occurred notwithstanding the fact that, in 1998, Nucor's cost of goods sold was significantly less than the domestic industry's average. *See* Post-Hearing Brief of Petitioners at A-19.

[42] *See* CR and PR Tables VI-2 and VI-6.

increasing apparent U.S. consumption throughout the period of investigation. This occurred even as unfairly traded subject imports pervasively undersold the domestic like product in increasing volumes, resulting in a significant increase in U.S. market share. By any measure, the sustained decline in the domestic industry's financial performance culminated in staggering losses during interim 1999; these losses are the result of unprecedented declines in price levels in the U.S. market which, I have found, are directly attributable to subject imports. Based upon all of the foregoing, I determine that subject imports have had a significant adverse impact on the domestic industry producing certain cold-rolled steel.

V. Critical Circumstances:

In its final antidumping determination regarding Brazil, Commerce made affirmative findings of critical circumstances with respect to imports from USIMINAS/COSIPA, CSN, and the "all others" category. In its final antidumping determination regarding Japan, Commerce made affirmative findings of critical circumstances with respect to imports from four Japanese companies: Nippon, Kawasaki, Kobe, and Nisshin. Commerce made a negative critical circumstances finding with respect to the "all others" category for Japan. Finally, Commerce determined that critical circumstances do not exist for Thailand.

As a result Commerce's determinations and my affirmative determinations of present material injury in the instant investigations, I am also required to render critical circumstances determinations for Brazil and Japan. Thus, I must determine whether the subject imports at issue are likely to undermine seriously the remedial effect of an antidumping duty order.

I note that in the Commission's investigation of *Certain Hot-Rolled Steel Products from Japan*, I based my affirmative critical circumstances determination upon a comparison of subject import volumes during the two-month period before and after the filing of the petition.[43] With regard to Brazil in the instant investigations, I note that the volume of subject imports at issue increased 2.2 percent in the two months following the filing of the petition, as compared with the two months preceding the filing of the petition.[44] The record also permits a comparison of three, four, five, and six month periods preceding and following the filing of the petition; each comparison evidences a decline in the volume of subject imports at issue following the filing of the petition. Accordingly, regardless of the period of comparison examined, I find that there has not been a massive surge in imports, such that the remedial effect of an order on Brazil will be undermined seriously absent an affirmative critical circumstances determination.

With regard to Japan, I note that the volume of subject imports at issue increased 9.1 percent in the two months following the filing of the petition, as compared with the two months preceding the filing of the petition.[45] The record also permits a comparison of three, four, five, and six month periods preceding and following the filing of the petition; each comparison evidences a decline in the volume of subject imports at issue following the filing of the petition. Accordingly, regardless of the period of comparison examined, I find that there has not been a massive surge in imports, such that the remedial effect of an order on Japan will be undermined seriously absent an affirmative critical circumstances determination.

For the foregoing reasons, I render negative critical circumstances determinations with regard to Brazil and Japan in these investigations.

VI. Conclusion:

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[43] Certain Hot-Rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at 23 n.129 (June 1999).

[44] The data and associated comparisons referred to in this discussion are derived from CR and PR Table IV-11.

[45] The data and associated comparisons referred to in this discussion are derived from CR and PR Table IV-12.

For the foregoing reasons, I determine that the domestic industry producing certain cold-rolled steel is materially injured by reason of subject imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand. In addition, I render negative critical circumstances determinations with regard to Brazil and Japan in these investigations.