

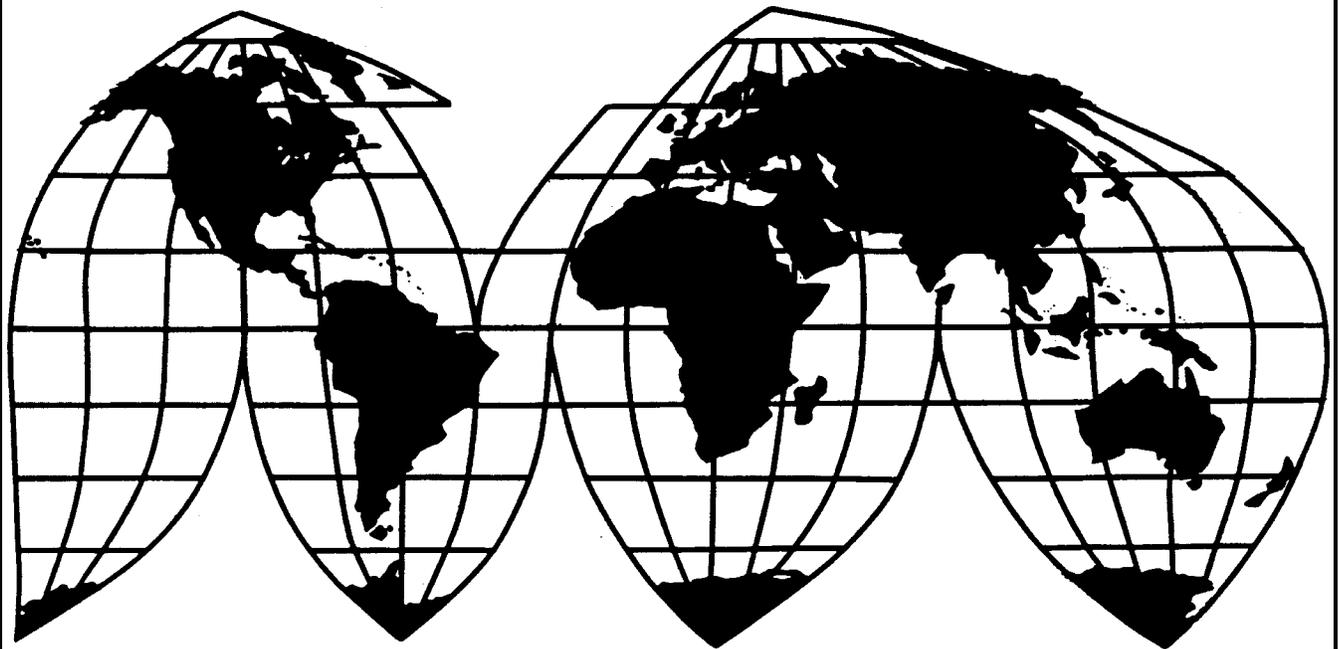
Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden

Investigations Nos. 701-TA-269 & 270 (Review)
and 731-TA-311-317 and 379-380 (Review)

Publication 3290

April 2000

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-269-270 (Review) and
731-TA-311-317 and 379-380 (Review)

BRASS SHEET AND STRIP FROM BRAZIL, CANADA, FRANCE, GERMANY,
ITALY, JAPAN, KOREA, THE NETHERLANDS, AND SWEDEN¹

DETERMINATIONS

On the basis of the record² developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the countervailing duty orders on brass sheet and strip from Brazil and France, and the antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, and Japan, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³ The Commission further determines that revocation of the antidumping duty orders on brass sheet and strip from Korea, the Netherlands, and Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁴

BACKGROUND

The Commission instituted these reviews on February 1, 1999 (64 F.R. 4892) and determined on May 6, 1999 that it would conduct full reviews (64 F.R. 27294, May 19, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on July 19, 1999 (64 F.R. 38688). The hearing was held in Washington, DC, on February 10, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The investigation numbers are as follows: Brazil is 701-TA-269 (Review) and 731-TA-311 (Review), Canada is 731-TA-312 (Review), France is 701-TA-270 (Review) and 731-TA-313 (Review), Germany is 731-TA-317 (Review), Italy is 731-TA-314 (Review), Japan is 731-TA-379 (Review), Korea is 731-TA-315 (Review), the Netherlands is 731-TA-380 (Review), and Sweden is 731-TA-316 (Review).

² The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

³ Commissioner Thelma J. Askey dissenting with respect to Brazil and Canada.

⁴ Chairman Lynn M. Bragg dissenting with respect to Korea and the Netherlands and Commissioner Deanna Tanner Okun dissenting with respect to Korea.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the countervailing duty orders on brass sheet and strip from Brazil and France, and the antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, and Japan, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹ The Commission further determines that revocation of the antidumping duty orders on brass sheet and strip from Korea, the Netherlands, and Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

I. BACKGROUND

In December 1986, the Commission determined that an industry in the United States was being materially injured by reason of imports of brass sheet and strip from Brazil that were being subsidized by the Government of Brazil and by reason of imports of brass sheet and strip from Brazil, Canada and Korea that were being sold in the United States at less than fair value (LTFV).³ The Department of Commerce issued a countervailing duty order on brass sheet and strip from Brazil and antidumping duty orders with respect to Brazil, Canada and Korea the next month.⁴ On February 19, 1987, the Commission determined that an industry in the United States was being materially injured by reason of subsidized imports of brass sheet and strip from France and LTFV imports of brass sheet and strip from France, Germany, Italy, and Sweden.⁵ Commerce issued a countervailing duty order on brass sheet and strip from France and antidumping duty orders on brass sheet and strip from France, Germany, Italy, and Sweden the next month.⁶ On July 29, 1988, the Commission determined that an industry in the United States was being

¹ Commissioner Thelma J. Askey dissenting with respect to Brazil and Canada. See Concurring and Dissenting Views of Commissioner Thelma J. Askey. Commissioner Askey joins in sections I, II, III.A, and IV.A of these views.

² Chairman Lynn M. Bragg dissenting with respect to Korea and the Netherlands, and Commissioner Deanna Tanner Okun dissenting with respect to Korea. See Dissenting Views of Commissioner Deanna Tanner Okun. Chairman Bragg provides a separate analysis of cumulation in these grouped reviews. See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation.

³ Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea, Inv. No. 701-TA-269 (Final), 731-TA-311, 312, and 315 (Final), USITC Pub. 1930 (Dec. 1986) (original Brazil/Canada/Korea determination).

⁴ Antidumping duty orders: Brazil, 52 Fed. Reg. 1214; Korea, 52 Fed. Reg. 1215; Canada, 52 Fed. Reg. 1217 (Jan. 12, 1987). Countervailing duty order: Brazil, 52 Fed. Reg. 698 (Jan. 8, 1987).

⁵ Certain Brass Sheet and Strip from France, Italy, Sweden, and West Germany, Inv. No. 701-TA-270 (Final), 731-TA-313, 314, 316, and 317 (Final), Pub. 1951 (Feb. 1987) (“original France/Italy/Sweden/Germany determination”). The Commission’s determination with respect to Italy was affirmed in LMI-La Metalli Industriale, S.p.A. v. United States, 13 CIT 305, 712 F. Supp. 959 (1989), aff’d in part, rev’d in part, 912 F.2d 455 (Fed. Cir. 1990) (only Commerce issues were appealed to the CAFC). The Commission’s affirmative determination with respect to Sweden was affirmed in Granges Metallverken AB v. United States, 13 CIT 471, 716 F. Supp. 17 (1989).

⁶ Antidumping duty orders: France, 52 Fed. Reg. 6995; Italy, 52 Fed. Reg. 6997; Sweden, 52 Fed. Reg. 6998 (Mar. 6, 1987) (Italy amended 52 Fed. Reg. 11299 (Apr. 8, 1987)). Countervailing duty order: France, 52 Fed. Reg. 6966 (Mar. 6, 1987).

materially injured by reason of LTFV imports of brass sheet and strip from Japan and the Netherlands.⁷ Commerce issued antidumping duty orders with respect to brass sheet and strip from Japan and the Netherlands the next month.⁸ In January 1990, the Commission determined again, on remand from the Court of International Trade, that an industry in the United States was being materially injured by reason of LTFV imports of brass sheet and strip from Japan and the Netherlands.⁹

On February 1, 1999, the Commission instituted reviews pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), to determine whether revocation of the countervailing duty orders on brass sheet and strip from Brazil and France and the antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden would likely lead to the continuation or recurrence of material injury to a domestic industry.¹⁰

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.¹¹ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

In these reviews, the Commission received responses to the notice of institution from: (1) several domestic brass mills, rerollers, and domestic union/worker groups;¹² (2) Wolverine Tube (Canada) Inc., a producer/exporter in Canada, (3) Outokumpu Copper Strip B.V., a producer/exporter in the Netherlands;

⁷ Certain Brass Sheet and Strip from Japan and the Netherlands, Inv. Nos. 731-TA-379 and 380 (Final), USITC Pub. 2099 (Jul. 1988) (“original Japan/Netherlands determination”). The Commission’s determination with respect to Japan was affirmed in Cambridge Lee Industries v. United States, 13 CIT 1052, 728 F. Supp. 748 (1989).

⁸ Japan, 53 Fed. Reg. 30454; Netherlands, 53 Fed. Reg. 30455 (Aug. 12, 1988).

⁹ Certain Brass Sheet and Strip from Japan and the Netherlands, Inv. Nos. 731-TA-379 and 380 (Remand), USITC Pub. 2255 (Jan. 1990). The Commission’s remand determination with respect to the Netherlands was affirmed in large part in Metallverken Netherland B.V. and Outokumpu Metallverken, Inc. v. United States, 13 CIT 471, 716 F. Supp. 17 (1989), and remanded with respect to one Commissioner’s affirmative threat determination. The Commission’s affirmative remand result was affirmed by the Court in Metallverken Netherland B.V. and Outokumpu Metallverken, Inc. v. United States, 14 CIT 481, 744 F. Supp. 281 (1990).

¹⁰ 64 Fed. Reg. 4892 (Feb. 1, 1999).

¹¹ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

¹² Domestic brass mills are Hussey Copper Ltd., Olin Corp.-Brass Group, Outokumpu American Brass, PMX Industries, Inc., and Revere Copper Products, Inc.; Heyco Metals, Inc. is a domestic reroller; and union/worker groups are the International Association of Machinists and Aerospace Workers, and the United Auto Workers Local 1024 and Local 2367, and the United Steelworkers of America, U.S. union/worker groups. PMX did not support continuation of the order on brass sheet and strip from Korea, and Outokumpu American Brass did not support continuation of the order on brass sheet and strip from the Netherlands.

and (4) Outokumpu Copper Strip A.B., a former producer/exporter in Sweden.¹³ No response to the notice of institution was filed by any producer, importer, or exporter of subject merchandise in Brazil, France, Germany, Italy, Japan, or Korea.

On May 6, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate with respect to all reviews and that the respondent interested party group responses for Canada and the Netherlands were adequate. The Commission further determined to conduct full reviews concerning Canada and the Netherlands based on the adequate group responses and to conduct full reviews concerning Brazil, France, Germany, Italy, Japan, Korea, and Sweden to promote administrative efficiency in light of its decision to conduct full five-year reviews concerning Canada and the Netherlands.¹⁴

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

1. Background

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”¹⁵ 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 under this subtitle.”¹⁶ In a section 751(c) review, the Commission must also take into account “its prior injury determinations.”¹⁷

Commerce described the merchandise subject to the antidumping and countervailing duty orders under review (using virtually identical terms in each of its final five-year review determinations) as brass sheet and strip, coiled, wound-on-reels (traverse wound), and cut-to length, other than leaded and tinned, having a solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.1888 inch (4.8 millimeters) in finished thickness or gauge, regardless of width, currently defined in the Copper Development Association (“CDA”) 200 Series or the Unified Numbering System (“UNS”) C20000 series.¹⁸ The distinction between brass sheet and brass strip is variously based on whether it is cut to length

¹³ Outokumpu Copper Strip A.B. noted that it did not produce subject merchandise any longer in Sweden and the Commission therefore determined it was not an interested party. Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Explanation of Commission Determinations of Adequacy (May 1999).

¹⁴ See Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Explanation of Commission Determinations of Adequacy (May 1999). Commissioner Crawford dissented from the decision to conduct full reviews concerning Brazil, France, Germany, Italy, Japan, Korea, and Sweden.

¹⁵ 19 U.S.C. § 1677(4)(A).

¹⁶ 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (CIT, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁷ 19 U.S.C. § 1675a(a)(1)(a).

¹⁸ 65 Fed. Reg. 735 (Jan. 6, 2000) (Netherlands) (Antidumping); 64 Fed. Reg. 66165 (Nov. 24, 1999) (Canada) (Antidumping); 64 Fed. Reg. 49767, 49768 (Sept. 14, 1999) (Germany) (Antidumping); 64 Fed. Reg. 49765 (Sept. (continued...))

(sheet) or coiled or wound on reels (strip),¹⁹ or on differences in the width of the product (*e.g.*, over 20 inches being sheet, not over 20 inches being strip).²⁰ The chief characteristic of C20000 series brass sheet and strip are ease of manufacture because of excellent forming and drawing properties, attractive surface appearance, fair electrical conductivity, good corrosion resistance, and good strength.²¹ Brass sheet and strip is used in electronics, electronic terminals, automotive parts, apparel fasteners, cable wrap, eyelets, jewelry and other ornamentation, building and lock hardware, radiators, transportation equipment, coinage, medical devices, ammunition, telecommunications equipment, household products, industrial machinery and equipment, stampers and component parts, welded tubes, and miscellaneous industrial applications.²²

The starting point of the Commission's like product analysis in a five-year review is the like product definition in the Commission's original determination.²³ In each of the original investigations, the Commission defined the domestic like product as all brass sheet and strip, coterminous with the scope of the subject merchandise.²⁴ In the Brazil/Canada/Korea investigations and the France/Italy/Sweden/Germany investigations, the Commission rejected arguments that brass sheet and strip sold for rerolling (reroll) and the finished product be defined as separate like products.²⁵ In the

¹⁸ (...continued)

14, 1999) (Japan) (Antidumping); 64 Fed. Reg. 49444 (Sept. 13, 1999) (Sweden) (Antidumping); 64 Fed. Reg. 48369, 48370 (Sept. 3, 1999) (France) (Countervailing); 64 Fed. Reg. 48367 (Sept. 3, 1999) (Brazil) (Countervailing); 64 Fed. Reg. 48351 (Sept. 3, 1999) (Brazil, France, Korea) (Antidumping); 64 Fed. Reg. 48348 (Sept. 3, 1999) (Italy) (all included CR Appendix A). Commerce additionally stated that the scope of the orders does not include products the chemical compositions of which are defined by other C.D.A. or U.N.S. series, and that the merchandise is currently classifiable under item numbers 7409.21.00 and 7409.29.00 of the Harmonized Tariff Schedules of the United States ("HTSUS"). *Id.*

¹⁹ CR at I-17, PR at I-15.

²⁰ Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea, Inv. No. 701-TA-269 (Final), 731-TA-311, 312, and 315 (Final), USITC Pub. 1930 (Dec. 1986) at 6.

²¹ CR at I-17, PR at I-15.

²² CR at I-17-I-18, PR at I-15.

²³ In the like product analysis for an investigation, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price. *See The Timken Co. v. United States*, 913 F. Supp. 580, 584 (CIT 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. *See, E.g. S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington*, 747 F. Supp. at 748-49.

²⁴ "Brass sheet and strip are products of a solid rectangular cross section that is over 0.006 inch but not over 0.188 inch thick, in coils or cut to length, whether or not corrugated or crimped. Sheet is over 20 inches wide, and strip is not over 20 inches wide. The articles under investigation are brass sheet and strip known as the CDA 200 or UNS C20000-series." Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea, Inv. No. 701-TA-269 (Final), 731-TA-311, 312, and 315 (Final), USITC Pub. 1930 (Dec. 1986) at 5-9. Accord, Certain Brass Sheet and Strip from France, Italy, Sweden, and West Germany, Inv. No. 701-TA-270 (Final), 731-TA-313, 314, 316, and 317 (Final), Pub. 1951 (Feb. 1987) at 5-10; Certain Brass Sheet and Strip from Japan and the Netherlands, Inv. Nos. 731-TA-379 and 380 (Final), USITC Pub. 2099 (Jul. 1988) at 3-10 (as in the prior investigations, the like product defined as all U.N.S. C20000 domestically produced brass sheet and strip).

²⁵ Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea, Inv. No. 701-TA-269 (Final), 731-TA-311, 312, and 315 (Final), USITC Pub. 1930 (Dec. 1986) at 6-9. Accord, Certain Brass Sheet and Strip

(continued...)

Brazil/Canada/Korea investigations, the Commission found that reroll and finished products are metallurgically identical and produced in the same manner.²⁶ In the France/Italy/Sweden/Germany investigations, the Commission explained that the majority of questionnaire responses stated that brass sheet and strip for reroll could not be distinguished on the basis of physical characteristics and that reroll could be used for something other than rerolling. It found that the degree of further processing, if any, required to convert the reroll material into finished product depends on the intended end use for the particular brass sheet or strip and, thus, there is no clear distinction between reroll and finished product.²⁷ In the Japan/Netherlands investigations, the Commission rejected arguments that 48-inch-wide Muntz metal and architectural bronze constituted a like product separate from other brass sheet and strip.²⁸

2. Analysis and Finding

In these reviews, no party has argued for any change in the domestic like product definition. Nothing in the current record of these reviews indicates any significant changes that would warrant a different analysis. Accordingly, we define the domestic like product in the instant five-year reviews to be all UNS C20000 series brass sheet and strip.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic 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.”²⁹ In accordance with our domestic like product determinations in the instant five-year reviews, we determine that the domestic industry consists of the domestic producers of UNS C20000 series brass sheet and strip.

C. Related Parties

We must further decide whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B), which allows the Commission, if appropriate

²⁵ (...continued)
from France, Italy, Sweden, and West Germany, Inv. No. 701-TA-270 (Final), 731-TA-313, 314, 316, and 317 (Final), Pub. 1951 (Feb. 1987) at 6-7; Certain Brass Sheet and Strip from Japan and the Netherlands, Inv. Nos. 731-TA-379 and 380 (Final), USITC Pub. 2099 (Jul. 1988) at 4, 10.

²⁶ Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea, Inv. No. 701-TA-269 (Final), 731-TA-311, 312, and 315 (Final), USITC Pub. 1930 (Dec. 1986) at 9.

²⁷ Certain Brass Sheet and Strip from France, Italy, Sweden, and West Germany, Inv. No. 701-TA-270 (Final), 731-TA-313, 314, 316, and 317 (Final), Pub. 1951 (Feb. 1987) at 6-7.

²⁸ Certain Brass Sheet and Strip from Japan and the Netherlands, Inv. Nos. 731-TA-379 and 380 (Final), USITC Pub. 2099 (Jul. 1988) at 5-11. It found that, although there may be a consumer preference in some architectural applications for 48-inch widths, in light of the 16-inch distance between wall studs and similar supporting structures, a 32-inch width, also a multiple of 16 inches, is technically substitutable for the 48 inch imports; consumer preference alone is a poor basis for finding a separate like product; and there are no “clear dividing lines” between the 48-inch and other widths, just as there were none in prior brass sheet and strip investigations, *e.g.*, on the basis of either the reroll/finished distinction or other quality and market considerations.

²⁹ 19 U.S.C. § 1677(4)(A).

circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.³⁰

PMX, a domestic producer seeking continuation of all the orders except the one concerning Korea,³¹ is ***-percent owned by Poongsan Corp., a Korean producer and interested party appearing in opposition to the Korean orders. Based on this ownership interest, we conclude that Poongsan is "legally or operationally in a position to exercise restraint or direction over" PMX³² and that PMX is therefore a related party. We find, however, that appropriate circumstances do not exist to exclude PMX from the domestic industry. PMX's U.S. production of brass sheet and strip in 1998 represented *** percent of total U.S. production,³³ and it had no subject imports during the period.³⁴ These factors, along with PMX's participation as part of the domestic interested party group with respect to all orders other than the one concerning Korea,³⁵ indicate that appropriate circumstances do not exist to exclude PMX from the domestic industry.

Outokumpu American Brass (OAB), a domestic producer seeking continuation of all orders except the one concerning the Netherlands,³⁶ is wholly owned by Outokumpu Copper Products Oy, a company in Finland that also owns Outokumpu Copper Strip BV (OBV). Based on this ownership interest, we conclude that Outokumpu Copper Products Oy is "legally or operationally in a position to exercise restraint or direction over" OAB.³⁷ Nevertheless, appropriate circumstances do not exist to exclude OAB from the

³⁰ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
- (3) the position of the related producer vis-à-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 (CIT 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 interest of the related producer lies in domestic production or importation. *See, e.g.*, Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7-I-8 (July 1994).

³¹ CR at I-24, PR at I-20.

³² 19 U.S.C. § 1677(4)(B).

³³ CR at I-24, PR at I-20.

³⁴ For the reasons discussed later in this opinion, Vice Chairman Miller, Commissioner Hillman, and Commissioner Koplán do not find that PMX is likely to import significant volumes of subject merchandise if the order is revoked. Therefore, they conclude that the primary interest of PMX will continue to be in domestic production.

³⁵ The domestic interested party group, including PMX and OAB, argues that the domestic industry consists of all producers of brass sheet and strip, including related parties. Domestic Producers' Prehearing Brief at 6.

³⁶ CR at I-24, PR at I-20.

³⁷ 19 U.S.C. § 1677(4)(B).

domestic industry. OAB's U.S. production of brass sheet and strip in 1998 represented *** percent of total U.S. production,³⁸ and it had no subject imports during the period.³⁹ These factors, along with OAB's participation as part of the domestic interested party group with respect to all orders other than the one concerning the Netherlands, indicate that appropriate circumstances do not exist to exclude OAB from the domestic industry.

Accordingly, we have included all domestic producers of brass sheet and strip, including PMX and OAB, in the domestic industry.

III. CUMULATION^{40 41}

A. Framework

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.⁴²

Thus, cumulation is discretionary in five-year reviews. The Commission, however, may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.⁴³ We note that neither the statute nor the Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") provides specific guidance on what factors the Commission is to consider in determining that imports "are likely to have no

³⁸ CR at I-24, PR at I-20.

³⁹ For the reasons discussed later in this opinion, Vice Chairman Miller, Commissioner Hillman, and Commissioner Koplán do not find that OAB is likely to import significant volumes of subject merchandise if the order is revoked. Therefore, they conclude that the primary interest of OAB will continue to be in domestic production.

⁴⁰ Chairman Bragg does not join section III, "Cumulation," of the opinion. See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation.

⁴¹ Commissioner Thelma J. Askey joins only subsection III.A of this discussion. She finds that the subject imports of brass sheet and strip from Brazil, Canada, Korea, and Sweden would not be likely to have a discernible adverse impact on the industry upon revocation of the orders. She also exercises her discretion not to cumulate the subject imports from the Netherlands with imports from the other subject countries. For her cumulation analysis, see her Concurring and Dissenting Views.

⁴² 19 U.S.C. § 1675a(a)(7).

⁴³ Id.

discernible adverse impact” on the domestic industry.⁴⁴ With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.^{45 46}

The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.⁴⁷ Only a “reasonable overlap” of competition is required.⁴⁸ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.⁴⁹

In these reviews, the statutory requirement that all of the brass sheet and strip reviews be initiated on the same day is satisfied.

⁴⁴ SAA, H.R. Rep. No. 103-316, vol. I (1994).

⁴⁵ For a discussion of the analytical framework of Vice Chairman Miller and Commissioners Hillman and Koplan regarding the application of the “no discernible adverse impact” provision, *see* Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Commissioner Koplan’s analytical framework, *see* Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplan Regarding Cumulation).

⁴⁶ Commissioner Askey notes that the Act clearly states that the Commission is precluded from exercising its discretion to cumulate if the imports from a country subject to review are likely to have “no discernible adverse impact on the domestic industry” upon revocation of the order. 19 U.S.C. § 1675a(a)(7). Thus, the Commission must focus on whether the imports will impact the condition of the industry discernibly as a result of revocation, and not solely on whether there will be a small volume of imports after revocation, *i.e.*, by assessing their negligibility after revocation of the order. For a full discussion of her views on this issue, *see* Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999) and her concurring and dissenting views in this proceeding.

⁴⁷ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. *See, e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (CIT 1989).

⁴⁸ *See* Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994, *aff’d*, 96 F. 3d 1352 (Fed. Cir. 1996)).

⁴⁹ *See, e.g.*, Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (CIT 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988).

B. No Discernible Adverse Impact

We find that revocation of the order with respect to brass sheet and strip from Sweden would have no discernible adverse impact on the domestic industry and, therefore, do not cumulate subject brass sheet and strip from Sweden with subject brass sheet and strip from any of the other subject countries. At the time of the original investigation, Metallverken AB was the only Swedish producer of subject brass sheet and strip. In 1986, the company (along with OBV, its sister company in the Netherlands) was acquired by Outokumpu in Finland, which for a time retained Metallverken's production facilities in Vasteras, Sweden. In 1992, Outokumpu closed its Swedish brass sheet and strip production lines, and no longer produces (nor has the capacity to produce) brass sheet and strip in Sweden.⁵⁰ Outokumpu's other facilities in Sweden produce nonsubject merchandise.⁵¹

Because Outokumpu has not produced subject merchandise at its remaining facilities in Sweden since closing the brass sheet and strip facility in 1992, its existing production programs and customer commitments are focused on nonsubject merchandise. Although we recognize that, as a general matter, facilities producing nonsubject sheet and strip products can also produce, or reroll subject merchandise, a representative of the Finnish parent company indicated at the hearing that such a shift would not be easily accomplished at the Swedish facilities.⁵² In light of the absence of current production of subject merchandise in Sweden and the difficulty in converting the Swedish mill to production of subject merchandise, we find that removal of the order with respect to Sweden will not result in any exports of subject merchandise to the United States within a reasonably foreseeable time. Accordingly, we find that subject brass sheet and strip from Sweden is likely to have no discernible adverse impact on the producers of the domestic like product in the reasonably foreseeable future.

For the reasons indicated in following sections of this opinion regarding the likely volume, price effects, and impact of the subject imports from the Netherlands, Korea, Brazil, Canada, France, Germany, Italy and Japan if the orders are revoked, we do not find that subject imports from those countries, respectively, are likely to have no discernible adverse impact on the domestic industry if the orders are revoked.⁵³

C. Reasonable Overlap of Competition

In the original Brazil/Canada/Korea determination and the original France/Italy/Sweden/Germany determination, the Commission found that subject imports from Brazil, Canada, France, Italy, Korea, Sweden, and Germany competed with each other and with the domestic like product and cumulated the volume and price effects of those imports.⁵⁴ The record in these reviews provides no reasons to depart from

⁵⁰ CR at II-20-II-21, PR at II-9.

⁵¹ *Id.*

⁵² Tr. at 288. In particular, he noted "a new investment, a new mill" would be needed to convert the continuous casting infrastructure for copper foil at the Swedish facility to brass strip production. *See also* Tr. at 32.

⁵³ Commissioner Stephen Koplán finds that subject brass sheet and strip from the Netherlands is also not likely to have a discernible adverse impact on the producers of the domestic like product in the reasonably foreseeable future. *See Separate Views of Commissioner Koplán.*

⁵⁴ USITC Pub. 1930 at 12; USITC Pub. 1951 at 12-13; USITC Pub. 2099 at 16 (although imports from Japan were cumulated in a subsequent review only with imports from the Netherlands, there was no indication there, and none are argued or appear here, that would permit a conclusion of no reasonable overlap with respect to Japan and
(continued...)

the prior overlap of competition findings concerning subject imports from Brazil, Canada, France, Germany, Italy, Korea, and Japan. Based on the facts available in these reviews, we do, however, depart from the prior overlap of competition findings concerning subject imports from the Netherlands.

We find that there will be a reasonable overlap of competition among the subject imports from Brazil, Canada, France, Germany, Italy, Japan, and Korea, and between those subject imports and the domestic like product. There is a moderate to high degree of substitutability among the domestic like product and imports from these subject countries.⁵⁵ Our analysis of current and prospective overlap of geographic markets is limited by low current volumes of subject imports. The domestic producers, ***.⁵⁶ Moreover, there is nothing in the record that would indicate that subject imports would not again be marketed nationwide, as they were prior to issuance of the antidumping orders, should the orders be revoked.⁵⁷

With respect to channels of distribution, producers sell to distributors, end users, and rerollers, direct sales generally being to larger end users, with smaller volume customers and specialized requests left to the distributor, reroller, and metal stamper market.⁵⁸ The Commission found the channels to be similar in the original investigations.⁵⁹ There is no indication that there are any significant differences in channels of distribution among the subject imports and between the domestic product and the subject merchandise.

Overall, we find that there likely would be a reasonable overlap of competition among subject imports from Brazil, Canada, France, Germany, Italy, Japan, and Korea, and between the subject imports and the domestic like product if the orders are revoked.

We find, however, that there is not likely to be a reasonable overlap of competition between subject imports from the Netherlands and subject imports from the other subject countries.⁶⁰ The Dutch producer at the time of the original investigation produced, or was found to be capable of producing, a range of subject brass sheet and strip articles besides its principal product, radiator strip.⁶¹ The successor Dutch

⁵⁴ (...continued)
these other subject countries).

⁵⁵ Concerning fungibility, in the current record, sixteen purchasers said that they never limit purchases based on country of origin. Three purchasers reported buying based on country of origin for reasons such as long-term relationships, quality, price, and/or delivery, and four purchasers reported that their customers make purchases based on country of origin, with reasons including quality, price, lead time, familiarity with mill quality, and “big automotive” preference for union-made U.S. goods. CR at II-29, PR at II-12. One reported that one of its customers directs it to buy from a designated source. Purchasers were more likely to consider a specific producer for some goods, citing reasons such as quality, technical capability, parts needing tight tolerances, reputation, delivery, lead time, and business relationships. *Id.* Nine purchasers said that purchasing decisions are “usually” based on price, eight said “sometimes,” and *** said “always.” CR at II-32, PR at II-13.

⁵⁶ CR at II-3, PR at II-2. ***.

⁵⁷ In fact, among importers, ***. CR at II-3-II-4, PR at II-2.

⁵⁸ CR & PR at II-2.

⁵⁹ *See Certain Brass Sheet and Strip from Brazil, Canada, France, Italy, the Republic of Korea, Sweden, and West Germany*, Invs. Nos. 701-TA-269-270 (Preliminary), and Invs. Nos. 731-TA-311-317 (Preliminary), USITC Pub. 1837 (1986) at 10, n.15 (subsequent final determinations incorporating this early analysis).

⁶⁰ Commissioner Stephen Koplán does not cumulate subject merchandise from the Netherlands on the basis of his finding that subject imports from the Netherlands are not likely to have a discernible adverse impact on the producers of the domestic like product in the reasonably foreseeable future.

⁶¹ USITC Pub. 2099 at 15. OBV Prehearing Brief at 18.

producer OBV,⁶² however, produces primarily radiator strip,⁶³ has demonstrated a commitment since the original investigation to that product, and has invested in new equipment and tailored operations to obtain maximum efficiencies in producing radiator strip.⁶⁴ OBV states that it intends to export only radiator strip to the United States if the order is revoked, to substitute for current production of its affiliated U.S. producer, OAB.⁶⁵ The only other subject country producer of radiator strip at the time of the original investigation was Ratcliffs in Canada. The order with respect to Ratcliffs was subsequently revoked,⁶⁶ however, and reported imports and related pricing information on radiator strip from Canada in the period reviewed relate to Ratcliffs.⁶⁷ There is no indication on the record that subject radiator strip is or is likely to be produced in any other subject country. Consequently, we conclude there is little likelihood that subject imports from the Netherlands will compete directly with subject imports from the other countries. Accordingly, we find that if the order with respect to the Netherlands is revoked, there will be no reasonable overlap of competition between the Dutch merchandise and the subject imports from other subject countries. We do not, therefore, cumulate subject imports from the Netherlands with the other subject imports.

D. Other Considerations

The limited record concerning subject imports from Brazil, Canada, France, Germany, Italy, and Japan indicates that, if the orders are revoked, those subject imports would likely compete in the U.S. market under similar conditions of competition. As indicated above, the record does not indicate any change in the conditions of competition with respect to imports from these subject countries since imposition of the orders. Therefore, we conclude that the orders were primarily responsible for the reduction in imports of brass sheet and strip from these subject countries to the United States. Accordingly, we exercise our discretion to cumulate subject imports from these countries.

By contrast, subject imports from Korea would likely face different conditions of competition in the U.S. market than the subject imports from those six countries.⁶⁸ Specifically, subsequent to the original

⁶² The principal Dutch producer at the time of the original investigation was Metallverken Netherland B.V. Subsequently, under the ownership of the Finnish parent, Outokumpu, it became Outokumpu B.V. (OBV).

⁶³ OBV reports that approximately 85 percent of its production is radiator strip. OBV Posthearing Brief at 7.

⁶⁴ *E.g.*, CR at II-12-II-13, PR at II-6. ***. *See also* CR at I-19, n.18, PR at I-16, n.18; OBV Prehearing Brief at 22-23.

⁶⁵ OBV Prehearing Brief at 6-39; OBV Posthearing Brief at 2. OBV does not intend to export to the United States the other subject items it produces. Those items represent a relatively small percentage of OBV's total production and are being, or will be produced by its U.S. sister company, OAB, in quantities sufficient to serve the U.S. market without supplementation by Dutch product. OBV Prehearing Brief at 11-24.

⁶⁶ 56 Fed. Reg. 57317 (Nov. 18, 1991).

⁶⁷ *E.g.*, CR at V-23-24; PR at V-9.

⁶⁸ Commissioner Okun finds that the conditions of competition for imports from Korea are not distinctly different from those for imports from Brazil, Canada, France, Germany, Italy, and Japan; thus, she exercises her discretion to cumulate subject imports from Korea with the other subject imports. The brass sheet and strip industry in Korea consists of 9 producers. *See* CR at IV-12, PR at IV-6. Commissioner Okun notes that the record evidence contains mixed evidence with regard to capacity for brass sheet and strip in Korea. While there is little available capacity for ***, the other producers may have some unused capacity; in fact, the record contains some evidence that at least one of these producers, ***. *See* CR at II-19, PR at II-8. Moreover, Commissioner Okun

(continued...)

determination, the principal Korean producer/exporter of the subject merchandise, Poongsan, has held a ***-percent ownership interest in a U.S. producer, PMX. PMX established a greenfield operation in Cedar Rapids, Iowa in 1992 and is now one of the leading U.S. producers of the domestic like product.⁶⁹ None of the brass sheet and strip producers in Brazil, Canada, France, Germany, Italy, or Japan has an affiliated producer of the domestic like product in the United States. Accordingly, whereas the presence of other subject producers in the U.S. market would be limited to exports, the principal Korean producer has made a substantial commitment to production in the United States.⁷⁰ On the basis of this significant difference in the conditions of competition between Korea and other subject countries, we do not exercise our discretion to cumulate subject imports from Korea with other subject imports.⁷¹

IV. WHETHER REVOCATION OF THE ORDERS IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME⁷²

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁷³ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁷⁴ Thus, the likelihood standard is prospective in nature.⁷⁵ The statute states that “the

⁶⁸ (...continued)

also notes that there is evidence on the record that ***. Whether Poongsan will achieve its objective depends upon a variety of factors, however, it is likely that if ***, Poongsan would quickly begin selling brass sheet and strip in the U.S. market.

⁶⁹ CR at I-25, PR at I-20. PMX’s U.S. capacity is substantially larger than Poongsan’s and the range of products is similar. Poongsan/PMX Prehearing Brief at 7, 15.

⁷⁰ Although Poongsan ***, there is no basis on the record for finding that Poongsan would likely cease ownership of PMX in a reasonably foreseeable time.

⁷¹ Commissioner Deanna Tanner Okun exercises her discretion to cumulate likely subject imports from Korea with those from Brazil, Canada, France, Italy, Germany and Japan.

⁷² Commissioner Askey joins in subsection IV.A of this section, but writes separately to explain her determinations. See her Concurring and Dissenting Views.

⁷³ 19 U.S.C. § 1675a(a).

⁷⁴ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

⁷⁵ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.”

(continued...)

Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”⁷⁶ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{77 78}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”⁷⁹ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.⁸⁰

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”⁸¹ In this case, a number of respondent interested parties did not provide questionnaire responses and/or participate in these reviews. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the

⁷⁵ (...continued)
SAA at 884.

⁷⁶ 19 U.S.C. § 1675a(a)(5).

⁷⁷ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

⁷⁸ In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

⁷⁹ 19 U.S.C. § 1675a(a)(1).

⁸⁰ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

⁸¹ SAA at 869.

evidence in the record from the Commission's original investigations, the information collected by the Commission since the institution of these reviews, and information submitted by the domestic producers and other parties in these reviews.

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States.^{82 83} In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁸⁴

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.⁸⁵

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁸⁶ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁸⁷ As instructed by the statute, we have considered the

⁸² 19 U.S.C. § 1675a(a)(2).

⁸³ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption determinations in the instant reviews.

⁸⁴ 19 U.S.C. § 1675(a)(2)(A)-(D).

⁸⁵ 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

⁸⁶ 19 U.S.C. § 1675a(a)(4).

⁸⁷ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year review investigations as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce found the following dumping and net subsidy margins: Brazil (dumping) 40.62 percent (64 Fed. Reg. 48353); Brazil (subsidy) no basis on which to determine (64 Fed. Reg. 48367); Canada (dumping) 8.10 - 11.54 percent; France (dumping) 42.24 (64 Fed. Reg. 48353); France (subsidy) 7.24 percent (64 Fed. Reg. 48372); Germany (dumping) 5.44 percent (64 Fed. Reg. 49770); Italy (dumping) 5.44 percent (64 Fed. Reg. 48351); Japan (dumping) 13.30 -
(continued...)

extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the order is revoked.⁸⁸

For the reasons stated below, we determine that revocation of the orders on brass sheet and strip from Sweden, the Netherlands and Korea would not be likely to lead to continuation or recurrence of material injury to the domestic injury within a reasonably foreseeable time.^{89 90} We find that revocation of the orders on brass sheet and strip from Brazil Canada, France, Germany, Italy, and Japan would be likely to lead to continuation or recurrence of material injury to the domestic injury within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁹¹

The U.S. industry has consolidated somewhat since the original investigations, with eight producers now supplying the domestic market, as compared with nine at the time of the original investigations.⁹² Notwithstanding this, industry capacity has increased somewhat since the original investigations. The industry’s market share has also increased. Although the market share of U.S. producers during the 1984-87 period never exceeded 83 percent, since 1997 it has exceeded 91 percent. With regard to imports, although nonsubject imports now hold a larger share of the market than do subject

⁸⁷ (...continued)

57.98 percent (64 Fed. Reg. 49767); Korea (dumping) 7.17 percent (64 Fed. Reg. 48353); Netherlands (dumping) 16.99 percent (65 Fed. Reg. 741); Sweden (dumping) 9.49 percent (64 Fed. Reg. at 49446).

⁸⁸ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁸⁹ Chairman Lynn M. Bragg dissenting with regard to Korea and the Netherlands.

⁹⁰ Commissioner Deanna Tanner Okun dissenting with regard to Korea.

⁹¹ 19 U.S.C. § 1675a(a)(4).

⁹² CR at I-24-I-26; PR at I-20-I-21. Among the basic producers, Hussey, Olin, OAB, and Revere all produced brass sheet and strip in the United States during the original investigations. OAB, American Brass at the time of the original investigations, was purchased by Outokumpu Copper Products Oy of Espoo, Finland, in 1990. Since the time of the original investigation, Olin acquired Bridgeport Brass, Hussey ***, and OAB ***. CR at I-25, PR at I-21. Rerollers *** and Heyco both operated during the time of the original investigations. During the period reviewed, however, ***. Another known producer, that did not respond in these reviews, is ***. CR at I-24, n.24; PR at I-19. Two other firms, neither believed to account for a significant portion of U.S. production, failed to respond to the Commission’s questionnaire. *Id.* Five firms that produced the like product at the time of the original investigations have ceased operation or ceased production of the product, and another was purchased by Olin in 1988. CR at I-25, PR and I-20. The only new entrant in the industry since the original investigations is PMX. This firm, established as a greenfield operation in Cedar Rapids, IA, in 1992, is ***-percent owned by Poongsan Corp., Seoul, Korea, a Korean producer.

imports, which fell sharply following imposition of the orders, the current share of nonsubject imports in the market is not markedly higher than it was during the 1984-87 period.⁹³

End-use markets have undergone minor changes since 1987, and substitute products have displaced brass sheet and strip in certain applications. Notably, brass has been progressively replaced in the radiator market by aluminum.⁹⁴ Reduced demand in certain end use product markets has been sufficiently offset by increased demand in other applications,⁹⁵ resulting in fairly flat rather than declining overall demand.⁹⁶

There are various ways in which brass sheet and strip is produced and sold. In the most straightforward situation, producers buy raw materials (zinc and copper), make the brass sheet and strip, and sell it to purchasers.⁹⁷ Some purchasers, however, also have tolling arrangements in which they supply the producers with at least some of the raw materials, and tolling purchasers pay only the fabrication price and the price of any materials they did not supply. Tolling is preferred by large-volume customers who can buy raw materials at cheaper prices than offered by the mills.⁹⁸ Producers often prefer not to engage in tolling arrangements because margins are not as high, and scheduling of production is more difficult when the inputs arrive separately from the producers' own materials orders.⁹⁹

C. Sweden

In the original investigation, the volume of imports from Sweden increased from 754,000 pounds in 1983,¹⁰⁰ to 1.7 million pounds in 1984 and to 5.2 million pounds in 1985.¹⁰¹ After the petitions were filed, imports from Sweden declined to 2.3 million pounds in 1986.¹⁰² There were zero imports of subject merchandise from Sweden in 1997, 1,000 pounds in 1998, and zero imports in the first six months of 1999.¹⁰³

In our no discernible adverse impact finding concerning Sweden, *supra*, we noted that the Swedish facility that produced subject brass sheet and strip at the time of the original investigation was shut down in 1992 and that there is no indication that the facility would likely resume subject production or that Swedish facilities currently producing nonsubject copper products in Sweden would begin significant production of subject merchandise within a reasonably foreseeable time if the antidumping duty order were revoked. Consistent with that finding, we find that the volume of subject imports from Sweden would not likely be significant within a reasonably foreseeable time if the order were revoked. We also find, therefore, that

⁹³ CR at I-3-I-7, PR at II-3.

⁹⁴ *E.g.*, CR at II-25, PR at II-10.

⁹⁵ One U.S. producer expects a decline in brass sheet and strip demand as miniaturization causes increased reliance on high performance materials; in the automotive connector market, electrical gauges have gotten lighter, while increased under-the-hood temperatures have required that the lighter brass contain additional alloys to make it stronger. Another explains that, while aluminum and plastic have been replacing brass in radiators, use of brass in automotive applications has grown. CR at II-24-II-25, PR at II-10.

⁹⁶ Tr. at 26.

⁹⁷ CR at II-6-II-7, PR at II-3.

⁹⁸ *Id.* at II-6, PR at II-3.

⁹⁹ *Id.* ***.

¹⁰⁰ USITC Pub. 1951, at Table 17.

¹⁰¹ CR & PR at Table I-2.

¹⁰² USITC Pub. 1951, at Table 17 (only 6-month 1986 considered); CR at Table I-2.

¹⁰³ CR & PR at Table I-2.

significant price effects would not be likely and that subject imports from Sweden would not be likely to have a significant adverse impact on the domestic industry's output, sales, market share, profits, or return on investment, if the order were revoked. We, therefore, find that revocation of the antidumping duty order on Sweden is not likely to lead to the continuation or recurrence of material injury to the U.S. brass sheet and strip industry within a reasonably foreseeable time if the order were revoked.

D. The Netherlands¹⁰⁴

In the original investigation, the volume of imports from the Netherlands decreased from 15.6 million pounds in 1984 to 15.4 million pounds in 1985 and 14.9 million pounds in 1986, then increased to 15.4 million pounds in 1987, and 3.8 million pounds in the first quarter of 1988 and in the first quarter of 1987.¹⁰⁵ Although the Dutch producer at the time of the original determination produced, or was found to be capable of producing, a range of subject brass sheet and strip articles besides radiator strip,¹⁰⁶ the successor Dutch producer, OBV,¹⁰⁷ continues to produce primarily radiator strip.¹⁰⁸ Moreover, OBV has invested in new equipment and tailored operations to maximize efficiencies in producing radiator strip. OBV states that it intends to export only radiator strip to the United States if the order is revoked, substituting for radiator strip currently produced at its affiliated U.S. producer, OAB, and projects that its volume of radiator strip exports to the United States in the event the order is revoked will be at most *** pounds annually.

We find that the likely volume of subject imports from the Netherlands should the antidumping duty order be revoked will not be significant in light of competitive conditions in the U.S. market.¹⁰⁹ In particular, the only significant U.S. producer of radiator strip currently is OAB, the U.S. affiliate of OBV. While PMX alleged that it also produces this product in significant commercial quantities, we find that PMX sells only a very small quantity of brass radiator strip.¹¹⁰

Consequently, the only significant domestic production likely to be displaced by OBV's increased imports of radiator strip is that of OBV's U.S. production affiliate, OAB. OBV acknowledges that OAB's

¹⁰⁴ Chairman Bragg does not join section IV.D of this opinion.

¹⁰⁵ USITC Pub. 2099 at Table 14; Memo INV-L-051 (Jul. 18, 1988).

¹⁰⁶ USITC Pub. 2099 at 15.

¹⁰⁷ The principal Dutch producer at the time of the original investigation was Metallverken Netherland B.V., which under the ownership of the Finnish parent, Outokumpu, became Outokumpu B.V. or OBV.

¹⁰⁸ Radiator strip is defined as:

Automotive nonelectrical, CDA end-use classification 310, CDA alloy 260, 0.0061-inch to 0.011-inch thick by 0.75 inch to 2 inches in width, brass radiator strip used in producing radiator and other heat-exchanger tubing as specified by ASTM "Standard Specification for Brass Strip in Narrow Widths and Light Gage for Heat Exchanger Tubing (Designation B569-93)."

CR at Table V-9 and Alternative Table V-9.

¹⁰⁹ While we have considered in our analysis of likely subject import volume such factors as capacity utilization, inventories, barriers to export of the subject merchandise, and potential product-shifting issues (19 U.S.C. § 1675(a)(2)(A)-(D)), they do not detract from our finding that likely subject import volume from the Netherlands will not be significant in light of competitive conditions.

¹¹⁰ Sample invoices submitted by PMX and information from PMX's customers ***. See CR & PR at Table III-3; Supp. Memo INV-X-063 at Alternative Table III-3.

U.S. production will likely be shifted into other brass sheet and strip products if the antidumping duty order on the Netherlands is revoked.¹¹¹ Should this happen, the quantity of OAB's production that would be shifted from radiator strip to other brass sheet and strip products would not be significant in relation to overall U.S. production of brass sheet and strip.¹¹² Moreover, the domestic market for radiator strip is stable or declining, with a large number of purchasers turning to aluminum for the production of this heat-exchanger tubing because of the lower weight and cost of the aluminum product.¹¹³ Therefore, it is not likely that U.S. production would shift into this sector even if the order on the Netherlands is not revoked.¹¹⁴

Revocation of the order on the Netherlands would also not be likely to cause significant price effects. As previously stated, OAB is currently the only significant U.S. producer of radiator strip. OBV is not likely to establish prices to undermine the competitive situation of OAB on its sales of other brass sheet and strip products.¹¹⁵ Moreover, because U.S. producers' shipments of radiator strip represent at most *** percent of total domestic consumption and domestic shipments of all subject brass sheet and strip,¹¹⁶ a change in sourcing patterns for radiator strip is not likely to have significant price effects on the overall U.S. brass sheet and strip market. Accordingly, we find that if the order is revoked imports of the subject merchandise from the Netherlands will not have significant depressing or suppressing effects upon prices of the domestic like product.¹¹⁷

We have considered whether the domestic industry is vulnerable to material injury if the order is revoked. Based on recent overall financial performance of the domestic industry, we do not consider the industry to be vulnerable despite some downturns in 1998 in certain operating and financial indicators. During the period examined, the domestic industry's production capacity increased. Although the domestic industry's capacity utilization, production, sales, shipments and operating income declined between 1997 and 1998, the data for interim 1999 indicate an upturn in all those factors compared with interim 1998 for both toll and nontoll brass sheet and strip operations.¹¹⁸ The industry enjoyed profitable performance over

¹¹¹ *E.g.*, CR at D-18, PR at D-4.

¹¹² See CR & PR at Tables I-4 and III-3.

¹¹³ *E.g.*, CR at II-12-II-13; PR at I-6.

¹¹⁴ OBV explains that its efficiencies in terms of technology, machinery and equipment, and specialization in radiator strip permit it to produce radiator strip competitive with the aluminum alternative and they would expect to be able to compete with the aluminum product if the order is revoked. *E.g.*, OBV Posthearing Brief at 10.

¹¹⁵ *E.g.*, OBV Prehearing Brief at 18-20.

¹¹⁶ CR at Tables I-2, I-4, III-3; INV-X-063 at alternative Table III-3.

¹¹⁷ We note that the limited information in the record regarding current radiator strip pricing indicates that, while there is some underselling when Dutch radiator strip prices are compared with U.S. producers' prices, generally, the Dutch product generally was priced above the comparable domestic product. CR & PR at Tables V-9-V-11 (product 6). There was little Dutch presence in the U.S. market, however, until the beginning of 1999, and the principal U.S. producer submitting price data for product 6 was OAB, the sister company of OBV. Hence, we place little reliance upon the price comparison data as the bulk of the data compares OAB pricing to OBV pricing. See CR at V-13, PR at V-7. Moreover, it appears that ***. We also do not rely on pricing data from PMX because, as discussed above, it could not be confirmed that the product sold was of the specified definition for radiator strip.

¹¹⁸ CR & PR at Table III-1 - III-3.

the period, and an increase in operating income as a percent of net sales in the interim period.¹¹⁹ Accordingly, we find that the domestic industry is not currently in a vulnerable state.

We find that revocation of the antidumping duty order is likely to lead to an increase only in radiator strip imports from the Netherlands, in quantities we find not to be significant in light of current and potential U.S. production of the domestic brass sheet and strip industry as a whole. We find also that revocation will not likely lead to significant depressing or suppressing effects on prices for the domestic like product. Therefore, we find that the subject imports from the Netherlands are not likely to have an adverse impact on the domestic brass sheet and strip industry in the reasonably foreseeable future if the antidumping duty order is revoked. Accordingly, we find that the subject imports from the Netherlands are not likely to lead to continuation or recurrence of material injury.^{120 121}

E. Korea^{122 123}

In the original investigation, the volume of imports from Korea increased from 1.8 million pounds in 1983, to 6.3 million pounds in 1984, and to 7.7 million pounds in 1985.¹²⁴ Subject imports from Korea totaled 5.5 million pounds in 1986 and 1.1 million pounds in 1987.¹²⁵ At their greatest annual volume during the period of the original investigation, subject imports from Korea reached only 1.5 percent of total U.S. consumption.¹²⁶ Subject imports from Korea were 1,000 pounds in both 1997 and 1998, and 22,000 pounds in the first quarter of 1999.¹²⁷

¹¹⁹ Operating income as a percent of net sales for combined nontoll and toll operations was 4.5 percent in 1997, 4.4 percent in 1998 and 6.4 percent in the first half of 1999, compared with 5.3 percent in the first half of 1998. CR & PR at Table III-6. For nontoll operations, operating income as a percent of net sales was 6.0 percent in 1997, 5.7 percent in 1998, and 7.9 percent in the first half of 1999, compared with 6.5 percent in the first half of 1998. CR & PR at Table III-9. *See also* CR & PR at Table III-10 (operating income for nontoll operations on a per-pound basis).

¹²⁰ We also note in this regard that a shift by OAB to brass sheet and strip products other than radiator strip when it replaces OBV as the Outokumpu supplier of radiator strip in the U.S. market, will represent a shift of only 2 percent of the market, which we find will not likely have a significant impact on the domestic brass sheet and strip industry as a whole.

¹²¹ For these and other reasons, Commissioner Koplán finds that if the order is revoked imports of the subject merchandise from the Netherlands are likely to have no discernible adverse impact on the domestic industry. *See* Separate Views of Commissioner Stephen Koplán on Cumulation in Brass Sheet and Strip From the Netherlands.

¹²² Chairman Bragg does not join section IV.E of this opinion.

¹²³ Commissioner Okun dissenting. *See* footnotes 137, 146, and 147 for her analysis with regard to Korea.

¹²⁴ Conf. Staff Report INV-J-186 at Table 14; CR & PR at Table I-2.

¹²⁵ CR & PR at Table I-2.

¹²⁶ In the original investigation, official import statistics showed 7.7 million pounds of subject imports for consumption from Korea in the final full year in the investigation period (USITC Pub. 1930 at Tables 16, 17), while total U.S. consumption of brass sheet and strip was 513.9 million pounds in 1985 (*id.* at Table 20).

¹²⁷ CR at Table I-2.

Poongsan accounted for the majority of imports from Korea in the original investigation.¹²⁸ It remains by far the largest of the Korean producers.¹²⁹ Poongsan established PMX in the United States in 1992, after issuance of the antidumping duty order. Poongsan and PMX have parallel product lines, enabling PMX generally to serve the U.S. market without significant resort to imports from Poongsan.¹³⁰ PMX is operating profitably in the United States and has ample capacity to increase production to meet any additional U.S. demand.¹³¹ Consequently, Poongsan is not likely to increase substantially its exports of subject merchandise if the antidumping duty order on Korea is revoked.

We have no basis for concluding that other Korean producers, who were not significantly present in the U.S. market during the original investigation, would significantly increase their exports to the United States above the very low levels found in the original investigation if the orders were revoked. While it is conceivable that the other Korean brass sheet and strip producers could export to the United States, we do not believe it likely that they will ship significant quantities to the United States. Those producers are relatively small and appear more focused than Poongsan on the home market and are therefore less likely to export generally.¹³² Revocation would thus be unlikely to result in a significant increase in their exports to the United States where they would face competition from much larger U.S. producers.¹³³ As a consequence, we conclude that the volume of subject imports from Korea is not likely to be significant.¹³⁴

We also find that Poongsan, the predominant Korean exporter, would have no incentive to price at levels that would undercut the competitive position of its U.S. affiliate, PMX, which produces a full range of brass sheet and strip products. Moreover, volumes from Korean producers overall are likely to be insufficient to have a significant effect upon the prices of domestic producers.¹³⁵

As previously stated, we find the U.S. brass sheet and strip industry not to be vulnerable. Because of the absence of significant likely volume and price effects, we find that revocation of the antidumping duty order on Korea would not be likely to significantly impact the domestic industry's output, sales, market share, profits, or return on investment. We therefore find that revocation of the antidumping duty order on Korea is not likely to lead to continuation or recurrence of material injury to the U.S. brass sheet and strip industry within a reasonably foreseeable time.

¹²⁸ Conf. Staff Rept. INV-J-186 at A-26; CR at IV-12. Poongsan estimates that it accounted for 97 percent of subject imports from Korea in the original investigation. Tr. at 167, Poongsan Posthearing Brief at 4.

¹²⁹ Poongsan estimates that it accounts for *** percent of Korean brass sheet and strip production, and *** percent of brass sheet and strip sales in Korea. CR at IV-12; PR at IV-6.

¹³⁰ *E.g.*, Poongsan Posthearing Brief at 6-9. PMX indicated it may on occasion have to import from Poongsan but that would be the exception. *Id.* at 9.

¹³¹ CR at Table III-7; PMX Questionnaire Response.

¹³² Poongsan's shares of total Korean production and of the Korean home market suggest that ***.

¹³³ This conclusion is consistent with the record from the original investigation, in which subject imports from Korea captured only a very small share of the United States market, of which those producers appear to have been a *de minimis* portion. As noted, Poongsan estimates that during the original investigation it accounted for 97 percent of all exports to the United States. Poongsan Posthearing Brief at 4.

¹³⁴ In light of the presence of PMX in the United States and Poongsan's stated intention to export to the United States in only limited circumstances, we also find that capacity utilization, inventories, other countries' barriers, and product-shifting potential issues (19 U.S.C. § 1675(a)(2)(A)-(D)) do not affect our determination with respect to likely volume of imports from Korea.

¹³⁵ We find that price comparisons and price effects analysis from the original investigation are no longer probative in light of Poongsan's subsequent establishment of PMX.

F. Brazil, Canada, France, Germany, Italy, and Japan¹³⁶

In its original determinations, the Commission found that subject import volumes fluctuated throughout the periods examined, but deemed subject import volumes to be significant.¹³⁷ Cumulated subject import volume for these six subject countries was 148.0 million pounds in 1984, 105.4 million pounds in 1985, and 92.6 million pounds in 1986, the last full year before the first set of antidumping and countervailing duty orders went into effect. In 1986, the cumulated market penetration for these six countries, measured by quantity, was 17.4 percent.¹³⁸

Current subject import volumes are much smaller than in the original investigations. Cumulated subject import volume for Brazil, Canada, France, Germany, Italy, and Japan was 10.8 million pounds in 1997, 24.0 million pounds in 1998, 7.9 million pounds in interim 1998, and 8.1 million pounds in interim 1999.¹³⁹

As indicated above, the record does not indicate any changes in the conditions of competition with respect to imports from these subject countries since imposition of the orders. Therefore, we conclude that the orders were primarily responsible for the reduction in exports of brass sheet and strip from these subject countries to the United States. The record indicates there is significant unused capacity in the subject countries.¹⁴⁰ Moreover, there is no record information indicating any likely limitations on those subject countries' resumption of significant export shipments to the United States if the orders were revoked. Thus, if the orders were revoked, producers in these subject countries would have the ability and motivation to increase exports to the United States. Accordingly, we find that imports of brass sheet and strip from

¹³⁶ Commissioner Okun notes that she has exercised her discretion to cumulate imports from Korea with the other subject imports. Accordingly, with respect to her analysis, the discussion in this section applies to the effects of revocation of the orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, Japan, and Korea. She notes that with regard to the volume of subject imports, as discussed in this section, there were little, and in some cases no, imports from Korea during the review period. Commissioner Okun notes, however, that while there is *** unused available capacity for ***, there are 8 other producers in Korea that may have available unused capacity; in fact, the record contains evidence that one of these producers, ***. See CR at II-19, PR at II-8. Moreover, data on the record also indicate that Korean producers have the ability to shift shipments of brass sheet and strip from one market to another easily. See Table IV-6 CR & PR. Therefore, while Commissioner Okun joins in the analysis for the volume effect of the cumulated subject imports from Brazil, Canada, France, Germany, Italy, and Japan, she notes that the volume of imports from Korea will also likely increase significantly in the reasonable foreseeable future.

¹³⁷ Original Brazil/Canada/Korea Determination, USITC Pub. 1930 at 14-15; Original France/Germany/Italy/Sweden Determination, USITC Pub. 1951 at 13-14; Original Japan/Netherlands Determination, USITC Pub. 2099 at 17-18.

¹³⁸ CR & PR at Table I-2, CR at I-4-I-5, PR at I-4.

¹³⁹ Id.

¹⁴⁰ CR & PR at Table IV-3 (Brazil 1998 production capacity of *** pounds and production of *** pounds); INV-J-186 (Canada production capacity other than Ratcliffs (currently nonsubject) in 1985 was *** pounds and production was *** pounds), CR at Table IV-4 (Germany) (1998 production capacity of sole producer responding to questionnaire was *** pounds and production was *** pounds); Table IV-5 (1998 production capacity of Japanese producers responding to questionnaires was 189.4 million pounds and production was 165.2 million pounds); USITC Pub. 2099 at a-30 (Table 11) (Japan production capacity in 1987 of 528.0 million pounds and production of 440.7 million pounds). There is no information on the record of either the current reviews or the original investigations concerning the production capacity/utilization for France and Italy. There is no information on either record for full production capacity/utilization for Germany.

these subject countries into the United States would be likely to increase significantly in the reasonably foreseeable future if the antidumping and countervailing duty orders were revoked.¹⁴¹

With regard to price effects, in the original determinations, the Commission found general underselling by the subject imports from Brazil, Canada, France, Germany, Italy, and Japan. In the original Brazil and Canada investigations, the Commission found underselling by the subject imports in the majority of price comparisons.¹⁴²

Because the U.S. brass sheet and strip market is fairly price competitive,¹⁴³ if the orders were revoked, the imports would need to be priced aggressively to regain market share. Thus, the pricing patterns observed in the original investigations are likely to recur and the subject imports would likely significantly undersell the domestic like product. As noted above, we find that subject imports from Brazil, Canada, France, Germany, Italy, and Japan are likely to increase significantly in the reasonably foreseeable future if the antidumping duty and countervailing duty orders are revoked. At these likely volumes, the subject imports from these countries would be likely to have significant depressing and suppressing effects on the prices of the domestic like product.^{144 145}

¹⁴¹ Chairman Bragg concurs in the majority's analysis with regard to Brazil, Canada, France, Germany, Italy, and Japan, and finds the same analysis equally applicable to likely import volumes from Korea and the Netherlands in the event of revocation. Chairman Bragg notes that to the extent foreign producers and exporters in these eight subject countries did not comply fully with the Commission's information requests, she infers that such producers and exporters will revert to pre-order production and export levels in connection with likely shipments to the U.S. market if the orders are revoked. Based upon all the foregoing, Chairman Bragg finds that revocation of the orders on these eight subject countries will likely result in a significant volume of imports in the U.S. market within a reasonably foreseeable time.

¹⁴² USITC Pub. 1930 at 15. In the original France investigation, the data for six product categories showed underselling in all but one of the 35 direct quarterly price comparisons. USITC Pub. 1951 at 16. In the original Germany investigation, there was underselling in 43 of 58 direct quarterly price comparisons. USITC Pub. 1951 at 16. In the original Japan investigation, price comparisons showed underselling in 74 of 100 instances. USITC Pub. 2099 at 19.

¹⁴³ *E.g.*, CR at I-23, II-30-II-33; PR at I-19, II-12-II-13.

¹⁴⁴ Chairman Bragg concurs in the majority's analysis with regard to Brazil, Canada, France, Germany, Italy, and Japan, and finds the same analysis equally applicable to the likely pricing behavior of imports from Korea and the Netherlands in the event of revocation. Chairman Bragg notes that to the extent foreign producers and exporters in these eight subject countries did not comply fully with the Commission's information requests, she infers that if the orders are revoked, such producers and exporters will revert to aggressive pricing practices with regard to exports to the U.S. market as evidenced in the Commission's original determinations. Chairman Bragg also notes that Commerce rendered an affirmative duty absorption finding with regard to the German producer Wieland-Werke AG. 64 Fed. Reg. at 49770 n.9 (September 3, 1999). As a result, Wieland would be able to engage in aggressive pricing practices with regard to exports of brass sheet and strip to the U.S. market in the event the order on Germany is revoked. *See* Uruguay Round Agreements Act, Statement of Administrative Action at 886. Based upon all the foregoing, Chairman Bragg finds that revocation of the orders on these eight subject countries will likely result in significant underselling by subject imports, as well as significant price suppression and depression in the U.S. market within a reasonably foreseeable time.

¹⁴⁵ With regard to price effects of the subject imports from Korea, Commissioner Okun notes that in the original Korea investigation, there was underselling in 24 of 28 direct quarterly price comparisons. *See* USITC 1930 at A-93. Because brass sheet and strip from different sources is highly substitutable and the market is price competitive (CR at II-30-II-33 and II-35-II-36), imports from Korea, along with the other subject imports, are likely to be priced at such levels that would have suppressing or depressing effects on domestic prices if the antidumping and

(continued...)

We have concluded that the domestic industry is not currently in a vulnerable condition. We have also concluded, however, that revocation of the antidumping duty orders with respect to Brazil, Canada, France, Germany, Italy, and Japan would lead to significant increases in the volume of cumulated subject imports from those subject countries that would undersell the domestic like product and significantly depress and suppress U.S. prices. In addition, the volume and price effects of the cumulated subject imports would have a significant negative impact on the production, shipments, sales, market share and revenues of the domestic industry.¹⁴⁶ This reduction in the industry's production, shipments, sales, market share, and revenues would adversely impact the industry's profitability and ability to raise capital and maintain necessary capital investments.

Indeed, in the original investigations the Commission found that the increasing volumes of imports that were underselling the domestic like product caused declines in the domestic industry's market share and material injury to the domestic industry.¹⁴⁷ Based on the facts available in these reviews, we conclude that if the orders were revoked, these circumstances would recur and the domestic industry's financial performance would be adversely affected.¹⁴⁸

¹⁴⁵ (...continued)
countervailing duty orders are revoked.

¹⁴⁶ Commissioner Okun notes that her analysis includes imports from Korea.

¹⁴⁷ USITC Pub. 1930 at 16, USITC Pub. 1951 at 17 (also citing impact of imports on U.S. producers' shipments and financial performance).

¹⁴⁸ Chairman Bragg concurs that the domestic industry is not currently in a weakened state, as contemplated by the vulnerability criterion of the statute. *See* Uruguay Round Agreements Act, Statement of Administrative Action at 885. Chairman Bragg also concurs in the majority's analysis with regard to Brazil, Canada, France, Germany, Italy, and Japan, and finds the same analysis equally applicable to the likely impact of imports from Korea and the Netherlands in the event of revocation. Having found that revocation of the orders on these eight subject countries will likely result in significant volumes of imports, at prices that will likely have significant price suppressing and depressing effects in the U.S. market within a reasonably foreseeable time, Chairman Bragg concludes that revocation will likely result in a significant adverse impact on the domestic industry, in terms of production, shipments, sales, market share, and revenues, as well as the ability to raise capital and make and maintain necessary capital investments.

CONCLUSION

For the foregoing reasons, we conclude that revocation of the antidumping duty orders covering brass sheet and strip from Brazil, Canada, France, Germany, Italy, and Japan, and the countervailing duty orders covering brass sheet and strip from Brazil and France, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, and that revocation of the antidumping duty orders covering brass sheet and strip from Korea, the Netherlands, and Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁴⁹

¹⁴⁹ Chairman Lynn M. Bragg dissenting with regard to Korea and the Netherlands.

SEPARATE VIEWS OF CHAIRMAN LYNN M. BRAGG REGARDING CUMULATION

I have previously described the analytical framework that I employ to assess cumulation in the context of grouped sunset reviews.¹ The sequence of my analysis differs from that of my colleagues in that I first assess whether there is likely to be a reasonable overlap of competition in the event of revocation, before addressing whether any subject imports are likely to have no discernible adverse impact. Now, with the benefit of argument by parties in subsequent grouped reviews, including the instant grouped reviews, I provide the following additional observations regarding cumulation generally, and my specific analytical framework in particular, in order to assist parties appearing in future grouped sunset reviews.

I. General Considerations:

Likelihood of a Reasonable Overlap of Competition

There are, in my view, two reasons why it is important first to address the issue of whether there is likely to be a reasonable overlap of competition, before turning to the issue of whether revocation of a particular order is likely to have no discernible adverse impact. First, I consider the sequence of my analysis to be a matter of logical progression. Before cumulation is warranted there must be established the likelihood of a reasonable overlap of competition, based upon the definition of the domestic like product. Stemming from this, a finding of no likely discernible adverse impact operates as an exception to cumulation that is otherwise warranted under the statute.

More importantly, however, I find that by first considering the likelihood of a reasonable overlap of competition, I am afforded an important context within which to understand fully the implications of revocation. This ensures that I arrive at an informed assessment of the likelihood of no discernible adverse impact if an order is revoked. It is precisely because my analysis of discernible adverse impact benefits from an evaluation of likely future competition that I am able to assess thoroughly the significant conditions of competition in a particular review, before excepting any countries from cumulation. Accordingly, I find that the sequence of my analysis leads to an efficient and informed decision, and is consistent with the prospective nature of the inquiry required by the statute in a sunset review.

Likelihood of No Discernible Adverse Impact—Individual Analysis

Once I am satisfied that there is likely to be a reasonable overlap of competition in the event of revocation, I then examine whether imports from each subject country, individually, are likely to have no discernible adverse impact on the domestic industry in the event of revocation.

Based upon the Commission's experience to date in conducting grouped sunset reviews, I have found two broad circumstances in which imports from a subject country, individually, were likely to have no discernible adverse impact on the domestic industry in the event of revocation.

First, I have found a likelihood of no discernible adverse impact where it was readily apparent that the order under review had not affected the presence of subject imports in the U.S. market and that

¹ See Potassium Permanganate from China and Spain, *Separate and Dissenting Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews*, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245, at 27-30 (October 1999).

revocation of the order similarly would have no effect on the volume or pricing of imports within a reasonably foreseeable time.²

Second, I have found a likelihood of no discernible adverse impact where it was readily apparent that due to current conditions of competition, revocation of the order under review would create no incentive or opportunity for foreign producers and exporters to increase significantly their volume of shipments to the United States, or to depart significantly from their pricing practices under the discipline of the order, within a reasonably foreseeable time.³

Of course, I do not rule out the possibility that additional circumstances may present themselves in future reviews which would similarly warrant a finding of no likely discernible adverse impact in the event an order is revoked.

Likelihood of No Discernible Adverse Impact—Aggregate Analysis

As I have also outlined previously, if I determine that imports from two or more subject countries, individually, are likely to have no discernible adverse impact in the event of revocation of the respective orders, I then proceed to examine whether imports from such countries combined are likely to have no discernible adverse impact in the event of revocation of the collective orders.⁴

Importantly, I do not automatically aggregate all subject countries; rather, when engaging in this second stage of my analysis, I aggregate only those countries for which I have first made an individual determination that imports are likely to have no discernible adverse impact. To date, I have reached this second stage of my analysis in only two grouped sunset reviews.⁵

² See Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada, Invs. Nos. 104-TAA-7 (Review); AA1921-198-200 (Review); and 731-TA-3 (Review), USITC Pub. 3238, at 17-18 & n.86 (September 1999); Iron Metal Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 303-TA-13 (Review); 701-TA-249 (Review); and 731-TA-262-263 and 265 (Review), USITC Pub. 3247, at 12-14 & n.72 (October 1999); Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Invs. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review), USITC Pub. 3274, at 40-41 (February 2000); Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan; and Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan, Invs. Nos. 701-TA-267-268 (Review); 731-TA-297-299, 304-305 (Review), *Dissenting Views of Chairman Lynn M. Bragg* (March 2000).

³ See Potassium Permanganate from China and Spain, *Separate and Dissenting Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews*, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245, n.44 (October 1999); Certain Steel Wire Rope from Japan, Korea, and Mexico, *Separate and Dissenting Views of Chairman Lynn M. Bragg*, Invs. Nos. AA1921-124 and 731-TA-546-547 (Reviews), USITC Pub. 3259, at 35-37 (December 1999).

⁴ See Potassium Permanganate from China and Spain, *Separate and Dissenting Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews*, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245, at 27-30 (October 1999).

⁵ See Certain Steel Wire Rope from Japan, Korea, and Mexico, *Separate and Dissenting Views of Chairman Lynn M. Bragg*, Invs. Nos. AA1921-124 and 731-TA-546-547 (Reviews), USITC Pub. 3259 at 33-39 (December 1999); Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan; and Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan, Invs. Nos. 701-TA-267-268 (Review); 731-TA-297-299, 304-305 (Review), *Dissenting Views of Chairman Lynn M. Bragg* (March 2000).

Conclusion–

Once I complete the second stage of my analysis (if applicable), I then apply the statutory proscription against cumulation of imports from those subject countries for which I have determined there is likely to be no discernible adverse impact in the event of revocation. In my view, cumulation is then appropriate for imports from all other subject countries for which I have previously found a likely reasonable overlap of competition; in other words, I do not believe that imports from a subject country can be deemed to satisfy the likely reasonable overlap of competition inquiry, and to have a likely discernible adverse impact in the event of revocation, but yet not be amenable to cumulation.

Importantly, I do not engage in any additional analysis in order to ascertain whether the exercise of my discretion to cumulate is warranted. I believe the Commission’s discretion to cumulate is grounded in the two criteria identified in the statute: the imports must be likely to compete with each other and with domestic like products in the U.S. market, and the imports must not be likely to have no discernible adverse impact on the domestic industry, in the event of revocation.⁶ Thus, in determining whether to cumulate subject imports in a grouped sunset review, I do not engage in an exercise of discretion unrelated to either of these two criteria.

Again, the foregoing discussion is intended solely to provide the public served by the Commission additional guidance with regard to my analysis of cumulation in grouped sunset reviews.

II Application of My Analytical Framework to the Instant Reviews:

Likelihood of a Reasonable Overlap of Competition–

In the original determinations, the Commission found a reasonable overlap of competition among subject imports from Brazil, Canada, France, Germany, Italy, Korea, and Sweden, and between such imports and the domestic like product.⁷ The Commission subsequently found a reasonable overlap of competition among subject imports from Japan and the Netherlands, and between such imports and the domestic like product.⁸

As noted, I consider the inquiry into the likelihood of a reasonable overlap of competition in the event of revocation to be grounded in the definition of the domestic like product. In these reviews, I join the majority in defining a single domestic like product comprised of all UNS C20000 series brass sheet and strip, just as the Commission did in each of the original investigations.

Brass strip used for radiator tube (“brass radiator strip”) falls within the Commission’s like product definition. The Dutch producer (“OBV”) and its U.S. affiliate (“OAB”) argue that revocation of the order on the Netherlands will not result in significant volumes of subject brass radiator strip imports from countries other than the Netherlands; in addition, they argue that U.S. production of brass radiator

⁶ 19 U.S.C. § 1675a(a)(7). Of course, the requirement that the grouped reviews be initiated on the same day must also be satisfied before the Commission may exercise its discretion to cumulate. *Id.*

⁷ USITC Pub. 1930 at 12 (December 1986); USITC Pub. 1951 at 12-13 (February 1987).

⁸ USITC Pub. 2099 at 16 (July 1988). In the original investigations involving Japan and the Netherlands, cumulation of subject imports from Brazil, Canada, France, Germany, Italy, Korea, and Sweden, was not at issue. Upon review, I find nothing in the Commission’s original determinations with regard to Japan and the Netherlands that would indicate the absence of a likely reasonable overlap of competition among subject imports from all nine countries in these reviews, as well as between all subject imports and the domestic like product, in the event of revocation.

strip will largely cease if the order is revoked because OAB will terminate such production and OBV will begin exporting only brass radiator strip to the U.S. market. Consequently, OBV and OAB argue that it is unlikely there will be a reasonable overlap of competition between imports from the Netherlands and other subject imports, as well as between imports from the Netherlands and the domestic like product, in the event of revocation. I disagree.

The argument raised by OBV and OAB was addressed and dismissed by the Commission in both its preliminary and final original investigations.⁹ I find no reason to depart from that conclusion in these proceedings. Brass radiator strip is but one type of UNS C20000 series brass sheet and strip; several U.S. producers have the capability to produce brass radiator strip among other products, and two U.S. producers have in fact engaged in such production.¹⁰ Nothing in the record indicates that producers in other subject countries are not similarly capable of producing brass radiator strip utilizing existing production facilities; indeed, no specialized equipment is required.¹¹ As a result, I find there is likely to be a moderate to high degree of fungibility among subject imports and between subject imports and the domestic like product in the event the orders are revoked.¹²

I also find that likely imports from each of the subject countries are likely to enjoy a simultaneous presence in the same geographic markets and within the same channels of distribution in the event of revocation, just as the Commission found in each of its original determinations prior to imposition of the orders. Accordingly, I find that there is likely to be a reasonable overlap of competition among all subject imports, and between subject imports and the domestic like product, in the event of revocation.¹³

Likelihood of No Discernible Adverse Impact—

The Netherlands: OBV and OAB argue that revocation of the order on the Netherlands is unlikely to result in a discernible adverse impact on the domestic industry because there will not be significant volumes of brass radiator strip imports from countries other than the Netherlands, and because there will not be significant U.S. production of brass radiator strip. I disagree.

⁹ USITC Pub. 2099 at 14-16 (July 1988).

¹⁰ Confidential Report (“CR”) and Public Report (“PR”) at II-12 and II-6, respectively (*i.e.* OAB and ***).

¹¹ See CR at II-13; PR at II-6. I note that the Canadian producer Ratcliffs exported brass radiator strip to the U.S. market during the period of review; however, the order with respect to Ratcliffs was revoked in 1991 and thus Ratcliffs is no longer a subject producer. See CR at I-11 and V-12; PR at I-9 and V-6. OBV and OAB assert that because the Dutch facility utilizes continuous vertical casting equipment to engage in more efficient brass radiator strip production, OBV is the only likely source of subject brass radiator strip in the event of revocation; this is belied by the fact that certain U.S. producers have the capability to produce brass radiator strip without the benefit of vertical casting equipment, as well as the interest in doing so, and there is nothing to suggest that producers in other subject countries are not similarly capable of brass radiator strip production.

¹² See CR at II-29 to II-35; PR at II-12 to II-16.

¹³ I note in this regard that the Korean producer Poongsan and its U.S. subsidiary PMX argue that there will not likely be a reasonable overlap of competition with regard to imports from Korea in the event of revocation because Poongsan’s exports will be minimal and will simply complement the U.S. production of brass sheet and strip by PMX. I disagree. Even if the likely volume of imports from Poongsan are disregarded, I further note that Poongsan states that it accounts for *** percent of Korean production of brass sheet and strip, with the remaining *** percent accounted for by *** additional producers in Korea, at least one of which possesses substantial production capacity. CR at IV-12; PR at IV-8. As a result, given the incentive to export to the U.S. market following revocation, I find that the likely volume of imports from Korea is far greater, and that the presence of such imports in the U.S. market is likely to be far more extensive, than Poongsan and PMX have represented.

As noted, several domestic producers in addition to OAB have the capability to produce brass radiator strip; one of these producers has previously engaged in such production, while another has expressed interest in doing so.¹⁴ OBV and OAB themselves acknowledge that if the order on the Netherlands is revoked, OBV intends to export approximately *** pounds of brass radiator strip to the U.S. market, an amount which substantially exceeds the annual commercial non-toll shipments of brass radiator strip by U.S. producers in both 1997 and 1998.¹⁵ Such a volume of imports would, in my view, substantially limit the production efforts of the domestic industry with regard to brass radiator strip. Based upon the foregoing, I find that revocation of the order on the Netherlands will likely have a discernible adverse impact on the domestic industry.

Korea: Poongsan and PMX argue that revocation of the order on Korea is unlikely to result in a discernible adverse impact on the domestic industry because Poongsan's exports will be minimal and will serve only to complement the U.S. production of brass sheet and strip by PMX. I disagree.

As noted, in addition to Poongsan there are *** additional producers of brass sheet and strip in Korea that have been identified, at least one of which possesses substantial production capacity; these additional producers account for *** percent of Korean production of brass sheet and strip.¹⁶ Thus, even if future imports from Poongsan are disregarded, the record indicates that there are likely to be significant additional imports of brass sheet and strip from Korea given the incentive resulting from revocation of the order.

As for Poongsan and PMX, even if future imports from Poongsan serve only to complement the U.S. production of PMX, such imports would still compete with the remainder of the domestic industry; moreover, I find that the flexibility afforded Poongsan and PMX as a result of revocation would likely lead to increased import competition in the United States within a reasonably foreseeable time.¹⁷ Based upon the foregoing, I find that revocation of the order on Korea will likely have a discernible adverse impact on the domestic industry.

Sweden: At the time of the original investigation, Metallverken AB was the sole Swedish producer of subject brass sheet and strip; in 1986, the company was acquired by the Finnish firm Outokumpu.¹⁸ In response to the Commission's questionnaire, Outokumpu indicated that in 1992, ***.¹⁹ Although the domestic producers argue that Outokumpu could convert its copper strip and foil production facility located in Finspang, Sweden, to the production of subject brass sheet and strip, the record contains mixed evidence with regard to the feasibility of such a conversion. Moreover, I am satisfied that Outokumpu would not convert its facility in Finspang to the production and exportation of subject brass sheet and strip to the U.S. market, because such exports would compete with the U.S. production of the Outokumpu affiliate OAB.²⁰

¹⁴ CR at II-12 and II-13; PR at II-6.

¹⁵ Cf. CR at IV-12; PR at IV-8 *with* Office of Investigations Memorandum INV-X-063 (March 23, 2000), Alternative Table III-3.

¹⁶ See *supra* n.13.

¹⁷ See Hearing Transcript at 200-205 (responses to questions from Chairman Bragg).

¹⁸ CR at IV-15 and IV-16; PR at IV-8.

¹⁹ CR at IV-16; PR at IV-8.

²⁰ To the extent the Finspang facility were converted to the production of brass radiator strip, exports of such production to the U.S. market would similarly compete with the brass radiator strip exports of Outokumpu affiliate OBV.

The record further indicates that there are two additional firms in Sweden believed to produce brass rolled products; however, the first indicated that ***, while the second stated that ***.²¹

Based upon the foregoing, I find that revocation of the order on Sweden will result in minimal, if any, volumes of subject imports within a reasonably foreseeable time. Accordingly, I find that revocation of the order is not likely to have a discernible adverse impact on the domestic industry.

Remaining Subject Countries: As noted in the views of the majority with regard to Brazil, Canada, France, Germany, Italy, and Japan, I find that there is significant unused production capacity in each of these subject countries that will be used to direct significant volumes of brass sheet and strip to the U.S. market in the event of revocation.²² Accordingly, I find that revocation of each of the orders on these six subject countries, individually, is likely to have a discernible adverse impact on the domestic industry.²³

Conclusion: I find that revocation of the order on Sweden, individually, is likely to have no discernible adverse impact on the domestic industry.²⁴ Because I find that revocation of each remaining order under review, individually, is likely to result in a discernible adverse impact, I do not reach the second stage of my cumulation analysis (*i.e.* an aggregate analysis).

Based upon all the foregoing, I determine to cumulate likely imports of brass sheet and strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, and the Netherlands, for purposes of these grouped reviews. In addition, I determine not to cumulate likely imports of brass sheet and strip from Sweden with imports from any other subject country in these grouped reviews.

²¹ CR at IV-16; PR at IV-8.

²² See Views of the Commission section IV.F.

²³ I note that with regard to the countervailing duty order on Brazil, the Commerce Department concluded that there was no basis upon which to determine the net countervailable subsidy likely to prevail in the event of revocation. *See, e.g.*, CR at I-10; PR at I-9. Nevertheless, Commerce did determine that revocation of the CVD order on Brazil would likely result in continuation or recurrence of a countervailable subsidy. 64 Fed. Reg. at 48368-69 (September 3, 1999).

I further note that Commerce rendered an affirmative duty absorption finding with regard to the German producer Wieland-Werke AG. 64 Fed. Reg. at 49770 n.9 (September 3, 1999). This indicates that in the event the order on Germany is revoked, Wieland would be able to engage in aggressive pricing practices with regard to exports of brass sheet and strip to the U.S. market. *See* Uruguay Round Agreements Act, Statement of Administrative Action at 886.

²⁴ Naturally, this finding forms the basis for my negative determination with regard to Sweden in these grouped reviews. *See* Views of the Commission section IV.C.

**SEPARATE VIEWS OF COMMISSIONER STEPHEN KOPLAN
REGARDING CUMULATION IN BRASS SHEET AND STRIP
FROM THE NETHERLANDS, INV. NO. 731-TA-380**

I find that revocation of the order with respect to brass sheet and strip from the Netherlands would have no discernible adverse impact on the domestic industry and, therefore, do not cumulate subject brass sheet and strip from the Netherlands with subject brass sheet and strip from any of the other subject countries.¹ I join in the Commission's finding that the Dutch producer, Outokumpu Copper Strip B.V. (OBV), produces primarily radiator strip, has demonstrated a commitment since the original investigation to producing primarily radiator strip, and has invested in new equipment and tailored operations to obtain maximum efficiencies in producing radiator strip. OBV states that it intends to export only radiator strip to the United States if the order is revoked, to substitute for current production of its affiliated U.S. producer, Outokumpu American Brass (OAB). Thus, I must determine whether the intended change in sourcing patterns for radiator strip from OAB to OBV is likely to have a discernible *adverse* impact on the overall domestic industry.

As discussed in the Commission's opinion, which I join, there is no indication on the record that subject radiator strip is or is likely to be produced in significant quantities by any other domestic producer. Consequently, the only domestic production likely to be displaced by OBV's increased exports of radiator strip is that of OBV's U.S. production affiliate, OAB. OBV acknowledges that OAB's U.S. production will likely be shifted into other brass sheet and strip products if the antidumping duty order on the Netherlands is revoked. In seeking revocation of the antidumping duty order on subject imports from the Netherlands, OAB advocated that it would in fact benefit from the shift in production, because it would allow OAB to focus on production of other brass products that it can produce more efficiently. Consequently, OAB does not perceive that it will be adversely impacted by revocation of the order on subject imports from the Netherlands.

Thus, while U.S. producer shipments of radiator strip, represented almost entirely by OAB, constitutes at most about *** percent of total domestic consumption and domestic shipments of brass sheet and strip, the portion of domestic brass sheet and strip industry other than OAB that could be adversely impacted by revocation of the antidumping duty order is PMX's production, which represents approximately *** percent of total domestic brass sheet and strip production.² Revocation of the order on

¹ For a discussion of my analytical framework regarding the application of the "no discernible adverse impact" provision, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 303-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplan Regarding Cumulation); Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review).

² CR at Table III-3, supp. III-3. Specifically, in interim 1999, PMX's production of radiator strip represented *** percent of domestic brass sheet and strip production and *** percent of PMX's production of brass sheet and strip. As to the remainder of the domestic industry, the domestic market for radiator strip is stable or declining, with a large number of purchasers turning to aluminum for the production of this heat-exchanger tubing because of the lower cost of the aluminum product. *E.g.*, CR at II-12-II-13; PR at II-6. It is not likely that, absent revocation of the order from the Netherlands, U.S. production would shift into this declining sector. A witness on behalf of OBV also testified as to the barriers to new entry into the radiator strip market. Tr. at 244-45. OBV explains that its efficiencies in terms of technology, machinery and equipment, and specialization in radiator strip permit it to produce radiator strip competitive with the aluminum alternative and they would expect to be uniquely positioned
(continued...)

the Netherlands therefore would adversely impact *** portion of the domestic industry.³ At that level, the imports are not likely to cause significant price effects in the domestic market. Indeed, in importing the radiator strip, OBV is not likely to establish prices to undermine the competitive situation of OAB in its sales of other brass sheet and strip products.⁴ Accordingly, I find that if the order is revoked, imports of the subject merchandise from the Netherlands are likely to have no discernible adverse impact on the domestic industry.

² (...continued)
to compete with the aluminum product if the order is revoked.

³ Put another way, in replacing OAB's sales, OBV's sales of radiator strip will not result in lost revenue to the remainder of the domestic industry, as no other producer sells radiator strip and the prices of other brass sheet and strip products sold by the industry are not likely to be adversely affected by OBV's sales of radiator strip to OAB's customers.

⁴ *E.g.*, OBV Prehearing Brief at 18-20.

CONCURRING AND DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Section 751(d) of the Tariff Act of 1930, as amended, requires the Department of Commerce to revoke an antidumping duty or countervailing duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹

Based on the record in these reviews, I determine that revocation of the antidumping duty orders covering brass sheet and strip (“BSS”) from France, Germany, Italy and Japan, and revocation of the countervailing duty order covering BSS from France, would be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I also determine that revocation of the antidumping duty orders covering BSS from Brazil, Canada, Korea, the Netherlands, and Sweden, and revocation of the countervailing duty order covering BSS from Brazil, would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I write separately to explain my determinations with respect to these orders. I agree with my colleagues with respect to their findings on the domestic like product, the domestic industry, and related parties, and their discussion of the legal standards governing the Commission’s cumulation and causation analysis in sunset reviews. Accordingly, I join the Commission’s joint views discussing these issues.

As a preliminary matter, I note that several parties entered an appearance, submitted information to the Commission, and filed briefs in this proceeding, including six domestic producers of BSS, three unions whose members are employed by the domestic industry, the largest Korean producer of BSS and the sole Dutch producer of BSS. In addition, a number of other subject producers submitted data on their operations to the Commission. A number of subject producers, however, including significant producers located in Canada, Germany, France, and Italy (among others) did not participate in this proceeding or submit data to the Commission. In light of this, the Commission has a somewhat limited record to review in determining whether revocation of the orders will be likely to lead to the continuation or recurrence of material injury in the reasonably foreseeable future. In a case such as this, where one or more of the parties (whether domestic or respondent interested parties) have fully participated in the review, those parties have an advantage in terms of being able to present information to the Commission without rebuttal or comment from the absent parties. Nonetheless, irrespective of the source of information on the record, the statute obligates the Commission both to investigate the matters at issue and to evaluate the information and evidence before it in terms of the statutory criteria.² The Commission cannot properly accept participating parties’ information and characterizations thereof without question and without evaluating other available information and evidence.³

¹ 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1) (1994).

² 19 U.S.C. § 1675a(a), *see also* SAA at 869.

³ *See, e.g., Alberta Pork Producers’ Mktg. Bd. v. United States*, 669 F. Supp. 445, 459 (Ct. Int’l Trade 1987) (“Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.”).

I. CUMULATION

A. *General*

In sunset reviews, the Commission has the discretion to cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews were initiated on the same day if those imports would be likely to compete with each other and with the domestic like product within a reasonably foreseeable time if the orders are revoked.⁴ Thus, in five-year reviews, the relevant inquiry is whether there would likely be competition among the domestic and subject merchandise within the reasonably foreseeable future, even if none currently exists. Because of the prospective nature of five-year reviews and the discretionary nature of the cumulation decision, the Commission has also examined other conditions of competition that are likely to prevail upon revocation when deciding whether to cumulate in sunset reviews.

Although cumulation is discretionary in sunset reviews, the statute unambiguously states that the Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise if those imports are “likely to have no discernible adverse impact on the domestic industry” upon revocation of the order covering those imports.⁵ Thus, before addressing whether the subject imports are likely to compete with one another and the domestic merchandise, the Commission is required by the statute to assess whether the subject imports from an individual country will have a discernible impact on the industry upon revocation of the order.

Moreover, as I have previously discussed, the statute does not direct the Commission to focus its discernability analysis solely on the likely volume levels of the imports; instead, the statute expressly directs the Commission to assess whether the subject imports will have a discernible adverse impact on the industry upon revocation. Accordingly, when I assess whether I am permitted to cumulate the subject imports in sunset reviews, I first focus on whether the imports will impact the condition of the industry in a discernible way as a result of revocation, and not simply on whether there will be a small -- *i.e.*, negligible -- volume of imports after revocation.⁶

Given the record of this proceeding and the arguments made by the parties, several additional points are necessary. First, counsel for the domestic industry has argued in these reviews that the “discernible adverse impact” standard applicable to our cumulation analysis in a sunset review requires a lower level of impact on the industry than an affirmative material injury finding in a sunset review.⁷ This is true. As petitioners correctly indicate, the “discernible adverse impact” standard requires the Commission to assess whether the subject imports will have a “noticeable” adverse impact on the industry upon revocation. This interpretation of the statutory standard is consistent with the overall structure of the current statute and with case law addressing the meaning of that phrase as used in the Tariff Act before the enactment of the URAA.

Second, in my view, the statute contemplates that the Commission will assess whether the subject imports are likely to have a discernible adverse impact on the industry as a result of revocation of an order. In this regard, the statute is premised on the notion that, in a sunset review, the Commission must analyze whether revocation of the antidumping or countervailing duty order under review will cause the

⁴ 19 U.S.C §1675a(a)(7).

⁵ Section 752(a)(7) of the Act, 19 U.S.C. 1675a(a)(7).

⁶ I discussed the rationale for my approach in more detail in my Additional Views in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245, at 31 (October 1999).

⁷ See, e.g., Tr. at 18 (testimony of Ms. Cannon).

continuation or recurrence of material injury to the industry. As stated in Statement of Administrative Action for the Uruguay Round amendments:

Under the likelihood standard in the [statutory sunset provisions], the Commission must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation of an order or termination of a suspended investigation and the elimination of the restraining effects of that order or suspended investigation on volumes and prices of imports.⁸

In light of this language, it seems clear that the discernible adverse impact analysis must also be viewed through the prism of what is likely to happen to the industry as a result of a change in the status quo, that is, as a result of revocation.

Finally, I would note that neither the statute nor the SAA indicates that the discernible adverse impact provision is a “limited” exception to cumulation in sunset cases. It may be true that, in the majority of reviews, imports from each of the subject countries will be found likely to have a discernible adverse impact on the industry. Nonetheless, if the record establishes that subject imports from several countries are unlikely to have a discernible adverse impact on the domestic industry upon revocation, the Commission is required by the statute not to cumulate imports from those countries, even if that means that, in some cases, most of the imports subject to review will not be subject to cumulation.

In this case, the reviews of the orders for the nine subject countries were initiated on the same day. Accordingly, I have considered first whether the subject imports from the subject countries are likely to have a “discernible adverse impact” on the domestic industry upon revocation of the orders. If I find that imports from any one of these countries are not likely to have a discernible adverse impact on the domestic industry upon revocation of the order, then I am precluded from cumulating the imports from that country with those of any other subject country. If I find that they are likely to have a discernible adverse impact on the industry upon revocation of the order, I must then consider whether it is appropriate to exercise my discretion to cumulate the subject countries. I discuss my cumulation analysis for each of these countries below.

B. Discernible Adverse Impact

1. The Subject Imports from Brazil Are Likely to Have No Discernible Adverse Impact on the Domestic Industry Within The Reasonably Foreseeable Future If the Brazilian Orders are Revoked

I find that the subject imports from Brazil are not likely to have a discernible adverse impact on the domestic industry if the Brazilian orders are revoked. Currently, there are minimal levels of Brazilian imports in the market. In 1997 and 1998, there were no imports of BSS from Brazil. In interim 1999, only 371 thousand pounds of BSS were imported from Brazil, a total equivalent to only 0.1 percent of the U.S. market.⁹ Similarly, the subject imports from Brazil occupied a small and declining share of the domestic market during the original investigations, with their market share declining from 2.4 percent in 1984 to 1.5 percent in 1985 and to 1.1 percent in 1986.¹⁰ These historical patterns of very low importation levels by

⁸ SAA at 883.

⁹ CR and PR at Table I-2.

¹⁰ *Id.*

the Brazilian producers indicate that they are unlikely to ship more than very small volumes of merchandise to the United States within the reasonably foreseeable future.

My conclusion in this regard is supported by the capacity data submitted by the Brazilian producers, which shows that they have a very limited amount of capacity that could be used to export BSS to the United States. Although the Brazilian producers' capacity utilization rates have been declining through the period of review,¹¹ their total capacity level is relatively small when compared to overall domestic consumption and production. The Brazilian producers had an annualized 1999 capacity level of approximately *** million pounds. Even if the Brazilian producers used all of their apparent unused capacity in 1999 to ship merchandise to the United States (*i.e.*, *** percent of their total 1999 capacity of *** million pounds), that total production level would equal less than *** percent of domestic consumption in 1998. While this production volume would most likely have a discernible impact on the industry if it were all shipped to the United States, the Brazilian producers have historically focused the large bulk of their shipments on their home market and have not made significant amounts of export shipments.¹² Given this, I find that the available record evidence indicates that it is most likely that the Brazilian producers would ship the bulk of any additional production to their home market customers and that they would ship only minimal levels of BSS to the United States in the reasonably foreseeable future.

I also find that the record indicates that the subject imports from Brazil will not have a discernible adverse impact on domestic prices upon revocation of the order. Although there is little usable price comparison data for Brazilian imports in these reviews, the very small increase in the level of the Brazilian imports that would occur upon revocation of the order is unlikely to have a discernible effect on domestic prices within the reasonably foreseeable future, even in a relatively price-sensitive market like the BSS market.

For the foregoing reasons, I find that the small increase in the volume of the subject imports from Brazil that can be expected upon revocation of the orders is unlikely to have a discernible adverse impact on the domestic industry. I have, therefore, not cumulated the subject imports from Brazil with imports from the other subject countries for purposes of my analysis in these reviews.

2. *The Subject Imports from Canada Are Likely to Have No Discernible Adverse Impact on the Domestic Industry Within the Reasonably Foreseeable Future If the Order is Revoked*

I also determine that the subject imports from Canada are not likely to have a discernible adverse impact on the domestic industry if the antidumping duty order covering Canada is revoked. The market share of the subject Canadian imports has remained relatively at relatively small levels throughout the period of review, with their market share being 0.5 percent in 1997, 2.4 percent in 1998 and 0.7 percent in interim 1999.¹³ Similarly, the Canadian imports had a small and declining market share during the original investigation, with their market share declining from 2.0 percent in 1984 to 1.4 percent in 1985 and then to 0.8 percent in 1986.¹⁴ Again, these small historical market shares indicate that the Canadian producers are

¹¹ Their capacity utilization rates declined from *** percent in 1997 to *** percent in 1998 and then to *** percent in interim 1999. CR and PR at Table IV-3.

¹² The Brazilian producers have consistently shipped more than *** percent of their total production to their home market in recent periods. CR and PR at Table IV-3.

¹³ CR and PR at Table I-2.

¹⁴ *Id.*

unlikely to begin shipping more than very small volumes of imports to the United States upon revocation of the order.

I further note that none of the three Canadian producers involved in the original investigation remains active in the BSS market.¹⁵ There remains only one producer of BSS in Canada, Wolverine. Wolverine submitted no production, capacity or shipments data to the Commission in this proceeding. Nonetheless, the record indicates that Wolverine has not increased its exports to the United States in more than a minimal fashion during the period of review, despite the fact that it has been subject to de minimis dumping margins since 1996.¹⁶ Given this, and given the historical export experience of the Canadian producers during the original investigation, I find that the available record evidence indicates that it is not likely that the remaining Canadian producer will ship more than minimal volumes to the United States upon revocation of the order.¹⁷

Similarly, I find that the record data indicate that the subject imports from Canada will not have a discernible adverse impact on domestic prices upon revocation of the order. There is a very limited amount of pricing data available for the Canadian imports, which indicates that the small volume of Canadian imports have generally undersold the domestic product.¹⁸ I note, however, that a significant portion of this underselling occurred during a period for which the Department has concluded that the Canadian producers were selling at de minimis margin levels.¹⁹ Moreover, given that it is unlikely that the Canadian imports would ship more than a minimal volume of merchandise to the United States upon revocation of the order, I find that it is unlikely these small volumes of Canadian imports would have a discernible effect on domestic prices within the reasonably foreseeable future upon revocation of the order.

Accordingly, I find that the subject imports from Canada would not be likely to have a discernible adverse impact on the domestic industry if the order were revoked. I have, therefore, not cumulated the subject imports from Canada with the subject imports from other countries for purposes of my analysis in these reviews.

¹⁵ CR at IV-6, PR at IV-4; Petitioner's Final Comments. One of the other producers ceased operating in the late 1980s and the other two producers have been acquired by the sole Canadian firm that now producing BSS, Wolverine. Id.

¹⁶ CR at I-12, PR at I-10.

¹⁷ I note that the subject Canadian imports did occupy approximately 2.4 percent of the market in 1998, the only point during the period of review in which they shipped more than minimal volumes of BSS to the United States. The record indicates, however, that more than ***. Given this set of circumstances, I find that this one-time increase in Canadian import levels does not indicate an intent on the part of Wolverine to resume more than minimal export levels to the United States upon revocation of the order.

¹⁸ CR and PR at Table V-13.

¹⁹ Compare CR at I-12 & PR at I-10 with CR and PR at Table V-13 (showing Canadian underselling in 1997 when Wolverine had de minimis dumping margins and Ratcliffs was not subject to the order.)

3. *The Subject Imports from Korea Are Likely to Have No Discernible Adverse Impact on the Domestic Industry Within the Reasonably Foreseeable Future If the Order is Revoked*

I also find that the subject imports from Korea are not likely to have a discernible adverse impact on the domestic industry if the order is revoked. Korea's import levels have been minuscule during the period, remaining below a level of 0.05 percent for each year of the period of review.²⁰ Moreover, Korea's market share remained minimal throughout the entire original period of investigation, with its market share being 1 percent in 1984, 1.5 percent in 1985, and 1 percent in 1986.²¹ As with Brazil and Canada, these export patterns suggest that it is unlikely that the Korean producers will ship more than minimal volumes of merchandise to the United States upon revocation of the order.

My conclusion in this regard is supported by the other record evidence with respect to Korea. First, the largest Korean producer, Poongsan, has been operating at very high capacity utilization rates throughout the period of review,²² which indicates that Poongsan has *** excess capacity available for export to the United States upon revocation. Accordingly, Poongsan is not likely to be able to ship more than minimal levels of product to the United States within the reasonably foreseeable future.²³ Similarly, the limited available record evidence indicates that the second largest Korean producer, Lee Ku, is operating at high capacity utilization rates as well.²⁴ Because these two producers account for the large bulk of Korean production²⁵ and because Poongsan accounted for the vast majority of Korea's exports to the United States during the original period of investigation,²⁶ I believe that the record indicates that it is unlikely that the Korean producers as a whole will use more than minimal amounts of their production capacity to export BSS to the United States upon revocation of the order.²⁷

Second, Poongsan has established a significant BSS production facility in the United States, PMX. PMX is the *** BSS producer in the United States and produces all of the BSS product lines produced by its parent, which allows PMX to serve the U.S. market without significant resort to imports from Poongsan.²⁸ PMX is operating *** in the United States and has *** capacity to increase production to meet

²⁰ CR and PR at Table I-2.

²¹ *Id.*

²² CR and PR at Table IV-6. Poongsan's capacity utilization rates have been in excess of *** percent during the period of review.

²³ I also note that Poongsan has *** inventory levels as well. CR and PR at Table IV-6.

²⁴ The record indicates that Lee Ku had *** percent. CR at IV-12, PR at 6, n. 13.

²⁵ CR at IV-12, PR at IV-6. Poongsan estimates that it accounted for 97 percent of subject imports from Korea in the original investigation. Tr. at 167, Poongsan Posthearing Brief at 4.

²⁶ Poongsan estimates that it accounts for *** percent of Korean brass sheet and strip production, and *** percent of brass sheet and strip sales in Korea. CR at IV-12, PR at IV-6.

²⁷ I do not find that the other Korean producers, who were not significantly present in the U.S. market during the original investigation, would significantly increase their exports to the United States above the very low levels found in the original investigation if the orders were revoked. The other Korean brass sheet and strip producers appear more focused than Poongsan on the home market and are therefore less likely to export generally.

²⁸ *E.g.*, Poongsan Posthearing Brief at 6-9. PMX indicated it may on occasion have to import from Poongsan but that would be the exception. *Id.* at 9.

any additional U.S. demand.²⁹ Since Poongsan is related to a significant domestic producer, I find this also shows that the largest Korean producer is not likely to export more than minimal volumes of subject merchandise to the United States if the antidumping duty order on Korea is revoked.

Similarly, I find that the record indicates that the subject imports from Korea will not have a discernible adverse impact on domestic prices upon revocation of the order. There is little pricing data available with respect to the Korean imports. I find, however, that Poongsan, the predominant Korean exporter, has no incentive to price at levels that would undercut the competitive position of its U.S. affiliate, PMX, which produces a full range of brass sheet and strip products. Moreover, the minimal volumes from the Korean producers that can be expected upon revocation are not likely to be sufficient to have a discernible impact upon the prices of domestic producers, even in a somewhat price-sensitive market. Accordingly, I find that it is unlikely the Korean imports would have a discernible effect on domestic prices within the reasonably foreseeable future upon revocation of the order.

Accordingly, I find that the subject imports from Korea would not be likely to have a discernible adverse impact on the domestic industry if the order were revoked. I have, therefore, not cumulated them with the subject imports from other countries for purposes of my analysis in these reviews.

4. *The Subject Imports from Sweden Are Likely to Have No Discernible Adverse Impact on the Domestic Industry Within the Reasonably Foreseeable Future If the Order is Revoked*

I also determine that the subject imports from Sweden are not likely to have a discernible adverse impact on the domestic industry if the antidumping duty order covering Canada is revoked. The record indicates that there is no longer any production of BSS in Sweden.³⁰ Outokumpu Rolled Products, the successor-in-interest to the only Swedish producer of BSS during the original investigations, shut down its BSS facility in 1992. Moreover, although Outokumpu Rolled Products still produces non-subject copper and copper alloy products in Sweden, the record indicates that it would be difficult for the Swedish producer to shift these production facilities to the production of BSS within a reasonably foreseeable time.³¹ Finally, Outokumpu is related to the second-largest domestic producer of BSS, OAB, which provides a significant disincentive to the Swedish company to resume production of BSS for the purpose of exporting merchandise to the United States. In light of these considerations, I find that it is likely that there will be no imports of BSS from Sweden in the reasonably foreseeable future and that the Swedish imports will therefore have no discernible adverse impact on the industry. I have, therefore, not cumulated the subject imports from Sweden with the subject imports from other countries for purposes of my analysis in these reviews.³²

²⁹ CR and PR at Table III-7; PMX Questionnaire Response.

³⁰ CR at IV-15-16, PR at IV-8.

³¹ *E.g.*, Tr. at 32 & 288.

³² In accordance with the statute, I have also considered whether imports from the remaining subject countries will be likely to have a discernible adverse impact on the industry upon revocation of the order. In the case of Japan, I note that the Japanese imports currently are at minimal levels in the market and that the Japanese producers are currently operating at very high capacity utilization rates. CR and PR at Tables I-2 & IV-5. During the original period of investigation, however, the Japanese imports' market share was at a level that would have had a discernible impact on the domestic industry during the original investigations and their market share was increasing during the period. CR and PR at Table I-2. Similarly, although we have little information with respect

(continued...)

C. Reasonable Overlap of Competition

1. *France, Germany, Italy, and Japan*

I find that the record evidence indicates that the subject imports from France, Germany, and Italy are likely to compete with one another and the domestic merchandise upon revocation of the orders. First, as I discuss more fully below, the record indicates that there is likely to be a moderate to high degree of substitutability among the domestic like product and imports from these subject countries upon revocation of the orders.³³ Second, the record of these reviews indicates that the BSS market is generally a nationwide market and that competition occurs on a national basis. In this regard, I note that the largest domestic producers,***.³⁴ This indicates to me that the subject imports would be likely to be marketed on a nationwide basis as well. Third, there is nothing in the record that indicates that imports would not be sold simultaneously throughout the nationwide market upon revocation of the orders. Finally, the record indicates that the domestic producers and importers both sell to distributors, end users, and rerollers.³⁵

Accordingly, I find that there is likely to be a reasonable overlap of competition among the subject imports from France, Germany, Italy, and Japan and the domestic merchandise if the orders covering these imports were revoked.³⁶ I therefore cumulate the subject imports from these countries for purposes of my analysis in these reviews.

³² (...continued)

to the German producers, the German imports are currently at minimal levels but occupied a significant portion of the market during the original investigations, with their market share ranging between 8.3 and 10.6 percent during the period of investigation. CR and PR at Table I-2. Accordingly, I find that the imports from Japan and Germany are likely to enter the market at levels that would have a discernible adverse volume and price impact on the industry upon revocation of the order.

Although it is a closer call with respect to France, Italy and the Netherlands, I also find that the subject imports from these countries are likely to have a discernible adverse impact on the industry upon revocation of the order. The volume of the Italian imports is currently very low and the Italian imports had a minimal market share during the original period of investigation. CR and PR at Table I-2. The limited available data, however, indicate that the largest Italian producer, LMI-La Metalli, is planning to bring on line additional copper alloy production capacity by the end of 2000 and that it entered into a merger agreement with the large French producer Trefimetaux and the large German producer Kabellmetal in 1995. CR at IV-7, PR at IV-4. These two developments indicate that the Italian producer would be likely to ship substantial volumes of merchandise to the United States if the order covering Italy were revoked while the French and German orders remained in place. Similar considerations lead me to conclude that the French imports are likely to have a discernible adverse impact on the industry if the order on France were revoked.

Finally, the sole Dutch producer has conceded that it will gradually ship approximately 15 million pounds of subject radiator strip to the United States upon revocation of the Dutch order. CR at IV-12, PR at IV-8. For the reasons discussed below, I do not find that these Dutch imports will be likely to have a significant or price impact on the industry. Because this conceded increase in import volume, however, would represent nearly a three percent share of the domestic market in 1998, I find that the Dutch imports are likely to have a discernible impact on the industry in this somewhat price-sensitive market.

³³ CR at II-29-35, PR at II-12-16.

³⁴ CR and PR at II-3.

³⁵ CR and PR at II-1.

³⁶ I do not find that there are any other conditions of competition that would support my exercising my discretion not to cumulate these countries in these reviews.

2. *The Netherlands*

I find, however, that the subject imports from the Netherlands are not likely to have a reasonable overlap of competition with the domestic merchandise and the other subject imports upon revocation of the order. OBV, the sole Dutch producer of BSS, currently produces radiator strip as its primary BSS product³⁷ and has invested in new equipment and tailored operations to obtain maximum efficiencies in producing radiator strip.³⁸ OBV has stated that it intends to export only radiator strip to the United States if the order is revoked³⁹ and that these exports would substitute for current production of radiator strip by its related domestic producer, OAB. Given that these exports would comprise almost all of the Dutch imports upon revocation of the order⁴⁰ and that shipments of radiator strip represented at most *** percent of the total quantity of domestic BSS shipments during the period of review,⁴¹ I find that this level of likely competitive overlap between the Dutch imports and domestic production does not constitute a sufficient degree of likely competition to warrant cumulation of the Dutch imports in these reviews.⁴² I therefore do not cumulate the subject imports from the Netherlands with the other subject imports.⁴³

II. **CONDITIONS OF COMPETITION**

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and

³⁷ OBV reports that approximately 85 percent of its production is radiator strip. OBV Posthearing Brief at 7.

³⁸ *E.g.*, CR at II-12-13, PR at II-6. ***. See also CR at I-19, n.18, PR at I-16, n. 18; OBV Prehearing Brief at 22-23.

³⁹ Although the petitioners correctly note that OBV also produces connector strip in the Netherlands, these items represent a relatively small percentage of OBV’s total production. Moreover, OAB is in the process of developing connector strip production lines in its U.S. facilities. LECG Economic Report at 34, OBV Prehearing Brief at 11-24; OBV Questionnaire Response. Given this, I find it unlikely that OBV would import more than minimal volumes of connector strip into the United States upon revocation of the order because doing so would hinder OAB’s development of its connector strip business.

⁴⁰ As indicated previously, the Dutch producer reports that it expects to export 15 million pounds of radiator strip eventually to the United States. CR at IV-12, PR at IV-8. This amount would equal less than three percent of total domestic consumption in 1998. See CR and PR at Table I-2.

⁴¹ CR and PR at Table III-3.

⁴² I also find that there is unlikely to be more than minimal levels of subject imports of radiator strip from any of the other subject countries. Aside from OBV, the only producer in a subject country that is known to produce radiator strip was the Canadian producer, Ratcliffs, who is not currently subject to the Canadian antidumping order. Although the record indicates that Ratcliffs was purchased by Wolverine recently, it is unclear what the corporate structure of the acquisition is and whether Ratcliffs will become subject to the order. As a result, I find that the record in these reviews would not support a finding that the subject Canadian producers are likely to export radiator strip to the United States upon revocation of the order. Accordingly, I also conclude there is little likelihood that subject imports from the Netherlands will compete to a reasonable degree with the subject imports from the other countries, including Canada.

⁴³ I also note that, even if there were a reasonable likely overlap of competition between the Dutch imports and the other subject and domestic merchandise, I would exercise my discretion not to cumulate the Dutch imports because of the fact that the sole Dutch producer is related to the second largest domestic producer, which is a significantly different condition of competition than those effecting imports from France, Germany, Italy and Japan, the other four countries whose imports are eligible for cumulation in these reviews.

conditions of competition that are distinctive to the affected industry.”⁴⁴ The BSS market in the United States is characterized by the following conditions of competition:

First, apparent demand for BSS has remained flat since the original investigations, generally ranging between 520 to 570 million pounds during the original period of investigation and the period of review.⁴⁵ Demand for BSS is derived from demand in its downstream end use markets, which has generally been strong throughout the nineties because of the strengthening of the economy.⁴⁶ Despite the general growth in the overall economy since 1985, however, demand for BSS or BSS has remained flat, in part because of the increasing substitution of other products, such as steel, aluminum, stainless steel, other copper alloys, and plastics, for BSS in certain end uses.⁴⁷

Second, the domestic industry has undergone significant restructuring since the original investigation. Of the nine domestic producers in the original investigation, only four producers still produce BSS.⁴⁸ Moreover, unlike the original investigations, two of the three largest domestic producers, Outokumpu AB (“OAB”) and PMX Industries (“PMX”), are related to significant subject producers of BSS. These two companies account for a substantial percentage of total domestic production.⁴⁹

Third, although demand has remained relatively flat, the industry has increased its total capacity significantly since the original investigations. During the original investigation, the industry’s capacity declined from 616 million pounds in 1984 to 543 million pounds in 1987, keeping pace with an overall decline in demand at the same time.⁵⁰ Despite flat demand since that period, the industry reports that its current capacity levels have increased to 715 million pounds in 1997. The industry’s capacity utilization rates are at the same relatively high levels seen during the original period of investigation.⁵¹

⁴⁴ 19 U.S.C. § 1675a(a)(4).

⁴⁵ CR and PR at Table I-2. The only exception was in 1984, when apparent consumption of BSS was nearly 640 million pounds.

⁴⁶ CR at II-23-26, PR at II-10-12.

⁴⁷ CR at I-20 & II-22, PR at I-17 & II-9. Purchasers differ with respect to the price changes of BSS that would cause increased substitution of these other products for BSS, with estimates of the necessary price changes ranging from 3-5 percent up to 150 percent. CR at I-20, PR at I-17.

⁴⁸ Among the basic producers, Hussey, Olin, OAB, and Revere all produced brass sheet and strip in the United States during the original investigations. OAB, American Brass at the time of the original investigations, was purchased by Outokumpu Copper Products Oy of Espoo, Finland, in 1990. Since the time of the original investigation, Olin acquired Bridgeport Brass, Hussey ***, and OAB ***. CR at I-25, PR at I-19. Rerollers *** and Heyco both operated during the time of the original investigations. During the period reviewed, however, ***. Another known producer, that did not respond in these reviews, is ***. CR at I-24, n.24, PR at I-19, n.24. Five firms that produced the like product at the time of the original investigation have ceased operation or ceased production of the product, and another was purchased by Olin in 1988. CR at I-25, PR at I-19. The only new entrant in the industry since the original investigations is PMX. This firm, established as a greenfield operation in Cedar Rapids, IA, in 1992, is ***-percent owned by Poongsan Corp., Seoul, Korea, a Korean producer.

⁴⁹ In 1998, Outokumpu AB accounted for approximately *** percent of total domestic production and PMX accounted for approximately *** percent of total domestic production. CR at I-24, PR at I-20.

⁵⁰ CR and PR at Table I-2. Apparent consumption declined from 639 million pounds in 1984 to 570 million pounds in 1987. *Id.*

⁵¹ CR and PR at Table I-1.

Fourth, the price of BSS is typically set on the basis of two pricing components: a raw materials component and a fabrication mark-up.⁵² The raw materials component of BSS pricing is typically based on the COMEX price of copper, the primary raw material input for brass.⁵³ The fabrication costs are intended to reflect the costs of manufacture for the producer.⁵⁴ The record indicates that these pricing components are both subject to negotiation between the producers and importers.⁵⁵

Fifth, the record indicates that a large majority of sales in the domestic market are made pursuant to long-term contracts.⁵⁶ Generally, these contracts have terms of between 1 to 3 years.⁵⁷ According to the domestic producers, long term contracts may represent between 80 and 95 percent of their total domestic sales.⁵⁸ Although the domestic producers assert that these contracts do not actually limit the ability of purchasers to switch suppliers, the majority of domestic producers reported that they do not normally include meet-or-release clauses in these contracts.

Sixth, the market is also characterized by a significant percentage of toll production sales.⁵⁹ Generally, toll production sales involve an arrangement between the purchaser and the producer in which the purchaser buys some or most of the raw material components for BSS, provides the raw materials to the BSS producer, and pays the producer the costs of manufacturing the BSS into a finished product.⁶⁰ Moreover, because scrap brass can frequently be melted down and re-used, these toll arrangements frequently involve scrap purchases or scrap buyback arrangements between the purchaser and the producer. According to the industry, tolling arrangements are not favored and the industry is moving away from use of tolling arrangements.⁶¹ The record indicates, however, that domestic producers are still making substantial volumes of toll sales and that these sales are at levels that are similar to those made during the original investigations.⁶²

Seventh, the record indicates that there is a reasonably high level of substitutability between the subject and domestic merchandise. Although the record indicates that quality is the most important factor in the purchase decision and that some firms reported that imports from certain countries were of different quality than the domestic merchandise, the large majority of producers, purchasers and importers reported that the subject merchandise and the domestic merchandise were interchangeable.⁶³ Moreover, the large

⁵² CR at V-7, PR at V-5.

⁵³ CR at V-7 & V-1, PR at V-5 & V-1.

⁵⁴ CR at V-1 & V-7-8, PR at V-1 & V-5.

⁵⁵ CR at V-8-9, PR at V-5-6.

⁵⁶ CR at V-7, PR at V-5.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ CR at II-6-11, PR at II-3-5.

⁶⁰ Id. In other words, the purchaser pays the fabrication costs and not the raw material costs component of the BSS price.

⁶¹ CR at II-6, PR at II-3.

⁶² The toll net sales quantity as a percent of total net sales quantity ranged from *** percent during the period from January-June 1998 to *** percent in January-June 1999. The total percentage of toll sales by quantity during the original period of investigation ranged from *** percent. CR and PR at Table III-6.

⁶³ CR at II-31-35, PR at II-15-16.

majority of purchasers reported that they rarely made a purchase based on the identity of the producer or the country of origin of the product.⁶⁴

Eighth, there has been a significant depreciation of the currencies of the subject countries against the U.S. dollar since 1997. Of the subject currencies, only the Japanese yen has appreciated against the dollar.⁶⁵

Finally, nonsubject imports occupy only a small share of the market, with their market share ranging between 3.4 and 4.8 percent during the period of review.⁶⁶ These levels are only slightly higher than the levels obtained by non-subject imports during the original investigations.⁶⁷

III. REVOCATION OF THE ANTIDUMPING AND COUNTERVAILING DUTY ORDERS COVERING BRASS SHEET AND STRIP FROM FRANCE, GERMANY, ITALY AND JAPAN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of the Cumulated Imports from France, Germany, Italy, and Japan

In evaluating the likely volume of imports of subject merchandise if an antidumping order is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁶⁸ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁶⁹

In its original determinations, the Commission found that subject import volumes had fluctuated throughout the periods examined but that their volumes and market shares remained at significant levels during those periods.⁷⁰ On a cumulated basis, the aggregate market shares of France, Germany, Italy and Japan ranged between 15.5 percent to 18 percent during the period from 1984 to 1987.⁷¹

I find that the volume of the cumulated subject imports is likely to be significant if the orders covering France, Germany, Italy and Japan are revoked. First, there is a very limited amount of data

⁶⁴ CR at II-29, PR at II-13.

⁶⁵ CR at V-5, PR at V-4.

⁶⁶ CR and PR at Table I-2.

⁶⁷ CR and PR at I-2.

⁶⁸ 19 U.S.C. § 1675a(a)(2).

⁶⁹ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁷⁰ Original Brazil/Canada/Korea Determination, USITC Pub. 1930 at 14-15; Original France/Germany/Italy/Sweden Determination, USITC Pub. 1951 at 13-14; Original Japan/Netherlands Determination, USITC Pub. 2099 at 17-18. In the Japanese/Netherlands determination, one member of the Commission majority made an affirmative threat determination, noting that Japanese import volumes had increased steadily through the period from but fell slightly in 1987 and considerably in interim 1988. Original Japan/Netherlands Determination, USITC Pub. 2099 at 33.

⁷¹ CR and PR at Table I-2.

available with respect to the cumulated subject producers' capacity levels in these reviews.⁷² Nonetheless, the available record evidence suggests that the cumulated subject producers in France, Germany, Italy and Japan have sufficient capacity to ship significant volumes of imports to the United States, as they did in the original investigation. For example, the record indicates that the large French producer Trefimetaux, the German produce Kabelmetall AG and the Italian producer La Metalli have combined to form a multinational conglomerate that has a sheet and strip facility with capacity of 600 million pounds.⁷³ While I believe it is unlikely that this facility would produce BSS products exclusively, its potential productive capacity in general is larger than the entire U.S. BSS market.⁷⁴ Similarly, the limited available evidence indicates that the German producer Wieland Werke is one of the largest BSS producers in the world and presumably would have significant capacity for the purpose of shipping imports to the United States.⁷⁵ In the absence of other data on these issues, I can only conclude that the subject producers have ample available capacity that could be used to increase their exports to the United States.

Moreover, as discussed above, the volumes and market share of the cumulated subject imports were significant during the original period of investigation. The market share of the German producers ranged from 8.3 percent to 10.6 percent of the market, the market share of the Japanese producers ranged from 2.8 percent to 4.3 percent, the market share of the French producers ranged from 1.6 percent to 3.6 percent, and the market share of the Italian producers ranged from 1 to 2 percent during the original investigations.⁷⁶ On a cumulated basis, the aggregate market shares of these four countries ranged from 15.5 percent to 18 percent during the period from 1984 to 1987.⁷⁷ Given that the market shares of all four countries are currently at minimal levels⁷⁸ and that their existing dumping duty rates are relatively high,⁷⁹ I find that it is likely that the existing orders are restraining the ability of these producers to import substantial volumes into the United States and that the subject producers would begin importing significant import volumes into the United States upon revocation of the orders.⁸⁰

Further, several structural aspects of the world market indicate that the subject producers have an incentive to resume exports to the United States. First, there has generally been a significant depreciation of the subject countries' currencies against the U.S. dollar in recent years. Since January 1, 1997, the franc has declined 11 percent against the dollar in real terms, the lira has declined 8.1 percent against the dollar

⁷² In this regard, the Commission obtained reasonably complete data with respect to production capacity, production and shipments figures from the Japanese producers. No French or Italian producer provided data to the Commission and only one German producer provided data to the Commission.

⁷³ CR at IV-7, PR at IV-4-5.

⁷⁴ Id.

⁷⁵ I note that the Commission also has a limited amount of inventory data for the producers in the cumulated subject countries.

⁷⁶ CR and PR at Table I-2.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ The current "all others rate" applicable to Germany is 16 percent, the current "all others" rate applicable to France is 42.24 percent, the rate applicable to Japan is 45.72 percent and the rate applicable to Italy is 9.49 percent. CR at I-11-13, PR at I-1-11 & App. A.

⁸⁰ In this regard, I note that the declines in market share exhibited by the cumulated subject imports since imposition of the orders have not been offset to a significant degree by increases in non-subject imports, which suggests that the subject imports will not simply replace non-subject import market share upon revocation of the orders. Id.

in real terms, and the deutschmark has declined 2 percent against the dollar in real terms.⁸¹ These currency declines relative to the dollar provide a currency-based incentive for the subject produces to increase their export levels to the United States upon revocation. In addition, the United States economy remains the strongest economy in the world while the European and Asian economies are only now in the process of recovering from their recent difficulties. I believe that the U.S. market's stable and relatively strong demand for BSS and other products will create an incentive for BSS producers to shift production to the United States upon revocation.

Accordingly, I find that the volume of the cumulated subject imports from France, Germany, Italy and Japan are likely to be significant upon revocation of the order.

B. Likely Price Effects of the Cumulated Subject Imports from France, Germany, Italy and Japan

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.⁸²

In its original determinations, the Commission found that the subject imports from France, Germany, Italy, and Japan had had significant adverse effects on domestic prices during the period of investigation.⁸³ In those determinations, the Commission found that the cumulated countries undersold the domestic merchandise in a majority of price comparisons and that the subject imports had suppressed or depressed domestic prices to a significant degree.⁸⁴

I find that the available record evidence indicates that the cumulated subject imports from France, Germany, Italy, and Japan are likely to have significant adverse effects on domestic prices if the orders are revoked. First, the record indicates that there is likely to be a reasonably high level of substitutability between the subject imports and the domestic product upon revocation of the order. Although the record indicates that quality is an important consideration in the purchase decision, the record also indicates that price is the second most important factor in the purchase decision and that most of the subject imports and

⁸¹ CR and PR at Table V-1. The Japanese yen is the only currency that has appreciated against the dollar. *Id.*

⁸² 19 U.S.C. § 1675a(a)(3). The SAA states that “[consistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

⁸³ Original Brazil/Canada/Korea Determination, USITC Pub. 1930 at 15-16; Original France/Germany/Italy/Sweden Determination, USITC Pub. 1951 at 14-16; Original Japan/Netherlands Determination, USITC Pub. 2099 at 18-19. In the Japanese/Netherlands determination, one member of the Commission majority made an affirmative threat determination, noting that the Japanese imports had consistently undersold domestic prices. Original Japan/Netherlands Determination, USITC Pub. 2099 at 33.

⁸⁴ USITC Pub. 1930 at 15. In the original France investigation, the data for six product categories showed underselling in all but one of the 35 direct quarterly price comparisons. USITC Pub. 1951 at 16. In the original Germany investigation, there was underselling in 43 of 58 direct quarterly price comparisons. USITC Pub. 1951 at 16. In the original Japan investigation, price comparisons showed underselling in 74 of 100 instances. USITC Pub. 2099 at 19.

the domestic merchandise are considered to be of similar quality.⁸⁵ In this regard, the large majority of producers and importers generally reported that the subject imports are considered interchangeable.⁸⁶ Moreover, the Commission's staff estimates the substitution elasticity of the products is between 4 to 6, which indicates a moderately high to high level of substitutability for the subject and domestic products.⁸⁷ Given these considerations, I find that price will be a very significant element of competition between the subject imports and the domestic merchandise upon revocation of the orders.

The record contains little available price comparison data for the subject imports from France, Germany, Italy and Japan. The record of these reviews indicates, however, that the domestic market for BSS is a relatively price-sensitive market, that it is a mature market, and that demand in the BSS market is moderately inelastic. Moreover, as I have concluded previously, the record indicates that the subject producers from France, Germany, Italy and Japan are likely to increase their import volumes to the United States significantly upon revocation of the order. In light of these considerations, I find that the significant volumes of the cumulated imports likely to enter the market upon revocation of the orders are also likely to enter at prices that will have a suppressive or depressive effect on domestic prices.

Several other conditions of competition in the market will exacerbate the likely adverse price effects of the subject imports. First, the pricing of BSS is generally based on a raw materials component and a fabrication mark-up,⁸⁸ which means that BSS products are generally priced on a more transparent basis than products in other markets. Because both of these pricing components are known by the purchasers, this pricing practice allows purchasers leverage in the negotiating process and would significantly limit the ability of BSS producers to keep prices high in the face of significant volumes of import competition. Second, there are eight domestic producers in the market, five of whom are reasonably large. As a result, the domestic market is currently reasonably competitive with respect to price. The likely addition of significant volumes of the cumulated imports would cause further price declines in this price competitive market. Finally, the U.S. dollar has appreciated with respect to three of the four subject currencies,⁸⁹ which gives the subject producers an additional ability to compete on a price basis with the domestic producers.

Accordingly, I find that the cumulated subject imports from France, Germany, Italy, and Japan are likely to have a significant adverse effect on domestic prices within a reasonably foreseeable time if the orders were revoked.

C. Likely Impact of the Cumulated Subject Imports from France, Germany, Italy, and Japan

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the

⁸⁵ CR at II-29-36, PR at II-12-16.

⁸⁶ CR at II-32-35, PR at II-14-16.

⁸⁷ CR at II-36-37, PR at II-16.

⁸⁸ CR at V-7, PR at V-4-5.

⁸⁹ CR and PR at Table V-1.

industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁹⁰ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁹¹

In its original determinations, the Commission found that the domestic industry's condition had showed some improvement during the first years of the periods of investigation but found that the industry suffered significant declines in its financial indicators during the latter years of these periods. The Commission found that increasing volumes of imports had caused declines in the industry's market share and that the subject imports had suppressed or depressed domestic prices, resulting in significant deterioration in the industry's financial performance. Accordingly, the Commission concluded that the subject imports had caused material injury to the domestic industry.⁹²

I find that the industry is not vulnerable to material injury if the orders are revoked.⁹³ The industry is currently in a reasonably strong financial condition and has improved considerably in many respects since the imposition of the orders. In particular, the industry's market share has increased significantly since the original investigations, increasing from 75 percent of the market in 1986 to more than ninety percent of the market in each year of the period of review.⁹⁴ Although there were some declines in its trade and financial data in 1998, the industry has been able to increase its capacity significantly since the original investigations and has experienced significant increases in its overall production volumes, shipment levels, employment levels and average unit prices since the original investigations.⁹⁵ Most importantly, the industry's profitability levels have increased from an operating income loss of 4.3 percent in 1986⁹⁶ to

⁹⁰ 19 U.S.C. § 1675a(a)(4).

⁹¹ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. I have taken into account the size of the likely margins in these reviews. Commerce has determined that the magnitude of the dumping margins or countervailing duty rates that are likely to prevail if the orders are: Brazil (dumping) 40.62 percent (64 Fed. Reg. 48353); Brazil (subsidy) no basis on which to determine (64 Fed. Reg. 48367); Canada (dumping) 8.10 - 11.54 percent; France (dumping) 42.24 (64 Fed. Reg. 48353); France (subsidy) 7.24 percent (64 Fed. Reg. 48372); Germany (dumping) 5.44 percent (64 Fed. Reg. 49770); Italy (dumping) 5.44 percent (64 Fed. Reg. 48351); Japan (dumping) 13.30 - 57.98 percent (64 Fed. Reg. 49767); Korea (dumping) 7.17 percent (64 Fed. Reg. 48353); Netherlands (dumping) 16.99 percent (65 Fed. Reg. 741); Sweden (dumping) 9.49 percent (64 Fed. Reg. at 49446).

⁹² USITC Pub. 1930 at 16, USITC Pub. 1951 at 17 (also citing impact of imports on U.S. producers' shipments and financial performance).

⁹³ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

⁹⁴ CR and PR at Table I-2.

⁹⁵ Id.

⁹⁶ Id.

operating income rates of between 4.4 percent and 6.4 percent during the period of review.⁹⁷ All of these factors indicate that the industry is in a healthy state, not a weakened one.⁹⁸

As I stated previously, the record of these reviews indicates that the subject imports from France, Germany, Italy and Japan are likely to have significant adverse volume and price effects on the domestic industry within the reasonably foreseeable future if the orders were revoked. Accordingly, I also find that the cumulated subject imports would be likely to have a significant impact on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, investment or development efforts within a reasonably foreseeable time if the orders were revoked. Further, I find that revocation of the orders would be likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.

Accordingly, I find that there is likely to be a significant impact on the domestic industry if the orders covering the subject imports from France, Germany, Italy and Japan are revoked. I therefore determine that revocation of the antidumping duty orders covering these imports would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

⁹⁷ CR and PR at Table III-6.

⁹⁸ Moreover, I further find that the improved condition of the industry is attributable in significant part to the imposition of the orders under review. The imposition of these orders resulted in the almost total departure of the cumulated subject imports from the marketplace and those import volumes have not been replaced by similar volumes of imports from non-subject countries. While some of the improvement in the industry may be attributable to the restructuring of the industry since the orders, I find that it is also attributable to the restraining effects of the orders.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING BRASS SHEET AND STRIP FROM THE NETHERLANDS IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of the Subject Imports from Netherlands

In its original determination concerning the Netherlands and Japan, the Commission cumulated the subject imports from the Netherlands and Japan.⁹⁹ Two members of the Commission majority made an affirmative injury determination and found that the market share of the Japanese and Dutch imports had increased during the three full years of the period of investigation. They further found that the subject imports had maintained a constant and significant presence in the declining domestic market for BSS. One member of the Commission majority made an affirmative threat determination but found that increases in the Dutch import penetration could not be construed as rapid for purposes of his threat analysis. During the period covered by the original investigation, the market share of the subject imports from the Netherlands was 2.4 percent in 1984, 3.0 percent in 1985, 2.8 percent in 1986 and 2.7 percent in 1987.¹⁰⁰

As an initial matter, I note that, in these reviews, OBV has conceded that it will eventually ship approximately 15 million pounds of radiator strip to the United States if the order is revoked, which would be an amount equivalent to less than 3 percent of apparent consumption in 1998. OBV asserts that it intends to export only radiator strip to the United States if the order is revoked and that these import volumes will replace radiator strip sales currently made by its affiliated U.S. producer, OAB. Aside from these volumes, OBV states that it will not export other categories of BSS merchandise to the United States. Petitioners contend, however, that these volumes are significant and that OBV has the ability to ship additional volumes of other merchandise to the United States and will displace the radiator strip production of other domestic producers.

First, I find that the 15 million pounds that OBV intends to ship to the United States does not represent a significant likely volume of imports in this market. While these volumes would be equivalent to three percent of apparent consumption in 1998 and the BSS marketplace is relatively price sensitive, I note that OAB is the only significant domestic producer of radiator strip in the market¹⁰¹ and that OBV intends to substitute its imports for OAB's production of radiator strip. Because domestic radiator strip represents only a small part of total domestic BSS production in 1998 and an extremely small percentage of total production for the domestic producers that are not related to OBV, I find that these volumes will have only a minimal adverse effect on the remaining members of the industry.¹⁰² Accordingly, I find that these volumes are not significant in light of conditions of competition in this market.

Moreover, I find that OBV is unlikely to ship significant additional non-radiator strip volumes of subject merchandise to the United States upon revocation of the order. First, apart from the 15 million pounds discussed above, the record indicates that OBV does not have sufficient available capacity to shift significant volumes of BSS merchandise to the United States upon revocation of the order. Although I note

⁹⁹ Original Japan/Netherlands Determination, USITC Pub. 2099 at 16-17.

¹⁰⁰ CR and PR at Table I-2.

¹⁰¹ See CR and PR at Table III-3.

¹⁰² In this regard, the domestic market for radiator strip is stable or declining, with a large number of purchasers turning to aluminum for the production of this heat-exchanger tubing because of the lower cost of the aluminum product. *E.g.*, CR at II-12-13, PR at II-6. Given this, it is not likely that U.S. production would shift significantly into this sector upon revocation of the order.

that OBV's full theoretical capacity may be understated somewhat in this proceeding,¹⁰³ OBV has reported that it is now operating at full capacity¹⁰⁴ and there is little evidence in the record to the contrary. In fact, the available record evidence suggests that OBV is, in fact, operating at close to capacity. In this regard, OBV has stated that it will eventually ship approximately 15 million pounds of radiator strip to the United States market upon revocation of the order. OBV has reported, however, that it will be required to eliminate sales of radiator strip to twenty-two third country markets and will be required to discontinue sales to selected customers in other markets in order to ship these volumes to the United States.¹⁰⁵ If OBV believes that it will be necessary to shift production from third country markets to obtain sufficient amounts of merchandise for this purpose, it seems likely that OBV is in fact operating at high capacity utilization rates. Given the foregoing, it seems clear that OBV has little available capacity in its facilities that can be used to increase their export volumes to the United States beyond the 15 million pounds that it concedes it will ship to the United States.¹⁰⁶

Further, OBV has a significant incentive not to export significant additional volumes of on-radiator strip merchandise to the United States upon revocation of the order. In 1990, OBV purchased OAB, the *** domestic producer of BSS in 1998. The record indicates that OAB produces a full line of BSS products for distribution in the United States. Given the size of OAB and OBV's substantial investment in OAB, I find that it is likely that OAB will be the primary production and merchandising facility in the United States market and that OBV will not export significant volumes of BSS merchandise to the United States upon revocation of the order, apart from the small volumes of radiator strip that it has conceded it will export.

Finally, although OBV can produce products other than radiator strip in its facilities (such as connector strip), OBV has reported that it concentrates primarily on the production of radiator strip products. Indeed, the record indicates that the non-radiator strip items produced in the Netherlands represent a relatively small percentage of OBV's total production. The record also indicates that OBV has invested in new equipment and tailored operations to obtain maximum efficiencies in producing radiator strip and states that it has no intention of exporting other products to the United States if the order is revoked. Given that OAB now produces a full line of BSS products and that it is in the process of developing significant connector strip production lines in its U.S. facilities,¹⁰⁷ I find this also indicates that it is unlikely that OBV would import more than minimal volumes of non-radiator strip products to the United States upon revocation of the order¹⁰⁸

Accordingly, I find that the volume of the subject imports from the Netherlands is unlikely to be significant upon revocation of the order.

B. Likely Price of the Subject Imports from the Netherlands

¹⁰³ OBV appears to have simply reported capacity as equalling its actual production for each year of the period of review.

¹⁰⁴ Tr. at 251.

¹⁰⁵ CR at IV-15, PR at IV-8.

¹⁰⁶ I also note that OBV has reported *** inventory levels as well. CR and PR at Table IV-7.

¹⁰⁷ LECG Economic Report at 34, OBV Prehearing Brief at 11-24; OBV Questionnaire Response.

¹⁰⁸ Indeed, OBV's statements are consistent with the export patterns exhibited by the Dutch imports during the original investigation. During the original period of investigation, the subject imports from the Netherlands consistently occupied between 2.4 and 3.0 percent of the domestic market. Given that they now claim that they intend to export what amounts to approximately 2.7 percent of the market in 1998, I believe their current statements about their likely import patterns are very credible.

I find that revocation of the order on the Netherlands would also not be likely to have significant adverse effects on domestic prices. As previously stated, the record indicates that OBV is only likely to import relatively small volumes of radiator strip to the United States upon revocation of the order. Since OAB is currently the only significant U.S. producer of radiator strip and will be exiting that portion of the market upon revocation of the order, there is little incentive for OBV to begin selling its radiator strip product in the market at price-suppressive or depressive levels. Moreover, I find that it is unlikely that OBV will establish prices for its radiator strip products that might undermine the competitive situation of OAB on its sales of other brass sheet and strip products.¹⁰⁹ Finally, because U.S. producers' shipments of radiator strip represent at most about *** percent of total domestic consumption and domestic shipments of all subject brass sheet and strip,¹¹⁰ a change in sourcing patterns for radiator strip is not likely to have significant price effects on the overall U.S. brass sheet and strip market. Accordingly, I find that likely small volumes of subject imports from the Netherlands will not have significant depressing or suppressing effects upon prices of the domestic like product.¹¹¹

C. Likely Impact of the Subject Imports from the Netherlands

I find that revocation of the order covering the Netherlands is not likely to have a significant adverse impact on the domestic industry.¹¹² As discussed above, I find that revocation of the order would be likely to lead only to a small increase in the volume of radiator strip imports from the Netherlands and that these small volumes of imports would be unlikely to have significant depressing or suppressing effects on prices for the domestic like product. Accordingly, I find that the subject imports from the Netherlands are not likely to have an adverse impact on the domestic brass sheet and strip industry in the reasonably foreseeable future if the antidumping duty order is revoked.

I therefore find that revocation of the antidumping duty order covering the subject imports from the Netherlands would not be likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time.

IV. REVOCATION OF THE ANTIDUMPING DUTY AND COUNTERVAILING DUTY ORDERS COVERING BRASS SHEET AND STRIP FROM BRAZIL IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed in detail above, I determined that the subject imports from Brazil are not likely to have a discernible adverse impact on the domestic industry if the antidumping duty order covering these imports were revoked. Accordingly, I have not cumulated the subject imports from Brazil with the other subject imports for purposes of my sunset analysis. In addition, for the same reasons that I discussed above, I find that the subject imports from Brazil are not likely to have a significant adverse volume or price effects or any other impact on the domestic industry after revocation of the order. Accordingly, I find

¹⁰⁹ *E.g.*, OBV Prehearing Brief at 18-20.

¹¹⁰ CR and PR at Tables I-2, I-4, III-3; INV-X-063 at alternative Table III-3.

¹¹¹ The limited information in the record regarding current radiator strip pricing indicates that, while there is some underselling when Dutch radiator strip prices are compared with U.S. producers' prices, generally, the Dutch product generally was priced above the comparable domestic product. CR and PR at Tables V-9-11 (product 6).

¹¹² I note that I previously concluded that the domestic industry is not vulnerable.

that revocation of the order on the subject imports from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹¹³

V. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING BRASS SHEET AND STRIP FROM CANADA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed in detail above, I determined that the subject imports from Canada are not likely to have a discernible adverse impact on the domestic industry if the antidumping duty order covering these imports were revoked. Accordingly, I have not cumulated the subject imports from Canada with the other subject imports for purposes of my sunset analysis. In addition, for the same reasons that I discussed above, I find that the subject imports from Canada are not likely to have a significant adverse volume or price effects or any other impact on the domestic industry after revocation of the order. Accordingly, I find that revocation of the order on the subject imports from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹¹⁴

VI. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING BRASS SHEET AND STRIP FROM KOREA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed in detail above, I determined that the subject imports from Korea are not likely to have a discernible adverse impact on the domestic industry if the antidumping duty order covering these imports were revoked. Accordingly, I have not cumulated the subject imports from Korea with the other subject imports for purposes of my sunset analysis. In addition, for the same reasons that I discussed above, I find that the subject imports from Korea are not likely to have a significant adverse volume or price effects or any other impact on the domestic industry after revocation of the order. Accordingly, I find that revocation of the order on the subject imports from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹¹⁵

¹¹³ In this regard, I find that, as discussed above, the industry is currently not vulnerable to imports. I also note that I have considered the fact that the industry's condition has improved as a result of the imposition of the original orders. I have further taken into account the Commission's findings in its determinations in the original investigations and the possibility that the Brazilian producers might be able to engage in some product shifting in their facilities. I do not find, however, that these considerations outweigh the factors addressed in my discussion of the discernible adverse impact of the Brazilian imports.

¹¹⁴ In this regard, I find that, as discussed above, the industry is currently not vulnerable to imports. I also note that I have considered the fact that the industry's condition has improved as a result of the imposition of the original orders. I have further taken into account the Commission's findings in its determinations in the original investigations and the possibility that the Canadian producers might be able to engage in some product shifting in their facilities. I do not find, however, that these considerations outweigh the factors addressed in my discussion of the discernible adverse impact of the Canadian imports.

¹¹⁵ In this regard, I find that, as discussed above, the industry is currently not vulnerable to imports. I also note that I have considered the fact that the industry's condition has improved as a result of the imposition of the original orders. I have further taken into account the Commission's findings in its determinations in its original

(continued...)

VII. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING BRASS SHEET AND STRIP FROM SWEDEN IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed in detail above, I determined that the subject imports from Sweden are not likely to have a discernible adverse impact on the domestic industry if the antidumping duty order covering these imports were revoked. Accordingly, I have not cumulated the subject imports from Sweden with the other subject imports for purposes of my sunset analysis. In addition, for the same reasons that I discussed above, I find that the subject imports from Sweden are not likely to have a significant adverse volume or price effects or any other impact on the domestic industry after revocation of the order. Accordingly, I find that revocation of the order on the subject imports from Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹¹⁶

¹¹⁵ (...continued)

investigations and the possibility that the Korean producers might be able to engage in some product shifting in their facilities. I do not find, however, that these considerations outweigh the factors addressed in my discussion of the discernible adverse impact of the Korean imports.

¹¹⁶ In this regard, I find that, as discussed above, the industry is currently not vulnerable to imports. I also note that I have considered the fact that the industry's condition has improved as a result of the imposition of the original orders. I have further taken into account the Commission's findings in its determinations in its original investigations and the limited possibility that the Swedish producers might be able to engage in some product shifting in their facilities. I do not find, however, that these considerations outweigh the factors addressed in my discussion of the discernible adverse impact of the Swedish imports.