

UNITED STATES INTERNATIONAL TRADE COMMISSION

STAINLESS STEEL ANGLE FROM JAPAN, KOREA, AND SPAIN

Investigations Nos. 731-TA-888-890 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION

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# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-888-890 (Preliminary)

## STAINLESS STEEL ANGLE FROM JAPAN, KOREA, AND SPAIN

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan, Korea, and Spain of stainless steel angle, provided for in subheading 7222.40.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

### COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

### BACKGROUND

On August 18, 2000, a petition was filed with the Commission and the Department of Commerce by Slater Steels Corporation, Specialty Alloys Division, Fort Wayne, IN, and the United States Steelworkers of America, AFL-CIO/CLC, Pittsburgh, PA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of stainless steel angle from Japan, Korea, and Spain. Accordingly, effective August 18, 2000, the Commission instituted antidumping duty investigations Nos. 731-TA-888-890 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 25, 2000 (65 FR 51845). The conference was held in Washington, DC, on September 8, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

## IEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of hot-rolled stainless steel angle (“SSA”) from Japan, Korea, and Spain that are allegedly sold in the United States at less than fair value (“LTFV”).

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

### II. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>3</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>4</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . .”<sup>5</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>6</sup> No single factor is dispositive, and the Commission

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<sup>1</sup> 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

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

<sup>3</sup> 19 U.S.C. § 1677(4)(A).

<sup>4</sup> 19 U.S.C. § 1677(4)(A).

<sup>5</sup> 19 U.S.C. § 1677(10).

<sup>6</sup> See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 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) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution;

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.<sup>7</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>8</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>9</sup>

## **B. Product Description**

In its notice of initiation, Commerce defined the scope of these investigations as follows:

hot-rolled, whether or not annealed or descaled, stainless steel products of equal leg length angled at 90 degrees that are not otherwise advanced. The stainless steel angle subject to these investigations is currently classifiable under subheadings 7222.40.30.20 and 7222.40.30.60 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of these investigations is stainless steel angle of unequal leg length. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.<sup>10</sup>

SSA is used in industrial applications requiring corrosion-resistant structural support, such as in the construction of stainless steel tanks for the food, beverage, and chemical processing industries.<sup>11</sup> Although SSA may be produced through either hot-rolling or extrusion,<sup>12</sup> and with the sides of the angle or “legs” of equal or unequal length,<sup>13</sup> the imported merchandise subject to these investigations consists only of hot-rolled angle of equal leg length.

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<sup>6</sup> (...continued)

(4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (CIT 1996).

<sup>7</sup> See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

<sup>8</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>9</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

<sup>10</sup> Commerce Department Notice of Initiation of Antidumping Duty Investigations: Stainless Steel Angle From Japan, Korea, and Spain, 65 Fed. Reg. 55504, 55505 (September 14, 2000).

<sup>11</sup> Preliminary Conference Transcript (“Tr.”) at 16.

<sup>12</sup> Tr. at 19.

<sup>13</sup> Tr. at 19.

### C. Domestic Like Product Issues

Petitioners<sup>14</sup> argue that the Commission should find one domestic like product defined in the same manner as Commerce's scope.<sup>15</sup> Respondents do not contest petitioners' definition.<sup>16</sup> On the whole, the record in these preliminary investigations indicates that all grades of hot-rolled SSA share similar physical characteristics, are generally used in similar applications (*i.e.*, they are used in industrial applications to provide structural support where resistance to corrosion is necessary), are produced in the same production facilities, and are sold in somewhat similar channels of distribution.<sup>17</sup> Accordingly, we find that all hot-rolled SSA as defined in the scope should be part of one domestic like product.

In these preliminary investigations, we have also considered whether extruded SSA, including that with unequal leg length, should be included within the same domestic like product as hot-rolled SSA. The record indicates that extruded SSA is used in similar applications as hot-rolled SSA and provides equipment designers with a greater range of angle choices for their designs. Nonetheless, the extruded angle is significantly more expensive than hot-rolled SSA.<sup>18 19</sup> While applications for extruded SSA are similar to those for hot-rolled SSA, customers normally purchase extruded angle only to obtain sizes, shapes (*i.e.*, angle of unequal length), grades, or dimensions not readily available in the hot-rolled product.<sup>20</sup> U.S. SSA manufacturers who produce the extruded product do not produce the hot-rolled product, and the sole domestic producer of the hot-rolled product, *i.e.*, Slater, does not manufacture extruded angle.<sup>21 22</sup>

In light of the differences in producers' and end users' perceptions, limited interchangeability, and differences in price and manufacturing processes, we do not include extruded angle in the domestic like product. We define the domestic like product to be hot-rolled SSA of equal leg length, commensurate with Commerce's definition of the scope of these investigations.

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<sup>14</sup> The petitioners are Slater Steels Corporation, Specialty Alloys Division ("Slater"), and the United Steelworkers of America, AFL-CIO/CLC.

<sup>15</sup> Petition at 37.

<sup>16</sup> Tr. at 82.

<sup>17</sup> Confidential Report ("CR") at I-4-6, Public Report ("PR") at I-3-4.

<sup>18</sup> CR at I-8, n.28, PR at I-5, n.28.

<sup>19</sup> See Stainless Steel Angle from Japan, Inv. No. 731-TA-699 (Preliminary), USITC Pub. 2777 at I-6, n.18 (May 1994); Stainless Steel Angle from Japan, Inv. No. 731-TA-699 (Final), USITC Pub. 2887, at I-6 (May 1995). In this previous antidumping investigation of SSA from Japan, the Commission considered whether to include extruded SSA -- which was outside the scope of that investigation, as it is outside the scope of the current investigations -- in the domestic like product. It concluded not to do so based on differences in price and the ways in which hot-rolled and extruded angle are produced. The final determination simply adopted the reasoning of the preliminary determination with respect to like product.

<sup>20</sup> CR at I-4 and I-7, PR at I-4-5. All SSA of unequal leg length produced in the United States is extruded. CR at I-6, PR at I-4. U.S. producers of extruded SSA include PMAC, Ltd., Beaver Falls, PA, and Plymouth Tube Co., Hopkinsville, KY. CR I-6, n.22, PR at I-4, n.22. The production of extruded SSA constitutes less than five percent of all SSA produced in the United States. Tr. at 35.

<sup>21</sup> CR at I-6, PR at I-4.

<sup>22</sup> Commissioner Askey notes that in any final phase investigations she intends to seek additional trade and financial data on extruded SSA products, as well as information relating to the manner in which these products compete with domestic and imported SSA in this market.

#### **D. Domestic Industry**

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . .”<sup>23</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>24</sup> Based on our definition of the like product, we find that the domestic industry consists of the sole domestic producer of hot-rolled SSA, *viz.*, Slater.

### **III. CUMULATION**<sup>25</sup>

#### **A. In General**

For purposes of evaluating the volume and price effects for a determination of reasonable indication of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.<sup>26</sup> In assessing whether subject imports compete with each other and with the domestic like product,<sup>27</sup> the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.<sup>28</sup>

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<sup>23</sup> 19 U.S.C. § 1677(4)(A).

<sup>24</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>25</sup> Commissioners Bragg and Askey find that the record indicates that import quantities for each of the three subject countries exceeded the 3 percent statutory negligibility threshold during the pertinent period. Table IV-2, CR at IV-4, PR at IV-2. Accordingly, they find that the subject imports are not negligible.

<sup>26</sup> 19 U.S.C. § 1677(7)(G)(i).

<sup>27</sup> The Uruguay Round Agreements Act (URAA) Statement of Administrative Action (“SAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA, H.R. Rep. 316, 103d Cong., 2d Sess. at 848 (1994), citing, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

<sup>28</sup> See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. (continued...)

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.<sup>29</sup> Only a “reasonable overlap” of competition is required.<sup>30</sup>

## **B. Analysis**

We cumulate the subject imports from Japan, Korea, and Spain for purposes of our analysis of present material injury. The petitions were filed on the same day. Based on the record in these preliminary investigations, we find that there is a reasonable overlap of competition among imports from each of the subject countries and between subject imports and the domestic like product.

First, we find that there is a reasonable degree of fungibility between the subject imports and the domestic like product. Although Slater does not manufacture angle in all sizes produced in the subject countries and exported to the United States, the record indicates that over 80 percent of the imports from each subject country consist of angle in sizes produced by Slater.<sup>31</sup> In addition, all SSA is produced in compliance with standard industry specifications with which all producers conform.<sup>32</sup> Moreover, the record indicates that U.S. and subject product of the same size and grade is viewed as interchangeable.<sup>33</sup> Slater and most importers stated that they consider the domestically-produced product and imported SSA to be at least frequently interchangeable, regardless of country of origin.<sup>34</sup>

Second, SSA produced by Slater is \*\*\*,<sup>35</sup> while imported angle from the subject countries is \*\*\* sold or marketed across the nation.<sup>36</sup> Accordingly, we find that there is a geographic overlap in sales among the subject imports and the domestic like product.

Third, domestically-produced angle was present in the United States throughout the period for which data were collected. Subject imports from Japan, Korea, and Spain were also present in the United States throughout the period of investigation.<sup>37</sup>

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(...continued)

898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

<sup>29</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

<sup>30</sup> See Goss Graphic System, Inc. v. United States, 33 F. Supp.2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

<sup>31</sup> Less than 20 percent of subject countries’ exports in 1999 was comprised of SSA in sizes not produced by Slater. See Table VII-2, CR at VII-3, PR at VII-3. Specifically, sizes made by Slater in 1999 accounted for \*\*\* percent of subject imports from Japan; \*\*\* percent of subject imports from Korea; and \*\*\* percent of subject imports from Spain. See Table VII-5, CR at VII-5, PR at VII-3; Table VII-8, CR at VII-8, PR at VII-4; Table VII-11, CR at VII-11, PR at VII-5.

<sup>32</sup> CR at I-6, PR at I-4.

<sup>33</sup> CR at I-6, PR at I-4.

<sup>34</sup> CR at II-6, PR at II-4. \*\*\* CR at II-6, PR at II-4.

<sup>35</sup> CR at V-5, PR at V-2.

<sup>36</sup> CR at V-5, PR at V-2.

<sup>37</sup> Table IV-3, CR at IV-6, PR at IV-4. See also Table V-2, CR at V-9-10, PR at V-5 (indicating pricing data for product 2 for the domestic like product and subject imports from Japan and Spain are available for every quarter in the period of investigation, and pricing data for subject imports from Korea are available for 12 of 14

Finally, the record of these preliminary investigations indicates that the subject and imported merchandise is sold in somewhat similar channels of distribution. All domestically-produced hot-rolled SSA is sold by Slater directly to service centers,<sup>38</sup> while the large majority of subject imports is also sold to service centers, either directly or indirectly through master distributors (U.S. mill depots).<sup>39</sup> Nonetheless, the record indicates that the bulk of subject imports is first sold to master distributors before being sold to service centers, while no domestic merchandise is sold to these customers before being sold to service centers.<sup>40 41</sup> We intend to further explore in any final phase investigations the extent of competition between the subject and domestic merchandise given this difference in distribution patterns.

Based on the information gathered in the preliminary phase of these investigations, we find that, on balance, there is a reasonable overlap of competition among the subject imports from Japan, Korea, and Spain, and between the subject imports and the domestic like product. Consequently, we cumulate subject imports from Japan, Korea, and Spain for purposes of our preliminary determinations.

#### **IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS**

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.<sup>42</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>43</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>44</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in

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<sup>37</sup> (...continued)  
quarters).

<sup>38</sup> CR at II-1, PR at II-1.

<sup>39</sup> Most subject imports (85 to 90 percent) are imported by or sold to master distributors, with the remainder sold directly to steel service centers. CR at II-1, PR at II-1. KG Specialty Steel, the country’s largest master distributor, distributes SSA from all three subject countries and estimates that 70 to 75 percent of its sales are to smaller, regional steel service centers. Tr. at 54; see Japanese Respondents’ Postconference Br. at 23, n.63. Because KG does not sell to end users, see Tr. at 52, the remaining 25 to 30 percent of its sales would be to the national steel service centers, which are also Slater’s principal customers, which in turn supply regional distributors.

<sup>40</sup> Commissioner Bragg notes that petitioners have indicated that Slater attempts to sell to master distributors as well as service centers, although respondents state that no domestic sales to master distributors have been made. Tr. at 12, 34, 49, and 52.

<sup>41</sup> CR at II-1, PR at II-1.

<sup>42</sup> 19 U.S.C. § 1671b(a) and 1673b(a).

<sup>43</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.”

19 U.S.C. § 1677(7)(B). See also, Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>44</sup> 19 U.S.C. § 1677(7)(A).

the United States.<sup>45</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>46</sup>

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from Japan, Korea, and Spain that are allegedly sold in the United States at less than fair value.

#### **A. Conditions of Competition**

We find several conditions of competition pertinent to the U.S. market for SSA.

First, demand for SSA depends on demand for the products in which the angle is used.<sup>47</sup> The parties concur that demand for SSA has grown since 1997, primarily because stainless steel has become more popular due to its corrosion-resistant properties.<sup>48</sup> U.S. apparent consumption of SSA rose overall from 1997 to 1999, and was higher in interim (January-June) 2000 than in interim 1999, although consumption apparently fell substantially between 1997 and 1998.<sup>49</sup> Thus, the record indicates that apparent consumption of SSA has fluctuated considerably during the period of investigation.

Second, as previously stated, Slater is the only U.S. producer of hot-rolled SSA. Although Slater is the sole domestic producer, it supplied between \*\*\* and \*\*\* percent of the market between 1997 and 1999.<sup>50</sup> Slater has reported that its annual capacity to produce SSA was \*\*\* pounds throughout the period of investigation,<sup>51</sup> which is substantially less than the overall level of consumption in the U.S. market, which ranged between \*\*\* and \*\*\* pounds between 1997 and 1999.<sup>52</sup> Additionally, Slater does not produce SSA in sizes over three inches and under one inch; consequently, purchasers who require such sizes currently must purchase imports.

Slater recently acquired the stainless steel operations of the Canadian firm Atlas and reported publicly that it intends to shut down its stainless melt and ingot production shop at Fort Wayne, Indiana and supply its angle production facility in Fort Wayne with billets from the Welland, Ontario production facility of Atlas.<sup>53 54</sup> Slater also experienced some production and operations difficulties during the period

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<sup>45</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>46</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>47</sup> CR at II-4, PR at II-3.

<sup>48</sup> CR at II-4, PR at II-3.

<sup>49</sup> U.S. apparent consumption of SSA declined from \*\*\* pounds in 1997 to \*\*\* pounds in 1998 and then increased to \*\*\* pounds in 1999. Apparent consumption was \*\*\* pounds in interim 2000, which was higher than the \*\*\* pounds in interim 1999. Table IV-4, CR at IV-7, PR at IV-5.

The record does not indicate the reason for the large decline in U.S. apparent consumption from 1997 to 1998, and the subsequent increase from 1998 to 1999. The Commission intends to explore the reasons for these large annual fluctuations in any final phase investigations.

<sup>50</sup> Table IV-4, CR at IV-7, PR at IV-5.

<sup>51</sup> CR at III-1, PR at III-1.

<sup>52</sup> Table IV-4, CR at IV-7, PR at IV-5. Compare Table III-1, CR at III-2, PR at III-I, with Table IV-4, CR at IV-7, PR at IV-5. We note that there is disagreement among the parties concerning Slater’s reported capacity figures and the capacity and capacity utilization of the foreign producers. We will further examine this issue in any final phase investigations.

<sup>53</sup> CR at VI-2, PR at VI-1.

<sup>54</sup> Commissioners Bragg and Askey intend to further explore the impact of Slater’s acquisition on Slater’s production capacity and the potential for any related changes in the range of product mix in any final phase

(continued...)

of investigation. During the spring and early summer of 1999, Slater was subject to a 39-day strike by the United Steelworkers of America, which was resolved by a new contract in June 1999.<sup>55</sup> In 1998, Slater also implemented a management restructuring program that involved the recruitment of new executives and the replacement of key managers.<sup>56</sup>

Third, the record in these preliminary phase investigations indicates that SSA generally is a commodity-type product, at least for products of the same dimensions.<sup>57</sup> This would indicate that there is a reasonably high degree of substitutability between imported and domestically-produced SSA of the same dimensions.

Fourth, the prices of both the subject imports and the domestic like product are affected by the cost of raw materials, including nickel, which is a principal input in the production of SSA. The price of nickel fluctuated sharply during the period of investigation.<sup>58</sup>

Fifth, as previously indicated, there are some distinctions in the distribution mechanisms used for the domestic like product, on the one hand, and the subject imports, on the other. Slater sells SSA exclusively to steel service centers in bundles of 2,000 pounds or greater,<sup>59</sup> and the service centers then sell product to smaller regional distributors, sometimes dismantling the bundles in the process.<sup>60</sup> In contrast, most subject imports are sold to master distributors, with the remainder sold directly to steel service centers.<sup>61</sup> The master distributor may sell SSA to the service centers, or it may break up the bundles purchased from the importers and sell to smaller distributors, but neither the master distributor nor Slater sells to end users.<sup>62</sup>

Sixth, both U.S. and foreign producers manufacture stainless steel bar at the same facilities at which they produce SSA, and they have the ability to switch production from bar to angle should market conditions warrant.<sup>63</sup>

Finally, nonsubject imports – primarily from Italy – have had a small and stable presence in the U.S. market during the period of investigation, with market penetration considerably lower than that of either domestic production or cumulated subject imports.<sup>64</sup> The quantity of nonsubject imports was constant from 1997 to 1999 but was higher in interim 2000 than in interim 1999.<sup>65</sup>

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<sup>54</sup> (...continued)  
investigations.

<sup>55</sup> CR at VI-4, PR at VI-2.

<sup>56</sup> CR at VI-4, PR at VI-2.

<sup>57</sup> See Petitioners' Postconference Br. at 8-9; Tr. at 11-12; Spanish Respondents' Postconference Br. at 2. Respondents also state there are no quality differences between domestic and subject imported SSA. CR at II-6, PR at II-4.

<sup>58</sup> See Petitioners' Postconference Br. at 26-29; Japanese Respondents' Postconference Br. at 28-29.

<sup>59</sup> CR at II-1, PR at II-1.

<sup>60</sup> CR at II-1, PR at II-1; Petitioners' Postconference Br. at 11.

<sup>61</sup> Table VII-3, CR at VII-3, PR at VII-3.

<sup>62</sup> CR at II-1, PR at II-1.

<sup>63</sup> Petitioners' Postconference Br. at 14-15; CR at III-2, PR at III-2.

<sup>64</sup> Nonsubject imports' market share, based on quantity of U.S. shipments, increased from \*\*\* percent in 1997, to \*\*\* percent in 1998, and then to \*\*\* percent in 1999. Table IV-4, CR at IV-7, PR at IV-5. The nonsubject imports' market share was lower in interim 2000 (\*\*\* percent), than in interim 1999 (\*\*\* percent). Table IV-4, CR at IV-7, PR at IV-5.

<sup>65</sup> Nonsubject imports declined from \*\*\* pounds in 1997 to \*\*\* pounds in 1998, and then increased to \*\*\*

(continued...)

## **B. Volume of Subject Imports**

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>66</sup>

The volume of the subject imports increased in terms of both quantity and market share over the period of investigation.<sup>67</sup> Cumulated subject imports increased from 28.3 million pounds in 1997 to 32.9 million pounds in 1999.<sup>68</sup> The quantity of cumulated subject imports was significantly higher in interim 2000 (25.4 million pounds) than in interim 1999 (9.8 million pounds).<sup>69</sup> Market share data reflect similar trends. Measured by quantity, the market penetration of cumulated subject import shipments increased from \*\*\* percent in 1997 to \*\*\* percent in 1999.<sup>70</sup> Market penetration by subject import shipments was higher in interim 2000, at \*\*\* percent, than in interim 1999, at \*\*\* percent.<sup>71</sup>

We note that the increase in market share captured by cumulated subject imports was accompanied by a decrease in the domestic industry’s market share. The domestic industry’s share of U.S. apparent consumption, measured by quantity, increased from \*\*\* percent in 1997 to \*\*\* percent in 1998, and then declined to \*\*\* percent in 1999,<sup>72</sup> even as apparent U.S. consumption increased over \*\*\* percent between 1998 and 1999.<sup>73</sup> The domestic industry’s share was lower in interim 2000, when it was \*\*\* percent, than in interim 1999, when it was \*\*\* percent.<sup>74</sup> By contrast, U.S. apparent consumption was \*\*\* percent higher in interim 2000 than in interim 1999.<sup>75</sup>

For purposes of these preliminary determinations, we determine that subject import volume, both in absolute terms and relative to consumption in the United States, is significant.

## **C. Price Effects of the Subject Imports**

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

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<sup>65</sup> (...continued)

pounds in 1999. Nonsubject imports in interim 2000 of \*\*\* pounds were higher than the interim 1999 quantity of \*\*\* pounds. Table IV-2, CR at IV-4, PR at IV-3.

<sup>66</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>67</sup> CR at IV-3, PR at IV-3, Table IV-3, CR at IV-6, PR at IV-4.

<sup>68</sup> Table IV-2, CR at IV-4, PR at IV-2. Cumulated subject imports decreased in 1998 to 16.3 million pounds, as did the market penetration of subject imports, to \*\*\* percent. Table IV-2, CR at IV-4, PR at IV-2. Table IV-2, CR at IV-5, PR at IV-3. We intend to examine further in any final investigations the different trends evidenced in 1998.

<sup>69</sup> Table IV-2, CR at IV-4, PR at IV-2.

<sup>70</sup> Table IV-4, CR at IV-7, PR at IV-5.

<sup>71</sup> Table IV-4, CR at IV-7, PR at IV-5.

<sup>72</sup> We intend to examine further in any final investigations the different trends evidenced in 1998.

<sup>73</sup> Table C-1, CR at C-4, PR at C-4.

<sup>74</sup> Table IV-4, CR at IV-7, PR at IV-5.

<sup>75</sup> Table C-1, CR at C-3, PR at C-3.

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>76</sup>

As noted, the record in these preliminary phase investigations indicates that SSA is a commodity-type product, and that the domestic like product and the subject imports appear to have a reasonable level of substitutability.<sup>77</sup> Moreover, the record suggests that price is a moderately important factor in purchasing decisions.<sup>78</sup>

We find that prices of both the subject imports and the domestic like product declined overall during the period of investigation. For all four domestically-produced products for which data were obtained, prices declined during the period from the beginning of 1997 to the second quarter of 1999, and then increased by a lesser amount during the last two quarters of 1999 and the first two quarters of 2000.<sup>79</sup> The prices for the subject imports also fell between 1997 and 1999 and generally were higher in interim 2000 than in interim 1999, although pricing patterns were not identical for all products from all subject sources.<sup>80</sup>

Additionally, the record reflects significant underselling by the subject imports. Subject imports undersold the domestic like product in 84 of 130 quarterly pricing comparisons for sales to steel service centers.<sup>81</sup> In light of the price declines noted above, we conclude for purposes of these preliminary determinations that this underselling is significant.

While price trends for the domestic like product were similar to trends in the price of nickel, changes in the cost of goods sold appear insufficient to explain the magnitude of the price declines that occurred.<sup>82</sup> Particularly during the period from 1997 to 1999, the decline in the unit value of sales \*\*\* the decline in average cost of goods sold.<sup>83</sup> Consequently, we believe that there is a reasonable indication that subject imports have had a significant depressing effect on domestic prices during the period of investigation.<sup>84</sup>

#### **D. Impact of the Subject Imports**

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<sup>76</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>77</sup> CR at II-5, PR at II-3.

<sup>78</sup> Commissioner Bragg notes that in the 1995 investigation of stainless steel angle from Japan, she joined a unanimous Commission in finding that although the subject angle was substitutable with the domestic product, price was not the only factor in many purchasing decisions. Stainless Steel Angle from Japan, Inv. No. 731-TA-699 (Final), USITC Pub. 2887 (May 1995), at I-15. Commissioner Bragg intends to explore this issue further in any final phase investigations.

<sup>79</sup> CR at V-6, PR at V-6.

<sup>80</sup> CR at V-6, PR at V-6; see Tables V-1-4, CR at V-7-14, PR at V-5.

<sup>81</sup> CR at V-19-20, PR at V-7. In addition, subject import prices for sales to master distributors were lower than those for U.S. producers' sales to steel service centers in 45 of 52 comparisons.

<sup>82</sup> In any final phase investigations, we intend to further examine trends in nickel and raw material costs and will explore the nature of the correlation between changes in these costs and changes in the price of SSA.

<sup>83</sup> Table VI-1, CR at VI-3, PR at VI-2. This is also corroborated by an examination of the prices of the individual products. See Tables V-1-4, CR at V-7-14, PR at V-5.

<sup>84</sup> We intend to gather additional information on how the channels of distribution used by Slater on the one hand and by importers of subject merchandise on the other affect the data selected for purposes of making price comparisons. We also intend to examine the effect of differences in bundle size on our pricing analysis in any final phase of these investigations.

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>85</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>86 87 88</sup>

We find that the subject imports had a significant adverse impact on the domestic industry. While the volume and market share of subject imports increased, the industry experienced declines in several key indicators. The record indicates that the domestic industry lost market share due to the significant volume of cumulated subject imports. The domestic industry’s market share declined from \*\*\* percent in 1997 to \*\*\* percent in 1999.<sup>89</sup> The market share was lower in interim 2000, at \*\*\* percent, than in interim 1999, at \*\*\* percent.<sup>90</sup> The domestic industry’s U.S. shipments declined from 1997 to 1999, and were \*\*\* higher in interim 2000 than in interim 1999.<sup>91</sup>

The combination of generally declining shipments and depressed prices resulted in falling sales revenues for the domestic industry from 1997 to 1999, notwithstanding increasing apparent consumption.<sup>92</sup>

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<sup>85</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” Id. at 885.).

<sup>86</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

<sup>87</sup> The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce identified estimated dumping margins for each subject country based on both normal value comparisons (home market price compared to export price), and below cost comparisons (constructed value compared to export price). Using normal value comparisons, Commerce estimated margins for Japan ranging from 29.80 to 105.97 percent; for Korea ranging from 2.89 to 53.49 percent; and for Spain ranging from 6.89 to 36.92 percent. Using below-cost comparisons, Commerce estimated margins for Japan ranging from 73.01 to 114.51 percent; for Korea ranging from 59.19 to 99.56 percent; and for Spain at 61.45 percent. Initiation of Antidumping Duty Investigations: Stainless Steel Angle From Japan, Korea, and Spain, 65 Fed. Reg. 55504, 55506-07 (September 14, 2000).

<sup>88</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11, n.63.

<sup>89</sup> Table IV-4, CR at IV-7, PR at IV-5.

<sup>90</sup> Table IV-4, CR at IV-7, PR at IV-5.

<sup>91</sup> The volume of the domestic industry’s U.S. shipments of SSA decreased from \*\*\* pounds in 1997 to \*\*\* pounds in 1999. Table III-2, CR at III-3, PR at III-2. U.S. shipments were \*\*\* pounds in interim 2000, as compared to \*\*\* pounds in interim 1999. Table III-2, CR at III-3, PR at III-2. In any final phase of these investigations, we intend to examine further the decline in apparent consumption evidenced in 1998, and the effect, if any, of that decline on data for 1999.

<sup>92</sup> The domestic industry’s sales revenues declined from \$\*\*\* in 1997 to \$\*\*\* in 1999, a period in which apparent U.S. consumption increased. Sales revenues were higher in interim 2000 (at \$\*\*\*) than in interim 1999

(continued...)

Additionally, operating performance deteriorated. The domestic industry's \*\*\* increased from \*\*\* in 1997 to \*\*\* in 1999; there were also \*\*\* in both interim 1999 (\*\*\*) and interim 2000 (\*\*\*). \*\*\* margins were \*\*\* for 1998, 1999, and both interim periods.<sup>93</sup>

Other indicators of domestic industry performance also declined. Employment of production workers decreased from \*\*\* in 1997 to \*\*\* in 1999 and was lower in interim 2000, at \*\*\* workers, than in interim 1999, at \*\*\* workers.<sup>94</sup> Capital expenditures declined from 1997 to 1999, and were lower in interim 2000 than in interim 1999.<sup>95</sup> Slater's inventories increased from \*\*\* percent of its shipments in 1997 to \*\*\* percent in 1999, and \*\*\* between the first half of 1999 and the first half of 2000, increasing from \*\*\* percent to \*\*\* percent.<sup>96 97</sup>

In sum, the record indicates there have been significant increases in the volume and market share of the subject imports, and that the subject imports undersold the domestic merchandise and have had significant depressing effects on domestic prices. Moreover, the record indicates that the financial condition of the industry has declined during the period, despite growing U.S. demand and increased domestic production. Accordingly, for purposes of these preliminary investigations, we find that there is a reasonable indication that the subject imports are causing material injury to the domestic industry.

### CONCLUSION

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is materially injured by reason of imports of SSA from Japan, Korea, and Spain that are allegedly sold in the United States at less than fair value.

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<sup>92</sup> (...continued)  
(at \$\*\*\*). Table VI-1, CR at VI-3, PR at VI-2.

<sup>93</sup> Table VI-1, CR at VI-3, PR at VI- 2.

<sup>94</sup> Table C-1, CR at C-4, PR at C-4; Table III-4, CR at III-5, PR at III-2.

<sup>95</sup> Capital expenditures declined from \$\*\*\* in 1997 to \$\*\*\* in 1998, then increased to \$\*\*\* in 1999. Such expenditures were higher in interim 1999 at \$\*\*\* than in interim 2000, when they fell to \$\*\*\*. Table C-1, CR at C-4, PR at C-4; Table VI-4, CR at VI-7, PR at VI-3.

<sup>96</sup> CR at II-2, PR at II-1-2, Table III-3, CR at III-4, PR at III-2.

<sup>97</sup> Slater argues that inventories increased because it could not sell its product due to a surge in subject imports, while respondents allege Slater was simply stockpiling inventory in anticipation of its May 1999 labor dispute. Petitioners' Postconference Br. at 31; Japanese Respondents' Postconference Br. at 32-33. We intend to further examine this issue in any final phase investigations.