

UNITED STATES INTERNATIONAL TRADE COMMISSION

BLAST FURNACE COKE FROM CHINA AND JAPAN
Investigations Nos. 731-TA-951-952 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3444, AUGUST 2001)

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from China and Japan of blast furnace coke, provided for in subheading 2704.00.0025 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).

BACKGROUND

On June 29, 2001, a petition was filed with the Commission and the United States Department of Commerce (Commerce) by the Committee for Fair Coke Trade,³ and the United Steelworkers of America, AFL-CIO, Pittsburgh, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of blast furnace coke from China and Japan. Accordingly, effective June 29, 2001, the Commission instituted antidumping duty investigations Nos. 731-TA-951-952 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of July 6, 2001 (66 FR 35669). The conference was held in Washington, DC, on July 20, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Commissioners Lynn M. Bragg and Marcia E. Miller dissenting. Vice Chairman Deanna Tanner Okun not participating.

³ Members of the committee are: Acme Steel Co., Chicago, IL; DTE Energy Services Inc., Ann Arbor, MI; Koppers Industries, Inc., Pittsburgh, PA; and Shenango Inc., Pittsburgh, PA.

VIEWS OF THE COMMISSION

Investigations Nos. 731-TA-951-952 (Preliminary)

BLAST FURNACE COKE FROM CHINA AND JAPAN

Based on the record in these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of blast furnace coke from China and Japan that are allegedly sold in the United States at less than fair value (“LTFV”).^{1 2}

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, 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.³ 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.”⁴

II. DOMESTIC LIKE PRODUCT

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁵ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant industry as the “producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁶ In turn, the Act defines “domestic like

¹ Vice Chairman Deanna Tanner Okun did not participate in these investigations.

² Commissioners Lynn M. Bragg and Marcia E. Miller find that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports from China and Japan. See Dissenting Views of Commissioner Lynn M. Bragg and Commissioner Marcia E. Miller. They join in sections I-IV and V.A of these Views, except as noted.

³ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int’l Trade 1999).

⁴ 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).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(4)(A).

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”⁷

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.⁸ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁹ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.¹⁰ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹¹

B. Product Description

The scope of these investigations covers:

*{b}last furnace coke made from coal or mostly coal and other carbon materials, with a majority of individual pieces less than 100 MM (4 inches) of a kind capable of being used in blast furnace operations, whether or not mixed with coke breeze. Blast furnace coke is generally classified under Harmonized Tariff Schedule United States (“HTSUS”) subheading 2704.00.0025. The tariff classification is provided for descriptive purposes; the scope of the investigation, not the tariff classification of the import, is dispositive.*¹²

Blast furnace coke is a type of metallurgical coke used as both a fuel and as a source of carbon in reducing iron ore to pig iron in a blast furnace. Blast furnace coke must be strong enough to support its own weight, and that of the iron ore and other materials fed into the blast furnace. It must also be porous to withstand the powerful gas currents in the blast furnace.¹³

⁷ 19 U.S.C. § 1677(10).

⁸ See, e.g., NEC Corp. v. Dep’t of Commerce and U.S. Int’l Trade Comm’n, 36 F. Supp. 2d 380 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁹ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁰ Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991).

¹¹ Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹² 66 Fed. Reg. 39009 (July 26, 2001).

¹³ Confidential Report (“CR”), as revised by Memoranda INV-Y-146 (Aug. 9, 2001) and INV-Y-151 (Aug. 10, 2001) and Public Report (“PR”) at I-5.

C. Domestic Like Product

Petitioners argue that the Commission should find one like product, coextensive with the scope, consisting of all blast furnace coke.¹⁴ No respondent has taken issue with Petitioners' suggested domestic like product.

The current blast furnace coke investigation presents questions on whether the domestic like product definition should be expanded to include foundry coke or industrial coke. We find that the evidence in this record reflects that foundry coke and blast furnace coke differ in physical characteristics (e.g., size, coal composition), manufacturing processes and end uses.¹⁵ Consequently, foundry coke is sold to foundries while blast furnace coke is sold primarily to steel producers at different prices.¹⁶ Similarly, in the recent preliminary determination in Foundry Coke from China, the Commission found that foundry coke and blast furnace coke were produced from different types of coal with specific size differences that control their end uses.¹⁷ We do not include foundry coke in the definition of the domestic like product in these investigations.

Regarding industrial coke, we find that the record in these investigations reflects that industrial coke is only available commercially as a byproduct of the foundry coke process, not the blast furnace coke process.¹⁸ Blast furnace coke and industrial coke are not interchangeable. They differ in chemical composition, and to a more limited extent size, and these differences result in different end uses and different customers.¹⁹ We also do not include industrial coke in the definition of the domestic like product in these investigations.²⁰

Therefore, we find one domestic like product consisting of all blast furnace coke, coextensive with the scope in these investigations ("blast furnace coke").

III. DOMESTIC INDUSTRY AND RELATED PARTIES

A. Domestic Industry

Section 771(4) of the Act defines the relevant industry as the "producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a

¹⁴ Petition at 21. Petitioners' Postconference Brief at 11.

¹⁵ Transcript of Blast Furnace Conference, July 20, 2001 ("Conference Tr.") 17-19, 52-54. Petitioners' Postconference Brief, Exhibit 1 at 3-4. Chinese Respondent Duferco's ("Duferco") Postconference Brief, Exhibit 4, at 3-4.

¹⁶ Conference Tr. at 18-19, 54. Petition at 17.

¹⁷ Foundry Coke from China, Inv. No. 731-TA-891 (Preliminary) USITC Pub. 3365 (Nov. 2000) at 5-7.

¹⁸ Conference Tr. at 11, 51, 145-146, USG Interiors, Inc. ("USG") and Rock Wool Manufacturing Co. ("Rock Wool") Postconference Brief at 1-2.

¹⁹ Conference Tr. at 11, 51, 145-146. USG and Rock Wool Postconference Brief at 1-3. Petitioners' Postconference Brief, Exhibit 1 at 4. Industrial coke is used by lead smelters, sugar beet manufacturers and calcium carbide producers. Petitioners' Postconference Brief, Exhibit 1 at 4.

²⁰ USITC Pub. 3365 at 7-8.

major proportion of the total domestic production of that product.”²¹ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.²² Based on our like product determination, we determine that there is a single domestic industry consisting of all domestic producers of blast furnace coke.

B. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.²³ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.²⁴ In defining the domestic industry, we have considered whether *** and ***, who are both domestic producers and importers of subject merchandise, should be excluded from the domestic industry under the related parties provision.

*** is the *** domestic producer of blast furnace coke, and produced *** percent of U.S. blast furnace coke in 2000.²⁵ *** imported subject imports in all periods examined,²⁶ as well as purchased

²¹ 19 U.S.C. § 1677(4)(A).

²² See, e.g., DRAMs From Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Inv. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People’s Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 and n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); see, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain (“OCTG”), Invs. Nos. 701-TA-363-364 (Final) and Invs. Nos. 731-TA-711-717 (Final), USITC Pub. 2911, at I-15 (Aug. 1995) (not including threaders in the casing and tubing industry because of “limited levels of capital investment, lower levels of expertise, and lower levels of employment”).

²³ 19 U.S.C. § 1677(4)(B).

²⁴ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

²⁵ CR/PR at Table III-1.

²⁶ CR/PR at Table IV-1.

Chinese blast furnace coke from U.S. importers in 2000.²⁷ In 1998, the ratio of *** subject imports relative to its blast furnace coke production was *** percent, in 1999, *** percent, in 2000 (including purchases of subject imports), *** percent, and in interim 2001, it was *** percent.²⁸ Although *** is a significant importer, it is also a significant producer. Given the *** ratio of imports relative to domestic production, and the importance of *** data, we find that its primary interests appear to lie in domestic production, and find that appropriate circumstances do not exist to exclude *** from the domestic industry.

*** is the *** domestic producer of blast furnace coke, producing *** percent of U.S. blast furnace coke in 2000.²⁹ *** is also a significant importer of subject merchandise, and imported subject merchandise in all periods examined.³⁰ The ratio of *** imports to its domestic production was *** percent in 1998, *** percent in 1999, *** percent in 2000, and *** percent in interim 2001.³¹ *** experienced ***.³² Given that *** has not appeared to benefit from its imports of subject merchandise, the importance of its data, and the absence of any contrary argument, we find that appropriate circumstances do not exist to exclude *** from the domestic industry.

Domestic producers *** did not import subject merchandise over the period of investigation, but they did purchase blast furnace coke from China. A domestic producer who is mainly a purchaser of subject merchandise may be a related party if it controls large volumes of imports, by being responsible for a predominant proportion of an importer's purchases when the importer's purchases were substantial.³³ In 1998, *** purchased imports of blast furnace coke from China from ***, and was *** customer for subject imports.³⁴ However, the ratio of *** 1998 purchases relative to its domestic production was *** percent, and *** imports were *** percent of total subject imports.³⁵ Although there may be an issue as to whether *** may be considered a related party due to the fact that it was *** customer with respect to subject imports, we find that appropriate circumstances do not exist to exclude *** as a related party given its relatively *** ratio of 1998 purchases to production, and *** percentage of overall subject imports.

Domestic producer *** purchased blast furnace coke from China in all periods examined, apparently from ***.³⁶ *** 1998 purchases appear to constitute *** percent of *** 1998 subject imports,

²⁷ CR at III-9, n.27; PR at III-7, n.27.

²⁸ Calculated from *** Producer Questionnaire and CR at III-9, n.27 & Table IV-1; PR at III-7, n.27 & Table IV-1.

²⁹ CR/PR at Table III-1.

³⁰ CR/PR at Table IV-1.

³¹ Calculated from *** Producer Questionnaire and CR/PR at Table IV-1.

³² CR/PR at Table VI-6.

³³ See, e.g., Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-293 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (April 1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (April 1997).

³⁴ CR/PR at Table IV-1, n.2. CR at III-9, n.26; PR at III-7, n.26.

³⁵ CR at III-9, n.26; PR at III-7, n.26; and *** Producer Questionnaire. CR/PR at Table IV-1.

³⁶ CR at III-9, n.25, Table IV-1, n.7; PR at III-7, n.25, and Table IV-1, n.7.

*** percent of *** subject imports in 1999,³⁷ *** percent of *** 2000 subject imports, and *** percent of *** interim 2001 subject imports.³⁸ ***³⁹ The ratio of *** purchases of subject imports to its domestic production was *** percent in 1998, *** percent in 1999, *** percent in 2000, and *** percent in interim 2001.⁴⁰ *** is a relatively small importer, accounting for only *** percent of total subject imports in 1998, *** percent in 1999, *** percent in 2000, a year in which its imports were ***, and *** percent in interim 2001.⁴¹ Although there may be an issue as to whether *** is a related party due to purchases from ***, given *** relatively *** ratio of purchases to its production, and ***'s relatively *** percentage of overall subject imports, we find that appropriate circumstances do not exist to exclude *** as a related party.

Similarly, *** purchased blast furnace coke from China in all periods examined except interim 2001, from importer ***.⁴² *** 1998 purchases accounted for *** percent of *** 1998 imports, *** percent of *** 1999 imports, and *** percent of *** 2000 imports.⁴³ ***.⁴⁴ The ratio of *** purchases of subject Chinese product to its domestic production was *** percent in 1998, *** percent in 1999, *** percent in 2000, and *** in interim 2001.⁴⁵ *** accounted for *** percent of total subject imports in 1998, *** percent in 1999, *** percent in 2000, and *** percent in interim 2001.⁴⁶ Although there may be an issue as to whether *** is a related party due to purchases from ***, given *** relatively *** ratio of purchases to production, and ***'s relatively *** percentage of overall subject imports, we find that appropriate circumstances do not exist to exclude *** as a related party.

IV. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, Section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.⁴⁷ In assessing whether subject imports compete with each other and with the domestic like product,⁴⁸ the Commission has generally considered four factors, including:

³⁷ ***, *** Producer Questionnaire and *** Importer Questionnaire.

³⁸ CR/PR at Table IV-1; CR at III-9, n.25; PR at III-7, n.25; *** Producer Questionnaire and *** Importer Questionnaire.

³⁹ ***, CR/PR at Table IV-1, n.7.

⁴⁰ CR at III-9, n.25; PR at III-7, n.25; and *** Producer Questionnaire.

⁴¹ CR/PR at Table IV-1.

⁴² CR at III-9, n.24; PR at III-7, n.24.

⁴³ Calculated from CR at III-9, n.24; PR at III-7, n.24; and CR/PR at Table IV-1.

⁴⁴ CR/PR at Table IV-1, n.5.

⁴⁵ CR at III-9, n.24; PR at III-7, n.24 and *** Producer Questionnaire.

⁴⁶ CR/PR at Table IV-1.

⁴⁷ 19 U.S.C. § 1677(7)(G)(i).

⁴⁸ 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

(continued...)

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁴⁹

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.⁵⁰ Only a “reasonable overlap” of competition is required.⁵¹

The petition in these investigations covered blast furnace coke from both China and Japan. Thus, the first statutory criterion for cumulation is satisfied.⁵² In addition, none of the four statutory exceptions to the general cumulation rule applies for purposes of these determinations.⁵³ Therefore, we are required to determine whether there is a reasonable overlap of competition both among the subject imports from China and Japan, and between the subject imports and the domestic like product.

B. Analysis⁵⁴

We find that there is a reasonable overlap of competition sufficient for cumulation, while at the same time recognizing the attenuated competition between subject imports and domestically produced blast furnace coke. This attenuated competition is due to the fact that a significant amount of subject imports is

(...continued)

satisfied if there is a reasonable overlap of competition,” SAA, H.R. Rep. 103-316, vol. I 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).

⁴⁹ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

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

⁵¹ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁵² Petition at 1-2.

⁵³ These exceptions concern imports from Israel, countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

⁵⁴ Commissioners Bragg and Miller find there is a reasonable overlap of competition and do not join the introductory Analysis paragraph. See Dissenting Views of Commissioner Lynn M. Bragg and Commissioner Marcia E. Miller.

transported over water and sold directly to steel makers at steel plants with port facilities. As noted below in our discussion of conditions of competition for the industry, the record reflects that blast furnace coke transported over water results in less product deterioration than blast furnace coke transported over land. We note, however, that how the Commission analyzes competition in the context of cumulation does not legally dictate how the Commission must analyze competition in the context of causation.⁵⁵

Fungibility.⁵⁶—The record reflects a sufficient level of physical interchangeability between domestically produced and imported blast furnace coke from China and Japan. Four responding domestic producers stated that domestically produced and imported blast furnace coke from China could always be used interchangeably, three stated they could frequently be used interchangeably, three stated that they could sometimes be used interchangeably, and one stated that they were never interchangeable.⁵⁷ One importer stated that domestically produced blast furnace coke and imported blast furnace coke from China were always interchangeable, one stated that they were frequently interchangeable, seven stated that they were sometimes interchangeable and one stated that they were never interchangeable.⁵⁸ Although the record reflects differences between Chinese coke used as center fill in a blast furnace,⁵⁹ and domestically produced blast furnace coke, the record reflects at least moderate competition between the domestic product and imports from China overall.

Six responding domestic producers stated that domestically produced and imported blast furnace coke from Japan could always be used interchangeably, four stated they could frequently be used interchangeably, none stated that they could sometimes be used interchangeably, and one stated that they were never interchangeable.⁶⁰ Three importers stated that domestically produced blast furnace coke and imported blast furnace coke from Japan were always interchangeable, two stated that they were frequently interchangeable, one stated that they were sometimes interchangeable, and one stated that they were never interchangeable.^{61 62}

⁵⁵ BIC Corp. v. United States, 964 F. Supp. 391, 397 (Ct. Int'l Trade 1997). “[L]ike product, cumulation and causation are functionally different inquiries because they serve different statutory purposes As a result, each inquiry requires a different level of fungibility. Hence the record may contain substantial evidence that two products are fungible enough to support a finding in one context (e.g., one like product), but not in another (e.g., cumulation or causation).” Id. at 399.

⁵⁶ Commissioners Bragg and Miller join the remaining Analysis discussion within the context of their Dissenting Views. See Dissenting Views of Commissioners Lynn M. Bragg and Marcia E. Miller.

⁵⁷ CR/PR at Table II-1.

⁵⁸ CR/PR at Table II-2.

⁵⁹ *** stated that depending on the strength and size of Chinese coke, it may or may not be used interchangeably with domestic coke. This is particularly so when the Chinese coke is used as center fill in the blast furnace, which requires high strength and large size under parameters unavailable from domestic coke. CR at II-9; PR at II-6. A representative for a Chinese exporter testified at the conference that the domestic product was not interchangeable with imports from China used in center fill applications at U.S. Steel’s Gary, Indiana plant. Conference Tr. at 105, 111 & 129.

⁶⁰ CR/PR at Table II-1.

⁶¹ CR/PR at Table II-2.

⁶² *** said that Japanese blast furnace coke is similar to domestically produced blast furnace coke in most parameters. Depending on the use and quality of Japanese blast furnace coke, it may or may not be interchangeable with domestic blast furnace coke. CR at II-10; PR at II-7. *** reported that the chemistry, size and physical
(continued...)

Domestic producer and importer responses reflect some interchangeability between imports from Japan and China. Two domestic producers reported that imported blast furnace coke from China and Japan could always be used interchangeably, two stated they could frequently be used interchangeably, and four stated that they could sometimes be used interchangeably.⁶³ One importer stated that imported blast furnace coke from China and Japan were always interchangeable, one stated that they were frequently interchangeable, and three stated that they were sometimes interchangeable.⁶⁴ Questionnaire respondents reported that imports from China and imports from Japan were not always interchangeable due to differences in ash content, size, stability and density.⁶⁵

Geographic Overlap.—Domestically produced blast furnace coke and imports from China and Japan are all present in the U.S. market for blast furnace coke particularly in the Eastern half of the United States, where most steel producers are concentrated.⁶⁶ However, most sales of subject imports are to steel producers with port facilities on the East Coast, which do not generally purchase domestically produced blast furnace coke at those plants.⁶⁷ Imports from China and Japan are also sold to some degree in the Western half of the United States.⁶⁸

Simultaneous Presence.—Subject imports from China, subject imports from Japan and domestic blast furnace coke were simultaneously present in the U.S. market in each annual period investigated and in the interim periods.⁶⁹

Channels of Distribution.—Most shipments of blast furnace coke by both producers and importers go directly to end users, which are steel producers, and not distributors.⁷⁰ Several integrated domestic producers⁷¹ either import or purchase both subject merchandise and domestic blast furnace coke.⁷² However, ***, purchase the majority of subject imports at different locations than they purchase

⁶² (...continued)

characteristics of Japanese blast furnace coke and domestically produced blast furnace coke are different. CR at II-10; PR at II-7.

⁶³ CR/PR at Table II-1.

⁶⁴ CR/PR at Table II-2.

⁶⁵ CR at II-11; PR at II-7.

⁶⁶ CR/PR at II-1 and Table III-1.

⁶⁷ This is discussed further in Section V.A.

⁶⁸ Importer *** reports that it services the western part of the United States, primarily **. CR/PR at II-1. Importer *** reported that it services the entire United States. CR/PR at II-1.

⁶⁹ CR/PR at Table IV-2 and Table IV-4.

⁷⁰ During 1998-2000, between 98.1 and 99.6 percent of U.S. annual shipments by producers were to steel producers with the remainder going to distributors. The percentage of total annual shipments of imports from China going directly to steel producers during 1998-2000 ranged between 96.6 and 99.5 percent. All imports from Japan were shipped directly to steel producers during 1998 and 2000. CR/PR at II-1.

⁷¹ In these Views, “integrated domestic producers” or “integrated producers” refers to domestic producers of both blast furnace coke and steel, and firms that have facilities physically integrated with steel producers.

⁷² **. CR/PR at Table III-4, nn. 1 & 2. CR/PR at Table IV-1.

domestically produced blast furnace coke.⁷³ Reportedly, purchasing the subject imports through a port facility results in lower degradation of the blast furnace coke and lower transportation costs through transportation over water rather than over land.⁷⁴

On balance, we find that a reasonable overlap of competition exists among subject imports and between subject imports and the domestic like product sufficient for cumulation.⁷⁵ The level of interchangeability varies between the subject imports and the domestic product. Subject imports and domestic blast furnace coke are both present in the East Coast market for blast furnace coke, where most purchasers are located. Subject imports and domestic blast furnace coke have been simultaneously present in the U.S. market in all periods examined. Channels of distribution are similar for both domestic blast furnace coke and subject imports in that most shipments go directly to end users, which are steel producers, and not distributors. However, most sales of subject imports are to *** steel producers with port facilities in the East, which do not generally purchase domestically produced blast furnace coke for use at these facilities, reportedly due to the economic advantages of water transport which reduces degradation.

V. **NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS**⁷⁶

In the preliminary phase of antidumping 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.⁷⁷ In making this determination, the Commission must consider the volume of subject 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.⁷⁸ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁷⁹ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United

⁷³ OINV Memorandum No. INV-Y-149 (Aug. 9, 2001).

⁷⁴ Duferco Postconference Brief at 6-7. Japanese Respondents’ Mitsubishi Chemical Corporation (“Mitsubishi”) and Mitsui Mining Co., Ltd., (“Mitsui”), (collectively the “Japanese Respondents”) Postconference Brief at 33, n.23 stating that ***.

⁷⁵ We reiterate in this respect, that only a reasonable overlap of competition is required, and that completely overlapping markets are not required. See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986) at 8-11, aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988). Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52.

⁷⁶ Commissioners Lynn M. Bragg and Marcia E. Miller dissenting. See Dissenting Views of Commissioners Lynn M. Bragg and Marcia E. Miller.

⁷⁷ 19 U.S.C. §§ 1671b(a) and 1673b(a).

⁷⁸ 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).

⁷⁹ 19 U.S.C. § 1677(7)(A).

States.⁸⁰ 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.”⁸¹

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports from China and Japan that are allegedly sold in the United States at less than fair value.

A. Conditions of Competition⁸²

Blast furnace coke is used to make pig iron in blast furnaces by steel producers, and is then further processed into steel.⁸³ The demand for blast furnace coke is therefore derived from the demand for pig iron, steel and steel products.⁸⁴ Apparent U.S. consumption for blast furnace coke fell slightly from 1998 to 2000, and was lower in interim 2001 than in interim 2000.⁸⁵ In 2000, apparent U.S. consumption of blast furnace coke was 19.0 million MT.⁸⁶

Blast furnace coke is generally produced using one of two processes: the byproduct recovery process or the beehive process. In the United States, most blast furnace coke is produced using byproduct recovery ovens in which the volatile materials produced during the coking process are recovered.⁸⁷ Byproduct coke batteries run continuously because allowing them to cool can result in damage to the ovens when they are reheated. Batteries are occasionally “hot-idled,” where the temperature is maintained but coal is not charged, and coke is not produced.⁸⁸ Petitioners maintain that hot-idling provides little savings

⁸⁰ 19 U.S.C. § 1677(7)(C)(iii).

⁸¹ 19 U.S.C. § 1677(7)(C)(iii).

⁸² Although Commissioners Bragg and Miller dissent, and find that there is a reasonable indication that the U.S. blast furnace coke industry is materially injured by reason of subject imports from China and Japan, they join the following Conditions of Competition discussion within the context of their Dissenting Views. Commissioner Bragg and Commissioner Miller further note that the record indicates that an important condition of competition is the high degree of substitution between imported and domestic blast furnace coke, as price is one of the primary factors in the sale of blast furnace coke, along with availability and quality (e.g., chemistry, size, physical characteristics, moisture and ash content). CR at II-6, PR at II-4. Accordingly, Commissioners Bragg and Miller find, within the context of their Dissenting Views, that substitutability, as well as the two production segments of the domestic industry (merchant and integrated producers), costly environmental compliance standards, intense capital expenditures for industry maintenance, and the need for steady domestic capacity utilization are all relevant factors of the conditions of competition affecting the domestic industry.

⁸³ CR at II-3, II-5; PR at II-2, II-3.

⁸⁴ CR at II-3; PR at II-2.

⁸⁵ Apparent U.S. consumption of blast furnace coke was 19.2 million metric tons (“MT”) in 1998, falling to 17.8 million MT in 1999, recovering back to 19.0 million MT in 2000. Apparent U.S. consumption of blast furnace coke was 4.3 million MT in interim 2001 as compared to 4.8 million MT in interim 2000. CR/PR at Table IV-4.

⁸⁶ CR/PR at Table IV-4.

⁸⁷ CR at I-6, PR at I-5.

⁸⁸ CR at I-8; PR at I-7.

due to the high energy costs required to keep the ovens hot. Therefore, they allege that they cannot adjust production to fit market demand.⁸⁹

Blast furnace coke crumbles whenever it is being transported or handled, creating particles of coke called coke breeze.⁹⁰ Operators do not want this breeze in their furnaces because it can plug up the blast furnaces.⁹¹ A higher percentage of breeze in a shipment, caused, for example, by the coke being on the ground, can result in a decreased price for the shipment, either because the purchaser discounts the shipment or because the breeze is screened out.⁹² Therefore, blast furnace coke producers seek to minimize crumbling or degradation of the blast furnace coke prior to use, by minimizing handling, moving or transporting the coke. Since placing the coke on the ground involves handling and degradation, blast furnace coke producers endeavor to avoid holding inventories.⁹³ Moreover, in general, blast furnace coke is sold directly to end users and not through distributors.⁹⁴

According to one of the Chinese respondents, it is far more economical for purchasers to receive blast furnace coke by vessel than by rail or truck because receiving the coke by water reduces the amount of handling of the coke, which in turn, reduces degradation.⁹⁵ ⁹⁶ Respondents testified that imported coke was a viable option only to U.S. customers with ready access to port facilities due to the significance of freight costs. Moreover, they testified that most U.S. merchant producers of coke were located inland, and so were limited to sales to nearby steel mills.⁹⁷ Sixty-seven percent of domestic producers' U.S. shipments were within 200 miles of their storage or production facilities.⁹⁸

The U.S. blast furnace coke industry is comprised of two segments, the integrated producer "captive" segment and the segment that sells to the merchant market. The integrated producers produce both blast furnace coke and steel. Most of their shipments are to their captive production operations in which they use their own coke to produce pig iron and then steel. However, the integrated producers also sell blast furnace coke in the merchant market, and are the predominant suppliers of that market.⁹⁹ ¹⁰⁰

⁸⁹ Petitioners' Postconference Brief at 21.

⁹⁰ Conference Tr. at 46-47, 74-75.

⁹¹ Conference Tr. at 48-49, 51-52.

⁹² Conference Tr. at 76.

⁹³ Conference Tr. at 76.

⁹⁴ CR/PR at II-1.

⁹⁵ Duferco's Postconference Brief at 6-7, 18-19.

⁹⁶ Duferco Postconference Brief, Affidavit of Jack Palmer, Vice President of Raw Material for Duferco Steel, Inc. at 1-2.

⁹⁷ Conference Tr. at 85.

⁹⁸ CR at II-2; PR at II-1.

⁹⁹ In 2000, domestic integrated producers shipped *** MT of blast furnace coke to the merchant market, while merchant producers shipped *** MT of blast furnace coke to the merchant market. The merchant shipments by the domestic integrated producers constituted *** percent of the total domestic merchant market shipments.

The captive producers shipped *** MT tons to their captive market. Together, the captive producers' merchant shipments and captive shipments were 12.6 million MT, constituting 79.4 percent of total domestic shipments. Correspondingly, merchant producers' shipments constituted 20.6 percent of total domestic shipments.

(continued...)

As noted above, *** and ***, two domestic producers, are also the primary importers of subject merchandise. Direct imports by *** and *** combined, plus *** indirect purchases of subject imports from China, comprised *** percent of subject imports in 2000.^{101 102} Integrated producers purchased *** percent of the merchant market's U.S. shipments of blast furnace coke in 2000, which includes merchant shipments by both integrated producers and merchant producers.¹⁰³

***'s total shipments (merchant and captive) were larger than the combined shipments of all of the merchant producers.¹⁰⁴ Clairton Partnership is a joint venture owned *** percent by ***. Clairton Partnership and DTE Energy Services have both purchased and now operate coke-making facilities on the site of integrated steel producers.¹⁰⁵

As noted above, *** imported the overwhelming majority of subject imports. *** does not generally purchase subject imports. *** relies exclusively on imports of blast furnace coke from China and Japan. All of *** subject imports of blast furnace coke over the period of investigation have been

⁹⁹ (...continued)

In 2000, merchant shipments constituted *** percent of captive producers' overall U.S. shipments, and captive shipments constituted *** percent of their overall U.S. shipments. Calculated from CR/PR at Table III-1.

¹⁰⁰ No party has argued that the captive production provision of the statute, 19 U.S.C. § 1677(7)(C)(iv), applies to these investigations. We find that the threshold requirement for application of the captive production provision is satisfied because significant production of the domestic like product is internally transferred and significant production is sold in the merchant market. In 2000, captive production shipments by all U.S. integrated producers were *** MT, *** percent of total U.S. domestic shipments of blast furnace coke. Commercial shipments by domestic merchant producers and captive producers were 8.1 million MT, 51.1 percent of total U.S. domestic shipments of blast furnace coke. Calculated from CR/PR at Table III-1.

However, we find that the captive production provision is not applicable to these investigations because the third criterion of the captive production provision is not satisfied. Blast furnace coke sold in the merchant market is used in the production of pig iron and steel, as is blast furnace coke that is internally transferred. U.S. integrated steel producers are virtually the exclusive purchasers of blast furnace coke in the United States. CR at I-13, III-7, PR at I-11, III-7; CR/PR at Table III-4. Conference Tr. at 82. Petitioners agree that the third criterion of the captive production provision is not satisfied. Petitioners' Postconference Brief at 17, n.20. Nevertheless, we do consider captive production as a condition of competition.

¹⁰¹ Calculated from CR/PR at Table IV-1, and CR at III-9, n.27, PR at III-7, n.27.

¹⁰² We note that there were *** nonsubject imports during the period of investigation. CR/PR at Table IV-2.

¹⁰³ Calculated from CR/PR at Tables III-1 and III-4. Because some of the domestic producers were also purchasers and end users of blast furnace coke, the domestic producer questionnaires issued in these investigations contained some questions usually asked in purchaser questionnaires. These questions concerned whether demand had changed for the end products since January 1998, and what characteristics the firm considered when determining the quality of blast furnace coke. Thus, in these investigations, we have purchaser information that we frequently have not yet obtained in preliminary phase investigations. See OINV Memorandum INV-Y-126 dated July 3, 2001.

¹⁰⁴ Calculated from CR/PR at Table III-1.

¹⁰⁵ Clairton Partnership owns and operates coke batteries 13, 14, and B of U.S. Steel's Clairton, Pennsylvania coke-making operations. DTE Energy Services owns and operates two blast furnace coke facilities: DTE Burns Harbor and EES Coke Battery Co. DTE Burns Harbor owns and operates the No. 1 coke battery at Bethlehem's Burns Harbor, Indiana steel facility, and sells its output on a contractual basis to Bethlehem. EES Coke owns and operates the Ecorse, Michigan coke production plant formerly owned by National Steel and sells its output on a contractual basis to National Steel. CR at III-2 & nn.7 and 8; PR at III-3 & nn.7 and 8; CR/PR at Table III-1.

consumed at ***. In first quarter 2000, Bethlehem began operation of a pulverized-coal-injection (PCI)¹⁰⁶ facility at Sparrows Point that will allow Bethlehem to reduce its annual need for blast furnace coke by *** MT ***, when the facility becomes fully operational.¹⁰⁷

*** does not consume any imports. All of *** imports from Japan and a few test shipments from China, were consumed at *** over the period of investigation ***. *** produces blast furnace coke for *** internal steel operations, which is supplemented by imports from China and blast furnace coke from other domestic producers.¹⁰⁸

Domestic capacity has declined significantly since 1979 due to environmental regulations and aging batteries,¹⁰⁹ leaving a significant supply deficit between domestic supply capacity and domestic demand of approximately two million MT.¹¹⁰ Long-term reduction of domestic capacity continued during the period of investigation.¹¹¹ Several coke batteries closed in 1998, which coincided with compliance requirements of the Clean Air Act.¹¹² Another company, Gulf States Steel closed its entire steel operations in 1999,¹¹³ and Bethlehem has announced that it will close a plant in the future.¹¹⁴ Petitioners do not refute respondents'

¹⁰⁶ Pulverized coal injection is a blast furnace technology that requires less coke. Conference Tr. at 44-45. EES Coke owns and operates a PCI facility in Ecorse, Michigan. OINV Memorandum INV-Y-149 (August 9, 2001).

¹⁰⁷ OINV Memorandum INV-Y-149 at 1.

¹⁰⁸ OINV Memorandum INV-Y-149 at 1-2.

¹⁰⁹ Coke plants were classified as hazardous air pollutants in the Clean Air Act Amendments of 1990, and between 1979 and 1996, the number of active coke batteries declined from 179 to 78 and annual capacity dropped 60 percent. Much of the decline was concentrated in the integrated sector but the merchant sector was also affected. Moreover by 1994, half of the coke oven batteries in the U.S. had reached or were nearing the 20-30 year average life span for coke oven batteries. Today there are 66 batteries in operation in the United States—integrated steel producers operate 38 by-product recovery ovens, while merchant producers operate 18 by-product recovery batteries and ten non-recovery batteries. Japanese Respondents' Postconference Brief at 6-7 and Exhibits 3 and 4.

¹¹⁰ Apparent U.S. consumption in 2000 was 19.0 million MT, whereas total domestic production capacity was 16.7 million MT, and domestic production was 16.1 million MT. CR/PR at Tables III-2 and IV-4.

¹¹¹ Japanese Respondents' Postconference Brief, Exhibits 3 & 4.

¹¹² Japanese Respondents' Postconference Brief at 8. In 1998, Bethlehem closed its blast furnace coke plant in Bethlehem, Pennsylvania. It also sold half of its coke-making operations at Burns Harbor, Indiana to DTE Energy Services. LTV closed its plant at Pittsburgh, Pennsylvania. Koppers closed its plant in Gadsden, Alabama, but this plant primarily produced foundry coke. CR at III-6. Petition, Exhibit 48. By January, 1998, each company had to decide which compliance track, MACT or LAER, it was going to accept for its batteries, which affected what standards were applicable to the batteries and when compliance was necessary. See Petitioners' Postconference Brief, Exhibit 1, Response Attachment D.

¹¹³ CR at III-6; PR at III-5.

¹¹⁴ Japanese Respondents' Postconference Brief, Exhibit 3. Bethlehem has announced its plans to shut down its Lackawanna plant with 700,000 MT capacity by the end of September 2001. Chinese Respondent Duferco Postconference Brief, Exhibit 6. *** were from its Lackawanna plant. Bethlehem Domestic Producer Questionnaire at 6. Staff phone conversation with ***.

arguments that coke batteries have closed due to aging, and the need to comply with environmental regulations.¹¹⁵

The domestic industry faces strict and expensive environmental standards. Petitioners allege that environmental compliance costs will increase by tens of millions of dollars in the next decade.¹¹⁶ One industry representative testified that the industry has spent “well over a billion dollars” on environmental projects since the early 1990s.¹¹⁷ The estimated cost to build a new blast furnace coke battery from the ground up with 300,000 tons of capacity is ***.¹¹⁸

The majority of sales of domestically produced blast furnace coke are on a contract basis. Contract periods are typically for one to three years, although they may be as many as 12 years in duration.¹¹⁹ The record also reflects that domestic producers tend to sell to a small number of customers with whom they have long-standing relationships.^{120 121}

B. Volume of the 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.”¹²²

As noted above, apparent U.S. domestic consumption for blast furnace coke decreased irregularly from 1998 to 2000, and was lower in interim 2001 than in interim 2000.¹²³ Apparent U.S. consumption fell by one percent between 1998 and 2000, and was eleven percent lower in interim 2000 than in interim

¹¹⁵ Petitioners state that respondents “concede” that pressures from environmental compliance regulations have caused the closure of a large fraction of U.S. coke producing facilities in the 1990s. Moreover, Petitioners reference Respondents’ statement that Petitioners had made no attempt to link the recent shutdowns in coke capacity to subject imports, and do not refute their arguments. Petitioners’ Postconference Brief at 20, 33. Petitioners stated at the conference that “[t]he truth of the matter is that historically closure of facilities, Gulf States included probably, is mostly related to the useful life of the facility and when it expires, it’s closed.” Conference Tr. at 153.

When asked by the Department of Commerce to what extent the Gulf States Steel, Bethlehem Steel Corp., Koppers and LTV closures were related to imports of blast furnace coke from China and Japan, Petitioners stated that they did not intend at that time to make any assertion as to the extent to which the closure of the Gulf States Steel coke battery in 2000 was related to subject imports. Response to Commerce Department Questions on the Petition for Imposition of Antidumping Duties: Blast Furnace Coke from China and Japan (July 6, 2001) at 10.

¹¹⁶ Petitioners’ Postconference Brief at 32.

¹¹⁷ Petitioners’ Postconference Brief at 20. Conference Tr. at 21.

¹¹⁸ Petitioners’ Postconference Brief, Answers to Staff Questions at 6.

¹¹⁹ CR/PR at V-3.

¹²⁰ Japanese Respondents’ Postconference Brief at 10-11 & Exhibit 2 (citing to several examples of long-term commitments of domestic producers, for example: ***. Over the period of investigation, the capacity utilization of domestic producers ranged from 92.6 percent in 1999 to 97.4 percent in interim 2000. CR/PR at Table III-2.

¹²¹ Commissioners Bragg and Miller do not join in the remainder of these Views. See Dissenting Views of Commissioner Lynn M. Bragg and Commissioner Marcia E. Miller.

¹²² 19 U.S.C. § 1677(7)(C)(i).

¹²³ CR/PR at Table IV-4.

2001.¹²⁴ The volume of cumulated subject import U.S. shipments fell at a sharper rate than demand. The volume of cumulated subject import shipments decreased irregularly from *** MT in 1998 to 3.1 million MT in 2000, a decrease of *** percent. In interim 2001, the volume of cumulated subject import shipments was sharply lower, 591,833 MT, as compared to 799,063 MT in interim 2000, 25.9 percent lower.¹²⁵ The share of apparent U.S. consumption supplied by the cumulated subject imports declined somewhat, from *** percent to 16.5 percent during 1998 to 2000, then was sharply lower in interim 2001, 13.8 percent, as compared to 16.5 percent in interim 2000.¹²⁶ In contrast, U.S. producers' share of apparent consumption increased somewhat from 83.0 percent to 83.5 percent during 1998 to 2000, then was higher in interim 2001, 86.2 percent, than in interim 2000, 83.5 percent.¹²⁷

Due to the overall decline in relative and absolute volume of subject imports during the period of investigation, we find the volume of subject imports not to be significant.

C. Price Effects of the Subject Imports

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

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹²⁸

Prices for the domestic like product generally fluctuated within a range of less than eight percent over the period of investigation. Indeed, the reported weighted average domestic price per MT for blast furnace coke in the first quarter of 1998 was \$121.18 per MT, and in the second quarter of 2001, it was \$121.59 per MT. Reported weighted average domestic prices for blast furnace coke increased steadily through the end of 1998 to a high in the last quarter of \$130.38 per MT. Domestic prices declined irregularly in 1999, ending the last quarter at \$122.51 per MT. From the last quarter of 1999, reported domestic prices stayed essentially flat for seven quarters. They stayed within a narrow range, from \$120.30 to \$122.71 per MT, from the last quarter of 1999 until the second quarter of 2001.¹²⁹

¹²⁴ CR/PR at Table C-1.

¹²⁵ CR/PR at Tables IV-4 and C-1.

¹²⁶ CR/PR at Table IV-6.

¹²⁷ CR/PR at Table C-1. As stated earlier, there were *** nonsubject imports during the period of investigation. CR/PR at Table IV-2.

¹²⁸ 19 U.S.C. § 1677(7)(C)(ii).

¹²⁹ CR/PR at Table V-1.

Prices for imports from China and Japan undersold domestic product in all fourteen quarters examined. Margins of underselling by imports from China ranged from *** percent to *** percent. Margins of underselling by imports from Japan ranged from *** percent to *** percent.^{130 131}

We do not find, however, that underselling by the subject imports has had significant adverse price effects. Domestic prices stayed relatively flat during the period of investigation without regard to the vacillations in the prices for subject imports from China and Japan during this period.¹³² Prices were at approximately \$120-\$122 per MT at the beginning and at the end of the reporting period.¹³³ Thus, prices for the domestic like product have not been significantly depressed.

Moreover, there is no indication that the subject imports have prevented price increases, which would otherwise have occurred, to a significant degree. The pricing data obtained show no clear pattern of responses of domestic prices to the prices of subject imports, with the domestic prices sometimes falling though import prices are rising, and vice-versa.¹³⁴ In addition, unit costs and the ratio of cost of goods sold to net sales revenue for the industry generally declined over the period of investigation, declining between 1998 and 2000, and then having only a small increase in interim 2001 relative to interim 2000, on both an overall and trade-only basis, with the exception of the ratio of cost of goods sold to net sales revenue for trade only sales, which increased marginally between 1998 and 2000.¹³⁵ This suggests that prices have not been significantly suppressed relative to costs.¹³⁶

The lack of significant adverse price effects by the subject imports is also confirmed by the nature of the conditions of competition for this industry. The overwhelming majority of subject imports, *** percent in 2000, is sold to *** integrated members of the industry to satisfy demand at certain of their steel plants, ***. *** purchases both domestically produced blast furnace coke and subject imports ***.¹³⁷ There is no evidence on this record that the prices of these imports, that to a great extent do not compete with domestically produced blast furnace coke, and which constitute the overwhelming percentage of subject imports, have had a significant effect on domestic prices.

¹³⁰ CR at V-8; PR at V-4.

¹³¹ Although we acknowledge the underselling by the subject imports, we also note that prices for imports from China and prices for imports from Japan increased beginning in the second half of 2000 and increased further in 2001. CR/PR at Table V-1.

¹³² See CR/PR at Figure V-3, indicating no clear correlation between prices of the subject imports and domestic prices.

¹³³ CR/PR at Table V-1 and Figure V-3.

¹³⁴ CR/PR at Table V-1 and Figure V-3.

¹³⁵ CR/PR at Table C-1.

¹³⁶ Moreover, the record does not reflect substantiated lost sales or lost revenues that would link prices for subject imports to depressed or suppressed domestic prices. Petitioners explain the lack of lost sales or lost revenue allegations in its Petition by stating that blast furnace producers' purchasing managers do not disclose competitive bids. ***. Conference Tr. at 12. Petitioners' Postconference Brief at 34 & Exhibit 4.

Although domestic producers that were not petitioners were asked to report any instances of lost sales or revenues they experienced due to competition from imports from China and Japan, responding domestic producers did not report any lost sales on an individual customer basis. One producer ***, made a specific allegation that it had reduced prices because of blast furnace coke imports from China and Japan, but did not provide all of the necessary information required to verify the allegation. CR at V-8; PR at V-6.

¹³⁷ OINV Memorandum INV-Y-149 (August 9, 2001). We note that ***. Id.

We thus find that subject imports have not depressed or suppressed domestic prices to a significant degree.

D. Impact of the Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”¹³⁸ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the industry.”^{139 140}

The record in these investigations indicates that the profitability of the domestic industry fluctuated within a narrow range over the period of investigation, as did several of the other economic indicators. Furthermore, there is no correlation between subject import volume and the financial condition of the domestic industry. Subject import volumes declined during the periods in which the domestic industry’s operating income margins declined to unprofitable levels. Cumulated subject import volume fell from 1998 to 1999, at the same time that the operating income as a share of sales fell from 0.5 percent to a negative 1.1 percent. Cumulated subject import volume increased from 1999 to 2000 while operating income as a share of sales recovered to a positive 1.1 percent. Finally, the volume of cumulated subject imports was 37.1 percent lower in interim 2001 than in interim 2000. At the same time, operating income as a share of sales fell to a negative 0.9 percent.¹⁴¹ Therefore, when subject import volume was declining, the domestic industry was less profitable, and when import volume was increasing, the domestic industry was more profitable. We find no causal nexus between subject imports and the financial health of this industry.

Other economic indicators for the industry fluctuated within a narrow range, while capacity utilization rates were high. Many of the economic indicators decreased from 1998 to 1999, recovered from 1999 to 2000, and were lower in interim 2001 than in interim 2000.

Total net sales, including internal consumption and related party transfers, fell slightly over the period examined.¹⁴² Production decreased from 1998 to 1999, and recovered in 2000, increasing slightly

¹³⁸ 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).

¹³⁹ 19 U.S.C. § 1677(7)(C)(iii).

¹⁴⁰ 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 estimated dumping margins as follows: China, from 132.2 percent to 207.2 percent; Japan, 71.66 percent. 66 Fed. Reg. 39009 *et seq.* (July 26, 2001).

¹⁴¹ CR/PR at Tables IV-2 and C-1. We note that the same pattern holds true for the merchant market (Trade only sales). Operating income as a percentage of sales was 2.9 percent in 1998, declining to 1.3 percent in 1999, and recovering to 1.6 percent in 2000. It was a negative 0.6 percent in interim 2001 and a positive 1.8 percent in interim 2000. Therefore, declines in the operating income margin for the merchant market also happened at the same time as import volume was declining. *Id.*

¹⁴² Total net sales and transfers fell from 16.7 million MT in 1998 to 15.8 million MT in 1999, and recovered to 16.6 million MT in 2000. Sales were 3.9 million MT in interim 2001, as compared to 4.2 million MT in interim 2000. CR/PR at Table C-1. Merchant market (Trade only) sales followed similar trends, although they

(continued...)

overall. Capacity and capacity utilization followed similar trends.^{143 144 145} Inventories fell from 1998 to 2000, but were larger in interim 2001 than in interim 2000.¹⁴⁶ Employment indicators are mixed. The number of production workers and hours worked declined between 1998 and 2000 and were lower in interim 2001 than in interim 2000. Wages paid and productivity increased between 1998 and 2000, although they were lower in interim 2001 than in interim 2000. Hourly wages increased between 1998 and 2000, and were higher in interim 2001 than in interim 2000.¹⁴⁷

Between 1998 and 1999, the per-unit cost of goods sold (COGS) was level, then declined from 1999 to 2000. Unit COGS was higher in interim 2001 than in interim 2000.¹⁴⁸ The ratio of COGS to sales increased from 1998 to 1999 and then fell from 1999 to 2000. It was larger in interim 2001 than in interim 2000.¹⁴⁹

Capital expenditures declined in 1999 and 2000. Reported research and development expenses increased steadily between 1998 and 2000, but were lower in interim 2001 than in interim 2000.¹⁵⁰

In light of our findings that declining volumes of subject imports have not suppressed or depressed domestic prices to a significant degree, that the financial performance of the domestic industry fluctuated within a narrow range, and lack of correlation of subject import volumes and the financial performance of the domestic industry, we find no reasonable indication that subject imports have had a significant adverse impact on the domestic industry.

¹⁴² (...continued)

increased from 1998 to 2000. Trade only sales were 8.3 million MT in 1998, decreasing to 7.8 million MT in 1999, recovering to 8.5 million MT in 2000. Trade only sales were 2.0 million MT in interim 2001 as compared to 2.2 million MT in interim 2000. Id.

¹⁴³ Domestic production of blast furnace coke was 16.0 million MT in 1998, decreasing to 15.4 million MT in 1999, recovering to 16.1 million MT in 2000. Domestic production was 3.9 million MT in interim 2001 and 4.1 million MT in interim 2000. CR/PR at Table C-1.

¹⁴⁴ Domestic production capacity was 16.62 million MT in 1998, decreasing slightly to 16.60 million MT in 1999, recovering to 16.68 million MT in 2000. Domestic production capacity was 4.12 million MT in interim 2001 as compared to 4.17 million MT in interim 2000. CR/PR at Table C-1.

¹⁴⁵ Capacity utilization was 96.0 percent in 1998, decreasing to 92.6 percent in 1999 and recovering to 96.7 percent in 2000. Capacity utilization was lower in interim 2001 than in interim 2000. CR/PR at Table C-1.

¹⁴⁶ End-of-period inventories decreased from 578,072 MT in 1998, to 528,398 MT in 1999, and then fell further to 430,127 MT in 2000. Inventories were 531,633 MT in interim 2001 as compared to 464,719 MT in interim 2000. CR/PR at Table C-1.

¹⁴⁷ CR/PR at Table C-1.

¹⁴⁸ CR/PR at Table C-1. For merchant market (Trade only) sales, unit COGS increased from 1998 to 1999, and then fell from 1999 to 2000. It was higher in interim 2001 than in interim 2000. Id.

¹⁴⁹ CR/PR at Table C-1. Merchant market (Trade only) sales had similar trends. Id.

¹⁵⁰ CR/PR at Table VI-7. Some companies reported a high percentage of their capital expenditure costs were related to environmental compliance, and others reported no environmental compliance capital expenditures. CR at VI-29-31; PR at VI-10. CR/PR at Table VI-7. Research and development data was only received from ***. Domestic Producer Questionnaires.

VI. CUMULATION FOR PURPOSES OF ANALYZING THE THREAT OF MATERIAL INJURY

Section 771(7)(H) of the Act permits the Commission, to the extent practicable, to assess cumulatively the volume and effect of subject imports for purposes of conducting its threat analysis.¹⁵¹ In addition to the factors considered in the cumulation for present injury analysis, the Commission also considers whether the imports are increasing at similar rates in the same markets, whether the imports have similar margins of underselling, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.¹⁵²

We exercise our discretion to cumulate subject imports from China and Japan for purposes of assessing threat of material injury in these determinations. There are both similarities and differences in their volume and pricing trends. We note that most of the subject imports are either imported or purchased by ***.¹⁵³

Given the similarities in their volume and price trends, as well as the fact that the overwhelming majority of subject imports from both countries are purchased by *** importers, we exercise our discretion to cumulate imports from China and Japan in analyzing the threat of material injury.

VII. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CHINA AND JAPAN

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁵⁴ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”¹⁵⁵ In making our determination, we have considered all factors that are relevant to these investigations.¹⁵⁶

¹⁵¹ See Kern-Liebers v. United States, 36 F. Supp.2d 394 (Ct Int'l Trade 1999).

¹⁵² See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

¹⁵³ CR/PR at Tables IV-1, IV-2 & IV-3; CR at IV-5 & III-9, n.27; PR at IV-3 & III-7, n.27.

¹⁵⁴ 19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

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

¹⁵⁶ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies is inapplicable to this antidumping investigation, as is Factor VII regarding raw and processed agricultural products.

U.S. shipments of subject imports into the U.S. market from China and Japan, combined, decreased *** from 1998 to 2000 and were 25.9 percent lower in interim 2001 than in interim 2000, a trend that does not support a finding that likely substantial increases in imports are imminent.¹⁵⁷ The market share of cumulated subject imports also decreased *** from 1998 to 2000, and was 2.8 percentage points lower in interim 2001 than in interim 2000.¹⁵⁸

We note that there is a supply deficit in the United States for blast furnace coke, that U.S. capacity has declined over time, and that subject import volume has followed demand trends over the period of investigation. We note that domestic producers are at high capacity utilization rates, and have long term relationships and commitments to a small number of customers. We find that there are *** principal importers of blast furnace coke, ***, who have used subject imports to supplement their blast furnace coke requirements. *** has stated that it will require *** fewer MT of subject imports annually when ***, although it is unclear when that will take place.¹⁵⁹

There is no evidence on the record of an imminent, substantial increase in production capacity in China or Japan, nor evidence of a likelihood of substantially increased imports of the subject merchandise given that the vast majority of subject imports during the period of investigation were destined for ***. As stated earlier, these *** steel producers do not generally purchase domestically produced blast furnace coke for use at their steel production facilities with port facilities, reportedly due to the economic advantages of water transport which reduces degradation, and the record does not reflect any intent for them to increase their imports or purchases in the future. We further find that the high capacity utilization of the domestic producers during the period of investigation, 96.0 percent in 1998, 92.6 percent in 1999, 96.7 percent in 2000, 97.4 percent in interim 2000 and 93.7 percent in interim 2001,¹⁶⁰ indicates that they could not meet any significant increase in orders for blast furnace coke, which further supports our finding of no reasonable indication of threat of material injury by reason of subject imports from China and Japan.

¹⁵⁷ CR/PR at Table C-1.

¹⁵⁸ CR/PR at Table C-1.

¹⁵⁹ OINV Memorandum INV-Y-149 (August 9, 2001) at 1.

¹⁶⁰ CR/PR at Table C-1.

While China is now the world's largest exporter of coke,¹⁶¹ reporting Chinese producers show high capacity utilization levels.¹⁶² ¹⁶³ Subject import volumes from China were sharply lower in interim 2001, as compared to interim 2000.¹⁶⁴

The record reflects that Mitsubishi Chemical and Mitsui Mining accounted for virtually all exports of blast furnace coke from Japan to the United States during the period of investigation. They maintain that like the United States, the great majority of Japanese coke production is captive, and that the integrated producers in Japan lack specialized export facilities for gently loading coke onto vessels that would make any export opportunities attractive.¹⁶⁵ They further maintain that there is a structural deficit of blast furnace coke in Japan as in the United States (although it appears to be caused by their exports), and that PCI usage has stabilized in Japan and will not increase, arguing that there will be no increased pressure to export more blast furnace coke to the United States.¹⁶⁶

¹⁶¹ CR at VII-4; PR at VII-2.

¹⁶² CR/PR at Table VII-2.

¹⁶³ Petitioners rely to a large extent on a 1999 Chinese Coke Directory, edited by Biswambhar Goswami, President of International Inspection & Consultancy (ILC) of Japan, and published by Tex Report. In that original Coke Directory, Mr. Goswami noted the swift emergence of the Chinese coke industry, particularly in Shanxi province. He also noted the environmental problems associated with beehive ovens, and that beehive ovens were being replaced with mechanical ovens. Petition, Exhibit 52, at pages "e-g". ***. Petition, Exhibit 51. Petitioners also present an article stating that the local government in Luliang, Shanxi Province, China is planning to close all traditional coking plants (beehive ovens) and build 24 modern plants, although the article reflects that these modern plants will replace beehive ovens being shuttered. Petitioners' Postconference Brief, Exhibit 6.

Counsel for Respondent Shanxi Group testified at the conference that there were "massive shutdowns" of beehive ovens in China. Conference Tr. at 116. Counsel for Japanese Respondents testified that the majority of U.S. imports of furnace coke from China during the period of investigation were from beehive ovens, and that if the ovens were shut down, the capacity to export that material is also shut down. Conference Tr. at 117. See also Manatt Phelps Letter dated July 19, 2001, showing known production closures. A representative of Chinese Respondent Duferco testified that the industry is in "transition," that at least 50 percent of the beehive ovens had been closed, and that they are attempting to produce beehive quality coke using slot ovens. Conference Tr. at 119-120, 142. Based on the foregoing, record evidence demonstrates that the Chinese blast furnace coke industry is in transition, and that at least some of its capacity is being shut down.

¹⁶⁴ We note that exports to the United States of blast furnace coke from China have been decreasing, and are projected to decrease further. The Commission received questionnaire responses believed to account for virtually all exports of blast furnace coke from China to the United States during January 1998 to March 2001. CR/PR at VII-1. This export data reflects that 1.8 million MT of blast furnace coke was exported to the United States in 2000, as compared to 6.1 million MT to other markets. Exports to the United States in interim 2001 were 113,976 MT in interim 2001 as compared to 465,949 MT in interim 2000. Projected calendar year exports to the United States in 2002 were *** as compared to 920,600 MT projected calendar year exports in 2001. CR/PR at Table VII-2.

¹⁶⁵ Japanese Respondents' Postconference Brief at 32. CR at VII-5; PR at VII-4. Conference Tr. at 99. Our data represents virtually all exports of blast furnace coke from Japan during the period of investigation. CR at VII-5, PR at VII-4.

¹⁶⁶ Japanese Respondents' Postconference Brief at 28-33, Exhibits 16, 17 & 18. Conference Tr. at 96.

***.¹⁶⁷ In 2000, *** imports accounted for *** of subject imports from Japan, or *** percent of subject imports from Japan.¹⁶⁸ It appears that *** requirements for imports at *** will decrease at some point in the future.¹⁶⁹

There is no indication that imports from Japan will increase in the future. The majority of reported Japanese shipments of blast furnace coke went to the home market, and reporting Japanese producers reported high capacity utilization levels.¹⁷⁰ Import volumes from Japan decreased from 1998 to 2000 and were lower in interim 2001 than in interim 2000. One of their *** primary U.S. customers has announced a significant decline in its future needs for blast furnace coke.¹⁷¹ Japanese market share of the U.S. market has been generally stable throughout the period of investigation.¹⁷² Official Commerce import statistics reflect that coke imports from Japan, (including both blast furnace coke and foundry coke) have ranged from 1.5 million MT to 1.9 million MT, beginning in 1992 and up to and including 2000, except for 1996, when imports of coke from Japan were 1.3 million MT.¹⁷³ Even Petitioners state that “Japanese imports have constituted a stable share of the domestic market...”¹⁷⁴ There is no indication that this will change in the future.

We also find it unlikely that subject imports from these two countries will enter the U.S. market at prices likely to suppress or depress domestic prices to any significant degree. As noted above, underselling has been persistent, but it has had little apparent adverse effect on domestic prices. We have found that import prices do not translate into depressed or suppressed prices for domestic blast furnace coke, due to the limited direct competition between imports and domestic blast furnace coke in these investigations. There is nothing in the record to indicate that these conditions of competition will significantly change or that they are likely to increase demand for further imports. Indeed, it appears that *** demand for subject imports will decrease in the future due to its proposed ***. Also, underselling margins narrowed in the first two quarters of 2001.

Imports from China and Japan are not generally inventoried by non-steel producing importers, due to the degradation involved.¹⁷⁵ Reported inventories for Japanese producers are low, and are not projected to significantly increase.¹⁷⁶ Chinese producers report an increase in inventories in 2000 and larger inventories in interim 2001 as compared to interim 2000. However, we note that the reported end-of-period inventories in 2000 would only constitute *** percent of apparent U.S. consumption in 2000. As for the end-of-period inventories in interim 2001, we note that although inventories are higher in interim 2001 as compared to interim 2000, total shipments are lower, and projected 2001 calendar year end-of-period

¹⁶⁷ CR at IV-5, nn. 4-5; PR at IV-3, nn.4-5.

¹⁶⁸ Calculated from CR/PR at Tables IV-2 and IV-3.

¹⁶⁹ OINV Memorandum INV-Y-149 (August 9, 2001) at 1.

¹⁷⁰ CR/PR at Table VII-4.

¹⁷¹ OINV Memorandum INV-Y-149 (August 9, 2001) at 1.

¹⁷² CR/PR at Table C-1.

¹⁷³ Official Commerce Statistics.

¹⁷⁴ Petitioners’ Postconference Brief at 40.

¹⁷⁵ Conference Tr. at 135-136. CR/PR at Table VII-5, nn.2-3. Although we note that importers held significant end-of-period inventories during the period of investigation, we note that most of these inventories were held by importers ***, importers that are also end users, *i.e.*, steel producers.

¹⁷⁶ CR/PR at Table VII-4.

inventories are smaller than interim 2001 inventories.¹⁷⁷ Although product-shifting is a theoretical possibility in both subject countries,¹⁷⁸ the record does not reflect any product-shifting during the period of investigation, or any intent to do it in the future.

Although Petitioners have argued that dumped import pricing is preventing the domestic industry from making investments in replacement and expansion capacity,¹⁷⁹ and ***,¹⁸⁰ we find that although capital expenditures were higher in 1998 than in 1999 and 2000, most of the 1998 expenditures were related to environmental compliance, so this decrease in capital expenditures does not appear to reflect a decrease in expenditures for upgrading facilities.¹⁸¹ Indeed, ***, reported capital expenditures for upgrading their facilities.¹⁸² Given our findings regarding import pricing, we do not find that import prices have significantly negatively affected or will potentially have any significantly negative effects on capital expenditures.

In light of the conditions of competition in this market, decreases in recent shipments to the United States, along with a general lack of evidence of future increased imports by the primary U.S. importers, we find no reasonable indication of threat of material injury by reason of cumulated subject imports from China and Japan.

CONCLUSION

For the foregoing reasons, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of blast furnace coke from China and Japan that are allegedly sold in the United States at less than fair value.

¹⁷⁷ CR/PR at Table VII-2. Although reported Chinese inventories are projected to be higher in calendar year 2002, the projected inventories would only constitute *** percent of apparent U.S. consumption in 2000. Calculated from CR/PR at Tables IV-4 and VII-2.

¹⁷⁸ CR at VII-4, PR at VII-2; Japanese Respondents' Postconference Brief, Answers to Staff Questions at 44. While there is reportedly a large theoretical capacity for production of both foundry coke and blast furnace coke in China, the record does not indicate that such theoretical capacity will result in substantially increased exports of blast furnace coke from China to the United States in the imminent future, given the current transitional state of the Chinese blast furnace coke industry in which capacity is being shut down, the fact that the volume of subject imports from China was significantly lower in interim 2001 than in interim 2000, and demand in other markets. CR at VII-4 & n.4; PR at VII-1 & n.4. CR/PR at Tables IV-2 and VII-2.

¹⁷⁹ Petitioners' Postconference Brief at 34.

¹⁸⁰ CR/PR at Appendix D.

¹⁸¹ CR/PR at Table VI-7 and CR at VI- 29-31 & nn.20-22, PR at VI-10 & nn. 20-22. Capital expenditures were lower in interim 2001 than in interim 2000. *Id.*

¹⁸² CR at VI- 29-31, nn. 20 & 22; PR at VI-10, nn. 20 & 22.

**DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG
AND COMMISSIONER MARCIA E. MILLER**

Investigations Nos. 731-TA-951-952 (Preliminary)

BLAST FURNACE COKE FROM CHINA AND JAPAN

Based on the record developed in the preliminary investigations, we find that there is a reasonable indication that the domestic industry is materially injured by reason of imports of blast furnace coke from China and Japan that are allegedly sold in the United States at less than fair value (“LTFV”). We also note that there are fundamental issues raised and unanswered in the limited record of these preliminary phase investigations which warrant an affirmative determination and the continuation of these investigations into the final phase. The important unresolved issues include the significant volume of merchant market producers’ sales in the open or commercial market that specifically raise concerns regarding the adequacy of pricing data, the lack of purchaser questionnaires, and the role and impact of subject imports on contract negotiations within the U.S. market.

We join the majority’s views on domestic like product, domestic industry, cumulation, and conditions of competition, except as noted.¹ Our dissenting views on material injury follow.

I. The Legal Standard for Preliminary Determinations

The legal standard for preliminary antidumping 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.² 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.”³

II. Reasonable Indication of Material Injury by Reason of Allegedly LTFV Imports From China and Japan

In the preliminary phase of an antidumping duty investigation, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the

¹ Given that the record indicates that subject imports and the domestic like product are interchangeable and recognizing an important issue raised regarding the nature of competition between subject imports and the domestic like product, *i.e.*, whether transportation costs limit U.S. merchant producers’ sales to nearby purchasers, we believe that negative determinations at this preliminary stage would be premature. The record does not, at this time, present information sufficient to support dispositive distinctions regarding the industry’s performance, as reflected in the lack of purchaser input regarding the nature of competition between domestic product and imported product, particularly in the sizable merchant segment.

² 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).

³ American Lamb, 785 F.2d at 994, 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

imports under investigation.⁴ In making this determination, the Commission must consider the volume of subject 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.⁵ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁶ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷ 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.”⁸

A. Volume of the 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.”⁹

Subject imports from China and Japan maintained a steady presence in the U.S. market over the period of investigation, and generally followed demand trends. Apparent U.S. consumption fell from 19.2 million metric tons in 1998 to 17.8 million metric tons in 1999, and then rebounded to 19.0 million metric tons in 2000. During the first quarter of 2001, apparent U.S. consumption was about 4.3 million metric tons as compared to 4.8 million metric tons in the first quarter of 2000. The volume of U.S. shipments of subject imports was *** metric tons in 1998, 2.8 million metric tons in 1999, and 3.1 million metric tons in 2000. U.S. shipments of subject imports, by volume, were 799,063 metric tons in the first quarter of 2000, as compared to 591,833 metric tons in the first quarter of 2001.¹⁰

Subject imports’ share of apparent U.S. consumption, by volume, remained relatively constant, at *** percent in 1998, 15.6 percent in 1999, and 16.5 percent in 2000. Subject imports share of apparent U.S. consumption was 13.8 percent in interim 2001, as compared to 16.5 percent in interim 2000.¹¹

Domestic producers’ share of apparent U.S. consumption likewise remained relatively stable over the period of investigation, at 83.0 percent in 1998, 84.4 in 1999, and 83.5 percent in 2000. The domestic

⁴ 19 U.S.C. § 1673b(a).

⁵ 19 U.S.C. § 1677(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 Chemical Co. v. United States, 140 R.3d 1478 (Fed. Cir. 1998).

⁶ 19 U.S.C. § 1677(7)(A).

⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁸ 19 U.S.C. § 1677(7)(C)(iii).

⁹ 19 U.S.C. § 1677(7)(C)(i).

¹⁰ CR/PR at Table C-1. We note that during the second half of 2000, just prior to the 2001 interim period, the Commission was conducting investigations on another coke product, foundry coke. The Commission issued a report in its Section 332 investigation in Foundry Coke: A Review of the Industries in the United States and China, Inv. No. 332-407, USITC Pub. 3323 (July 2000), and its affirmative preliminary determination in an antidumping investigation, Foundry Coke From China, Inv. No. 731-TA-891 (Preliminary), USITC Pub. 3365 (Nov. 2000).

¹¹ CR/PR at Table C-1.

industry's U.S. market share was 86.2 percent in interim 2001, compared to 83.5 percent in interim 2000.¹² As noted under Conditions of Competition,¹³ because of capacity shutdowns by the domestic industry, current U.S. demand is met by both domestic production and imports, and certain domestic producers also import subject merchandise.

We find that, during the period of investigation, although the domestic industry did not lose market share to subject imports and there was no significant change in the volume of subject imports, subject imports maintained an important and steady presence in the U.S. market during the period.¹⁴ We further note that the statute does not require that the volume of subject imports be increasing, but that volume alone, either in absolute terms or relative to production or consumption in the United States, is significant. Accordingly, we find the volume of subject imports was significant during the period of investigation.

B. Price Effects of the Subject Imports

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

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States; and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁵

The subject imports undersold the domestic like product in all quarters for which pricing comparisons were available,¹⁶ at margins ranging from *** percent to *** percent.¹⁷ We find this underselling to be significant.

Overall, the prices of the subject imports irregularly trended downward over the investigation period.¹⁸ The prices of the Chinese product declined *** from *** per metric ton at the end of 1998, to *** per metric ton at the beginning of 1999, and reached their lowest point in 2000, at *** per metric ton in the first quarter. The declining prices of the Japanese product followed the trend of the Chinese prices, dropping from *** per metric ton in the first quarter of 1998, down to *** per metric ton in the second

¹² CR/PR at Table C-1.

¹³ See Conditions of Competition in Views of the Commission.

¹⁴ We further note that given the significant depressing and suppressing price effects that mounted during the period of investigation, the declining domestic industry performance, and recognizing there is only a limited record in these preliminary phase investigations, final investigations would provide the opportunity to more adequately assess the role of subject imports in the U.S. market. Accordingly, we find the volume of subject imports is significant.

¹⁵ 19 U.S.C. § 1677(7)(C)(ii).

¹⁶ Eleven out of twelve known domestic producers and all nine importers of subject merchandise provided pricing data. CR at V-5, PR at V-4.

¹⁷ CR/PR at Table V-1.

¹⁸ CR/PR at Table V-1.

quarter of 1999, to *** per metric ton in the third quarter of 1999, and ranging from *** per metric ton to *** per metric ton in 2000.¹⁹

U.S. prices started the period of investigation at \$121.18 per metric ton, reached a high of \$130.38 per metric ton in the fourth quarter of 1998, and never returned to that level, ending the period of investigation at \$121.59 per metric ton in the second quarter of 2001. Most notably, when demand rose in 2000, U.S. prices did not rise above \$122.71 per metric ton, and dropped as low as \$121.29 per metric ton. Overall, U.S. prices ended the period at a level of only \$.41 per metric ton higher than at the beginning of the period, but almost \$9 per metric ton lower than the peak price in the fourth quarter of 1998.²⁰

Based on the above price trends, we conclude that U.S. prices were depressed and suppressed during the period of investigation and were not able to return to historically high levels, even in 2000 when demand rose and U.S. shipments increased. The decline in U.S. prices occurred when the prices of subject imports were at their lowest levels during the period. The average unit values (“AUVs”) of both subject imports and the net sales of the domestic product declined throughout the period examined, which further indicate the downward depressing and suppressing price effects of subject imports on U.S. prices.²¹ While we are mindful of the limits of using AUV data, AUVs in this investigation are a reasonable indicator of price trends, given that blast furnace coke is a commodity product, the high degree of substitutability, and that subject imports and the domestic product are sold primarily to end users under long-term contracts.²²

We acknowledge that the record in these preliminary phase investigations indicates that factors other than subject import prices may have contributed to any suppression or depression of domestic prices during the period.²³ However, the record also contains evidence that low-priced imports, particularly in 1999-2000, were an important factor in domestic producers failing to achieve price increases during contract negotiations toward the end of the period. Subject imports and the domestic like product are generally considered interchangeable and price is an important factor in purchasing decisions.²⁴ Petitioners testified that the prices of subject imports drove down the prices at which they could sell their product, that pricing had become the “driver” in contract negotiations during the last three years, and that contract negotiations in the fall of 2000, for 2001 contracts, “were disastrous with continuing inadequacy of prices that fall further and further behind costs for 2001.”²⁵ The record contains evidence that certain producers entered into new

¹⁹ CR/PR at Table V-1. We note that, although the prices of subject imports rose again in the first half of 2001, this rise in prices immediately followed Commission actions on another coke product, foundry coke. See Foundry Coke: A Review of the Industries in the United States and China, Inv. No. 332-407, USITC Pub. 3323 (July 2000); and Foundry Coke From China, Inv. No. 731-TA-891 (Preliminary), USITC Pub. 3365 (Nov. 2000).

²⁰ Price declines experienced by the merchant producers, considered alone, are even more striking. Their prices declined over the entire period by over *** per metric ton, and declined by almost *** per metric ton from a high in the fourth quarter of 1998 of *** per metric ton to *** per metric ton at the end of the period. See Staff Worksheet entitled Table A.

²¹ CR/PR at Tables VI-2, VI-5, C-1, C-2 & C-3.

²² CR/PR at II-1, V-3.

²³ For example, ***, which supplies blast furnace coke to ***, reported that ***. CR at VI-2, n.4; PR at VI-1, n.4.

²⁴ CR at II-6; PR at II-4.

²⁵ Tr. at 17, 25, 29, 36.

contracts for 2001 at depressed prices.²⁶ In addition, while it appears that a large percentage of subject merchandise was imported by integrated producers *** to replace their own captive production of blast furnace coke that was shut down, there is, however, evidence of direct competition between subject imports and trade sales of blast furnace coke by both merchant producers and integrated producers.²⁷

Although the record is limited at this stage of the proceedings, we nonetheless find, based in large part upon the steady market share of the subject imports and the numerous instances of underselling, that the subject imports are having significant negative price effects on the domestic like product. We further note that, given our recognition that the preliminary record is limited, of particular importance is the absence of additional data from purchasers with respect to the effect of import prices on their price negotiations with domestic producers; final phase investigations would provide the opportunity to more adequately assess the price effects of subject imports.²⁸

Based on the foregoing, we find, for purposes of these preliminary investigations, significant underselling of the domestic like product by subject imports and a reasonable indication that subject imports have suppressed and depressed domestic prices to a significant degree.

C. Impact of the Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”²⁹ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the industry.”³⁰

We find that the subject imports have had a significant adverse impact on the domestic industry. The steady volume of subject imports, at prices which consistently undersold the domestic like product and contributed to the suppression and depression of domestic prices, resulted in several key performance

²⁶ Indeed, the record indicates that Shenango, a domestic producer which testified that it had been “battered by Chinese and Japanese blast furnace coke in our traditional market area,” had the ***. Tr. at 17; CR at VI-5, nn. 8 & 10; PR at VI-2, nn.8 & 10.

²⁷ For example, ***. Petitioners’ Post-Conference Brief at Exhibit 4. U.S. Steel uses both domestically produced and imported steel at its facility in Gary, Indiana. From 1998 to 2000, its purchases of imports *** for the Gary facility, while its purchases from domestic producers ***, as follows: ***. INV-Y-149; CR at III-9, n.23; PR at III-7, n.23.

²⁸ See 785 F.2d at 1001 (Fed. Cir. 1986).

²⁹ 19 U.S.C. § 1677(7)(C)(iii).

³⁰ 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 estimated dumping margins as follows: China, 132.2 to 207.2 percent; Japan, 71.66 percent.

Commission 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.

indicators declining over the investigation period, although certain indicators were positive.³¹ The volume of U.S. producers' U.S. shipments declined from 1998 to 1999, rose in 2000, and was lower in interim 2001, as compared to interim 2000.³²

As noted previously, the AUVs of the domestic producers declined steadily over the period, including in 2000, when demand increased and the volume of U.S. producers' U.S. shipments rose. The industry's average unit costs declined in 2000. However, despite the lower costs, higher demand, and increased shipment volumes, profitability in 2000 was stagnant, due to the domestic producers' declining AUVs.³³ The domestic industry was thus unable to return to the profitable income levels experienced at the beginning of the period of investigation.³⁴ When average unit costs rose slightly in interim 2001, due to increasing raw material and environmental compliance costs, profitability plummeted, as the industry's AUVs continued to decline.³⁵ The industry's failure to realize even a modest level of profitability at the end of the period led to deferral of capital improvements, with a large percentage of capital expenditures being used merely to meet environmental requirements.³⁶

As noted above, the constant volume of low-priced subject imports, which consistently undersold the domestic like product, contributed to the suppression and depression of domestic prices and the steady decline in the domestic industry's AUVs, resulting in the industry's poor financial performance. We therefore find that the cumulated subject imports have had a significant adverse impact on the domestic industry producing blast furnace coke.

III. Conclusion

For the foregoing reasons, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of imports of blast furnace coke from China and Japan that are allegedly sold in the United States at less than fair value.

³¹ U.S. production increased by 1.1 percent from 15,951,721 metric tons in 1998 to 16,130,084 metric tons in 2000, but decreased by 4.8 percent during the interim periods. Capacity utilization rates remained high during the period, and employment levels were stable as a result of the battery ovens running consistently at full tilt, as mentioned in the Conditions of Competition. See Conditions of Competition in Views of the Commission; CR/PR at Table C-1.

³² CR/PR at Table C-1.

³³ CR/PR at Tables VI-2, VI-5, C-1, C-2, C-3.

³⁴ The data for trade sales only indicate that the entire industry maintained an operating margin in 2000 of 1.6 percent, as compared to 2.9 percent in 1998; merchant producers' operating margins were *** percent in 2000, as compared to *** percent in 1998; integrated producers' operating margins were *** percent in 2000, as compared to *** percent in 1998. CR/PR at Tables C-1, C-2, C-3.

³⁵ Data for trade sales only indicate operating margins in interim 2001 of a negative 0.6 percent for the industry as a whole; a negative 3.2 percent for the merchant producers; and 0.8 percent for the integrated producers. CR/PR at Tables C-1, C-2, C-3.

³⁶ CR at VI-29-31, Table VI-7; PR at VI-10, Table VI-7.