

# **U.S. International Trade Commission**

Washington, DC 20436

## **Hot Rolled Steel Products from Argentina and South Africa**

Investigations Nos. 701-TA-404 (Final)  
and 731-TA-898 and 905 (Final)



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# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-404 (Final) and 731-TA-898 and 905 (Final)

## HOT ROLLED STEEL PRODUCTS FROM ARGENTINA AND SOUTH AFRICA

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Argentina of hot rolled steel products, provided for in subheadings 7208.10.15, 7208.10.30, 7208.10.60, 7208.25.30, 7208.25.60, 7208.26.00, 7208.27.00, 7208.36.00, 7208.37.00, 7208.38.00, 7208.39.00, 7208.40.60, 7208.53.00, 7208.54.00, 7208.90.00, 7211. 14.00, 7211.19.15, 7211.19.20, 7211.19.30, 7211.19.45, 7211.19.60, and 7211.19.75,<sup>2</sup> of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be subsidized by the Government of Argentina and sold in the United States at less than fair value (LTFV).

The Commission also determines, pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports from South Africa of hot rolled steel products, provided for in the HTS subheadings listed above, that have been found by the Department of Commerce to be sold in the United States at LTFV.

### BACKGROUND

The Commission instituted these investigations effective November 13, 2000, following receipt of a petition filed with the Commission and Commerce on behalf of Bethlehem Steel Corp.; Gallatin Steel Co.; IPSCO Steel, Inc.; LTV Steel Co., Inc., National Steel Corp.; Nucor Corp.; Steel Dynamics, Inc.; U.S. Steel Group of USX Corp.; Weirton Steel Corp; and the labor union representing the organized workers at Weirton Steel Corp. known as the Independent Steelworkers Union. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of hot rolled steel products from Argentina were being subsidized and sold at LTFV within the meaning of sections 703(b) and 733(b) of the Act (19 U.S.C. § 1671b(b) and 1673b(b)) and that imports of hot rolled steel products from South Africa were being sold at LTFV within the meaning of section 733(b) of the Act.. Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of May 10, 2001 (66 FR 23950). The hearing was held in Washington, DC, on July 17, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

<sup>2</sup> Certain hot-rolled flat-rolled carbon-quality steel covered by these investigations, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel, may also enter under the following tariff numbers: 7225.11.00, 7225.19.00, 7225.30.30, 7225.30.70, 7225.40.70, 7225.99.00, 7226.11.10, 7226.11.90, 7226.19.10, 7226.19.90, 7226.91.50, 7226.91.70, 7226.91.80, and 7226.99.00. Subject merchandise may also enter under 7210.70.30, 7210.90.90, 7211.14.00, 7212.40.10, 7212.40.50, and 7212.50.00.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 27, 2001. The views of the Commission are contained in USITC Publication 3446 (August 2001), entitled “Hot Rolled Steel Products from Argentina and South Africa: Investigation No. 701-TA-404 (Final) and Investigations Nos. 731-TA-898 and 905 (Final).”

## VIEWS OF THE COMMISSION

Based on the record in these final investigations, we determine that an industry in the United States is materially injured by reason of imports of hot-rolled steel products from Argentina that are subsidized and by reason of imports of hot-rolled steel products from Argentina and South Africa that the U.S. Department of Commerce (“Commerce”) has determined to be sold in the United States at less than fair value (“LTFV”).<sup>1</sup>

### I. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>2</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>3</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”<sup>4</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>5</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>6</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>7</sup>

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<sup>1</sup> The petitions regarding subsidized imports from Argentina and LTFV imports from Argentina and South Africa were filed on the same day as petitions regarding subsidized imports from India, Indonesia, South Africa, and Thailand, and LTFV imports from China, India, Indonesia, Kazakhstan, Netherlands, Romania, Taiwan, Thailand, and Ukraine. CR at I-1-I-2, PR at I-1-I-2. Commerce has not yet issued its final determinations in the remaining investigations. CR at I-3, PR at I-3.

<sup>2</sup> 19 U.S.C. § 1677(4)(A).

<sup>3</sup> *Id.*

<sup>4</sup> 19 U.S.C. § 1677(10).

<sup>5</sup> See, e.g., *NEC Corp. v. Department of Commerce*, 36 F. Supp. 2d 380, 383 (Ct Int’l Trade 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Torrington Co. v. United States*, 747 F. Supp. 744, 749, n.3 (Ct Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See *Nippon*, 19 CIT at 455 & n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct Int’l Trade 1996).

<sup>6</sup> See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

<sup>7</sup> *Nippon Steel*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are  
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Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise that has been found to be subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>8</sup>

## **B. Product Description**

In its final determinations, Commerce defined the imported merchandise within the scope of these investigations as:

certain HRS [hot-rolled steel] of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 2.25 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or

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<sup>7</sup> (...continued)

not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

<sup>8</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

0.40 percent of lead, or  
1.25 percent of nickel, or  
0.30 percent of tungsten, or  
0.10 percent of molybdenum, or  
0.10 percent of niobium, or  
0.15 percent of vanadium, or  
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel may also enter under the following tariff classification numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.<sup>9</sup>

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<sup>9</sup> 66 Fed. Reg. 37,001 (July 16, 2001). Although the HTS subheadings are provided for convenience and U.S. Customs purposes, Commerce's written description of the merchandise under investigation is dispositive.

### **C. Domestic Like Product**

In the preliminary phase of these investigations the Commission found a single domestic like product consisting of all domestically-produced hot-rolled steel, including those steels with slightly elevated levels of microalloying elements.<sup>10</sup> No party has challenged the Commission's domestic like product determination in the final phase of these investigations and no new evidence has been obtained that would call into question the Commission's reasoning in the preliminary determinations.<sup>11</sup> Based on the record in these investigations, we determine that there is one domestic like product consisting of all hot-rolled steel products corresponding to the scope for the reasons stated in the preliminary determination.

### **D. 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 the major proportion of that product."<sup>12</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>13</sup> Based on our definition of the like product, we find that the domestic industry consists of all domestic producers of hot-rolled steel.

### **E. 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.<sup>14</sup> Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.<sup>15</sup>

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<sup>10</sup> Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, Inv. Nos. 701-TA-404-408 (Preliminary) and 731-TA-898-908 (Preliminary), USITC Pub. 3381 (Jan. 2001) at 4 ("Hot-Rolled Preliminary").

<sup>11</sup> In its posthearing submission, Dutch respondent argued that battery-quality hot band ("BQHB") is "so specialized a product that it should qualify [sic] for separate 'like product' consideration by the Commission." Dutch Respondent's Posthearing Brief at Exh. U, p.6 n.2. We did not take this brief discussion to indicate that Dutch respondent was in fact urging the Commission to treat BQHB as a separate like product. In any case, Dutch respondent also argued that there is no domestic production of BQHB, Dutch Respondent's Posthearing Brief at Exh. U, p.6-7. Since the statute requires us to identify the most similar product if there is no domestic product "like" the subject imports, we would find hot-rolled steel to be the product most like BQHB.

<sup>12</sup> 19 U.S.C. § 1677(4)(A).

<sup>13</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>14</sup> 19 U.S.C. § 1677(4)(B).

<sup>15</sup> 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

(continued...)

In the preliminary phase of these investigations, the Commission determined not to exclude \*\*\*.<sup>16</sup> \*\*\* is \*\*\*, which is affiliated with \*\*\*.<sup>17</sup> \*\*\* is owned by \*\*\*.<sup>18</sup>

\*\*\* has never imported subject merchandise. It accounted for \*\*\* percent of reported total domestic production in 2000 and \*\*\*.<sup>19</sup> Its financial performance has been \*\*\* throughout the period of investigation (“POI”, from January 1998 through March 2001), and there is no evidence of any benefit to \*\*\* from its relationship with the \*\*\*.<sup>20</sup>

\*\*\* accounted for \*\*\* percent of total domestic production in 2000.<sup>21</sup> Its financial performance has been \*\*\* throughout the POI.<sup>22</sup> \*\*\*.<sup>23</sup> \*\*\* purchases from 1998-2000 of subject merchandise were equivalent to \*\*\* percent of its production during those years.<sup>24</sup> Imports from \*\*\* affiliated subject producer in \*\*\* consisted of products which \*\*\* does not market or sell in the same channels of distribution as its own prime domestically-produced hot-rolled steel.<sup>25</sup>

The Commission has also concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of imports. The Commission has found such control to exist where the domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial.<sup>26</sup> \*\*\* purchased \*\*\* short tons of subject imports form

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<sup>15</sup> (...continued)

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.

<sup>16</sup> USITC Pub. 3381 at 6. The Commission considered, but was unable to resolve, whether Trico was a related party by virtue of its ownership by a third party who also owned a subject foreign producer. USITC Pub. 3381 at 5-6. Trico has ceased production and F\*\*\*. CR at III-1 n.1, PR at III-1 n.1.

<sup>17</sup> CR at Table III-1, PR at Table III-1.

<sup>18</sup> CR at Table III-1, PR at Table III-1; \*\*\*. \*\*\* also purchased subject imports from \*\*\*. CR at Table III-8, PR at Table III-8.

<sup>19</sup> CR at Table III-1, PR at Table III-1.

<sup>20</sup> CR at Table VI-6, PR at Table VI-6.

<sup>21</sup> CR at Table III-1, PR at Table III-1.

<sup>22</sup> CR at Tables III-1 and VI-6, PR at Tables III-1 and VI-6.

<sup>23</sup> CR at Table III-1, PR at Table III-1.

<sup>24</sup> CR at Table III-8, PR at Table III-8; Producer Questionnaire of \*\*\* at Question II-9.

<sup>25</sup> \*\*\*.

<sup>26</sup> *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-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (April (continued...))

Taiwan in 1998.<sup>27</sup> It is unclear whether the purchases would result in direct or indirect control of any importer or exporter of subject imports from Taiwan.

\*\*\* accounted for \*\*\* percent of total domestic production in 2000, it \*\*\* the petitions, and its financial performance has been \*\*\*,<sup>28</sup> \*\*\* purchase of subject merchandise from Taiwan in 1998 was equivalent to \*\*\* percent of its production that year.<sup>29</sup> The \*\*\*.<sup>30</sup>

Petitioners acknowledge the existence of related parties but argue that appropriate circumstances do not exist to exclude any related party producer from the domestic industry.<sup>31</sup> No respondent has argued for the exclusion of any producer on related party grounds. Based on the evidence in the final phase of these investigations, we determine that appropriate circumstances do not exist to exclude any producer from the domestic industry as a related party.

## II. NEGLIGENCE

### A. **In General**

The statute provides that imports from a subject country corresponding to a domestic like product that account for less than three percent of total imports imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.<sup>32</sup> However, if the aggregate volume from all countries whose imports individually are below three percent exceeds seven percent, imports from those countries shall not be deemed negligible.<sup>33</sup> By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.<sup>34</sup> The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.<sup>35</sup>

The statute also provides that different standards are to be used when determining negligibility in countervailing duty investigations of subject imports from countries designated by the United States Trade Representative ("USTR") as "developing countries."<sup>36</sup> Subsidized imports from developing countries shall

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<sup>26</sup> (...continued)

1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (April 1997).

<sup>27</sup> CR at Table III-8, PR at Table III-8.

<sup>28</sup> CR at Tables III-1 and VI-6, PR at Tables III-1 and VI-6.

<sup>29</sup> CR at Table III-8, PR at Table III-8; Producer Questionnaire of \*\*\* at Question II-9.

<sup>30</sup> CR at IV-5-IV-6, PR at IV-1.

<sup>31</sup> Posthearing Brief of Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and United States Steel LLC ("Bethlehem Posthearing Brief") at Exh. 1, Answers to Written Questions at 7-9.

<sup>32</sup> 19 U.S.C. § 1677(24)(A)(i)(I).

<sup>33</sup> 19 U.S.C. § 1677(24)(A)(ii).

<sup>34</sup> 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

<sup>35</sup> 19 U.S.C. § 1677(24)(C); see also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 856 (1994) ("SAA").

<sup>36</sup> 19 U.S.C. § 1677(24)(B).

not be deemed negligible if they exceed four percent of total imports, or if the aggregate volumes from the several developing countries with individually negligible imports exceed nine percent of total imports.<sup>37</sup>

### **B. The Antidumping Duty Investigations**

Of the eleven countries subject to antidumping duty investigations, five are individually at negligible levels as determined by their respective shares of total imports for the 12 months preceding the filing of the petition: Argentina, at 1.74 percent; Kazakhstan, at 2.78 percent; South Africa, at 2.26 percent; Thailand, at 2.40 percent; and Ukraine, at 2.65 percent.<sup>38</sup> However, the sum of the shares of these countries, at 11.83 percent, exceeds the seven percent aggregate share for negligibility set by statute.<sup>39</sup> Therefore, as in our preliminary determination, we find subject imports from none of these countries to be negligible for purposes of the antidumping duty investigations.

### **C. The Countervailing Duty Investigations**

Of the five countries subject to countervailing duty investigations, four are individually at negligible levels as determined by their respective shares of total imports: Argentina, at 1.74 percent; Indonesia, at 3.97 percent; South Africa, at 2.26 percent; and Thailand, at 2.40 percent.<sup>40 41</sup> The sum of these shares, at 10.37 percent, exceeds the nine percent aggregate limit for negligibility for developing countries prescribed by statute. Therefore, we find subject imports from none of these countries to be negligible for purposes of the countervailing duty investigations.

## **III. CUMULATION**

### **A. In General**

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<sup>37</sup> 19 U.S.C. § 1677(24)(B).

<sup>38</sup> CR at IV-6, PR at IV-5.

<sup>39</sup> 19 U.S.C. § 1677(24)(A)(ii).

<sup>40</sup> CR at IV-6, PR at IV-5. Each of the four negligible countries with individually negligible levels of imports has been designated as a developing country by USTR and is therefore subject to the higher negligibility limits prescribed in 19 U.S.C. § 1677(24)(B). 63 Fed. Reg. 29,945 (June 2, 1998). In our preliminary determination, we considered the argument presented by the Thai respondents concerning whether the higher negligibility limits prescribed in 19 U.S.C. § 1677(24)(B) should in fact be applied to countries designated as “least developed” rather than “developing,” such as Indonesia. Hot-Rolled Preliminary at 7 n.40. We found in the course of our preliminary determination that USTR’s designation clearly indicated that Indonesia should be treated as a developing country for purposes of determining which negligibility threshold applies. Id. We therefore apply the higher negligibility standard in determining that subject imports from Indonesia subject to the countervailing duty investigations are individually negligible.

<sup>41</sup> Respondents from South Africa and Thailand have argued that, even if the higher, four percent threshold is applied, subject imports from Indonesia are not negligible. Tr. at 246-47, 280 (Ms. Mowry); Iscor Prehearing Brief at 7; Thai Respondent’s Prehearing Brief at 4. Respondents do not dispute the figures used to calculate Indonesia’s share of total imports, but rather argue that, if the Commission’s typical typesetting format were followed, Indonesia’s share would appear as “4.0 percent.” Id. We reject this argument. The statute defines subject imports as individually “negligible” if such imports “account for less than 4 percent.” 19 U.S.C. § 1677(24)(A)(i) and (B). Indonesia’s share of total imports, at 3.97 percent, is individually negligible under the statute.

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 assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.<sup>42</sup> In assessing whether subject imports compete with each other and with the domestic like product,<sup>43</sup> the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.<sup>44</sup>

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.<sup>45</sup> Only a “reasonable overlap” of competition is required.<sup>46</sup>

## **B. Analysis**

The petitions in the investigations of Argentina and South Africa were filed on the same day as those of China, India, Indonesia, Kazakhstan, Netherlands, Romania, Taiwan, Thailand, and Ukraine.<sup>47</sup> Based on the record in these final investigations, we find that there is a reasonable overlap of competition among imports from each of the subject countries and between subject imports and the domestic like product.

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<sup>42</sup> 19 U.S.C. § 1677(7)(G)(i).

<sup>43</sup> The Uruguay Round Agreements Act (URAA) Statement of Administrative Action (“SAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA, H.R. Rep. 316, 103d Cong., 2d Sess. at 848 (1994), citing, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

<sup>44</sup> 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).

<sup>45</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

<sup>46</sup> See Goss Graphic System, Inc. v. United States, 33 F. Supp.2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

<sup>47</sup> CR at I-1-I-2, PR I-1-I-2.

## 1. Fungibility

Based on the evidence in the record, there appears to be at least a moderate level of substitutability between domestic and imported hot-rolled steel products and among subject imports. Domestic producers find a high degree of interchangeability between the domestic like product and subject imports, with \*\*\* percent of producers saying that the domestic like product and subject imports are “always” interchangeable.<sup>48</sup> Importers also find a \*\*\* of fungibility.<sup>49</sup> Purchasers generally agreed that imported and domestically-produced steel are used in the same applications, specifically identifying product from Argentina, India, the Netherlands, Romania, Taiwan, and Thailand as being used in the same applications as the domestic like product.<sup>50</sup> Most purchasers do not believe that differences in quality between domestically-produced and imported steel are so significant that the market should be considered segmented.<sup>51</sup> \*\*\* said that steel from all sources must meet minimum standards and though some differences are apparent, steel from all sources is suitable for most applications.<sup>52</sup> \*\*\* specifically identified product from India, Kazakhstan, Romania, and South Africa as being considered lower quality.<sup>53</sup>

South African respondent Saldanha argues that subject imports from South Africa should not be cumulated because those imports consist of thin and ultra-thin gauge hot-rolled steel. Over the entire period of investigation, hot-rolled steel of more conventional thicknesses accounted for \*\*\* percent of subject imports from South Africa;<sup>54</sup> thin and ultra-thin gauge hot-rolled steel have accounted for \*\*\* of subject imports from South Africa \*\*\*.<sup>55</sup> Furthermore, the record indicates that thin and ultra-thin steel are domestically produced and imported. At least \*\*\* produce steel of thicknesses less than 1.9 mm, including steels of thicknesses less than 1.6 mm.<sup>56</sup> Thin or ultra-thin steels also are among the subject imports from \*\*\*.<sup>57</sup>

Dutch respondent Corus argues that subject imports from the Netherlands consist of niche products which do not overlap with the domestic like product. According to Dutch respondent, \*\*\* percent of subject imports from the Netherlands consists of thin and ultra-thin gauge hot-rolled steel; \*\*\* percent consists of BQHB steel; and \*\*\* percent consists of \*\*\*.<sup>58</sup> We have noted above the presence of thin and ultra-thin gauged hot-rolled steel among both subject imports and the domestic like product.

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<sup>48</sup> Prehearing Brief of Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and United States Steel LLC (“Bethlehem Prehearing Brief”) at 8.

<sup>49</sup> Bethlehem Prehearing Brief at 8.

<sup>50</sup> CR at II-17, PR at II-11.

<sup>51</sup> CR at II-16, PR at II-11.

<sup>52</sup> CR at II-16-II-17, PR at II-11.

<sup>53</sup> CR at II-17, PR at II-11.

<sup>54</sup> Bethlehem Prehearing Brief at 9.

<sup>55</sup> Saldanha Posthearing Brief at 1.

<sup>56</sup> Bethlehem Posthearing Brief at Exh. 1, Answers to Written Questions at 1; Gallatin Posthearing Brief at Answers to Questions, p.A-24.

<sup>57</sup> \*\*\*.

<sup>58</sup> Dutch Respondent’s Posthearing Brief at Exh. U, pp. 5 and 11-12.

The record does indicate, however, that \*\*\*.<sup>59</sup> \*\*\*. Nonetheless, the record indicates that \*\*\* of subject imports from the Netherlands are of products fungible with the domestic like product and with other subject imports.<sup>60</sup>

Respondents from Kazakhstan, Ukraine, and Romania argue that subject imports from their respective countries are not fungible because of quality differences. Despite acknowledged quality differences, most responding purchasers agreed that steel from all sources was interchangeable.<sup>61</sup>

Thai respondents argue that subject imports from Thailand are not fungible because the subject imports sold to two end users were not fungible with other subject imports or with the domestic like product.<sup>62</sup> However, both of those end users purchased or qualified for purchase hot-rolled steel from domestic producers and other foreign producers.<sup>63</sup>

## **2. Geographic Overlap**

The domestic like product is marketed and sold throughout the entire U.S. market.<sup>64</sup> A majority of the subject imports from seven of the 11 subject countries entered through the Gulf region during the POI. At least one-quarter of all subject imports from all 11 countries except the Netherlands entered the U.S. market through the Gulf region during the POI. Over three-quarters of all subject import volume from the Netherlands entered the U.S. market through the Great Lakes region during the POI, as did at least 30 percent of the subject imports from Kazakhstan, Romania, and Ukraine. Some portion of subject imports from most countries entered every region at some point during the POI. Most of the exceptions concerned the West region. No subject imports from Kazakhstan, Romania, or Ukraine entered the West region during the POI. Very low levels of subject imports from Thailand entered the Great Lakes region, while very low levels of subject imports from Ukraine entered the East region and very low levels of subject imports from the Netherlands entered through the West region.<sup>65</sup>

## **3. Channels of Distribution**

Approximately two-thirds of U.S. producers' total shipments of hot-rolled steel in 2000 were consumed internally or transferred to related affiliates for further processing.<sup>66</sup> Slightly more than half of all commercial shipments of the domestic like product were sold to distributors, processors, or service centers in 2000.<sup>67</sup> Manufacturers of tubular products accounted for 21.4 percent of commercial

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<sup>59</sup> Bethlehem Posthearing Brief at Exh.1, Answers to Written Questions at 4.

<sup>60</sup> The identified specialized products account for \*\*\* percent of subject imports from the Netherlands. Dutch Respondent's Posthearing Brief at Exh. U, pp. 5 and 11-12.

<sup>61</sup> CR at II-17, PR at II-11.

<sup>62</sup> Thai Prehearing Brief at 11-14. One of the clients purchased \*\*\*.

<sup>63</sup> Thai Prehearing Brief at 12-14.

<sup>64</sup> CR at IV-7, PR at IV-6.

<sup>65</sup> CR at Table IV-3, PR at Table IV-3.

<sup>66</sup> CR at I-12, PR at I-10.

<sup>67</sup> CR at Table I-1, PR at Table I-1.

shipments of the domestic like product in 2000, cold-rolled sheet converters accounted for 2.9 percent of shipments, and other end users accounted for the remaining 22.0 percent of shipments.<sup>68</sup>

Approximately two-thirds of all commercial shipments of subject imports went to distributors, processors, or service centers.<sup>69</sup> Manufacturers of tubular products purchased 22.3 percent of subject imports, cold-rolled sheet converters purchased 2.8 percent, and other end users purchased the remaining 7.6 percent.<sup>70</sup> Sales to distributors, processors, or service centers accounted for 99.8 percent of all sales of subject imports from Argentina and for \*\*\* percent of all sales of subject imports from Kazakhstan, while \*\*\* percent of all sales of subject imports from Ukraine were to manufacturers of tubular products.<sup>71</sup> Only subject imports from China and South Africa were sold to cold-rolled sheet converters in any notable volume.<sup>72</sup>

Respondents from the Netherlands and Thailand challenge cumulation on the grounds that their products travel in different channels of distribution than other subject imports or the domestic like product. However, the record indicates that approximately \*\*\* of subject imports from each of those two countries were sold to distributors, processors, or service centers, as were the majority of all domestic commercial shipments and the majority of all other subject imports.<sup>73</sup> Respondents from the Netherlands and Thailand attempt to distinguish their service center and distributor sales on the grounds that they know who the final purchaser of those imports will be.<sup>74</sup> However, the record indicates that a significant portion of all subject imports are prepared for a known final consumer even when distributors or service centers may be involved in the transaction.<sup>75 76</sup>

#### 4. Simultaneous Presence

The domestic like product was available throughout the POI. With the exception of subject imports from Argentina in 1998, subject imports from every country entered the U.S. market in every year of the POI.<sup>77</sup> No subject imports from Argentina entered the U.S. market in 1998, but they did enter the U.S. market in 12 months of 1999, 11 months of 2000, and two of three months in interim 2001.<sup>78</sup> Only subject imports from Indonesia entered the U.S. market in less than 10 of 12 months in 2000, and

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<sup>68</sup> CR at Table I-1, PR at Table I-1.

<sup>69</sup> CR at Table I-1, PR at Table I-1.

<sup>70</sup> CR at Table I-1, PR at Table I-1.

<sup>71</sup> CR at Table I-1, PR at Table I-1.

<sup>72</sup> CR at Table I-1, PR at Table I-1.

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

<sup>74</sup> Dutch Respondent's Prehearing Brief at 5; Thai Respondents' Posthearing Brief at 9-10.

<sup>75</sup> CR at II-18, PR at II12-; Tr. at 301-02 (Mr. Macready).

<sup>76</sup> Only subject imports from \*\*\* were sold \*\*\* to end users. CR at Table I-1, PR at Table I-1. However, purchasers of subject imports from \*\*\* also purchased subject imports from \*\*\*. Purchaser Questionnaires of \*\*\*. Questionnaires were received from \*\*\*. Foreign Producer Questionnaires of \*\*\*.

<sup>77</sup> CR at Table IV-4, PR at Table IV-4.

<sup>78</sup> CR at Table IV-4, PR at Table IV-4.

subject imports from every country entered the U.S. market in at least as many, if not more, months in 2000 than in 1998.<sup>79</sup>

## 5. Conclusion

On balance, we find that there is a reasonable overlap of competition among the subject merchandise from all 11 countries and between subject imports and the domestic product. With respect to fungibility, we note that some quality differences and differences in product mix exist among the subject imports and between the subject imports and the domestic like product. However, the record indicates that there is general interchangeability between subject imports and between subject imports and the domestic like product, and that subject imports from every country contain a substantial proportion of interchangeable products.

Similarly, we note the presence of some variation in the other factors. However, the standard is whether there is a reasonable overlap of competition, and subject imports from most countries had some presence in most or all regions of the United States, were present throughout most of the POI, and most especially in the latter portion of the POI, and moved in similar channels of distribution. Consequently, we cumulate subject imports from all subject countries for the purpose of analyzing whether the domestic industry is materially injured by reason of subject imports from Argentina and South Africa.

## IV. MATERIAL INJURY BY REASON OF SUBSIDIZED AND LTFV IMPORTS

In the final phase of the countervailing and antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.<sup>80</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>81</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>82</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>83</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>84</sup>

For the reasons discussed below, we determine that the domestic industry is materially injured by reason of subject imports.

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<sup>79</sup> CR at Table IV-4, PR at Table IV-4.

<sup>80</sup> 19 U.S.C. § 1673d(b).

<sup>81</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also, Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>82</sup> 19 U.S.C. § 1677(7)(A).

<sup>83</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>84</sup> Id.

**A. Conditions of Competition**

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

**1. Captive Production<sup>85 86</sup>**

Approximately two-thirds of domestic production of hot-rolled steel is captively consumed or transferred to related parties for downstream processing.<sup>87</sup> Accordingly, we find that the threshold provision of the captive production provision is met, as domestic producers internally transfer significant production and sell significant production in the merchant market.<sup>88</sup>

We find the first statutory criterion is met. The record evidence indicates that virtually all

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<sup>85</sup> Commissioner Bragg does not join in Section IV.A.1 of these Views. Commissioner Bragg determines that the captive production provision of the statute is not applicable in these investigations. She agrees that the threshold criterion of the provision is satisfied, given that significant production of the domestic like product is both internally transferred and sold in the merchant market. However, with respect to the first statutory criterion of the provision, the record indicates that there is significant overlap in the types of hot-rolled steel internally transferred and sold in the merchant market. Fifteen of 16 domestic producers indicated that hot-rolled steel products from other producers could be used in the responding domestic producers' internal operations, and seven of the 16 had used, or at least qualified for use, hot-rolled steel products from other suppliers. CR at III-9; PR at III-7. In addition, \*\*\*. CR at III-11; PR at III-7. Commissioner Bragg therefore finds that the first statutory criterion is not satisfied. Accordingly, she determines that the captive production provision does not apply in these investigations. Commissioner Bragg notes, however, that, within her discretion, she considers the volume of captive production as a condition of competition. Commissioner Bragg begins her analysis with an examination of the domestic industry and the domestic market as a whole. She then considers whether an evaluation of the merchant market conforms with her evaluation of the domestic industry and the domestic market as a whole. She finds that the domestic industry is materially injured by reason of subject imports by reason of her analysis of both the domestic industry and domestic market as a whole, as well as the merchant market data.

<sup>86</sup> Commissioner Devaney concurs in this determination. At this time, Commissioner Devaney does not adopt a position as to the appropriate method of analysis regarding the captive production provision.

<sup>87</sup> CR at I-12, PR at I-10.

<sup>88</sup> The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), provides:

(iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that --

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,

(II) the domestic like product is the predominant material input in the production of that downstream article, and

(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

internally-transferred hot-rolled steel is in fact processed into downstream articles by the producer or a related party. Fifteen of the sixteen producers who reported information on internal consumption responded that all of the hot-rolled steel products transferred for further processing were in fact processed into a downstream product.<sup>89</sup> The one domestic producer that did not in fact process all its internally-transferred steel was referring \*\*\*.<sup>90</sup> Thus all internally-transferred hot-rolled steel was in fact converted into downstream product and did not enter the merchant market.

We find the second statutory criterion is met. Hot-rolled steel typically accounts for \*\*\* for cold-rolled and coated products.<sup>91</sup>

We also find the third statutory criterion is met. Between January 1998 and March 2001, domestic producers internally transferred 128.6 million short tons of hot-rolled steel and converted 85.7 percent into cold-rolled steel.<sup>92</sup> Between January 1998 and March 2001 the domestic industry sold 68.2 million short tons of hot-rolled steel in the merchant market, and only 1.8 million short tons, or 2.6 percent, were sold directly to producers of cold-rolled steel.<sup>93</sup> Between January 1998 and March 2001 the domestic industry transferred 11.1 million short tons of hot-rolled steel to related parties for additional downstream processing, and 8.1 million short tons, or 73.1 percent, were converted into cold-rolled steel.<sup>94</sup> If all related party transfers were treated as merchant market sales, 9.9 million short tons out of 79.3 million short tons of total transfers were converted into cold-rolled sheet, or 22.4 percent of total transfers.<sup>95</sup> Thus, the share of merchant market transfers devoted to producing cold-rolled steel is between 2.6 percent to 22.4 percent, while the share of internal consumption devoted to cold-rolled steel is 85.7 percent.

Based on the record available to us, we find that the captive production provision applies, and we therefore focus our analysis primarily on the merchant market for hot-rolled steel products in considering market share and financial performance of the domestic industry.

## 2. Other Conditions of Competition

Hot-rolled steel is typically used in applications where its strength serves a structural function and

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<sup>89</sup> CR at III-9, PR at III-7.

<sup>90</sup> Bethlehem Prehearing Brief at 18 n.55.

<sup>91</sup> Bethlehem Prehearing Brief at 18.

<sup>92</sup> CR at Table III-6, PR at Table III-6.

<sup>93</sup> CR at Table III-6, PR at Table III-6.

<sup>94</sup> CR at Table III-6, PR at Table III-6.

<sup>95</sup> Petitioners have argued that all related-party transfers should be classified as internal consumption, but in the alternative they have argued that \*\*\* percent of the related-party transfers were made under toll arrangements, and that toll transfers should not be considered market sales. Bethlehem Prehearing Brief at 21-23.

We note that the record indicates that there may be differences in the way domestic producers handle toll and non-toll transfers to related parties. CR at III-11-III-12, PR at III-7-III-8. However, the classification of some or all related party transfers as internal transfers or merchant market sales does not alter our analysis. Under any classification we would find insufficient overlap between internal consumption and merchant market consumption to warrant a finding that the third criterion of the statute is not met.

surface finish and light weight are not crucial qualities.<sup>96</sup> Typical uses include pipes, tubes, and automotive frames.<sup>97</sup> Light weight is becoming more important, however, and steel producers are rolling hot-rolled steel in thicknesses of 2 mm or less.<sup>98</sup> In most applications there is no effective substitute for hot-rolled steel.<sup>99</sup>

Service centers, processors, and distributors are important purchasers of hot-rolled steel. In 2000, a majority of all domestically-produced hot-rolled merchant market sales were to service centers, processors, or distributors.<sup>100</sup> The share of subject imports sold to this group of purchasers was even higher at 67.3 percent.<sup>101</sup>

Most sales of both domestically-produced hot-rolled steel and subject imports are made in the spot market. U.S. producers make 71.4 percent of their sales on the spot market.<sup>102</sup> When domestic producers sell by contract those contracts are typically of short duration, with approximately 62 percent of those contracts lasting for six months or less.<sup>103</sup> Approximately 55 percent of importer sales are on the spot market, and 91 percent of the contract sales are through contracts lasting six months or less.<sup>104</sup>

Demand for hot-rolled steel is derived from the demand for downstream products such as pipes and tubes, automobiles, trucks, applications, and machinery.<sup>105</sup> Hot-rolled steel has many industrial uses, and demand for it sometimes follows broad indicators, such as GDP or the index of industrial production.<sup>106</sup> During the POI, the industrial production index increased from 1998 until late 2000, when it began declining.<sup>107</sup>

Merchant market consumption of hot-rolled steel fell by 12.6 percent between 1998 and 1999, falling from 31.8 million short tons to 27.8 million short tons.<sup>108</sup> Although merchant market consumption rose by 3.0 percent between 1999 and 2000, at 28.6 million short tons, merchant market consumption in 2000 was 10 percent lower than in 1998.<sup>109</sup> For interim 2001, merchant market consumption of hot-rolled steel was 6.2 million short tons, compared to 8.0 million short tons in interim 2000.<sup>110</sup> Total apparent domestic consumption of hot-rolled steel followed a similar pattern, falling by 3.5 percent

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<sup>96</sup> CR at I-11, PR at I-9.

<sup>97</sup> CR at I-11, PR at I-9.

<sup>98</sup> CR at I-11, PR at I-9.

<sup>99</sup> CR at II-11, PR at II-7.

<sup>100</sup> CR at Table I-1, PR at Table I-1.

<sup>101</sup> CR at Table I-1, PR at Table I-1.

<sup>102</sup> CR at V-15, PR at V-12.

<sup>103</sup> CR at V-15, PR at V-12.

<sup>104</sup> CR at V-15, PR at V-12.

<sup>105</sup> CR at II-10, PR at II-7.

<sup>106</sup> CR at II-11, PR at II-7.

<sup>107</sup> CR at II-11, PR at II-7.

<sup>108</sup> CR at Table C-2, PR at Table C-2.

<sup>109</sup> CR at Table C-2, PR at Table C-2.

<sup>110</sup> CR at Table C-2, PR at Table C-2.

between 1998 and 1999 to 71.4 million short tons.<sup>111</sup> Total apparent domestic consumption rose by 1.6 percent between 1999 and 2000 to 72.5 million short tons, but that amount remained 1.9 percent below 1998 levels.<sup>112</sup> For interim 2001, total apparent domestic consumption was 15.8 million short tons, 20.6 percent lower than in interim 2000.<sup>113</sup>

The domestic industry consists of integrated producers using basic oxygen furnaces (“BOFs”) and non-integrated producers, which use electric arc furnaces (“EAFs”) or purchase, rather than produce, their slab needs.<sup>114</sup> Minimills are the most prominent examples of non-integrated producers. Integrated producers typically use iron ore as their primary raw material, while minimill producers are more likely to use steel scrap.<sup>115</sup> Minimills are typically more recent entrants into the market, and they are typically more heavily focused on spot merchant market sales than are integrated producers.<sup>116</sup>

Domestic producers increased capacity steadily through most of the POI. Total production capacity increased in both 1999 and 2000 and rose by 4.0 percent overall between 1998-2000.<sup>117</sup> Total production capacity in interim 2001 was 19.1 million short tons, compared to 19.2 million short tons in interim 2000.<sup>118</sup> This increase in overall capacity between 1998 and 2000 occurred despite the fact that bankruptcy affected numerous firms, removing an estimated \*\*\* percent of capacity from the domestic industry in 2000.<sup>119</sup>

The market share of various suppliers shifted significantly during the POI. In 1998, nonsubject imports, including imports from Brazil, Japan, and Russia, reached 10.4 million short tons, or 32.6 percent of merchant market consumption.<sup>120</sup> On September 30, 1998, a petition was filed by the domestic industry, alleging material injury by reason of LTFV and/or subsidized imports from Brazil, Japan, and Russia.<sup>121</sup> In mid-1999, the Commission determined that the domestic industry was materially injured by subject imports from those countries, and remedies in the form of antidumping duties or suspension agreements were imposed.<sup>122</sup> In 1999, nonsubject imports, including those from Brazil, Japan, and Russia, dropped to 3.3 million short tons, accounting for 11.7 percent of merchant market

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<sup>111</sup> CR at Table C-1, PR at Table C-1. Transfers for internal consumption and transfers to related parties for downstream processing increased in both 1999 and in 2000, rising by 4.3 percent between 1998 and 2000. CR at Table VI-5A, PR at Table VI-5A.

<sup>112</sup> CR at Table C-1, PR at Table C-1.

<sup>113</sup> CR at Table C-1, PR at Table C-1.

<sup>114</sup> CR at I-7-I-8, PR at I-6-I-7.

<sup>115</sup> CR at I-7-I-8, PR at I-6-I-7.

<sup>116</sup> Bethlehem Posthearing Brief at 4 n.14.

<sup>117</sup> CR at Table III-3, PR at Table III-3.

<sup>118</sup> CR at Table III-3, PR at Table III-3.

<sup>119</sup> CR at III-1 n.1, PR at III-1 n.1.

<sup>120</sup> CR at Tables IV-5 and IV-8, PR at Tables IV-5 and IV-8.

<sup>121</sup> Certain Hot-Rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 (June 1999) at 1 (hereinafter 1999 Hot-Rolled Determination).

<sup>122</sup> 1999 Hot-Rolled Determination at 3; Certain Hot-Rolled Steel Products from Brazil and Russia, Inv. Nos. 701-TA-384 (Final) and 731-TA-806-808 (Final), USITC Pub. 3223 (August 1999) at 3.

consumption.<sup>123</sup> In 2000, nonsubject imports accounted for 10.7 percent of the merchant market.<sup>124</sup> In interim 2001, nonsubject imports accounted for 8.5 percent of the merchant market, compared to 10.1 percent in interim 2000.<sup>125</sup>

As we noted above, there is a fair degree of substitutability among hot-rolled steel products from the various subject countries, and also between subject imports and the domestic like product.<sup>126</sup> Although the source of imports changed during the POI, imports remain an important segment of the market. Total imports accounted for 37.0 percent of merchant market consumption in 1998, 23.0 percent in 1999, and 25.6 percent in 2000.<sup>127</sup>

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

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>128 129</sup>

As noted above, total apparent domestic consumption of hot-rolled steel fell in 1999 and recovered somewhat in 2000 but remained at lower levels in 2000 than in 1998.<sup>130</sup> This pattern occurred in both the merchant market and in overall consumption.<sup>131</sup> Despite these declines, subject import volume rose significantly during the POI. In 1998, subject imports were 1.4 million short tons and accounted for 4.4 percent of the merchant market and 1.9 percent of total apparent domestic consumption.<sup>132</sup> Subject import volume rose by 122.7 percent between 1998 and 1999, reaching 3.1 million short tons.<sup>133</sup> Subject import volume increased by another 36.2 percent between 1999 and 2000, reaching 4.2 million short tons and accounting for 14.8 percent of the merchant market and 5.9 percent of total apparent domestic consumption.<sup>134</sup> Thus, between 1998 and 2000, the volume of subject imports increased by 203.4 percent.

Total shipments of the domestic like product rose by 4.8 percent, or 3.0 million short tons,

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<sup>123</sup> CR at Tables IV-5 and IV-8, PR at Tables IV-5 and IV-8.

<sup>124</sup> CR at Table C-2, PR at Table C-2.

<sup>125</sup> CR at Table C-2, PR at Table C-2.

<sup>126</sup> CR at II-15-II-17, PR at II-.

<sup>127</sup> CR at Table C-2, PR at Table C-2.

<sup>128</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>129</sup> To the extent that this discussion analyzes merchant market data prior to total market data, it does not reflect the sequence of analysis applied by Commissioner Bragg. See supra n.85.

<sup>130</sup> CR at Tables C-1 and C-2, PR at Tables C-1 and C-2.

<sup>131</sup> CR at Tables C-1 and C-2, PR at Tables C-1 and C-2. Transfers for internal consumption and transfers to related parties for downstream processing increased in both 1999 and in 2000, increasing by 4.3 percent between 1998 and 2000. CR at Table VI-5A, PR at Table VI-5A. The domestic industry accounted for 100 percent of domestic internal transfers and transfers to related parties.

<sup>132</sup> CR at Tables IV-5, IV-7, and IV-8, PR at Tables IV-5, IV-7, and IV-8.

<sup>133</sup> CR at Table IV-5, PR at Table IV-5.

<sup>134</sup> CR at Tables IV-5, IV-7, and IV-8, PR at Tables IV-5, IV-7, and IV-8.

between 1998 and 2000.<sup>135</sup> Shipments to the merchant market followed a different pattern. In 1999, shipments of the domestic like product to the merchant market increased by 1.4 million short tons, compared to a 1.7 million short ton increase in the volume of subject imports.<sup>136</sup> In 2000, however, the volume of domestic shipments to the merchant market fell by 106,804 short tons, while subject imports increased by another 1.1 million short tons.

Quarterly data further show the differing trends between shipments of subject imports and the domestic like product. The domestic industry's order books peaked in the fourth quarter of 1999 and declined thereafter.<sup>137</sup> Shipments to the merchant market by domestic producers declined between the first and second quarters of 2000.<sup>138</sup> Conversely, subject import volume continued to rise, peaking in the second quarter of 2000. Subject import volume subsequently declined, but remained above pre-1999 levels until the first quarter of 2001.<sup>139</sup>

Some respondents have argued that the Commission should focus on domestic minimills' increased share of the merchant market during the POI. Minimill shipments to the merchant market increased by 13.0 percent between 1998 and 2000 and shipments in interim 2001 were 2.1 million short tons, compared to 2.0 million short tons in interim 2000.<sup>140</sup> Commercial shipments by integrated mills rose only 2.9 percent between 1998 and 2000 and shipments in interim 2001 were 3.2 million short tons, compared to 4.0 million short tons in interim 2000.<sup>141</sup>

We do not find that a modest increase in shipments by one segment of the domestic market in the interim period mandates a finding that the volume of subject imports is not significant. We note that minimill orders followed a pattern similar to that of the integrated producers. In fact, the minimills, which rely on sales to the merchant market more heavily than do integrated mills, felt the effects of the increased volume of subject imports sooner than the integrated mills. Order books at minimills peaked in the third quarter of 1999 and declined throughout 2000, while the order books of integrated producers peaked in the fourth quarter of 2000.<sup>142</sup>

We recognize that the volume of subject imports was significantly lower in interim 2001 than in interim 2000. However, subject imports increased most strongly in the same time period, namely the first half of 2000, that purchaser inventories of hot-rolled steel reached peak levels for the POI.<sup>143</sup> Inventories subsequently remained at high levels through the first quarter of 2001.<sup>144</sup> The coincidence of peak subject import levels and peak inventory levels indicates that purchases of subject imports contributed to the significant inventory build-up that occurred in the first half of 2000. Those inventories remain high and continue to exert downward pressure on orders for the domestic like product.

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<sup>135</sup> CR at Table IV-5, PR at Table IV-5.

<sup>136</sup> CR at Table IV-8, PR at Table IV-8.

<sup>137</sup> CR at III-14, PR at III-10.

<sup>138</sup> CR at Table III-5, PR at Table III-5, and Bethlehem Prehearing Brief at Exh. 26.

<sup>139</sup> Bethlehem Prehearing Brief at Exh. 29.

<sup>140</sup> INV-Y-148.

<sup>141</sup> INV-Y-148.

<sup>142</sup> INV-Y-156.

<sup>143</sup> CR at V-13, PR at V-11.

<sup>144</sup> CR at V-13, PR at V-11.

Furthermore, we find it likely that the filing of these petitions contributed to the decline in import volume.<sup>145</sup> Subject imports peaked in the second quarter of 2000, but the volume of subject imports in the third quarter of 2000 remained significantly higher than in the first eight quarters of the POI. Subject import volume fell in the fourth quarter of 2000 and the first quarter of 2001, while these petitions were filed in November of 2000. Based on the above, we find that subject import volume, both in absolute terms and relative to consumption in the United States, is significant.

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

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>146</sup>

As noted above, we find that a fair degree of substitutability exists between the subject imports and the domestic like product and the subject imports. Price is an important factor in purchasing decisions.<sup>147</sup>

Prices were at their highest levels for the POI in the first or second quarter of 1998, then fell sharply as the volume of then unfairly traded imports from Brazil, Japan, and Russia entered the market. After relief was granted against those unfairly traded imports in mid-1999, prices began to rise in the latter part of 1999. Prices rose through the first or second quarter of 2000 but typically still remained below 1998 peaks. Prices then fell sharply during the latter half of 2000 and the first part of 2001, generally to points lower than experienced prior to the imposition of import relief with respect to imports from Brazil, Japan, and Russia.<sup>148</sup>

Throughout most of the POI subject imports consistently undersold the domestic like product. Subject imports undersold the domestic like product in 238 of 368 quarterly comparisons, or 64.7 percent of the comparisons.<sup>149</sup>

We find this underselling particularly probative in these investigations. Purchasers have indicated that low prices, as well as anticipated future demand, is an important factor in determining inventory levels.<sup>150</sup> We find that low subject import prices, at a time when prices for the domestic like product

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<sup>145</sup> 19 U.S.C. § 1677(7)(I).

<sup>146</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>147</sup> CR at Tables II-2 and II-3, PR at Tables II-2 and II-3.

<sup>148</sup> CR at Tables V-3 through V-12, PR at Tables V-3 through V-12.

<sup>149</sup> CR at Table V-13, PR at Table V-13.

<sup>150</sup> CR at V-11, PR at V-9.

were rising and shipments were increasing, provided the impetus for the significant growth in import volume that occurred in late 1999 and the first half of 2000.

We note that some overselling by subject imports began to occur in the last two quarters of 2000. However, these instances of overselling do not indicate that the subject imports did not have a significant adverse effect on domestic prices. The domestic industry had already lost volume and sales in the first half of 2000 as subject import volume increased significantly.<sup>151</sup> The record indicates that the domestic industry, having already lost volume, resorted to price cutting in an attempt to maintain needed production volume and market share.<sup>152</sup> We further note that the filing of the petition, in the last quarter of 2000, coincided with these instances of overselling. Additionally, subject imports continued to exert downward pressure on prices throughout the latter part of the POI, despite any overselling, by means of the inventory overhang to which the surge in subject imports in the first half of 2000 contributed.

Respondents argue that one cause of the price declines seen in 2000 was aggressive price competition by minimills at the expense of the integrated mills. The product-specific pricing data show this proposition to be incorrect. Sales of product 2 to service centers, processors, and cold-strip users accounted for \*\*\* of sales for both integrated and minimill producers.<sup>153</sup> \*\*\* by minimills is apparent.<sup>154</sup> In 1998, minimill prices tracked integrated mill prices \*\*\*,<sup>155</sup> In the first half of 2000, minimill product \*\*\* integrated mill product.<sup>156</sup> Both integrated and minimill product, however, were \*\*\* by combined subject imports, with some of the \*\*\* occurring in the first two quarters of 2000.<sup>157</sup> Similar patterns mark the interplay between integrated mill and minimill prices in other high-volume product-specific price comparisons. For sales of product 1 to service centers, processors, and cold-strip users, minimill prices again tracked the integrated mill price \*\*\* and \*\*\* in the first two quarters of 2000, while both minimill product and integrated mill product were \*\*\* by combined subject imports throughout most of the POI.<sup>158</sup> We find no evidence that minimills initiated the price declines seen in 2000. Rather, the record indicates that the domestic industry as a whole, integrated mills and minimills alike, reacted to the significantly increased volume of lower-priced imports by reducing prices.

We have already noted that prices for the domestic like product improved somewhat in late 1999 and early 2000 after import relief was imposed against imports from Brazil, Japan, and Russia, but prices generally did not recover to the levels seen in early 1998, despite increased apparent domestic consumption in late 1999 and early 2000. This limited price recovery occurred during the same quarters that subject import volume increased sharply and subject imports undersold the domestic like product. We take this combination of facts to indicate that subject imports significantly suppressed prices in late 1999 and in early 2000. Additionally, inventory overhangs, to which subject imports contributed, continue

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<sup>151</sup> CR at Table III-5, PR at Table III-5.

<sup>152</sup> Tr. at 57 (Mr. DiMicco).

<sup>153</sup> INV-Y-148.

<sup>154</sup> INV-Y-148.

<sup>155</sup> INV-Y-148.

<sup>156</sup> INV-Y-148.

<sup>157</sup> INV-Y-148.

<sup>158</sup> INV-Y-148.

to exert negative influence on domestic prices. Consequently, we find that the subject imports have had significant adverse effects on domestic prices during the period of investigation.<sup>159</sup>

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

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>160</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>161 162 163</sup>

Both commercial shipments and production for downstream processing by the domestic industry were higher in 2000 than in 1998.<sup>164</sup> Capacity, production, and capacity utilization rates all rose from 1998 to 2000.<sup>165</sup> Yet despite increased production and shipments, the domestic industry’s financial performance was poor throughout most of the POI. The domestic industry had operating losses on

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<sup>159</sup> Petitioners argued that the effect of subject imports on prices could best be seen by lagging those prices. Bethlehem Posthearing Brief at Answers to Written Questions, p.4. However, we have relied on direct quarter-to-quarter comparisons in our analysis of the price effects of subject imports.

<sup>160</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” *Id.* at 885.).

<sup>161</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

<sup>162</sup> The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). Commerce published its final antidumping determinations in its investigations of Argentina and South Africa, finding the following margins: Argentina, 40.60 percent to 44.59 percent; South Africa, 9.28 percent. CR at I-4, PR at I-3-I-4. Commerce published its final countervailing duty determination in its investigation of Argentina, finding a margin of 41.69 percent. CR at I-4, PR at I-3. For the remaining antidumping duty investigations, Commerce has published the following preliminary margins: China, 40.74 percent to 67.44 percent; India, 34.55 percent to 39.36 percent; Indonesia, 59.25 percent; Kazakhstan, 239.57 percent; Netherlands, 2.44 percent; Romania, 22.97 percent to 88.62 percent; Taiwan, 20.28 percent to 29.14 percent; Thailand, 7.48 percent to 20.30 percent; and Ukraine, 89.49 percent. CR at I-4-I-5, PR at I-3-I-4. For the remaining countervailing duty investigations, Commerce has published the following preliminary margins: India, 8.08 percent to 34.7 percent; Indonesia, 16.53 percent; South Africa, 0.45 to 13.53 percent; and Thailand, 6.55 percent. CR at I-4-I-5, PR at I-4.

<sup>163</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11, n.63.

<sup>164</sup> CR at Table III-4, PR at Table III-4.

<sup>165</sup> CR at Table III-3, PR at Table III-3.

commercial sales and total production in both 1999 and 2000.<sup>166</sup> Several domestic producers entered Chapter 11 bankruptcy proceedings, and two ceased operations altogether.<sup>167</sup> The number of production related workers declined throughout the POI, as did the number of hours worked and total wages paid.<sup>168</sup> Total capital expenditures increased between 1998 and 2000 but expenditures on research and development dropped.<sup>169</sup>

Undoubtedly, the industry's performance in the early portion of the POI reflected the adverse effects of unfairly traded hot-rolled steel imports from Brazil, Japan, and Russia. But quarterly data indicate that the domestic industry had gained some benefit from the import relief imposed on imports from Brazil, Japan, and Russia by mid-1999. For a brief time, shipments increased, prices increased, and the domestic industry's financial performance improved, although prices generally remained below pre-injury levels. The value per ton of net domestic commercial sales fell to \$292 in 1999, but in the first quarter of 2000 the value per ton of net domestic commercial sales reached \$323.<sup>170</sup> By the first quarter of 2000, operating income on commercial sales had shifted from a \$12 loss per ton for the year of 1999 to a \$16 per ton profit.<sup>171</sup> The value of total net production was \$285 for 1999 but reached \$314 per ton in the first quarter of 2000.<sup>172</sup> On total production, a loss of \$11 per ton for the year 1999 shifted to a \$5 profit per ton in the first quarter of 2000.<sup>173</sup>

This improvement did not last. Virtually every financial and production indicator was lower in interim 2001 than in interim 2000. Shipments by the domestic industry to the merchant market in interim 2001 were 11.4 percent lower than in interim 2000.<sup>174</sup> Total shipments, including internal consumption, were 16.5 percent lower in interim 2001 than in interim 2000.<sup>175</sup> Operating loss per ton of net sales was \$50 in interim 2001, compared to a positive income per ton of \$16 in interim 2000.<sup>176</sup> Operating loss per ton of total production was \$63 in interim 2001, compared to a positive income per ton of \$5 in interim 2000.<sup>177</sup> Operating losses were widespread in the industry, affecting 17 of 21 reporting firms in 2000.<sup>178</sup>

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<sup>166</sup> CR at Tables VI-2 and VI-5, PR at Tables VI-2 and VI-5. The domestic industry also suffered operating losses on its internal transfers and related-party transfers in 1999 and 2000. CR at Table VI-5A, PR at Table VI-5A.

<sup>167</sup> CR at III-1 n.1, PR at III-1 n.1.

<sup>168</sup> CR at Table III-10, PR at Table III-10.

<sup>169</sup> CR at Table VI-8, PR at Table VI-8.

<sup>170</sup> CR at Table VI-1, PR at Table VI-1.

<sup>171</sup> CR at Table VI-1, PR at Table VI-1.

<sup>172</sup> CR at Table VI-5, PR at Table VI-5. The net value of internal transfers and transfers to related parties for downstream processing was \$282 for the year 1999 and \$310 for the first quarter of 2000. CR at Table VI-5A, PR at Table VI-5A.

<sup>173</sup> CR at Table VI-5, PR at Table VI-5. Operating losses on internal transfers and transfers to related parties for downstream processing were \$22 per ton for the year 1999 and \$1 per ton in the first quarter of 2000. CR at Table VI-5A, PR at Table VI-5A.

<sup>174</sup> CR at Table C-2, PR at Table C-2.

<sup>175</sup> CR at Table C-1, PR at Table C-1. Internal transfers and transfers to related parties for downstream processing were 9.7 million short tons in interim 2001, compared to 12.0 million in interim 2000. CR at Table VI-5A, PR at Table VI-5A.

<sup>176</sup> CR at Table VI-1, PR at Table VI-1.

<sup>177</sup> CR at Table VI-5, PR at Table VI-5. For internal transfers and transfers to related parties for downstream

(continued...)

Only 12 of 21 firms had reported losses in 1998, and only 13 of 21 firms had reported losses in 1999, when imports from Brazil, Japan, and Russia were adversely affecting the domestic industry.<sup>179</sup> The number of production related workers was 29,123 in interim 2001, compared to 31,639 in interim 2000.<sup>180</sup> Hours worked were 16.3 million in interim 2001, compared to 18.2 million in interim 2000.<sup>181</sup>

The record indicates that the domestic industry's condition has been affected by a drop in consumption since the latter part of 2000. The industrial production index peaked in the third quarter of 2000 and declined thereafter. Similarly, total apparent domestic consumption of steel declined in the second half of 2000. We also note that, while the industry's internal transfers declined by only 5.3 percent from the first to the third quarter of 2000, commercial shipments fell by 19.2 percent.<sup>182</sup> This is further evidence that the general drop in demand for hot-rolled steel did not begin until the end of 2000, and that the sharp drop in commercial shipments through the third quarter of 2000 was due primarily to subject imports. However, the weakening in the domestic industry's condition began before the decline in overall consumption. The order books of integrated producers peaked in the fourth quarter of 1999; minimill order books peaked a quarter earlier, in the third quarter of 1999.<sup>183</sup> Domestic shipments to the merchant market peaked in the first quarter of 2000, as did total domestic shipments, including internal transfers.<sup>184</sup> Domestic shipments to the merchant market declined by 7.8 percent from the first quarter of 2000 to the second. In contrast, subject imports rose from 1.2 million short tons in the first quarter of 2000 to 1.5 million short tons in the second quarter.<sup>185</sup> Furthermore, in that same second quarter subject imports were generally underselling the domestic like product, regardless of whether the like product came from a minimill or an integrated mill.<sup>186</sup>

We note that the volume of subject imports has declined since the second quarter of 2000, although the volume remained notably high compared to pre-1999 levels through the third quarter of 2000. We also note that some overselling by subject imports occurred in the second half of 2000 as import volume contracted. Nonetheless, we find present material injury by reason of subject imports. Domestic shipments and production contracted at a time when overall apparent domestic consumption was still strong, as shown by the rapid growth in subject imports. In contrast, subject import volume grew rapidly through most of the POI. Subject imports gained those sales from the domestic industry largely through underselling. As discussed previously, subject imports have clearly had negative price

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<sup>177</sup> (...continued)

processing, operating losses per short ton were \$70 in interim 2001, compared to a \$1 loss in interim 2000. CR at Table VI-5A, PR at Table VI-5A.

<sup>178</sup> CR at Table VI-5, PR at Table VI-5.

<sup>179</sup> CR at Table VI-5, PR at Table VI-5.

<sup>180</sup> CR at Table III-10, PR at Table III-10.

<sup>181</sup> CR at Table III-10, PR at Table III-10.

<sup>182</sup> CR at Table III-5, PR at Table III-5.

<sup>183</sup> INV-Y-156.

<sup>184</sup> CR at Table III-5, PR at Table III-5.

<sup>185</sup> Respondents' Joint Economic Prehearing Submission at Exh. 8.

<sup>186</sup> INV-Y-148.

effects on the domestic industry. Finally, the domestic industry has been negatively affected by the high level of purchaser inventories to which low-priced subject imports contributed.<sup>187</sup>

In sum, the record indicates there have been significant increases in the volume and market share of the subject imports, and that the subject imports have undersold the domestic like product and have had a significant suppressing and depressing effect on domestic prices. As a result, the overall condition of the industry declined during the period. Accordingly, we find that the subject imports are having a significant adverse impact on the domestic industry.

### CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of imports of hot-rolled steel products from Argentina that are subsidized and by imports of hot-rolled steel products from Argentina and South Africa that are sold at less than fair value.

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<sup>187</sup> Fewer than one-half of the purchasers responding to the Commission's questionnaires were able to classify inventories by country of origin. CR at V-15, PR at V-11. Nonetheless, the data gathered in the course of these investigations indicate that subject imports did contribute to inventory growth. Purchaser inventories reached peak levels at the same time as did subject import volume, namely, the second quarter of 2000, at a time when domestic shipments to unrelated purchasers declined. CR at V-13, PR at V-11. Subject import volume held in purchaser inventories rose by 149.8 percent between 1998 and 2000, while reported total purchaser inventories rose 20.5 percent. CR at V-15, PR at V-11. Subject imports accounted for only 4.9 percent of inventories in 1998 but accounted for 10.2 percent of significantly larger inventories by the end of 2000. CR at V-15, PR at V-11.