UNITED STATES INTERNATIONAL TRADE COMMISSION

FOUNDRY COKE FROM CHINA
Investigation No. 731-TA-891 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3449, September 2001)

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FOUNDRY COKE FROM CHINA

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of foundry coke, provided for in subheading 2704.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective September 20, 2000, following receipt of a petition filed with the Commission and Commerce by ABC Coke, Birmingham, AL; Citizens Gas & Coke Utility, Indianapolis, IN; Erie Coke Corp., Erie, PA; Tonawanda Coke Corp., Tonawanda, NY; and the United Steelworkers of America, AFL-CIO.[2] The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of foundry coke from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation 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 9, 2001 (66 FR 23727).[3] The hearing was held in Washington, DC, on July 26, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[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] On February 15, 2001, Sloss Industrial Corp. was added as a petitioner to the investigation.

[3] The Commission's scheduling notice was subsequently corrected (66 FR 29173, May 29, 2001).

VIEWS OF THE COMMISSION

Based on the record in this final investigation, we determine that an industry in the United States is materially injured by reason of imports of foundry coke from China that the U.S. Department of Commerce ("Commerce") has determined to be sold in the United States at less than fair value ("LTFV").

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."[1] 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."[2] 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."[3]

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.[4] No single factor is dispositive, and the Commission

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[1] 19 U.S.C. § 1677(4)(A).

[2] *Id*.

[3] 19 U.S.C. § 1677(10).

[4] *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).

may consider other factors it deems relevant based on the facts of a particular investigation.[5] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[6] Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise that has been found to be sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.[7]

B. Product Description

In its final determination, Commerce defined the imported merchandise within the scope of this investigation as:

> coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100-mm (4 inch) sieve, of a kind used in foundries.[8]

Foundry coke is the carbonized product remaining after blended bituminous coals are heated in an oven for a period of time.[9] It is one of three types of metallurgical coke,[10] and accounts for 5 to 7 percent

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[5] *See, e.g.*, S. Rep. No. 96-249, at 90-91 (1979).

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

[7] 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).

[8] 66 Fed. Reg. 39487 (July 31, 2001). Commerce indicated that the foundry coke products subject to this investigation were classifiable under subheading 2704.00.00.10 as of January 1, 2000, and as of July 1, 2000, are currently classifiable under subheading 2704.00.00.11 of the Harmonized Tariff Schedules of the United States (HTSUS). *Id*. Although the HTSUS subheadings are provided for convenience and Customs purposes, Commerce noted that its written description of the scope of this investigation is dispositive. *Id*.

[9] Confidential Report ("CR") and Public Report ("PR") at I-2-3; Foundry Coke: A Review of the Industries in the United States and China, Inv. No. 332-407, USITC Pub. 3323 at 1-1 (July 2000) ("Section 332 Report").

[10] "Metallurgical coke" is the carbonized product remaining after the destructive distillation of certain types of coal heated in the oven for many days or hours. Section 332 Report at 1-2. The types of metallurgical coke other than foundry coke are blast furnace coke (or "furnace coke") and other industrial coke, including coke breeze. CR and PR at I-2-3; Section 332 Report at 1-2.

of annual U.S. metallurgical coke production. Foundry coke is used primarily in the production of molten iron in a cupola furnace,[11] both as a fuel and a source of carbon for the melted product.[12]

C. Domestic Like Product

In the preliminary phase of this investigation, the Commission considered whether blast furnace coke or industrial coke should be included in the domestic like product. The Commission determined that blast furnace coke was not part of the domestic like product in light of differences in physical characteristics and end uses, prices, production facilities, and channels of distribution.[13] The Commission also determined that industrial coke was not part of the domestic like product because of the differences in size, ash and carbon content, price, end uses, and customers.[14] Thus, the Commission defined the domestic like product as consisting only of foundry coke.

No party in the final phase of this investigation has challenged the Commission's domestic like product determination,[15] and no new evidence has been obtained that would call into question the Commission's reasoning in the preliminary determination. We therefore adopt the Commission's reasoning and findings from the preliminary phase that neither blast furnace coke nor industrial coke is part of the domestic like product, and that the domestic like product consists only of foundry coke, commensurate with Commerce's definition of the scope of this investigation.

D. Domestic Industry

1. 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

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[11] A "cupola furnace" is a cylindrically-shaped continuous melting device that is charged in alternating layers of metal (*e.g.*, scrap iron) and replacement fuel (*e.g.*, foundry coke). Section 332 Report at E-2.

[12] CR and PR at I-2; Section 332 Report at 1-1.

[13] Foundry Coke From China, Inv. No. 731-TA-891 (Preliminary), USITC Pub. 3365 (Nov. 2000) at 5-7.

[14] USITC Pub. 3365 at 7-8.

[15] *See* Petitioners' Prehearing Brief at 2; Prehearing Brief of USG Interiors, Inc. and Rock Wool Manufacturing Company at 1-2.

proportion of that product."[16] 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.[17] Based on our finding that the domestic like product consists of foundry coke, we conclude that the domestic industry consists of all domestic producers of that product.

2. 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.[18] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[19] In defining the domestic industry in this investigation, we have considered whether Sloss Industrial Corp. ("Sloss") or Empire Coke Co. ("Empire") should be excluded from the domestic industry under the related parties provision. No party has argued for exclusion of these or any producers under the related parties provision.

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[16] 19 U.S.C. § 1677(4)(A).

[17] *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).

[18] 19 U.S.C. § 1677(4)(B).

[19] 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.

a. Sloss Industries Corp.

Sloss is a wholly-owned subsidiary of Walter Foundries [20] which also owns a U.S. *** of subject foundry coke, U.S. Pipe and Foundry Co. ("U.S. Pipe").[21] In these circumstances, Walter Foundries directly controls Sloss as well as U.S. Pipe, and therefore Sloss is a related party under 19 U.S.C. § 1677(4)(B)(ii)(III).

U.S. Pipe's *** of subject Chinese coke were equivalent to *** percent of Sloss' foundry coke production in 2000.[22] Sloss does not itself import any subject coke, but does sell its domestically-produced coke to U.S. Pipe.[23] Thus, its affiliated *** both *** foundry coke from China and purchases domestic foundry coke from Sloss.[24]

Sloss maintains separate financial records from those maintained by the corporate parent.[25] It does not appear that Sloss derives a benefit from U.S. Pipe's *** of foundry coke from China. Although Sloss performed *** during 1998-2000, a comparison of its data for the interim periods indicates that Sloss' financial condition has since ***.[26] These *** occurred even as Sloss ***.[27] Sloss lost 100 percent of its business with one U.S. Pipe foundry and a significant share of its business with another U.S. Pipe foundry.[28]

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[20] CR at III-3 and IV-2, PR at III-2 and IV-1.

[21] CR at IV-2, PR at IV-1; Transcript of Hearing, July 26, 2001 ("Hearing Tr.") at 38-39 (testimony of Mike Keel, president and CEO of Sloss Industries); Hearing Tr. at 47 (testimony of Lee Airhart, Director of Six Sigma for U.S. Pipe and Foundry, and former plant manager at U.S. Pipe's Burlington, N.J. plant).

[22] CR and PR at III-1 and U.S. Pipe's ***. U.S. Pipe's *** were equivalent to *** percent of Sloss' production in 1998 and *** percent of Sloss' production in 1999. U.S. Pipe's *** and Sloss' producers' questionnaire response.

[23] *See* CR and PR at IV-1 n.4; Hearing Tr. at 38-39 (testimony of Sloss Industries president Mike Keel).

[24] *See* Tr. at 38-39 (testimony of Sloss Industries president Mike Keel), 47-48 (testimony of Lee Airhart of U.S. Pipe).

[25] *See* CR and PR at Table VI-3.

[26] *See* CR and PR at Table VI-3.

[27] CR at VI-12 n.17, PR at VI-3 n.17.

[28] Hearing Tr. at 39 (testimony of Sloss Industries president Mike Keel). The U.S. Pipe representative explained that U.S. Pipe "had the opportunity to significantly reduce [its] costs by purchasing Chinese foundry coke instead of coke from [its] related party, [and] could not afford to pass up that opportunity." Hearing Tr. at 47-

Sloss accounted for *** percent of domestic foundry coke production in 2000.[29] Sloss joined the petition in the final phase of this investigation. Given that its interests appear to lie in domestic production and its lack of obvious benefit from its relationship to U.S. Pipe, we do not find that there are appropriate circumstances to exclude Sloss from the domestic industry.

b. Empire Coke Co.

Empire purchased subject Chinese coke *** in 1999 and *** in 2000,[30] and resold the imported product to ***.[31] Empire is not an importer itself and has no corporate affiliation with these or any other importers of foundry coke. However, Empire may be deemed a related party if its purchases of imports are sufficient to amount to "control" of a large share of subject imports.[32] In certain previous cases, the Commission has found such control to exist where the domestic producer was responsible for a predominant portion of an importer's purchases and the importer's purchases were substantial.[33]

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[28] (...continued)
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[29] CR and PR at III-1.

[30] CR and PR at IV-1 & n.4. ***. CR and PR at IV-1 & n.5.

[31] CR at III-2, PR at III-1-2. A former employee of the Koch division that imported Chinese foundry coke testified that Koch had imported Chinese foundry coke for Empire in 1999. Transcript of Conference, Oct. 11, 2000 ("Conference Tr.") at 106-108 (testimony of Patrick Kellerman). Additionally, the president of Shook Trading testified that he had bought some Chinese coke from Empire at the end of 2000 and the beginning of 2001. Hearing Tr. at 163 (testimony of Doug Shook).

[32] *See* Structural Steel Beams From Germany, Japan, Korea, and Spain, Invs. Nos. 701-TA-401 (Preliminary) and 731-TA-852-855 (Preliminary), USITC Pub. 3225 (Sept. 1999) at 8.

[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-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (Apr. 1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (Apr. 1997).

We find that Empire is a related party in light of the volumes of imports purchased and resold by Empire,[34] and the fact that ***.[35] However, we do not find appropriate circumstances to exclude Empire from the domestic industry. While Empire's purchases of subject imports in 1999 and 2000 were not insignificant, the evidence in the record suggests that Empire's primary interests continue to lie in domestic production of foundry coke, and not in importation. Empire's purchases of subject Chinese coke were equal to *** percent of Empire's foundry coke production in 1999 and *** of its foundry coke production in 2000.[36] Empire is one of the *** foundry coke producers, representing *** percent of 2000 U.S. production,[37] and its financial data *** the same general trends as the rest of the industry, ***.[38]

Empire ***.[39] Empire has not *** since its ***.[40] Empire's transactions concerning the subject imports appear to have been prompted in part by the needs of its related purchasers to stay competitive with their competitors who were purchasing and using Chinese coke.[41] In other part, it *** to supplement its ***.[42] Based on the information in the record, we find that appropriate circumstances do not exist to exclude Empire from the domestic industry.

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[34] In 1999, *** accounted for *** percent of subject imports, and Empire's purchases accounted for *** percent of *** imports in 1999. CR and PR at III-2 n.4 and Table IV-1; *** importers' questionnaire response; USITC Pub. 3365 at 9-10. In 2000, *** imported approximately *** percent, ***, of all subject imports, and Empire purchased *** percent of *** imports. *See* CR at III-2 & n.4, IV-1, and Tables III-3 and IV-1, PR at III-1-2 & n.4, IV-1, and Tables III-3 and IV-1; *** importers' questionnaire response.

[35] CR and PR at IV-1.

[36] CR and PR at III-2; Empire's producers' questionnaire response.

[37] CR and PR at III-1.

[38] *See* CR and PR at Table VI-3. Commission staff verified that ***. CR at VI-2 n.10, PR at VI-1 n.10.

[39] CR and PR at III-2.

[40] *See* Empire's producers' questionnaire response to question II-10. *See also* staff notes of Bonnie Noreen regarding phone conversation with *** (Aug. 8, 2001); Hearing Tr. at 163 (testimony of Doug Shook, president of Shook Trading).

[41] Empire indicated that it ***. Empire's producers' questionnaire response to question ***.

[42] Empire indicated that ***. Empire's producers' questionnaire response to question II-2.

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[43] 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.[44] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[45] 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.[46] 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."[47]

For the reasons discussed below, we determine that the domestic industry is materially injured by reason of subject imports from China that are sold in the United States at less than fair value.

A. Conditions of Competition

Several conditions of competition are pertinent to our analysis in this investigation. Demand for foundry coke is derived from the demand for the end products produced by purchasers, mainly in the automotive and truck manufacturing sectors, the pipe and fittings sectors, and the municipal castings sector.[48] Apparent U.S. consumption of foundry coke increased by 4.3 percent from 1998 through 1999,

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[43] 19 U.S.C. § 1673d(b).

[44] 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).

[45] 19 U.S.C. § 1677(7)(A).

[46] 19 U.S.C. § 1677(7)(C)(iii).

[47] *Id*.

[48] CR at II-4 and II-6, PR at II-2-3.

but then declined by 4.1 percent in 2000.[49] Apparent U.S. consumption was also 11.8 percent lower during the first quarter of 2001 relative to the comparable period for 2000.[50]

Total foundry cokemaking capacity in the United States increased by a moderate 1.7 percent during 1998-2000, primarily because of capital investments made by the domestic industry to retrofit, maintain, and improve efficiencies of aging batteries.[51] After a slight decrease from 1998 to 1999, domestic production declined by 7.9 percent in 2000.[52] Paralleling production, the capacity utilization rate declined from 89.6 percent in 1998 to 88.5 percent in 1999, and then declined more sharply, to 81.1 percent in 2000.[53] In interim 2001, capacity was 2.7 percent higher than it was during the comparable period for 2000, but production was 12.9 percent lower, resulting in a drop in the capacity utilization rate to 72.2 percent, as compared to 85.0 percent in interim 2000.[54]

Environmental compliance costs represent a significant ongoing cost for the domestic foundry coke industry.[55] The industry has already spent over $100 million in complying with environmental regulations, in particular the Clean Air Act of 1990, and there are further significant costs that domestic foundry coke producers will continue to incur in the future in order to stay environmentally compliant.[56]

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[49] CR and PR at Tables IV-2, IV-3 and C-1.

[50] CR and PR at Tables IV-2, IV-3 and C-1.

[51] CR at III-3, PR at III-2. Nearly all equipment necessary for current U.S. foundry coke capacity has reached or is nearing the 35 year average lifespan for coke oven batteries. During the lifespan of these batteries, the industry has replaced, repaired, and/or retrofitted ovens, depending on their condition, to comply with environmental regulations. CR at III-3-4, PR at III-2; Conference Tr. at 50-51 (Testimony of Robert Bloom, president of Erie Coke Corp. and Tonawanda Coke Corp; Testimony of Martin Dusel, senior vice president of operations for Citizens Gas and Coke Utility; Testimony of John Pearson, president of ABC Coke). As a result, these ovens are lasting longer than their original lifespan estimation.

[52] CR and PR at Tables III-1 and C-1.

[53] CR and PR at Table III-1.

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

[55] Petition at 12-13; Petitioners' Prehearing Brief at 20. *See, e.g.*, Hearing Tr. at 31 (testimony of ABC president John Pearson), 33-34 (testimony of Martin Dusel, senior vice president of Citizens), 37 (testimony of Don Crane, chairman and owner of Erie and Tonawanda).

[56] Conference Tr. at 17-18 (Mr. Schagrin), 35 (testimony of Robert Bloom, president of Erie and Tonawanda); Conference Tr. at 32 and Hearing Tr. at 34 (testimony of Martin Dusel, senior vice president of Citizens).

In addition, the record indicates that domestic production is capital intensive and that the domestic industry has high fixed costs.[57] High expenses associated with building and maintaining production equipment as well as costs of complying with environmental measures require that the industry maintain high capacity utilization rates to offset its costs.[58]

All foundry coke sold in the United States is either produced domestically or imported from China. There were no nonsubject imports of foundry coke into the United States during the period of investigation.[59]

Nearly all responding purchasers indicated that price is an important factor in their purchasing decisions, although quality is often the first consideration.[60] The majority of purchasers considered the domestic and Chinese product comparable in quality, while most considered the Chinese product advantageous in terms of price.[61] Notwithstanding differences in carbon and ash content, purchasers who compared the domestic and Chinese product indicated that they view the Chinese product as substitutable for the domestic product;[62] this was true across end use sectors.[63] In addition to quality, purchasers also ranked the U.S. and Chinese product generally comparable in terms of availability, delivery, quantity requirements, packaging, consistency, product range, supply reliability, and transportation costs.[64]

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[57] Petitioners' Prehearing Brief at 19-20; Hearing Tr. at 30 (testimony of ABC president John Pearson), 59 (testimony of Robert Blecker, professor of Economics at American University), and 110 (Mr. Schagrin).

[58] CR at VI-14-17 and Table VI-4, PR at VI-4-5and Table VI-4; Hearing Tr. at 59 (testimony of Robert Blecker, professor of economics).

[59] CR and PR at Tables IV-1 and IV-2.

[60] CR and PR at Table II-1.

[61] CR and PR at Table II-2.

[62] CR at II-9 & n.9, PR at II-5 & n.9.

[63] CR at II-9, PR at II-5.

[64] CR and PR at Table II-2. Just over half of the purchasers considered the U.S. product superior in terms of technical support and service, a factor which was not ranked as a priority in purchasing decisions. *Id.*; CR and PR at Table II-1.

The majority of domestic producers' U.S. sales of foundry coke are made on a contract basis, for terms of one to five years.[65] Prices are normally fixed during the contract period, and quantities are fixed in some contracts but not others.[66] However, several *** multi-year contracts *** and there may be renegotiations after one year.[67] Many of the domestic producers' current contracts were negotiated during 2000 or 2001.[68] In contrast, U.S. importers' U.S. sales of foundry coke are made on a spot basis or pursuant to shorter-term *** contracts.[69]

We also note as a condition of competition that *** and Sloss--reported sales of foundry coke to related pipe foundries in the United States.[70] The proportionate share of these firms' combined related party transfers amounted to *** percent of 2000 U.S. shipments by domestic producers.[71] However, the record indicates that these firms competed on a price basis with the subject imports and with other U.S.

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[65] CR at V-3, PR at V-2. Among six producers accounting for *** percent of 2000 domestic production (*see* CR and PR at III-1), contract sales accounted for 65-100 percent of total shipments. CR at V-3, PR at V-2.

[66] CR at V-3-4, PR at V-2.

[67] Petitioners' Posthearing Brief at A-13-16 and Exhibit 6; CR at V-3, PR at V-2.

[68] *See* Petitioners' Posthearing Brief at Exhibit 6. For example, *** negotiated *** contracts for sale of approximately *** metric tons annually effective in 2000, and *** contracts for sale of approximately *** metric tons annually effective in 2001. *Id*. In the first half of 2000, *** signed *** contracts for annual sales of approximately *** metric tons. *Id*. *** negotiated *** long term contracts in 2000, one effective on ***, and the other effective on ***. *Id*. At the expiration of numerous *** contracts in 2000 and 2001, *** negotiated new *** contracts ***. *Id*. In 2000 and 2001, *** renegotiated *** expiring contracts. *Id*. Contracts reportedly accounting for over one half of the total quantity of U.S. industry shipments during 2000 are due to be renewed or renegotiated during the remainder of 2001 and during 2002. CR at V-4, PR at V-3.

[69] CR at V-3-4, PR at V-2-3.

[70] CR at III-4, PR at III-3; Hearing Tr. at 38-39 (testimony of Mike Keel, President and CEO of Sloss Industries). No party has argued for application of the statutory captive production provision, 19 U.S.C. § 1677(7)(C)(iv), and we do not find that provision applicable. We note that the related party transfers would not meet at least two of the statutory captive consumption criteria. *** indicated that foundry coke constitutes *** percent or less, and *** indicated that foundry coke constitutes less than *** percent, of the input in the production of their downstream articles (pipes and fittings); therefore, foundry coke does not appear to be "the predominant input" in the production of the downstream articles, as required by the second criterion of the statutory captive consumption provision, 19 U.S.C. § 1677(7)(C)(iv)(II). *See* Purchaser Questionnaire Responses of *** and *** subsidiary *** to question III-3. Also, even if the related party transfers were considered non-commercial sales, the related party transfers do not appear to meet the third statutory criterion, (19 U.S.C. § 1677(7)(C)(iv)(III)) given that domestic foundry coke sold in the merchant market is generally used in the production of the same downstream articles that *** and *** manufacture–iron pipes and fittings. *See* CR at II-4, PR at II-2; Purchaser Questionnaire Responses of *** to question III-1.

[71] CR and PR at Table III-2.

producers for sales to their related foundries, that their prices to related firms followed similar trends as their prices to non-related purchasers,[72] and that, for financial purposes, they treat the related party sales in a manner comparable to their treatment of non-related sales.[73]

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."[74]

By quantity and value, the volume of subject imports increased significantly, from *** metric tons valued at $*** in 1998 to 119,649 metric tons valued at $13.3 million in 1999, and then to 146,785 metric tons valued at $15.8 million in 2000.[75] Subject imports also increased significantly as a share of the U.S. market, from only 1.0 percent of shipments in 1998 to 7.6 percent in 1999 and to 11.5 percent in 2000.[76]

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[72] *See, e.g.*, Producer Questionnaire Responses of *** and ***; Hearing Tr. at 38-39 (testimony of Sloss Industries president Mike Keel) and 47-48 (testimony of Lee Airhart, Director of Six Sigma for U.S. Pipe and Foundry, and former plant manager at U.S. Pipe's Burlington , N.J. plant) (Sloss lost all of its business with one U.S. Pipe foundry and a significant share of its business with another U.S. Pipe foundry to imports.); CR at *** and VI-2 n.9, PR at *** and VI-1 n.9. In interim 2001, ***.

[73] *** average unit sales value for related parties was *** than the average unit value of its commercial U.S. sales. *See* *** producers' questionnaire response to question II-7. *** average unit value for related party transfers at the beginning of the period of investigation was *** than the average unit value for its U.S. commercial sales. *See* *** producers' questionnaire response to question II-7. The related parties unit sales value subsequently *** to *** that for U.S. commercial sales, which ***. In the first quarter of 2001, *** average unit value for commercial shipments ***, to within *** percent of the unit value for related party transfers. *** producers' questionnaire response at question II-7. *See* CR at VI-2 & nn.9-10, VI-12 n. 17, PR at VI-1 & nn. 9-10, VI-3 n.17.

[74] 19 U.S.C. § 1677(7)(C)(i).

[75] CR and PR at Table IV-1. The importer respondents argued that the Commission should subtract all domestic producers' direct and indirect imports from the volume of imports in considering market share. Prehearing Brief of Shook Trading, Inc. and U-Met of PA, Inc. (Importers' Prehearing Brief) at 24. Exclusion of these subject imports from our consideration of volume would be contrary to the general statutory requirement that the Commission evaluate whether an industry is injured or threatened by reason of imports of "subject" merchandise. *See* 19 U.S.C. §§ 1673d(a)(1) and 1673d(b)(1). *Cf.* SAA at 853 (exclusion of certain related party imports only if the captive product provision applies). In any event, we note that the extent of related party imports/purchases declined during the period examined, both in absolute terms and relative to total subject imports. *See* CR and PR at Table III-3 and U.S. Pipe and Foundry's ***; Empire's producers' questionnaire response to question II-10.

[76] CR and PR at Table IV-3.

In terms of value, subject imports' share of the market also increased significantly, from 0.7 percent of the market in 1998, to 5.7 percent in 1999, and to 9.3 percent in 2000.[77]

Although actual imports of foundry coke from China ceased after the Commission's affirmative preliminary determination in November 2000,[78] U.S. shipments of subject imports continued into 2001, with shipped imports continuing to occupy 6.6 percent of the volume and 6.0 percent of the value of the U.S. foundry coke market in interim 2001.[79] The available volumes of subject imports are reflected in the importers' high end-of-period inventories,[80] which increased from *** metric tons at the end of 1998 to 44,381 metric tons at the end of 1999, and then to 46,187 metric tons at the end of 2000.[81] Even at the end of March 2001, importers retained 27,864 metric tons of subject foundry coke available for shipment in the U.S. market.[82]

By volume and value, U.S. producers' market share declined, dropping from 99.0 percent of volume and 99.3 percent of value in 1998 to 88.5 percent of volume and 90.7 percent of value in 2000.[83] When apparent consumption declined by 4.1 percent from 1999 to 2000, the quantity of U.S. producers' shipments showed a greater decline, by 8.1 percent, while U.S. shipments of subject imports increased by 45.4 percent.[84]

Accordingly, we determine that subject import volume and the increase in that volume during the period of investigation, both in absolute terms and relative to consumption in the United States, is significant.

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[77] CR and PR at Table IV-3.

[78] We find that the reduction in subject import volume is related to the pendency of the investigation and therefore reduce the weight accorded to this reduction pursuant to 19 U.S.C. §1677(7)(I).

[79] CR and PR at Table IV-3.

[80] CR and PR at Table VII-2.

[81] CR and PR at Table VII-2.

[82] CR and PR at Table VII-2. *See also* Hearing Tr. at 31-31(testimony of John Pearson, president of ABC Coke).

[83] CR and PR at Table IV-3.

[84] CR and PR at Table C-1.

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.[85]

As noted under conditions of competition, the record in this final investigation indicates that domestic foundry coke and imported foundry coke from China are substitutable, notwithstanding differences in carbon and ash content and product density. Indeed, in all end use sectors, responding purchasers almost unanimously indicated that they viewed the products as interchangeable.[86] As also discussed as a condition of competition, the record further indicates that price is an important factor in purchasing decisions,[87] and that purchasers overwhelmingly viewed subject imports as more favorably priced than the domestic product.[88]

We find that the imports significantly undersold the domestic like product. The quarterly price comparisons, based upon questionnaire responses of domestic producers and importers, confirm that the Chinese product was priced below that of the domestic like product in every quarter between January 1998 and March 2001.[89] The margins of underselling reflected in the price comparisons ranged from *** percent to *** percent.

The price comparison data include responses from all U.S. producers except ***, and represent approximately *** percent of U.S. producers' shipments during the period of investigation, while the

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[85] 19 U.S.C. § 1677(7)(C)(ii).

[86] CR at II-9, PR at II-5.

[87] *See, e.g.*, CR and PR at Table II-1.

[88] CR and PR at Table II-2.

[89] CR and PR at Table V-1.

import data are based on responses from two importers representing *** of the 1999 and 2000 commercial shipments of imports.[90] The record also indicates that the importers who did not provide quarterly pricing data reported average unit values *** below those reported by the two who did provide quarterly data.[91] The per metric ton values for all U.S. shipments of imports were $136.37 in 1998, $133.79 in 1999, and $140.80 in 2000.[92] The per metric ton values for all U.S. shipments of the domestic like product were substantially higher than those of subject imports, but declined steadily, from $181.67 in 1998 to $180.25 in 1999 and to $177.85 in 2000.[93] These data indicate that the overall price differential is even greater than that exhibited by the quarterly pricing data.

The record further indicates that the subject imports suppressed and depressed prices for the domestic like product to a significant degree. Despite rising unit cost of goods sold ("COGS") and selling, general, and administrative expenses ("SG&A"), and substantial expenditures necessary for compliance with environmental requirements, domestic producers were unable to raise prices. Rather, over the period examined, the domestic industry's foundry coke prices tended to move gradually but steadily downward.

The quarterly pricing data show that the domestic producers' efforts to increase prices gradually during 1998 failed, as lower-priced subject imports began to enter the U.S. market.[94] Instead, prices for the domestic product declined steadily from the third quarter of 1998 through the first quarter of 2001.[95] Import prices fluctuated from quarter to quarter, but, as noted, were consistently below U.S. prices.

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[90] CR at V-5, PR at V-3.

[91] *See* CR at V-6, PR at V-5; Importers' Questionnaire Responses of ***, ***, and ***. Given that there are no uncertainties in this investigation as to product mix, we find the average unit value data to be probative, particularly as a supplement to the importer pricing data.

[92] CR and PR at Table C-1. The average unit value for import shipments was higher in interim 2001 than it was in interim 2000. *Id*. However, we consider any post-petition changes in values to be related to the pendency of this investigation, and accord that information less weight. *See* 19 U.S.C. § 1677(7)(I).

[93] CR and PR at Table C-1.

[94] CR and PR at Table V-1.

[95] CR and PR at Table V-1.

In order to maintain customers in the face of the lower prices offered by importers of Chinese foundry coke, U.S. producers were often forced to decrease their prices, in some cases to customers already under contract.[96] Several contracts re-negotiated during 2000 and 2001 require ***, and others ***.[97] A number of purchasers confirmed that the attractiveness of the prices offered for subject imports compelled them to purchase the imports in lieu of some or all of their previous purchases of domestic product, or to seek lower prices from domestic producers.[98] Of the 31 responding purchasers, 22 bought at least some Chinese product during the period of investigation, and three of these purchasers switched completely to the lower-priced imports from China.[99] Purchasers also confirmed many of the domestic producers' allegations of sales lost to lower-priced imports and of lost revenues because of the need to lower prices in order to compete with the Chinese prices and to retain customers.[100]

Accordingly, we find that subject imports undersold the domestic like product and suppressed and depressed U.S. prices to a significant degree during the period of investigation.

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.[101] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow,

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[96] *See* CR and PR at Table V-3; Petitioners' Posthearing Brief at A-13-15 and Exhibit 6.

[97] *See* Petitioners' Posthearing Brief at A-14-15 and Exhibit 6. Further, as prices trend downward, contracts accounting for over half of the total quantity of U.S. shipments during 2000 are due to be renewed or renegotiated during the remainder of 2001 and 2002. CR at V-4, PR at V-3.

[98] *See, e.g.*, CR V-9-19 and Tables V-2 and V-3, PR at V-5-8 and Tables V-2 and V-3.

[99] CR at II-6, PR at II-3.

[100] CR at V-9-19 and Tables V-2 and V-3, PR at V-5-8 and Tables V-2 and V-3. We note that even the confirmed lost sales and revenues excluding *** and *** transactions with related parties are sufficient to demonstrate this point.

[101] 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).

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."[102] [103] [104]

We find that the subject imports are having a significant adverse impact on the domestic industry.[105] As the lower-priced LTFV imports captured market share at the expense of the domestic industry, the combination of declining shipments and depressed prices resulted in falling sales revenues for the domestic industry. The accompanying decline in sales revenue was primarily due to the lower sales and shipment volume, but the decline in prices and average unit values also contributed to the financial decline.[106]

While the capacity of domestic producers increased modestly as they brought their batteries into compliance with environmental standards, actual production of foundry coke decreased significantly as the result of declining shipments.[107] Consequently, capacity utilization rates declined significantly as more ovens were hot idled in response to declining shipments.[108] However, even the reduced production outpaced

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[102] 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

[103] 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 determination in its investigation of foundry coke on July 31, 2001. In its final determination, Commerce assigned individual weighted-average dumping margins ranging from 76.19 percent to 109.85 percent, and a PRC-wide rate of 214.89 percent. 66 Fed. Reg. 39487, 39489 (July 31, 2001).

[104] 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.

[105] In this investigation, production and trade data on the domestic industry are based on questionnaire responses for seven domestic producers that accounted for all domestic foundry coke production in 2000. CR and PR at III-1. Financial data are based on questionnaire responses that accounted for approximately *** percent of domestic foundry coke production in 2000. CR and PR at VI-1 & n.1.

[106] CR at VI-12, PR at VI-3.

[107] The domestic industry's U.S. shipments declined from 1.14 million metric tons in 1998 to 1.02 million metric tons in 2000. CR and PR at Tables III-2. During the same period, U.S. foundry coke production declined from 1.24 million metric tons in 1998 to 1.14 million metric tons in 2000. CR and PR at Table III-1.

[108] As noted, the U.S. industry's capacity utilization rate declined by 8.5 percentage points, from 89.6 percent in
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shipments, as reflected in the industry's growing end-of-period inventories, which increased from 38,877 metric tons at the end of 1998 to 54,899 metric tons at the end of 1999, and then to 66,771 metric tons at the end of 2000.[109]

The reduced production and sales volume resulted in higher average unit cost of goods sold ("COGS") and selling, general, and administrative costs ("SG&A"), which rose, respectively, from $*** and $*** per metric ton in 1998 to $*** and $*** per metric ton in 2000.[110] Over the same period, the average unit sales revenue declined from $*** per metric ton in 1998 to $*** per metric ton in 2000.[111] This in turn led to declines in average unit gross profits from $*** per metric ton in 1998 to $*** per metric ton in 2000, and to declines in average unit operating profits from $*** in 1998 to $*** in 2000.[112]

The domestic industry's operating income declined by *** percent, from $*** in 1998 to $*** in 2000.[113] In interim 2001, it was only $*** as compared to $*** in interim 2000.[114] Operating income

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[108] (...continued)
1998 to 81.1 percent in 2000. CR and PR at Tables III-1 and C-1. In interim 2001, the industry was operating at only 72.2 percent capacity as compared to 85.0 percent in interim 2000. CR and PR at Table III-1.

During the final phase of this investigation, respondents questioned the accuracy of the capacity and capacity utilization data originally reported in the producers' questionnaire responses. *See* Posthearing Brief of Chinese Exporters at 5-6; Hearing Tr. at 242 (Mr. Neeley). Commission staff conferred with the producers to ensure that these data were reported accurately and, where necessary, producers revised the data as presented in the final confidential staff report. *See* Revised Producers' Questionnaire Responses of ***, submitted on Aug. 9, 2001; CR and PR at Table III-1 n.1.

[109] CR and PR at Table III-4. The ratio of U.S. producers' end-of-period inventories to production increased from 3.1 percent in 1998 to 4.4 percent in 1999, and then to 5.9 percent in 2000. We note that the increase in inventories was not attributable to changes in U.S. producers' export shipments, which increased between 1998 and 1999, as inventories began to grow. CR and PR at Tables III-2 and III-4. In 2000, export shipments were only *** metric tons lower than they were in 1998, and therefore could not account for the 27,894 metric ton increase in inventories during that period.

[110] CR and PR at Table VI-2.

[111] CR and PR at Table VI-2. This downward trend continued in interim 2001, when the average unit value of sales was $*** as compared to $*** in interim 2000.

[112] CR at VI-13 and Table VI-2, PR at VI-4 and Table VI-2. The decline in average unit gross profits continued in interim 2001, when they were $*** per metric ton as compared to $*** per metric ton in interim 2000. Likewise, the decline in average unit operating profits continued in interim 2001, when they were $*** per metric ton compared to $*** per metric ton in interim 2000.

[113] CR and PR at Tables VI-1 and C-1.

[114] *Id*. As noted in the discussion of volume, there were no subject imports of foundry coke in 2001. However, the large volumes of inventoried imports enabled importers to continue shipping significant volumes of Chinese
(continued...)

margins declined from *** percent in 1998 to *** percent in 1999, and then to *** percent in 2000.[115] The adverse impact of the LTFV imports is thus reflected in the domestic industry's financial indicators, all of which declined during the period of investigation.[116]

Other domestic industry performance indicators also indicate the adverse effects of the LTFV imports.[117] The average number of production and related workers ("PRWs") employed industry-wide declined steadily between 1998 and 2000 and was lower in interim 2001 than in interim 2000.[118] While hourly and total wages paid increased, average worker productivity fell and unit labor costs rose.[119]

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[114] (...continued)
foundry coke in interim 2001. The financial data indicate that the domestic industry's condition remained poor in the interim 2001 period relative to interim 2000, as it continued to experience the adverse impact of the LTFV imports.

[115] CR and PR at Table VI-1. This decline continued into interim 2001, when operating income margins were *** percent as compared to *** percent in the comparable period of 2000.

[116] *See* CR and PR at Table VI-3. As required by the statute, we examined the effects of the LTFV imports upon the industry as a whole. *See* 19 U.S.C. § 1677(4)(A); Sandvik AB v. United States, 721 F. Supp. 1322, 1330 (Ct Int'l Trade 1989) *aff'd*, 904 F.2d 46 (Fed. Cir. 1990); Copperweld Copperweld Corp. v. United States, 682 F. Supp. 552, 562 (Ct Int'l Trade 1988), 682 F. Supp. at 569. We note, however, that the record evinces different levels of performance among the U.S. producers, largely based upon the age of the batteries and the firms' economies of scale; those firms with *** generally outperformed the *** facilities. CR and PR at Tables I-1 and VI-3. Notwithstanding these differences, the record indicates that *** U.S. producers were adversely affected by the influx of low-priced LTFV imports. Indeed, the evidence shows that the operating income margins for *** producers were lower in 2000 than they were in 1998, and that ***, suffered steady revenue losses throughout the period of investigation. *See* CR and PR at Table VI-3. In interim 2001, ***, reported substantial reductions in profits. *Id*.

[117] We also examined the decline in apparent domestic consumption between 1999 and 2000 to determine if it could have been responsible for the concurrent declines in the performance indicia of the domestic industry. However, apparent consumption declined by only 48,798 metric tons, whereas domestic producers' U.S. shipments declined by almost twice that amount, *i.e.*, by 90,222 metric tons. CR and PR at Table IV-2. Domestic producers' non-related U.S. shipments declined by *** metric tons at the same time that subject imports increased. CR and PR at Table IV-2. Apparent U.S. consumption declined at a greater rate (11.8 percent) between interim 2000 and interim 2001. However, as noted above, we have given data on the period after the filing of the petition less weight in our analysis.

[118] CR and PR at Table III-5. In 1998, the industry employed 1,094 PRWs, but by 2000 employed only 1,042 PRWs. In interim 2001, there were 977 PRWs in the domestic foundry coke industry as compared to 1,078 in interim 2000. *Id*.

[119] CR and PR at Table III-5. Average worker productivity fell from 517.1 metric tons per 1,000 hours in 1998 to *** metric tons per 1,000 hours in 2000, and in interim 2001 was *** metric tons per 1,000 hours as compared to *** metric tons per 1,000 hours in interim 2000. *Id*. Per metric ton labor costs rose from $35.07 in 1998 to $*** in 2000, and were $*** in interim 2001 as compared to $*** in interim 2000. *Id*.

Notwithstanding the need for domestic foundry coke producers to fund the projects necessary for compliance with strict environmental standards, the domestic industry's capital expenditures declined from $*** in 1998 to $*** in 2000.[120] Several domestic producers reported reductions in the size of their capital expenditures during the period examined, as well as anticipated further reductions, as a result of the LTFV imports.[121] The domestic industry's declining operating income and operating margins undermine their ability to finance the capital projects necessary for them to continue as ongoing concerns.[122]

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

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[120] CR and PR at Table VI-4. In interim 2001, domestic producers reported capital expenditures in the amount of $***, *** percent lower than the $*** they reported for interim 2000. CR and PR at Tables VI-4 and C-1.

[121] CR and PR at Appendix E.

[122] *See* CR at VI-15-16, PR at VI-12-13; Hearing Tr. at 32 (testimony of John Pearson, president of ABC Coke), 34 (testimony of Martin Dusel, senior vice president of operations for Citizens Gas and Utility), 42 (testimony of Robert Bloom, president of Eric Coke and Tonawanda Coke).

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of imports of foundry coke from China that are being sold in the United States at less than fair value.