UNITED STATES INTERNATIONAL TRADE COMMISSION

CLAD STEEL PLATE FROM JAPAN
Investigation No. 731-TA-739 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3459, October 2001)

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Clad Steel Plate from Japan

DETERMINATION

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on June 1, 2001 (66 FR 29829, June 1, 2001) and determined on September 4, 2001 that it would conduct an expedited review (66 FR 49040, September 25, 2001).

The Commission transmitted its determination in this review to the Secretary of Commerce on October 29, 2001. The views of the Commission are contained in USITC Publication 3459 (October 2001), entitled *Clad Steel Plate from Japan: Investigation No. 731-TA-739 (Review)*.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.2(f)).

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended ("the Act"), that revocation of the antidumping duty order concerning clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In June 1996, the Commission determined that an industry in the United States was materially injured by reason of imports of clad steel plate from Japan that the Department of Commerce ("Commerce") determined to be sold at less than fair value ("LTFV").[1] On June 1, 2001, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on clad steel plate from Japan would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.[2]

In five-year reviews, the Commission first determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. Specifically, the Commission determines whether individual responses to the notice of institution are adequate and, based on these individually adequate responses, whether the collective responses submitted by two groups of interested parties -- domestic interested parties (such as producers, unions, trade associations, or worker groups) and respondent interested parties (such as importers, exporters, foreign producers, trade associations, or subject country governments) -- show a sufficient willingness among each group to participate and provide information requested in a full review, and if not, whether other circumstances warrant a full review.[3]

The Commission received one response to its notice of institution. This response was from Bethlehem Lukens Plate Corp. ("Lukens"), a domestic producer of clad steel plate accounting for an estimated *** percent of total domestic production in 2000.[4] Lukens also filed comments on adequacy, arguing that the review should be expedited because no Japanese clad steel plate producer responded to the Commission's notice of institution.

On September 4, 2001, the Commission found that the domestic interested party group response was adequate. The Commission also found that the respondent interested party group response was inadequate. Pursuant to 19 U.S.C. § 1675(c)(3)(B), the Commission expedited review of this matter.[5]

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[1] Clad Steel Plate from Japan, Inv. No. 731-TA-739 (Final), USITC Pub. No. 2972, June 1996 ("Original Determination").

[2] 66 Fed. Reg. 29829 (June 1, 2001).

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

[4] Confidential Staff Report ("CR") at I-10; Public Staff Report ("PR") at I-8.

[5] 66 Fed. Reg. 49040 (Sept. 25, 2001).

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines "the domestic like product" and the "industry."[6] The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."[7] In its final five-year review determination, Commerce defined the imported product covered by the existing antidumping duty order as "all clad steel plate of a width of 600 mm or more and a composite thickness of 4.5 mm or more."[8]

Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. This limited diffusion is characteristic of clad products and differentiates them from products metalized in other manners (i.e., by normal electroplating).

In the original investigation, no party raised any like product issues and the Commission found a single like product coextensive with the scope of Commerce's investigation, i.e., all clad steel plate of a width of 600 mm or more and a composite thickness of 4.5 mm or more.[9] In this review investigation, no party has contested the Commission's original like product determination, nor have new facts been presented to warrant a different conclusion than that reached by the Commission in the original investigation.

We therefore define, based on the facts available, a single domestic like product consisting of all clad steel plate of a width of 600 mm or more and a composite thickness of 4.5 mm or more coextensive with Commerce's scope in this review.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[10] Based on its findings in the original investigation of a single domestic like product, the Commission found that the domestic industry consisted of all domestic

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[6] 19 U.S.C. § 1677(4)(A). Section 771(4)(A) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product." *Id*.

[7] 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[8] 66 Fed. Reg. 49040 (Sept. 25, 2001).

[9] Original Determination at 4.

[10] 19 U.S.C. § 1677(4)(A). In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States. *See* United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

producers of clad steel plate of the dimensions specified by the definition of the like product.[11] No evidence gathered in this review warrants a different conclusion from the Commission's original determination. We find, therefore, that the domestic industry consists of all domestic producers of clad steel plate of a width of 600 mm or more and a composite thickness of 4.5 mm or more.

III. REVOCATION OF THE ORDER ON CLAD STEEL PLATE FROM JAPAN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order or finding unless it makes a determination that dumping is likely to continue or recur and the Commission makes a determination that material injury would be likely to continue or recur if the order or finding is revoked, as described in section 752(a).

Section 752(a) of the Act states that in a five-year review "the Commission shall determine whether revocation of an order [or finding], or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[12] The Uruguay Round Agreements Act ("URAA") Statement of Administrative Action (" SAA") indicates that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the order or finding] . . . and the elimination of its restraining effects on volumes and prices of imports."[13] Thus, the likelihood standard is prospective in nature.[14] The statute states that "the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time."[15] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' time frame applicable in a threat of injury analysis [in antidumping and countervailing duty determinations]."[16] [17]

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[11] Original Determination at 4.

[12] 19 U.S.C. § 1675a(a).

[13] URAA SAA, H.R. Rep. No. 316, 103d Cong., 2d Sess., vol. I at 883-84.

[14] While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked." SAA at 884.

[15] 19 U.S.C. § 1675a(a)(5).

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

[17] In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines "reasonably foreseeable time" as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he

(continued...)

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same elements. The statute provides that the Commission is to "consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked." It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.[18] [19]

Section 751(c)(3) of the Act and the Commission's regulations provide that in an expedited five-year review the Commission may issue a final determination "based on the facts available, in accordance with section 776."[20] We have relied on the facts available in this review, which consist primarily of the record in the original investigation and information submitted by Lukens.

For the reasons stated below, we determine that revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[21] Conditions of competition relevant to the clad steel plate industry are discussed below.

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[17] (...continued)
considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define "reasonably foreseeable time" by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

[18] 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

[19] Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce stated in its five-year review determination that it has not issued any duty absorption findings in this matter. 66 Fed. Reg. 51007 (October 5, 2001).

[20] 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to "use the facts otherwise available" in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a).

[21] 19 U.S.C. § 1675a(a)(4).

Many of the conditions of competition prevailing in the U.S. market at the time of the original investigation still exist. Although there have been fluctuations, apparent U.S. consumption of clad steel plate has declined since the time of the original investigation, falling *** percent from 1995 to 2000.[22] Production of clad steel plate in the United States also has declined since the imposition of the antidumping duty order in July 1996, falling from 1995 to 1997, then rising in 1998 compared to 1997, and then decreasing again from 1998 to 2000, for an overall decline of *** percent from 1995 to 2000. [23]

In the original determination, the Commission did not include temporary imports under bond ("TIB") entries in its analysis but did regard subject TIB entries as a relevant condition of competition and an economic factor in its analysis of the volume of imports.[24] While there have been no such subject entries since 1996, we recognize the existence of a small volume of nonsubject TIBs and note them as a condition of competition in the U.S. market.[25]

Another condition of competition in this industry is that demand for clad steel plate is derived from end uses in the petrochemical industry, the power/utilities industry, the pulp and paper industry, and the shipbuilding industry. The record indicates that, during the period of review (as was the case during the original investigation), the petrochemical industry consumed most of the clad steel plate sold in the U.S. market.[26]

The U.S. market is price sensitive and contract negotiations are characterized by a relatively small number of major bids.[27] The domestic industry's downstream customer base of clad vessel fabricators has been reduced since 1996 with several clad vessel fabricators exiting the market. Among the closing firms were Nooter (St. Louis, MO), which closed after 100 years of continuous operation, and Graver (Houston, TX), which had been Lukens' largest clad steel plate customer during the 1990-95 period.[28]

Another important condition of competition in this industry is that sales are made through a multi-level, competitive bidding process. General contractors or engineers design process vessels for inclusion in larger industrial projects, and they solicit bids from fabricators who compete for contracts to produce these process vessels. Clad steel plate producers, in turn, compete to supply fabricators with the clad steel plate used to manufacture the process vessels.[29] Because each contract has fairly exact specifications for clad steel plate, clad steel plate offered by different suppliers bidding on the same project is generally fungible. Clad steel plate produced for different projects, however, may vary significantly due

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[22] CR & PR Table I-4. The Commission noted in its original determination that "demand patterns for clad steel plate are irregular" due to the sporadic nature of the contracts through which the product is sold. Original Determination at 7.

[23] CR & PR Table I-4.

[24] Consistent with the original determination, Commissioner Bragg considers it appropriate in this investigation to include likely TIB imports in the apparent consumption, import, and market share data for purposes of determining the likely effects of subject imports on U.S. producers of clad steel plate in the event of revocation. See Original Determination at 8, n.43.

[25] CR & PR Table I-2 - I-3.

[26] CR at I-6 - I-7; PR at I-4 - I-5.

[27] CR & PR Table I-4.

[28] CR at I-8; PR at I-7; Original Determination at 15; Lukens Submission of July 17, 2001, at 4-5.

[29] CR at I-7; PR at I-6.

to the unique specifications for each project. Moreover, not all producers can bid for every type of project, due to their differing production capabilities.[30]

Clad steel plate in the range of 1/2 inch to 2 inches in thickness is generally specified in the larger contracts for the petrochemical industry.[31] In general, roll bonding is more cost-effective than explosion bonding for the production of these sizes of clad steel plate.[32]

In 1995, there were four firms producing clad steel plate in the United States: Ametek (Eighty Four, PA), DuPont (Kennett Square, PA), Dynamic Materials Corporation ("DMC") (Lafayette, CO), and Lukens (Coatesville, PA).[33] Each of these firms, with the exception of DMC, provided a response to the Commission's questionnaire during the original investigation. Lukens accounted for *** percent of reported U.S. production in 1995, DuPont accounted for *** percent, and Ametek accounted for the remaining *** percent. No U.S. producer reported importing clad steel plate or purchasing imported clad steel plate. Lukens primarily produced clad steel plate during the period examined in the original investigation by the roll-bonding method, but also utilized the "bang and roll" method,[34] on a toll basis, for thicker plate gauges. DuPont and DMC were primarily explosion-bond clad steel plate producers and Ametek manufactured the product through roll-bonding.[35]

Each of the original producing firms, with the exception of DuPont, continues to manufacture the subject clad steel plate in the United States today.[36] In July 1996, DMC acquired DuPont's clad steel plate operations.[37] Also, Vessel Clads was renamed Vee Cee Metals and, Bethlehem Lukens is the successor company of Lukens.[38] Lukens claims that "other than DMC's acquisition of DuPont's clad steel plate operations, the domestic industry remains virtually the same as it was in 1995-96."[39] Lukens estimates that

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[30] Furthermore, a substantial proportion of the annual sales volume of clad steel plate is derived from large contracts that are made on a sporadic basis. As a result, demand patterns for clad steel plate are irregular and render year-to-year comparisons of the data collected in this investigation less probative than in other industries where demand is more consistent from year to year.

[31] CR at I-6 - I-7.

[32] Original Determination at 4.

[33] In addition, Vessel Clads (Berwyn, PA) ***, CR at I-9.

[34] Clad steel plate produced by explosion bonding may be further rolled to achieve the desired thickness; this is known as the "bang and roll" method.

[35] CR at I-9 citing Staff Report of June 3, 1996, at I-8 and III-1. While there have been some changes in ownership and some consolidation, Lukens estimates that the aggregate operations of the other U.S. producers are about the same as they were during the period examined in the original investigation (1993-95).

[36] CR at I-9; PR at I-8.

[37] CR at I-9 - I-10. Further, on June 15, 2000, 55 percent of DMC's stock was purchased by SNPE, a wholly-owned subsidiary of Group SNPE, a French government-owned fire chemicals, aerospace, and defense company with interests in the explosive bonding of clad metals plate. On March 15, 2001, DMC announced that it had reached agreement to acquire 100 percent of the stock of Nobelclad and Nitro Metall from Nobel Explosifs France ("NEF"). Nobelclad and Nitro Metall operate cladding businesses in France and Sweden, respectively. Group SNPE wholly owns NEF. Lukens Submission of July 17, 2001, at 8, n.6.

On April 23, 1999, DMC announced that it would be closing its Colorado clad steel plate manufacturing plant and consolidating its Explosive Metalworking Group operations into a new Pennsylvania-based clad metal plate manufacturing facility. Id.

[38] In May 1998, Bethlehem acquired all of the outstanding stock of Lukens, Inc. CR at I-10.

[39] Lukens Submission of July 17, 2001, at 6.

it accounted for *** percent of U.S. production in 2000, DMC for *** percent, Ametek for *** percent, and Vee Cee Metals for *** percent.[40]

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.[41] In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[42]

As discussed below, we conclude from the facts available[43] that subject import volume is likely to increase significantly and would be significant if the order is revoked.[44] This conclusion is based largely on the record from the original investigation and the information submitted by Lukens in this review. As noted above, no respondent interested parties responded to the Commission's notice of institution.

We recognize that the volume of subject imports is currently at a very low level relative to total consumption.[45] In a five-year review, however, our focus is on whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping duty order is revoked, as current import levels may be affected by the antidumping duty order.

The record from the original investigation indicated that Japanese clad steel plate producers had the ability and willingness to establish a significant presence in the U.S. market. The Commission also found that U.S. imports of clad steel plate from Japan excluding those temporarily imported under bond rose from *** tons in 1993 to *** tons in 1994 and then fell to *** tons in 1995.[46] In contrast, total U.S. imports of clad steel plate from Japan rose continuously on an annual basis during the original period of

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[40] Lukens Submission of July 17, 2001, exhibit 3.

[41] 19 U.S.C. § 1675a(a)(2).

[42] 19 U.S.C. § 1675a(a)(2)(A)-(D).

[43] See 19 U.S.C. § 1677e(a).

[44] Commissioner Bragg notes that by including TIB imports, the subject import volume is likely to increase even more significantly and would therefore likely be more significant if the order is revoked. Furthermore, she infers that, upon revocation, subject producers would resort to their historical emphasis in exporting to the United States, as evidenced in the Commission's original determination. Based on the record in this review, Commissioner Bragg finds that the historical emphasis will likely result in significant volumes of subject imports into the United States if the order is revoked.

[45] CR & PR Table I-2.

[46] The Commission noted in its views for the original investigation that "{i}n 1994, when subject imports were at their height, many of the domestic industry's economic indicators experienced their worst performance. ... Conversely, between 1994 and 1995, when the level of subject imports decreased, and the rate of growth in overall imports of Japanese clad steel plate (including TIB imports) greatly slowed, many domestic industry economic indicators improved." Original Determination at 23.

investigation.[47] Following the imposition of the antidumping duty order in July 1996, U.S. imports of clad steel plate from Japan dropped to minimal levels.[48] In 2000, there were 4 tons of clad steel plate imported from Japan. U.S. imports of clad steel plate from sources other than Japan were relatively low in 1994 and 1995 compared to 1993.[49] After the imposition of the antidumping duty order in July 1996, nonsubject imports began to rise and, by 1997, exceeded the highest annual level reported during the period examined in the original investigation. Nonsubject imports of clad steel plate declined somewhat from 1997 to 1998, rose again in 1999, and increased sharply in 2000.[50]

Given the apparent high substitutability between domestic and Japanese clad steel plate, relatively small changes in price can result in significant shifts in market share. In these circumstances, Lukens maintains that subject imports would surge if the order is revoked given the high dumping margins that Commerce found in its review investigation.[51]

During the original investigation, Japanese capacity utilization was *** percent in 1993, *** percent in 1994, and *** percent in 1995. Evidence collected in this review indicates that Japanese producers have increased their production capacity since the order went into effect. Moreover, the Japanese industry is export oriented, as it exported over one half its production volume during the original period of investigation and still depends on substantial quantities of exports.[52] The export orientation of the Japanese industry indicates that it would likely seek to re-enter the U.S. market with significant quantities of subject merchandise, as it did during the original investigation, if the order were revoked. Therefore, we conclude that the likely volume of imports of the subject merchandise would be significant absent the restraining effect of the antidumping duty order.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and if the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.[53]

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[47] CR & PR Table I-3. The Commission stated in its views for the original investigation that "{w}e regard TIB entries ... as a relevant economic factor in our analysis of the volume of imports, pursuant to 19 U.S.C. 1677(7)(b)(ii). Specifically, while subject imports declined from 1994 to 1995, we give the decline less weight in considering whether subject imports are significant. TIB imports compete for U.S. fabricators' purchases in the U.S. market. Thus, there was not a wholesale decline in imports of clad steel plate from Japan, but rather a shift of such imports to TIB entries." Original Determination at 14-15.

[48] CR & PR Table I-2.

[49] *Id*.

[50] *Id*.

[51] Commerce found the dumping margin rate for Japan Steel Works, Ltd. ("JSW") and all others to be 118.53 percent. 66 Fed. Reg. 51007 (Oct. 5, 2001).

[52] CR & PR Tables I-5 - I-6.

[53] 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

The record in this expedited review contains very little current pricing data, and provides no information comparing current prices of the domestic like product and the subject imports in the U.S. market. As noted above, subject imports dropped to minimal levels after the order was imposed. Consequently, our conclusions are based primarily on the record of the original investigation and the information submitted by Lukens.

In the original determination, the Commission found that less than fair value imports from Japan consistently undersold the domestic like product and depressed prices in the U.S. market to a significant degree.[54] The Commission found instances where the Japanese producers won bids on the basis of lower prices.[55] Lukens asserts that subject imports would again enter the U.S. market at prices that would have significant price depressing or suppressing effects if the order is revoked.[56]

As noted above, the market for clad steel plate is price sensitive such that price plays a key role in determining which supplier will win a bid.[57] It is likely that if the order is revoked subject Japanese exporters would offer attractively low prices to U.S. purchasers in order to regain market share. Consequently, prices for domestically produced clad steel plate in the United States would likely decline to a significant degree due to the effects of increased volumes of highly substitutable subject clad steel plate offered at lower prices.

Accordingly, we find that revocation of the antidumping duty order would be likely to result in significant price effects, including significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression in the reasonably foreseeable future.[58]

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.[59] All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.[60] As instructed by the statute, we have considered the

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[54] Original Determination at 5-6.

[55] Original Determination at 6.

[56] Lukens Submission of July 17, 2001, at 3. Lukens points out that after revocation of the 1982 order on clad steel plate from Japan, less than fair value imports resumed and prompted the filing of a petition in 1995, which resulted in the subject order.

[57] See also, Original Determination at 5.

[58] Commissioner Bragg infers that, in the event of revocation, subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original determination. Original Determination at 15-16.

[59] 19 U.S.C. § 1675a(a)(4).

[60] *Id.* Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the

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extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.[61]

In the original determination, the Commission found that the significant increase in less-than-fair-value imports adversely affected the financial condition of the domestic industry. It found that the adverse impact on the domestic industry of the volume and prices of subject imports was reflected in the industry's low capacity utilization rates, declining shipments and employment, and consistently poor financial performance and operating losses throughout the period of investigation.[62] Following the completion of the original investigation, U.S. producers' market share declined irregularly, reaching a period low in 2000. The market share for imports from Japan rose from 1993 to 1994, declined in 1995, and then fell sharply after the imposition of the antidumping duty order in July 1996. From 1997 onward, the market share for subject imports has remained below *** percent.[63] The market share of U.S. imports of clad steel plate from countries other than Japan has fluctuated since 1993 with large increases shown in the years following the imposition of the antidumping duty order. In addition, the market share of nonsubject imports also increased sharply in 2000 as clad steel plate from Austria began to be imported in relatively large amounts.

Total U.S. production declined overall by *** percent, from *** tons in 1995 to *** tons in 2000.[64] Although the record does not contain data on total U.S. shipments during the period of review, Lukens did provide shipment data from 1994 to 2000. Lukens' shipments also fell dramatically from *** tons in 1995 to *** tons in 2000.[65] On balance, we find that the domestic industry's condition has declined since the order went into effect as reflected by its declining market share, production, and shipments. Consequently, we find the domestic industry to be currently vulnerable.

Lukens contends that revocation of the order would lead to an increased volume of subject imports that would displace U.S. producers' shipments, result in lost market share for the domestic industry, and cause capacity utilization to decline, and erode profitability in an industry that is dependent on high capacity utilization. It further argues that the domestic industry is currently vulnerable and is facing significant cost increases, and that an increase in unfairly priced imports would therefore have a devastating impact on the domestic industry.[66]

Based on the record in this review, we find that revocation of the antidumping duty order would likely lead to significant increases in the volume of subject imports at prices that would undersell the domestic product and significantly depress or suppress U.S. prices. We find further that the volume and price effects of the subject imports would have a significant negative impact on the domestic industry and

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[60] (...continued)
"magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

[61] The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

[62] Original Determination at 6-7.

[63] CR at I-10 - I-12; PR at I-10 - I-12.

[64] CR & PR Table I-1.

[65] *Id.*

[66] Lukens Submission of July 17, 2001, at 6-7.

would likely cause the domestic industry to further lose market share. In addition, the price and volume declines would likely have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability.

For all of the above reasons, we conclude that revocation of the antidumping duty order on clad steel plate from Japan likely would have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury to the U.S. clad steel plate industry within a reasonably foreseeable time.