Certain Cold-Rolled Steel Products From Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela

Investigations Nos. 701-TA-393 and 731-TA-829-840 (Final) (Remand)

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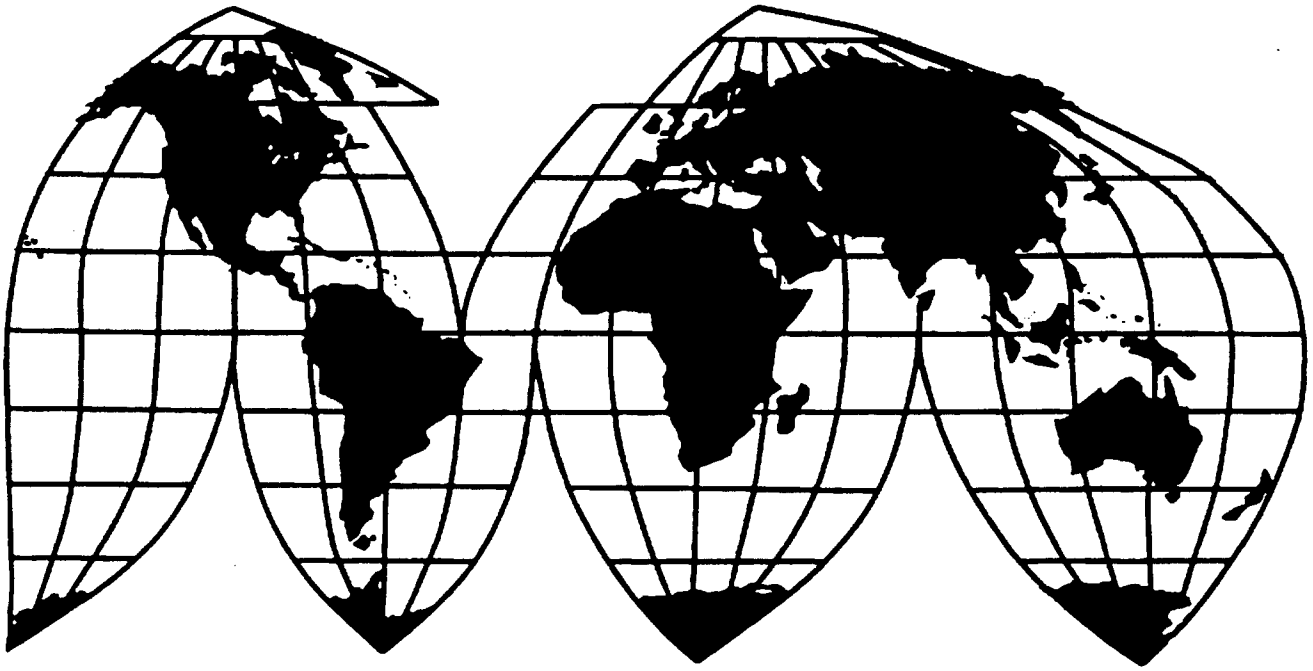

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VIEWS OF THE COMMISSION ON REMAND

Based on the record in these remand investigations, we find that an industry in the United States is not materially injured, or threatened with material injury, by reason of imports of certain cold-rolled steel products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela that the Department of Commerce has found to be subsidized and/or sold at less than fair value in the United States.[1]

I. INTRODUCTION

These Views respond to the Court's order of remand.[2] As ordered by the Court, the Commission has re-examined its determination that the captive production provision does not apply in these investigations. Consistent with the Court's order, the Commission also has allowed domestic producers and purchasers to provide additional data relating to the captive production provision.[3]

Based on the Court's order, we apply the captive production provision on remand, as discussed more fully below. We find, however, that many aspects of the Commission's analysis in these investigations are not altered by the application of the captive production provision. We therefore adopt unchanged and incorporate herein by reference our original analysis with respect to the domestic like product and domestic industry (including related parties), negligible imports, cumulation, and no threat of material injury by reason of subject imports.[4] [5] Although our analysis is unchanged in many respects regarding the relevant conditions of competition, the volume of subject imports, price effects of subject imports, and impact of subject imports, our analysis incorporates some changes, as discussed in these

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[1] Commissioner Charlotte R. Lane dissenting. See her Dissenting Views. Except as indicated below, she joins sections I and II of these Views.

[2] Bethlehem Steel Corp. v. United States, Cons. Ct. No. 00–00151, Slip Op. 03-143 (Oct. 28, 2003) (Ct. Int'l Trade).

[3] The Court concludes that when the Commission declined to rely on certain data supplied by domestic producers, it did so in reliance on the "facts otherwise available" provision (19 U.S.C. §§ 1677e(a) & 1677m(d)). Bethlehem Steel, Slip Op. at 27. The Court ordered the Commission to clarify whether it had complied with the statutory prerequisites relating to that provision. Id. The Court further ordered that, if such prerequisites had not been satisfied, the Commission must allow the domestic industry an opportunity to provide the data in a usable form. Id. In its original investigations, the Commission did not invoke the "facts otherwise available" provision when it declined to rely on the domestic producers' data. Nevertheless, the Commission afforded the domestic producers and purchasers an opportunity to provide additional data in the remand investigations. The new data were utilized in these remand determinations.

[4] Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 (March 2000).

[5] Commissioner Pearson did not participate in the original determinations. After reviewing the record, he adopts the reasoning and findings of the Commission majority as stated in the original Views of the Commission regarding the domestic like product, domestic industry (including related parties), negligibility, cumulation, and no threat of material injury by reason of subject imports.

remand Views. Our determinations remain the same: that the domestic industry is neither materially injured nor threatened with material injury by reason of the subject imports.[6]

II. CAPTIVE PRODUCTION

In its original final determinations, the Commission determined that the captive production provision did not apply in these investigations.[7] The Commission found that the threshold provision and factors I and II of the provision were satisfied, but that factor III was not satisfied. Nevertheless, the Commission found that captive production by the domestic industry was a condition of competition that was relevant to its analysis, and examined both the total market and merchant market in its analysis.[8]

In reviewing the Commission's determinations, the Court agreed that the threshold provision and factors I and II were satisfied. We adopt and incorporate herein by reference our analysis in the original determinations of the threshold provision and factors I and II of the captive production provision.[9] [10]

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[6] Commissioner Lane did not participate in the original determinations. Thus, she is considering the evidence in the record, and making findings on this evidence, for the first time. She has considered the findings, analysis and conclusions in the original Views of the Commission on domestic like product, domestic industry, related parties, negligibility, and cumulation, and adopts the Commission's prior Views on these issues in their entirety. See her Dissenting Views as to her findings on conditions of competition, the volume of subject imports, the price effects of subject imports, and impact of subject imports.

[7] The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), provides:

> (iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that --
>
> > (I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,
> >
> > (II) the domestic like product is the predominant material input in the production of that downstream article, and
> >
> > (III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,
>
> then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

[8] Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 (March 2000) at 18.

[9] Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 (March 2000) at 15-18.

[10] Because she initially found factor III of the captive production provision not to be satisfied, Chairman Okun did not reach the question of whether factor I was satisfied in the original final determinations. Original Determination at 25 n.110. However, Chairman Okun employs the same analytical approach to factor I as Vice Chairman Hillman, Commissioner Miller, and Commissioner Koplan. See, e.g., Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, Invs. Nos. 701-TA-404-408 (Preliminary) and 731-TA-898-908 (Preliminary), USITC Pub. 3381 (January 2001) at 12 n.69. Accordingly, after careful review of the record, she joins in the conclusion that factor I of the captive production provision is satisfied in these investigations.

With respect to factor III, the Court found that the Commission's interpretations of the terms "internally transferred" and "sold in the merchant market" were unreasonable.[11] The Court ordered the Commission to re-examine factor III, and ordered the Commission to interpret the disputed terms in accordance with the statute and the Court's opinion.[12]

Factor III of the captive production provision is satisfied if:

> the production of the domestic like product sold in the merchant market is not generally used in the production of [the] downstream article [that internally transferred domestic production is used to make].

19 U.S.C. § 1677(7)(C)(iv). The Court has restated this test as whether "a significant portion of the merchant market purchases were devoted to producing the same downstream products as the majority of the captive production."[13]

In accordance with the Court's instructions, the Commission is to treat transfers as sales in the merchant market only if the transfer is to an unrelated party, title is transferred, and consideration is paid.[14] All other transfers are treated as internal transfers. Therefore, according to the Court's apparent instructions, all transfers to related parties, regardless of the nature of the transfer or the nature of the corporate relationship, must be treated as internal transfers.[15] [16] When employing this approach, the

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[11] The Court's finding that the Commission's interpretation of the terms is unreasonable was based primarily on its reading of the Federal Circuit's decision in NSK Ltd. v. United States, 115 F.3d 965 (1997), which addresses the meaning of the term "sold" in the context of 19 U.S.C. §§ 1673 & 1677a(c) (1988). Bethlehem Steel, Slip Op. at 12-14. As the Court is aware, the Commission disagrees with the Court's interpretation of NSK and its application of NSK to the captive production provision. See Response of Defendant United States International Trade Commission To Motion For Reconsideration (filed December 16, 2003). We discuss this in more detail in footnote 15.

[12] Bethlehem Steel Corp., Slip Op. at 13, 15.

[13] Slip Op. at 21.

[14] The Commission believes that the Court may have defined the term "internally transferred" in a manner that is inconsistent with its definition of the term "sold in the merchant market." The Commission filed a Motion for Clarification with the Court on December 16, 2003, but the Court denied the motion as untimely on March 18, 2004. As the Commission's Motion states, the Court indicates that, for purposes of the captive production provision, all transfers by domestic producers must be categorized as either internal transfers or sales in the merchant market. Slip Op. at 12. It also indicates that "[i]f the transfers are to related parties and title did not pass, or if compensation was not paid for the CRS, then the" ITC must "categorize such a transaction as an internal transfer." Slip Op. at 15. That statement appears to suggest that a transfer to a related party joint venture should not be classified by the Commission as an "internal transfer" under the captive production provision if title passes and compensation is paid. The Court also, however, defines a sale in the merchant market as a transfer in which "title to the CRS [is] transferred, consideration [is] paid for the CRS, and the transfer of title [is] to an unrelated party." Slip Op. at 13. In other words, under this definition, a sale to a related party may not be considered a sale in the merchant market. Despite the apparent inconsistency of these two definitions, the Commission treats as merchant market sales only transactions satisfying all three elements set out by the Court for purposes of these remand determinations. The Commission treats any transaction not satisfying all three elements as an internal transfer. The other parties to this proceeding appear to share this interpretation of the Court's instructions, although not all of them necessarily agree with it. See Defendant-Intervenors' Motion for Reconsideration and United States Steel Corporation's Response to Defendant United States International Trade Commission's Motion for Clarification.

[15] Although we interpret the disputed terms in accordance with the Court's order, the Commission does not view the Court's interpretation as the only reasonable interpretation of the captive production provision, or reliance on NSK to be particularly appropriate or helpful in interpreting the captive production provision when transfers are

record indicates that virtually all cold-rolled steel (sometimes hereinafter "CRS") that is internally transferred is devoted to producing the downstream coated products and tin mill products.[17] By contrast, only *** percent to *** percent of domestically-produced CRS sold in the merchant market is devoted to these products.[18] Therefore, applying the Court's order, we now conclude that the third statutory factor is also satisfied and that the captive production provision applies.[19]

Based on our determination that the captive production provision applies, we focus primarily on the merchant market for the domestic like product when "determining market share and factors affecting financial performance [that are examined in considering the impact of subject imports on the domestic industry]."[20] We also, however, consider the market as a whole, as is our practice and as the statute requires. As noted, we originally treated captive production as a relevant condition of competition in these investigations, even though we found that the captive production provision did not apply, and examined both the total market and the merchant market in our analysis.

III. CONDITIONS OF COMPETITION OTHER THAN CAPTIVE PRODUCTION

Apart from our consideration of the captive production provision, our analysis of the conditions of competition remains largely the same as in the final determinations. As we found in our original determinations, demand for certain cold-rolled products increased over the period under investigation, there are few substitute products for certain cold-rolled steel, there is a fair degree of stability in supplier-purchaser relationships, the domestic producers dominate the market for certain cold-rolled steel, domestic production capacity increased over the period, prices for the three principal flat carbon steel

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made to related parties. In particular, under the Court's instructions, transactions that are much more akin to open market sales than to internal transfers must nonetheless be treated as internal transfers solely due to the existence of a corporate relationship between the parties (including where one party has only a minority ownership in the other). For example, a related-party transaction may involve any or all of the following characteristics normally associated with an open market sale, and not associated with an internal transfer: transfer of title, transfer of marketing rights, and payment of market-based compensation. We note that several of the related party transfers in these investigations have some or all of these characteristics. INV-BB-004 at Table 2. However, under the Court's restrictive interpretation, transfers with any or all of these characteristics must be treated as an internal transfer if the parties have any corporate relationship. The Commission believes that it could reasonably find that some of these transfers are more properly treated as merchant market sales, which in turn could affect our determination as to whether factor III and therefore the captive production provision are satisfied. See INV-BB-004 at Table 4, Scenario 3.

[16] Commissioner Lane does not agree with the Commission majority's interpretation of the Court's remand decision and order as set forth in the two preceding footnotes. First, she believes that joint ventures are related parties and that transfers to them generally should be considered to be internal transfers and not merchant market sales. Second, she notes that the Commission majority rightfully quotes from the Court's statement that "[i]f the transfers are to related parties and title did not pass, or if compensation was not paid for the CRS, then the" ITC must "categorize such a transaction as an internal transfer." Slip Op. at 15 (emphasis added). However, she accepts the Court's opinion at face value and does not believe that further interpretation is necessary; thus she does not attempt to restate or paraphrase this opinion.

[17] INV-BB-004 at 5.

[18] INV-BB-004 (as revised by INV-BB-009) at Table 4, Scenario 1.

[19] Commissioners Lane and Pearson did not participate in the original determinations. For purposes of these remand determinations, they adopt the reasoning of the Commission majority as stated in the original Views of the Commission and find that the threshold provision and factors I and II are satisfied as well.

[20] 19 U.S.C. § 1677(7)(C)(iv).

products have tended to track each other closely over time, the domestic producers have made significant productivity gains, and a trade agreement signed on July 12, 1999, limits subject imports from Russia to approximately half the level of 1998 imports. Although the relevant conditions of competition (apart from the application of the captive production provision) remain essentially the same as in our original analysis, we restate them here.

First, demand for certain cold-rolled steel products has been strong and growing during the period under investigation. Apparent merchant market consumption of certain cold-rolled steel increased *** percent between 1996 and 1998, rising from *** million short tons in 1996 to *** million in 1998.[21] Merchant market demand in the interim 1999 period showed a slight decline from interim 1998.[22] Overall apparent U.S. consumption increased 8.6 percent between 1996 and 1998, rising from 34.6 million short tons in 1996 to 37.6 million in 1998.[23] Consumption was 2.2 percent higher in the interim period from January to September 1999 than in the same time period in 1998.[24]

Second, presently purchasers of certain cold-rolled steel have few substitute products available to them. Both producers and importers find that other products may be substituted for certain cold-rolled steel only under certain limited conditions.[25] Moreover, most responding purchasers report there are no substitutes for certain cold-rolled steel that they purchase for their applications.[26]

Third, a fair degree of stability exists in the relationships between suppliers and purchasers, which in turn reflects the importance of non-price considerations to purchasers. When seeking a cold-rolled steel supplier, purchasers generally are motivated primarily by quality concerns, with price being a secondary concern.[27] This is especially true for larger purchasers, such as automobile manufacturers.[28] Purchasers change suppliers infrequently.[29] Some purchasers prefer to transact business with domestic producers because of shorter lead times and fewer delivery problems.[30] These non-price considerations mitigate the interchangeability between subject imports and domestic merchandise.

Fourth, domestic producers dominate the market for certain cold-rolled steel. Domestic shipments to the merchant market increased overall from *** million short tons in 1996 to *** million short tons in 1998. Most of the increase occurred between 1996 and 1997, with a slight decline from 1997 to 1998.[31] Domestic merchant market shipments declined slightly between interim 1998 and

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[21] INV-BB-004 at Table 5. The change in data from that reported in the original final determinations is largely the result of ***. See INV-BB-004 at Table 1 n.1.

[22] INV-BB-004 at Table 5.

[23] CR at Table IV-7, PR at Table IV-7.

[24] CR at Table IV-7, PR at Table IV-7.

[25] CR at II-6, PR at II-4.

[26] CR at II-7, PR at II-4. Thin gauge hot-rolled steel has been mentioned as a potential rival for certain cold-rolled steel, but a majority of responding purchasers reported that thin gauge hot-rolled could not be used as a substitute at this time. CR at II-7, PR at II-4.

[27] CR at Table II-1, PR at Table II-1.

[28] See, e.g., Bethlehem Posthearing Brief at Exhibit 5, General Motors Corporation submission of October 26, 1998, at 7-8 ("GM is far more focused on the quality of service and product...than it is in spot market developments").

[29] CR at II-8, PR at II-5.

[30] CR at II-10, PR at II-6.

[31] INV-BB-004 at Table 5. The trend in these data differs somewhat from that in the original determinations. The record indicates that this is largely due to ***. See INV-BB-004 at Table 1 n.1.

interim 1999.[32] Although the share of merchant market consumption accounted for by domestic production dropped from *** percent in 1996 to *** percent in 1998, it improved in interim 1999 to *** percent from *** percent in interim 1998.[33] Total domestic shipments, including internal transfers, rose throughout the period, increasing from 32.2 million short tons in 1996 to 34.0 million short tons by 1998, an increase of 5.4 percent. Shipments also increased by 3.0 percent in interim 1999 over interim 1998.[34] The share of total domestic consumption accounted for by domestic production slipped between 1996 and 1998, but remained above 90 percent. The domestic market share rebounded somewhat in interim 1999, rising to 91.8 percent compared to 91.1 percent in interim 1998.[35]

Fifth, domestic production capacity increased over the period under investigation. Total domestic certain cold-rolled steel capacity increased from 37.1 million short tons in 1996 to 39.5 million short tons by 1998, an increase of 6.4 percent.[36] Domestic capacity increased one percent in interim 1999 over the same time period in 1998.[37] This increase in capacity included the ***.[38] ***.[39] The domestic industry was able to maintain high capacity utilization rates throughout the period. Capacity utilization reached a low of 85.9 percent in 1997 before rising to 86.4 percent in 1998.[40] The capacity utilization rate was 88.8 percent in interim 1999, compared to 87.2 percent in interim 1998.[41]

Sixth, the extent of competition between domestic production and subject imports is somewhat limited, given the domestic producers' large volume of internal transfers and contractual sales. Most subject imports do not compete significantly with the domestic like product for certain important segments of the merchant market, such as for sales to domestic automobile purchasers.[42] Approximately 60 percent of all open market sales are made directly to end users, and automotive applications, from which subject imports are typically excluded, account for approximately 16 percent of all open market sales.[43] The domestic production sold into the merchant market is more commonly sold by contract than are subject imports.[44] Of all domestic sales to the merchant market, more than three-fifths were by contract, compared to less than one-half of subject import sales to the merchant market.[45] Contracts for the sale of domestic product are typically for a year, while contracts for sales of subject imports are shorter, typically three to six months.[46] The majority of all domestic production of certain cold-rolled

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[32] INV-BB-004 at Table 5.

[33] INV-BB-004 at Table 5.

[34] CR at Table IV-7, PR at Table IV-7.

[35] CR at Table C-1, PR at Table C-1.

[36] CR at Table C-1, PR at Table C-1.

[37] CR at Table C-1, PR at Table C-1.

[38] CR at III-4, PR at III-1.

[39] CR at II-3, PR at II-2. Other outages include a blast furnace failure at ***. CR at III-4-III-5, PR at III-1.

[40] CR at Table III-2, PR at Table III-2.

[41] CR at Table III-2, PR at Table III-2.

[42] Tr. at 145 (Mr. Schagrin).

[43] CR at Table I-2, PR at Table I-2.

[44] CR at V-8, PR at V-8.

[45] CR at V-8, PR at V-8.

[46] CR at V-8, PR at V-8. Morever, prices and quantities are usually fixed in domestic contracts, and these contracts do not usually contain meet-or-release provisions. CR at V-8-V-9, PR at V-8.

steel is destined for further downstream processing by the producer, with such transfers not sold in direct competition with subject imports.[47]

Seventh, we note that the prices of the three principal groups of flat carbon steel products–hot rolled, cold rolled, and corrosion resistant–have tended to track each other closely over time.[48] During the period under investigation, prices for both hot-rolled steel, the major input for certain cold-rolled steel, and corrosion-resistant steel, the major downstream product, have declined.[49]

Eighth, domestic producers have made significant productivity gains[50] and are typically shipping more varied grades of cold-rolled steel to the merchant market than are subject foreign producers. Domestic products sold into the merchant market are less likely to be of common commercial grades than are subject imports. While subject imports are heavily concentrated in one common commercial grade, that grade accounted for about 20 percent of domestic merchant shipments.[51]

Finally, we note the existence of an agreement signed on July 12, 1999, between Commerce and the Ministry of Trade of the Russian Federation, which limits subject imports from Russia to approximately half the level of 1998 imports.[52] Unlike a suspension agreement, this comprehensive agreement limits subject imports from Russia notwithstanding the Commission's negative determination in the investigation regarding Russia.[53] We note that this agreement already appears to have had a significant effect on the level of subject imports, with subject imports from Russia during the interim period of 1999 falling more than one third relative to their interim 1998 levels.[54]

IV. VOLUME OF CUMULATED 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."[55] In applying the captive production provision to our analysis, we focus primarily on the merchant market in considering market shares, but also consider the market as a whole. In our original determinations, we also gave consideration to market share in the merchant market, consistent with our treatment of captive production as a relevant condition of competition.

The volume of subject imports increased between 1996 and 1998, from 1.1 million short tons in 1996 to 2.2 million short tons in 1998.[56] Most of the increase occurred between 1996 and 1997, when

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[47] CR at II-1, PR at II-1.

[48] Tr. at 54-55, 64 (Mr. Bouchard).

[49] See, e.g., Joint Respondents' Prehearing Brief at Vol. I, Exhibit 2.

[50] CR at Table III-6, PR at Table III-6.

[51] CR at Table IV-4, PR at Table IV-4.

[52] This agreement is in addition to the suspension agreement under 19 U.S.C. § 1673c(c)(l), which was signed on January 13, 2000, too late to affect the data collected in these investigations. 65 Fed. Reg. 5500 (Feb. 4, 2000).

[53] See Joint Respondents' Prehearing Brief at Vol. I, Exhibit 29 for text.

[54] CR at Table IV-2, PR at Table IV-2.

[55] 19 U.S.C. § 1677(7)(C)(i).

[56] CR at Table IV-2, PR at Table IV-2.

subject imports rose by over 700,000 short tons, an increase of 67 percent.[57] Subject imports declined 7.7 percent in interim 1999 compared to interim 1998.[58]

The share of merchant market consumption accounted for by subject imports rose from *** percent in 1996 to *** percent in 1998.[59] Their share of merchant market consumption slipped from *** percent in interim 1998 to *** percent in interim 1999.[60] As a share of total apparent U.S. consumption, including internal transfers, subject imports rose from 3.0 percent in 1996 to 5.9 percent in 1998.[61] The share of total apparent U.S. consumption held by subject imports in interim 1999 was 5.0 percent, compared to 5.5 percent for interim 1998.[62]

Relative to production in the United States, the volume of subject imports increased from 3.2 percent in 1996 to 5.4 percent in 1997, and to 6.4 percent in 1998.[63] The volume of subject imports relative to production in the United States was lower in interim 1999 than during interim 1998.[64]

While the volume of subject imports increased between 1996 and 1998, the increases occurred at a time when domestic capacity utilization rates remained high despite increasing domestic capacity. Furthermore, these increases occurred primarily in the early portion of the period under investigation when the domestic industry's performance was very strong. In addition, most of the increases in subject imports occurred while ***.[65] The actual increase in subject import volume between 1997 and 1998, approximately 457,000 tons, was 2.7 percent of merchant market consumption and one percent of total apparent U.S. consumption.

In 1999, subject imports declined. To some extent this decline may, as petitioners argue, reflect the filing of the petitions in June 1999. This decline also likely reflects expanding domestic production capacity and the impact of the comprehensive agreement with Russia, which reduced the volume from the largest source of subject imports.

We find the volume of subject imports relative to consumption in the merchant market, which is our primary focus when applying the captive production provision, to be significant. This finding, however, is tempered by the fact that competition between subject imports and the domestic like product is attenuated and subject imports did not have significant price effects on the prices for the domestic product, as discussed more fully below.

V. PRICE EFFECTS OF THE CUMULATED SUBJECT IMPORTS

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

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

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[57] CR at Table IV-2, PR at Table IV-2.

[58] CR at Table C-1, PR at Table C-1.

[59] INV-BB-004 at Table 5.

[60] INV-BB-004 at Table 5.

[61] CR at Table C-1, PR at Table C-1.

[62] CR at Table C-1, PR at Table C-1.

[63] Figures derived from CR at Table C-1, PR at Table C-1.

[64] CR at Table C-1, PR at Table C-1.

[65] ***. CR at II-3, PR at II-2. ***. CR at III-4, PR at III-1.

(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.[66]

Although we apply the captive production provision, the factors on which our price effects analysis was based in our original determinations remain essentially unchanged. In particular, competition between subject imports and the domestic like product is attenuated by differences between the two in various non-price factors, and factors other than subject imports account for the decline in prices of the domestic like product.

Domestic prices for each of the three products for which pricing data was collected declined during the period of investigation, although the domestic prices typically remained well above subject import prices.[67] Prices of subject imports also declined throughout most of the period under investigation.[68] Domestic prices showed some recovery in the second and third quarters of 1999, while subject import prices continued to fall.[69]

The central issue in these investigations is the role, if any, of subject imports in the price declines in the domestic market. One consistent feature of the U.S. certain cold-rolled steel market between 1996 and 1999 was the differences in prices of the subject merchandise and the domestic like product. Out of a total of 268 price/product comparisons, subject imports undersold the domestic like product in 211 comparisons between 1996 and 1997.[70] Similarly, out of a total of 319 price/product comparisons, subject imports undersold the domestic like product in 287 comparisons between 1998 and the third quarter of 1999.[71] However, in light of the market conditions for certain cold-rolled steel, we do not find the underselling by the imported merchandise to be significant, nor do we find that subject imports contributed to a significant degree to price suppression or depression.

While underselling has existed throughout the period, we find that the persistent price gap between subject imports and domestic prices is largely due to various differences between the domestic and imported products or sellers of those products. According to purchasers, quality, availability, and delivery are the most important non-price factors when choosing a supplier,[72] and when purchasers find a reliable supplier, they rarely change.[73] Purchasers rely on the domestic producers' ability to deliver product reliably and on a short lead time, factors of particular importance to producers operating on just-in-time inventory practices.[74] The purchase of domestic products was also found to present less risk of loss through damage than subject imports.[75] Furthermore, domestic products are generally more

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[66] 19 U.S.C. § 1677(7)(C)(ii).

[67] CR at Tables F-1-F-6, PR at Tables F-1-F-6.

[68] CR at Tables F-1-F-6, PR at Tables F-1-F-6.

[69] CR at Tables F-1, F-3, and F-5, PR at Tables F-1, F-3, and F-5.

[70] CR at V-16, PR at V-11.

[71] CR at V-16, PR at V-11.

[72] CR at II-10, PR at II-5. We note that purchasers overwhelmingly listed quality as the most important factor in purchasing decisions. CR at II-6-II-7; PR at II-5. Five purchasers ranked availability first. Price was listed most important by only three of the 30 and was even listed as third most important by 11 purchasers. CR at II-6-II-7, PR at II-5.

[73] CR at II-8, PR at II-5.

[74] CR at II-10, PR at II-5.

[75] CR at II-10, PR at II-6.

specialized than are the subject imports. Only 20 percent of all commercial shipments of domestic certain cold-rolled steel are of the common commercial grade ASTM A-366, compared to nearly 60 percent of subject imports.[76]

Domestic producers make most of their open market sales to end users and by contract.[77] The stability of supplier-purchaser relationships in the certain cold-rolled steel market, even in the face of price fluctuations, can be seen in the prevalence of the honoring of contracts, especially by larger purchasers. While petitioners claim that some contracts were abandoned or renegotiated because of the price pressure from imports, the record indicates that the vast majority of those contracts, and especially the largest of those contracts, were kept despite underselling by imports.[78]

The lack of a significant role by subject imports in the price declines in the market is reflected in the fact that subject import prices have generally continued to decline in 1999, while domestic prices have recovered in certain important segments. The recent recovery in domestic prices in service center sales indicates further the lack of significant price effects from subject imports, given that approximately 60 percent of all subject imports are sold to service centers.[79]

No purchaser mentioned any subject importer or subject producer as a price leader in the U.S. market. Instead, purchasers generally regard domestic producers as being the price leaders in the market, with Nucor and USX mentioned most frequently.[80] This is further indication that subject imports do not in fact lead or significantly affect domestic prices. We also note the lack of confirmed lost sales or lost revenue allegations.[81] Total alleged lost sales amounted to only 25,100 short tons over the entire period of investigation, at a time when merchant market domestic consumption was 16.8 million tons and total apparent domestic consumption exceeded 30 million tons per year.[82] While we are mindful of the limitations of anecdotal lost sales and revenue information, we find the near total absence of confirmed lost sales and revenues provides additional support for a general lack of significant price effects by subject imports.[83]

We find, instead, that the decline in domestic prices in 1998 and 1999 reflects a number of competitive conditions in the market and that the contribution of subject imports was not material. Most importantly, the large and growing number of domestic participants in this market has increased competition within the domestic industry, which has been sharpened to some extent by the competitive advantages accruing to minimills and the decline in scrap prices during the period under investigation. While we recognize the relatively small size of minimills in this market, as well as some quality differences and differences in channels of distribution between minimills and integrated producers, we

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[76] CR at Table IV-4, PR at Table IV-4.

[77] CR at I-10, V-8, PR at I-9, V-8.

[78] CR at V-9, PR at V-8.

[79] CR at Table I-2, PR at Table I-2.

[80] CR at V-9-V-10, PR at V-8.

[81] CR at V-16, PR at V-16.

[82] Confirmed lost sales allegations involved a total of ***. CR at Table V-9, PR at Table V-9.

[83] In addition, respondents produced an econometric model, the results of which suggest that the subject imports had little impact on domestic prices for cold-rolled steel. Joint Respondents' Prehearing Brief, Vol. II. We closely examined the model and note that the results are consistent with our findings, and also consistent with the findings of the COMPAS model.

note that Nucor is regarded by some as a price leader and that Steel Dynamics, Inc., has become the first minimill to gain a contract with a major domestic automobile producer.[84]

We note that hot-rolled steel is the major input for certain cold-rolled steel.[85] Hot-rolled prices have declined throughout most of the period examined.[86] Falling hot-rolled prices have been particularly beneficial to re-rollers, who purchase, rather than produce, hot-rolled steel for cold-rolling.[87] While we recognize that re-rollers represent a relatively small segment of domestic production,[88] we believe that the decline in hot-rolled prices likely put downward pressure on the domestic industry's cold-rolled prices. This downward pressure is likely not only because of the presence of re-rollers but also because of the historic relationship between hot-rolled costs and prices and cold-rolled prices, whereby the market has tolerated only modest deviations from a fairly steady price margin between hot-rolled and cold-rolled steel products.[89] [90]

Another factor contributing to the price declines was the General Motors Corporation (GM) strike, which lasted from June 5, 1998 to July 30, 1998.[91] GM is one of the largest consumers of carbon steel flat-rolled products in the world. Approximately 80 percent of overall GM purchases are of cold-rolled and corrosion-resistant steel.[92] As a result of the work stoppage, GM estimates that 685,000 tons of flat-rolled steel products were not purchased by GM or its suppliers.[93] We note that the majority of responding domestic producers (10 of 19) and importers (20 of 33) reported that the strike had a significant effect on the market in 1998, temporarily reducing demand and causing an oversupply of cold-rolled steel products.[94] The timing of the GM work stoppage corresponds more closely with the drop in domestic prices than does the largest increase in subject imports.

In sum, while subject imports may have contributed to some extent to the price declines in the market, we conclude that the contribution of subject imports to those price declines was not significant.

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[84] CR at V-9-V-10, PR at V-8 (price leadership); Joint Respondents' Posthearing Brief at Vol. II, p. 27 (Steel Dynamics, Inc., automotive contract).

[85] CR at I-8, PR at I-8.

[86] See, e.g., Joint Respondents' Prehearing Brief at Vol. I, Exhibit 2.

[87] CR at V-1, PR at V-1.

[88] See CR at Table III-1, PR at Table III-1.

[89] Tr. at 54-55, 64 (Mr. Bouchard). Among other evidence, respondents pointed to a Nucor price list showing a relatively stable price gap of $110 to $120 per ton. Joint Respondents' Prehearing Brief at Vol. I, Exhibit 7.

[90] In evaluating price trends for hot-rolled and cold-rolled steel, Chairman Okun places greater emphasis on the common costs associated with the production of hot-rolled and cold-rolled steel.

[91] Bethlehem Posthearing Brief at Exhibit 5, General Motors Corporation submission of October 26, 1998, at 4-5.

[92] Bethlehem Posthearing Brief at Exhibit 5, General Motors Corporation submission of October 26, 1998, at 2.

[93] Bethlehem Posthearing Brief at Exhibit 5, General Motors Corporation submission of October 26, 1998, at 5-6.

[94] CR at II-6, PR at II-4. See also Respondents' Prehearing Brief at Vol. I., Exhibit 23, pp.7-8.

VI. IMPACT OF CUMULATED SUBJECT IMPORTS ON THE DOMESTIC INDUSTRY[95]

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[96] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."[97] Consistent with our finding that the captive production provision applies, we focus primarily on the impact of subject imports on the domestic industry's performance in the merchant market, but we also consider the impact on the domestic industry's performance in the overall market. However, after applying the captive production provision, our analysis and conclusions are similar to those reached in our original determinations.

We recognize that the financial condition of the industry weakened in late 1998 and into 1999. Operating income declined in 1998 and was negative for interim 1999.[98] These same results occurred for open market transactions and for the total market.[99] The deterioration in the financial condition of the industry was caused by price declines, which affected revenue.[100] However, we do not find that subject imports suppressed or depressed domestic prices to a significant degree. Accordingly, we do not find that subject imports had a material impact on the domestic industry.

Moreover, despite the decline in the financial condition of the domestic industry in the latter part of the period examined, other factors that we are required to consider are more positive. Although the domestic industry experienced some loss of market share, domestic shipments to the merchant market showed a slight overall increase of *** percent from 1996 to 1998, although they declined slightly

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[95] 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 subject imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce's final antidumping duty margins are as follows: Argentina, 24.53 percent; Brazil, 46.68 to 63.32 percent; China, 23.72 percent; Indonesia, 43.90 to 83.79 percent; Japan, 39.28 to 53.04 percent; Russia, 73.98 percent; Slovakia, 109.21 to 163.89 percent; South Africa, 16.65 percent; Taiwan, 14.97 percent; Thailand, 67.97 to 80.67 percent; Turkey, 8.67 to 32.91 percent; and Venezuela, 42.93 to 56.37 percent. CR at I-5, PR at I-5; Certain Cold-Rolled Steel Products from Turkey and Venezuela, Invs. Nos. 731-TA-839-840 (Final), USITC Pub. 3297 (May 2000) at I-4; and Certain Cold-Rolled Steel Products from China, Indonesia, Slovakia, and Taiwan, Invs. Nos. 731-TA-831-832, 835, and 837 (Final), USITC Pub. 3320 (July 2000) at I-4.

Only one country, Brazil, is also subject to a countervailing duty investigation. Commerce's final net subsidy margins for Brazil ranged from 7.14 percent to 10.60 percent. CR at I-5, PR at I-5. We did not take into consideration revised subsidy margins issued by Commerce on March 1, 2000, because by then the record in these investigations had closed and the parties had not had an opportunity to comment on that revised information. See 19 U.S.C. § 1677m(g). We do note that the changes were minor and in no way would affect our determinations in these investigations.

[96] 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).

[97] 19 U.S.C. § 1677(7)(C)(iii).

[98] CR at Tables VI-2 and VI-6, PR at Tables VI-2 and VI-6.

[99] CR at Tables VI-2 and VI-6, PR at Tables VI-2 and VI-6, INV-BB-004, Table 5.

[100] CR at VI-6-VI-7 and Table VI-4, PR at VI-8 and Table VI-4.

between 1997 (their highest level of the period) and 1998, and again when the interim periods are compared.[101] Domestic shipments to the total market grew in both 1997 and 1998 and were up 3.0 percent in interim 1999, as compared to interim 1998.[102] Production was essentially steady in 1997 when compared to 1996, and rose by 5.2 percent in 1998.[103]

While employment in the industry has declined, productivity has risen sharply, especially in the latter part of the period.[104] Hourly wages rose from $25.56 in 1996 to $28.55 in 1998, and rose from $28.46 to $29.88 between the interim periods.[105] Despite the wage increases, unit production costs declined from 1997 to 1998 and showed a further drop in the interim period.[106]

The industry has been able to attract capital and has made significant investments over the period. ***, for an increase in production capacity of over 2 million short tons, most of which came on line in 1998.[107] Despite the increase in capacity and the increase in subject imports, the industry's capacity utilization was 86.4 percent in 1998, only slightly below the level of 87.7 percent in 1996.[108] Although declining somewhat between 1996 and 1998, capital expenditures remained significant at over $500 million in this period, and showed strong growth in interim 1999.[109]

In light of our conclusion that the price effects of subject imports are not material, we do not find a causal relationship between subject imports and the state of the domestic industry. Accordingly, we do not find material injury to the domestic industry by reason of the subject imports.[110]

CONCLUSION

For the reasons stated above and in the portions of our original final determinations incorporated herein by reference, we determine that the domestic industry producing certain cold-rolled steel is not materially injured or threatened with material injury by reason of imports of certain cold-rolled steel from Brazil that Commerce found to be subsidized or by imports of certain cold-rolled steel from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela that Commerce found to be sold in the United States at less than fair value.

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[101] INV-BB-004, Table 5.

[102] CR at Table C-1, PR at Table C-1.

[103] CR at Table C-1, PR at Table C-1.

[104] CR at Table III-6, PR at Table III-6. The number of production and related workers fell by 908, or four percent, between 1996 and 1998. In the interim period, the number of production and related workers fell by 1,101, or five percent. CR at Table III-6, PR at Table III-6. Productivity increased by 15.7 percent between 1996 and 1998. Between the interim periods productivity increased by 14.4 percent. CR at Table III-6, PR at Table III-6.

[105] CR at Table III-6, PR at Table III-6.

[106] CR at Table III-6, PR at Table III-6.

[107] CR at III-4 and Table III-2, PR at III-1 and Table III-2.

[108] CR at Table C-1, PR at Table C-1.

[109] CR at Table VI-8, PR at Table VI-8.

[110] As noted above, we adopt unchanged the analysis of no threat of material injury by reason of subject imports from the original final determinations. None of the factors in that analysis are changed by our application of the captive production provision.

DISSENTING VIEWS OF COMMISSIONER CHARLOTTE R. LANE

For the reasons set forth below, I determine that the domestic cold-rolled steel industry is materially injured by reason of less than fair value imports from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela; and subsidized imports from Brazil. Accordingly, I respectfully dissent from the majority's negative determinations.

I. DOMESTIC LIKE PRODUCT, DOMESTIC INDUSTRY AND RELATED PARTIES

In the final phase of the original investigations, the Commission found a single domestic like product, certain cold-rolled steel, corresponding to the description of the scope of the subject merchandise. Following a thorough review of the record in this matter, I concur with the findings of the Commission as to cold-rolled motor lamination and nonoriented electrical steels, hardened and tempered high-carbon steel, and DOS steel.[111] Furthermore, for the reasons set forth by the Commission in its original final determinations, I find that there is one domestic like product, consisting of all cold-rolled steel products, which is coextensive with the scope of these investigations.[112] Based on my finding that the domestic like product consists of all certain cold-rolled steel included within the scope of these investigations, I define the corresponding domestic industry as consisting of all domestic producers of certain cold-rolled steel.[113] Inasmuch as I do not find that appropriate circumstances exist to exclude any domestic producer as a related party, I also concur with the findings of the Commission that the domestic industry consists of all domestic producers of certain cold-rolled steel.[114]

II. NEGLIGIBLE IMPORTS

According to the statute, imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent twelve months for which data are available preceding the filing of the petition shall be deemed negligible.[115] The statute also holds that imports from a single country that comprise less than three percent of total imports of such merchandise shall not be deemed negligible if the aggregate volume of imports of the subject merchandise from all countries that each comprise less than three percent of total imports exceeds seven percent of the volume of all such merchandise imported into the United States during the applicable twelve- month period.[116]

Subject imports from China, Indonesia, Slovakia, Taiwan, Turkey, and Venezuela each fall below the individual negligibility threshold of three percent. However, once the import shares of these countries are combined they equal 15.2 percent, exceeding the seven percent statutory negligibility

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[111] Certain Cold-Rolled Steel Products From Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836 and 838 (Final), USITC Pub. 3283 at 5-7 (March 2000).

[112] Certain Cold-Rolled Steel Products From Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836 and 838 (Final), USITC Pub. 3283 at 4-7 (March 2000).

[113] Certain Cold-Rolled Steel Products From Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836 and 838 (Final), USITC Pub. 3283 at 7 (March 2000).

[114] Certain Cold-Rolled Steel Products From Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836 and 838 (Final), USITC Pub. 3283 at 7-9 (March 2000).

[115] 19 U.S.C. § 1677(24)(A)(i).

[116] 19 U.S.C. § 1677(24)(A)(ii).

threshold. Therefore, I concur with the findings of the Commission in the final phase of the original investigations and hold that subject imports from China, Indonesia, Slovakia, Taiwan, Turkey and Venezuela are not negligible for purposes of injury analysis in these remand investigations.[117]

III. CUMULATION

Following a thorough review of the record, I find that there is a reasonable overlap of competition among imports from each of the twelve subject countries in these remand investigations and between subject imports and the domestic like product. Therefore, I concur with the findings of the Commission in the final phase of the original investigations in these matters and cumulate subject imports from all twelve countries for purposes of assessing material injury to the domestic industry.[118]

IV. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

A. Captive Production

When determining market shares and the factors affecting financial performance, the Commission shall focus primarily on the merchant market if the captive production provision of the statute is satisfied.[119] When determining whether the captive production provision applies, the Commission must determine whether domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market.[120] In order for the captive production provision to apply the Commission must also find that:

> (I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,
>
> (II) the domestic like product is the predominant material input in the production of that downstream article, and
>
> (III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article. . .[121]

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[117] Certain Cold-Rolled Steel Products From Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836 and 838 (Final), USITC Pub. 3283 at 9-10 (March 2000).

[118] Certain Cold-Rolled Steel Products From Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836 and 838 (Final), USITC Pub. 3283 at 10-14 (March 2000).

[119] 19 U.S.C. § 1677(7)(C)(iv).

[120] 19 U.S.C. § 1677(7)(C)(iv).

[121] 19 U.S.C. § 1677(7)(C)(iv)(I) - (III).

I find that the record in these investigations shows that each prong of the captive production provision is satisfied.[122] Therefore, I concur with the decision of the Commission on the matter of captive production in these remand investigations and shall focus primarily on the merchant market for the domestic like product in determining market shares and the factors affecting financial performance.

B. Other Conditions of Competition[123]

In addition to the captive production provision, there are a number of other conditions of competition that have been taken into account in these investigations.

As discussed in more detail in the volume section, domestic consumption of certain cold- rolled steel increased throughout the period of examination. Overall domestic consumption in the merchant market rose from *** million short tons in 1996 to *** million short tons in 1997, and to *** million short tons in 1998. Domestic consumption in the merchant market was steady when comparing the interim periods: *** million short tons in interim 1998 as compared to *** million short tons in interim 1999.

Domestic consumption in the total market increased from 34.6 million short tons in 1996 to 35.6 million short tons in 1997, and to 37.6 million short tons in 1998. Domestic consumption in the total market also increased over the interim periods from 28.0 million short tons in interim 1998 to 28.7 million short tons in interim 1999.

While domestic consumption increased over the period examined so did domestic capacity. Total domestic production capacity rose 6.4 percent between 1996 and 1998 and rose 1.0 percent between interim 1998 and interim 1999. Capacity utilization fell 1.4 percentage points between 1996 and 1998 but was 1.6 percentage points higher in interim 1999 when compared to interim 1998.

Interchangeability is also an important factor to consider when analyzing the conditions of competition in these investigations. A review of the record shows that cumulated subject imports and domestically produced cold-rolled steel products are broadly interchangeable. Therefore, price is an important factor to purchasers of cold-rolled steel products. Quality, availability and delivery are other important factors.[124]

Another condition of competition relevant to this matter is the means by which the cold-rolled steel is sold. Subject imports are typically sold slightly more often on a spot basis than on a contract basis. However, even when subject imports are sold on a contract basis, the contracts are typically of a short duration. The data show that nearly two-thirds of all domestically produced cold-rolled steel sold in the merchant market is sold pursuant to long term contracts rather than on a spot basis.[125]

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[122] I adopt the analysis from the original determination regarding the threshold criteria and factors I and II of 19 U.S.C. § 1677(7)(C)(iv). I also adopt the analysis from the majority's remand views with respect to factor III of 19 U.S.C. § 1677(7)(C)(iv), as found in the Captive Production section of the Commission Majority's Remand Opinion.

[123] All data referred to in this section are derived from CR/PR at Table C-1, CR at II-8 to II-22 and PR at II-5 to II-13, and INV–BB-004 at Table 5.

[124] CR at II-8 to II-22, PR at II-5 to II-13.

[125] CR/PR at V-8.

C. Volume of Subject Imports[126]

Following a thorough review of the record in this matter, it is apparent that the volume of cumulated subject imports increased significantly between 1996 and 1998. Inasmuch as the Commission found the captive production provision applies in these remand investigations the primary focus of this section is the volume of subject imports relative to consumption in the merchant market. However, the data concerning the total market are also evaluated.

The market share of cumulated subject imports in the merchant market nearly doubled between 1996 and 1998, while the domestic industry's market share decreased. The market share of cumulated subject imports in the merchant market increased from *** percent in 1996 to *** percent in 1997 and to *** percent in 1998. The market share of cumulated subject imports in the merchant market was *** percent in interim 1998 and decreased to *** percent in interim 1999.

The market share of domestic producers in the merchant market decreased from *** percent in 1996 to *** percent in 1997 and to *** percent in 1998. The market share of domestic producers in the merchant market was *** percent in interim 1998 as compared to *** percent in interim 1999. The decrease in domestic market share in the merchant market occurred while overall domestic consumption rose from *** million short tons in 1996 to *** million short tons in 1997, and to *** million short tons in 1998. Domestic consumption in the merchant market was relatively steady when comparing the interim periods: *** million short tons in interim 1998 as compared to *** million short tons in interim 1999.

In absolute terms, the volume of cumulated subject imports increased from approximately 1.1 million short tons in 1996 to 1.8 million short tons in 1997, and to 2.2 million short tons in 1998. Cumulated subject imports were over 1.5 million short tons in interim 1998 as compared to 1.4 million short tons in interim 1999. During the period of investigation, domestic producers' shipments in the merchant market remained relatively steady despite the increase in domestic consumption. The domestic industry shipped *** million short tons in 1996, compared to *** million short tons in 1997 and *** million short tons in 1998. Domestic industry shipments in the merchant market were more than *** million short tons in interim 1998 as compared to *** million short tons in interim 1999.

These increased volumes of cumulated subject imports resulted in their market share nearly doubling between 1996 to 1998 while domestic market share in the merchant market decreased during this same time. During this time, shipments of the domestic like product by domestic producers in the merchant market remained relatively steady and the volume of cumulated subject imports increased by nearly 1.2 million short tons, while domestic consumption increased by almost *** million short tons.

An analysis of the total market also reveals a decrease in domestic producers' market share. Domestic producers' market share in the total market declined from 93.2 percent in 1996 to 91.1 percent in 1997, and to 90.4 percent in 1998. Domestic producers' share of the total market was 91.1 percent in interim 1998 as compared to 91.8 percent in interim 1999. The increase in total market share between 1996 and 1998 occurred while the market share of cumulated subject imports nearly doubled, increasing from 3.0 percent in 1996 to 4.9 percent in 1997, and then to 5.9 percent in 1998. Cumulated subject imports' share of the total market was 5.5 percent in interim 1998 as compared to 5.0 percent in interim 1999.

Apparent U.S. consumption in the total market increased from 34.6 million short tons in 1996 to 35.6 million short tons in 1997, and to 37.6 million short tons in 1998. Apparent U.S. consumption in the total market was 28.0 million short tons in interim 1998 as compared to 28.7 million short tons in interim 1999.

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[126] All data referred to in this section are derived from CR/PR at Table C-1 and INV–BB-004 at Table 5.

The volume of domestic shipments increased in the total market from more than 32.2 million short tons in 1996 to slightly less than 32.4 million short tons in 1997, and to 34.0 million short tons in 1998. Domestic shipments in the total market were 25.6 million short tons in interim 1998 as compared to 26.3 million short tons in interim 1999.

The volume of cumulated subject imports in the total market more than doubled between 1996 and 1998. Subject imports increased from 1.1 million short tons in 1996 to 1.8 million short tons in 1997, and to 2.2 million short tons in 1998. The volume of cumulated subject imports in the total market decreased in the interim periods from 1.5 million short tons in interim 1998, compared to 1.4 million short tons in interim 1999.

As in the merchant market, an evaluation of the total market shows that domestic producers lost market share while domestic consumption increased. Furthermore, while domestic consumption increased by close to 3.0 million short tons in the total market between 1996 and 1998 domestic shipments increased by slightly more than 1.7 million short tons.

Non-subject imports' share in the merchant market was relatively steady over the period of investigation: *** percent in 1996, *** percent in 1997 and *** percent in 1998. It was *** percent in interim 1998 as compared to *** percent in interim 1999. The trends were the same when examining non-subject import market share in the total market. It was 3.8 percent in 1996, 4.0 percent in 1997, and then 3.7 percent in 1998. Non-subject imports' share in the total market was 3.4 percent in interim 1998 as compared to 3.2 percent in interim 1999.

A review of the record in these remand investigations shows an increase in apparent domestic consumption in both the merchant market as well as the total market between 1996 and 1998. Apparent U.S. consumption in the merchant market increased by *** percent between 1996 and 1998, but domestic producers' U.S. shipments only increased by *** percent during this period. Apparent U.S. consumption in the total market increased by 8.6 percent between 1996 and 1998 while domestic producers' U.S. shipments only increased by 5.4 percent. As explained above, non-subject import market share was relatively steady during this period. Therefore, I find that both the volume and increase in volume of cumulated subject imports in both the merchant market and total market were significant.

D. Price Effects of Subject Imports

I first note that during the original investigations, respondents presented results of an econometric analysis that they argued proved that "subject imports played an insignificant role in the recent fall of the domestic price" and that other factors were "the primary explanation for the price of cold-rolled steel."[127] Petitioners did not proffer an econometric model. Commission staff found that the results of respondents' model were basically sound. That is, they believed that the analysis indicated that a number of factors other than subject import prices influenced the price of domestically-produced cold-rolled steel.[128] However, I find it important that Commission staff also believed that the analysis did not show that subject import prices did not affect domestic prices.[129] Commission staff further pointed out that respondents' analysis was best viewed as a complement to the other information and data collected during the original investigations.[130]

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[127] Respondents' Joint Prehearing Brief, Vol. II: Econometric Study at 2.

[128] CR at II-24, PR at II-15.

[129] CR at II-24, PR at II-15.

[130] CR at II-24, PR at II-15.

As explained above, as reported by U.S. mills and a majority of importers, domestically-produced and imported cold-rolled steel products are broadly interchangeable.[131] In fact, purchasers listed price as one of the three most important factors considered when choosing a supplier; indeed, it was the most frequently ranked second and third factor.[132]

The importance of price in the domestic cold-rolled steel market is evidenced in the manner in which the steel was sold. U.S. producers sold approximately 60 percent of their products on a contract basis and the remaining 40 percent on a spot basis. These contracts, usually one year in duration, contain fixed prices and quantities and generally do not contain meet-or-release provisions.[133] Yet over the course of the period of investigation, U.S. producers were required to renegotiate a substantial portion of their contract sales: 17.8 percent.[134] They argued that the low spot prices influenced contract negotiations and precipitated substantial price reductions for subsequent contracts.[135]

These arguments are borne out in the pricing data obtained by the Commission during the original investigations. Of the 588 quarterly price comparisons between U.S.-produced and subject imports of cold-rolled steel products, subject imports undersold the domestic products in 498 quarters.[136] In the service center sector, such underselling occurred in 289 quarters, and the margins of underselling ranged from 0.7 percent to 25.2 percent With respect to sales to end users, underselling occurred in 209 quarters, and the margins of underselling ranged from 1.9 percent to 34.0 percent.[137] I find the underselling to be significant.

Prices for both domestic products and subject imports generally declined over the period of investigation. Domestic prices tended to decline the most during 1998 and the first quarter of 1999,[138] and with respect to all three pricing products in sales to both service centers/converters and to end users.[139] Subject import prices declined as well, and tended to decline by a significantly larger percentage than domestic prices.[140] Nonsubject import prices, as evidenced by average unit values (AUVs), were significantly higher than the domestic prices.[141] As explained above, nonsubject import volumes were relatively stable over the period of investigation.

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[131] CR at II-8, II-9, PR at II-5.

[132] CR/PR at Table II-1. Quality was most often ranked as the first factor. CR/PR at Table II-1.

[133] CR at V-8 - V-9, PR at V-8.

[134] CR at V-9, PR at V-8. These sales were primarily to lower-end purchasers, such as steel drum producers and service centers. CR at V-9 n.4, PR at V-8 n.4. However, there is also testimony in the record that a very large cold-rolled consumer forced U.S. Steel to renegotiate a contract for the fourth quarter of 1998 – 12,500 tons over three months – that resulted in a loss of a half million dollars. Tr. at 109-10 (Mr. Bouchard).

[135] Petitioners' Posthearing Brief, Exh. 3, at 4.

[136] CR at V-16, PR at V-11.

[137] CR/PR at Table V-6.

[138] CR at V-12, PR at V-9.

[139] CR/PR at Tables F-1 - F-6.

[140] CR/PR at Tables F-1 - F-6.

[141] CR/PR at Table C-1. I note that changes in AUVs may reflect differences in product mix over time, but they are the means by which we are able to measure nonsubject import prices in these investigations. Testimony in the record supports my finding. Tr. at 158 (Mr. Shagrin) ("non-subject imports were really overselling subject imports by a tremendous amount, which is why they were losing market share"), 298 (Mr. Durling) ("AUV[s] of non-subject imports are going up").

In light of the foregoing, I find that the domestic market is experiencing price depression. I further find this price depression to be significant, especially in view of my finding that the volumes of cumulated subject imports, and increases in these volumes, are significant.[142]

In view of the fact that the price of cold-rolled steel products is one of the most important factors to purchasers and that subject imports are broadly interchangeable with domestic products, as well as my finding of significant volume effects from subject imports, I find that the price effects of the subject imports are significant.

E. Impact of Subject Imports

Despite the apparent increase in U.S. consumption and U.S. shipments by domestic producers over the period examined, subject imports have caused U.S. price levels to drop and U.S. market shares to shrink, in turn causing the financial health of the domestic industry to deteriorate. This deterioration is evident both in total U.S. market data and in merchant market data.

As noted above, the domestic cold-rolled steel industry lost market share throughout the period examined, while subject imports nearly doubled in both absolute volume and market share. The increase in subject import volume between 1996 and 1998 was responsible for roughly 39 percent of the increase in total apparent U.S. consumption and captured roughly *** percent of the increase in U.S. merchant market sales between those years.[143]

Looking at just the U.S. merchant market operations, as reflected in the Commission Staff Memorandum dated January 5, 2004, financial indicators for domestic producers evidence that between 1996 and 1998, gross profits declined by *** percent, while operating income declined *** percent. Net sales quantity increased *** percent during the period but the net sales unit value declined *** percent. The operating margin realized by the domestic industry declined from *** percent in 1996 to *** percent in 1998. Additionally, domestic producers' U.S. market share declined from *** percent to *** percent, and the unit cost of goods declined by only *** percent.

Interim data indicate that gross profits declined *** percent between interim 1998 and interim 1999. Net sales quantity declined *** between these periods, while the net sales unit value declined *** percent. The operating margin realized by the domestic industry declined from *** percent in interim 1998 to *** percent in 1999. Further, domestic producers' U.S. market share increased only slightly from *** percent to *** percent, and the unit cost of goods sold declined by *** percent during this same period.

Next, looking at total U.S. market operations, the financial indicators for domestic producers also evidence that between 1996 and 1998, gross profits declined 31.4 percent, while operating income declined 70.0 percent.[144] Other indicators of injury to the domestic industry include an increased number of firms that posted operating losses 4 out of 18 in 1996 to 6 out of 19 in 1998, the decline in the operating margin realized by the domestic industry from 5.0 percent in 1996 to 1.5 percent in 1998, and the decline in capital expenditures between 1996 and 1998 of 10.9 percent. Further, gross profits were

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[142] I note that most of the lost sales and lost revenues allegations presented by the petitioners were not verified. CR/PR at Tables V-7 - V-9. I give little weight to this fact. See, e.g., Lone Star Steel Co. v. United States, 650 F. Supp. 183, 186 (Ct. Int'l Trade 1986) ("Anecdotal evidence of lost sales and revenue rarely adds distinct information").

[143] *See* CR/PR at Table C-1. All data and comparisons referred to herein concerning total U.S. market operations for the domestic industry are found at CR/PR Table C-1. Data and comparisons concerning U.S. merchant market operations for the domestic industry are found in INV-BB-004 and INV-BB-009 at Table 5.

[144] *See* CR/PR at Table C-1, C-2.

81.0 percent lower in interim 1999 when compared to interim 1998. These events resulted in an operating loss of over $380 million in interim 1999. Net sales quantity increased 2.8 percent in interim 1999 when compared to 1998 and the net sales unit value declined 9.1 percent. The operating margin realized by the domestic industry declined from 2.5 percent in interim 1998 to negative 3.6 percent in interim 1999. Not surprisingly, reported operating losses increased from 6 out of 19 firms in interim 1998 to 11 out of 19 firms in interim 1999.[145]

The domestic industry has suffered other negative effects as well, notably, the loss of production workers and the increase in inventories. Between 1996 and 1998, the number of production workers declined 4.0 percent, while domestic producers' inventories increased 4.4 percent and inventories of subject imports in the U.S. market more than tripled. A comparison of interim data show that the number of U.S. production workers declined 4.9 percent interim 1999 when compared to 1998, while domestic producers' inventories increased 0.3 percent and inventories of subject imports in the U.S. market declined roughly 31 percent.

The adverse impact of the subject imports is not limited to the large, integrated producers. For example, Nucor, a mature and efficient minimill, arguably in a better position to compete with the subject imports, experienced a *** percent decline in operating income between 1996 and 1998 with regard to total U.S. shipments, and a *** percent decline with regard to U.S. merchant market shipments during the same period.[146] With regard to either measure, Nucor's operating margin in interim 1999 was roughly *** that evidenced during 1996.[147]

Based on the foregoing data, it is evident that the domestic industry, including both integrated producers and minimills, suffered a significant and broad-based financial deterioration even in consideration of the increasing apparent U.S. consumption throughout the period examined. The deterioration occurred even as unfairly traded subject imports undersold the domestic like product in increasing volumes, resulting in an increase in U.S. market share. The steady decline in the domestic industry's financial performance culminated in crippling losses during interim 1999, stemming from significant declines in price levels in the U.S. market.

For these reasons, I determine that the subject imports have had a significant adverse impact on the domestic industry producing cold rolled steel.

V. CRITICAL CIRCUMSTANCES

In its final antidumping determination regarding Brazil, Commerce made affirmative findings of critical circumstances with respect to imports from USIMINAS/COSIPA, CSN and the "all others" category. In its final antidumping determination regarding Japan, Commerce made affirmative findings of critical circumstances with respect to imports from four Japanese companies: Nippon, Kawasaki, Kobe, and Nisshin. Commerce made a negative critical circumstances finding with respect to the "all others" category for Japan. Finally, Commerce determined that critical circumstances do not exist for Thailand.

As a result of Commerce's determinations and my affirmative determinations of present material injury in the investigation at hand, I must also render critical circumstances determinations for Brazil and

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[145] *See* CR/PR at Table VI-1

[146] *See* CR/PR at Tables VI-2 and VI-6. These declines occurred notwithstanding the fact that, in 1998, Nucor's cost of goods sold was significantly less than the domestic industry's average. *See* Post-Hearing Brief of Petitioners at A-19. C-1 and C-2.

[147] *See* CR/PR Tables VI-2 and VI-6.

Japan. This determination rests on whether I find the subject imports at issue are likely to undermine seriously the remedial effect of an antidumping duty order.

Upon review of the record in the present investigation, I note that the volume of subject imports with regard to Brazil increased 2.2 percent in the two months following the filing of the petition, as compared with the two months preceding the filing of the petition.[148] Further, the record reflects the fact that the three, four, five and six month periods preceding and following the filing of the petition, and with each month following the filing of the petition, there is a decline in the volume of subject imports. Accordingly, regardless of the period of comparison examined, no massive surge in imports can be detected such as to deem the remedial effect of an order on Brazil to be seriously undermined absent an affirmative critical circumstances determination.

Regarding Japan, a similar picture emerges. The volume of subject imports increased 9.1 percent in the two months following the filing of the petition, as compared with the two months preceding the filing of the petition.[149] A similar comparison of three, four and five month and six month periods preceding and following the filing of the petition evidences a decline in the volume of subject imports at issue following the filing of the petition. Again I find that there has not been a massive surge in imports, such that the remedial effect of an order on Japan will be seriously undermined absent an affirmative critical circumstances determination.

For these reasons, I render negative critical circumstances determinations with regard to Brazil and Japan in these investigations.

VI. CONCLUSION

For the foregoing reasons, I determine that the domestic industry producing certain cold-rolled steel is materially injured by reason of subject imports from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey and Venezuela.

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[148] The data and associated comparisons referred to in this discussion are derived from CR/PR at table IV-11.

[149] The data and associated comparisons referred to in this discussion are derived from CR/PR at table IV-12.

APPENDIX

FEDERAL REGISTER NOTICE

Information collection	Public burden HR per action
ff. Performance standards for exploration	1
gg. Performance standards for surface and underground coal mines	1
hh. Exploration reports	4
ii. Production reports	10
jj. Notices and orders	3
kk. Enforcement	2

Annual Responses: 1,289. *Application Fee Per Response:*

	Estimated number of actions	Filing fee per action	Total estimated annual collection
(a) Application for an exploration license	10	$250	$2,500
(j) Leasing on application (applications received)	15	250	3,750
(m) Lease modifications	6	250	1,500
(n) License to mine	2	10	20
(p) Transfers, assignments, subleases	27	50	1,350
Total			9,120

Annual Burden Hours: 25,585.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: December 11, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–31216 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–84–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–393 and 731–TA–829–840 (Final) (Remand)]

Cold-Rolled Steel From Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela; Notice and Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The United States International Trade Commission (Commission) gives notice of the court-ordered remand of its final countervailing duty and antidumping duty investigations Nos. 701–TA–393 and 731–TA–829–840 (Final) (Remand).

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, telephone (202) 205–3095 or Diane Mazur, Office of Investigations, telephone (202) 205–3184, 500 E Street SW., Washington, DC 20436, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Reopening the Record

In March, May, and July of 2000, the Commission made negative final determinations in the referenced investigations. The determinations were appealed to the U.S. Court of International Trade (CIT). On October 28, 2003, the CIT issued an opinion requiring the Commission to reconsider its findings on the applicability of the captive production provision (19 U.S.C. 1677(7)(C)(iv)) and its injury determination. The Commission was instructed to file its findings on remand within 90 days of its order, or on January 26, 2004.

In order to assist it in making its determinations on remand, the Commission is reopening the record on remand in these investigations to include information bearing on the applicability of the captive production provision. The record in these proceedings will encompass the material from the record of the original investigations and information gathered by Commission staff during the remand proceedings.

Participation in the Proceedings

Only those persons who were interested parties to the original administrative proceedings and are parties to the ongoing litigation (*i.e.*, persons listed on the Commission Secretary's service list and parties to *Bethlehem Steel* v. *United States*, Consol. Ct. No. 00–00151) may participate in these remand proceedings.

Nature of the Remand Proceedings

On January 5, 2004, the Commission will make available to parties who participate in the remand proceedings information that has been gathered by the Commission as part of these remand proceedings. Parties that are participating in the remand proceedings may file comments on or before January 8, 2004 on whether any new information received affects the Commission's findings as to the applicability of the captive production provision in these investigations. Any material in the comments that does not address this limited issue will be stricken from the record or disregarded. No additional new factual information may be included in such comments. Comments shall be typewritten and submitted in a font no smaller than 11-point (Times new roman) and shall not exceed twelve double-spaced pages (inclusive of any footnotes, tables, graphs, exhibits, appendices, *etc.*).

In addition, all written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means. Each document filed by a party participating in the remand investigations must be served on all other parties who may participate in the remand investigations (as identified by either the public of BPI service list), and a certificate of service

must be timely filed. The Secretary will not accept a document for filing without a certificate of service. Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigations will be released to the referenced parties, as appropriate, under the administrative protective order (APO) in effect in the original investigation. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in these remand investigations.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: December 15, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–31272 Filed 12–17–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on December 3, 2003, a proposed consent decree in *United States* v. *Government of Guam,* Civil Case No. 02–00022, was lodged with the United States District Court for the District of Guam.

In this action, the United States sought injunctive relief and civil penalties under section 309 of the Clean Water Act ("CWA") against the Government of Guam for: (1) Discharges of leachate from the Ordot Landfill without a permit in violation of CWA section 301; and (2) violation of the U.S. Environmental Protection Agency's administrative order to cease the discharges. The consent decree requires the Government of Guam to: (1) Close the Ordot Landfill, conduct environmental studies, and develop, design, construct, and operate a new sanitary landfill; (2) as a supplemental environmental project, develop and implement a comprehensive waste diversion strategy for household hazardous waste on Guam; and (3) pay a civil penalty of $200,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Government of Guam,* D.J. Ref. #90–5–1–1–06658.

The consent decree may be examined at the Office of the United States Attorney, Suite 500, Sirena Plaza, 108 Hernan Cortez, Hagatna, Guam, and at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthrone Street, San Francisco, California. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31152 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that on December 3, 2003, a proposed Consent Decree ("Consent Decree") in *United States* v. *Island Chemical Company,* et al., Civil Action No. 2003–193 was lodged with the United States District Court for the District of the Virgin Islands, Division of St. Criox.

In this action the United States sought the implementation of the remedy set forth in the Record of Decision issued August 13, 2002, and the recovery of costs incurred by the United States in response to releases and threatened releases of hazardous substances at the Site pursuant to sections 106, 107(a) and 113 of the Comprehensive Environmental Response, Compensation, and Recovery Act, as amended ("CERCLA"), 42 U.S.C. 9606, 9607(a) and 9613. The Consent Decree, which was lodged concurrently with the filing of the complaint, resolves the United States' claims under the Complaint, recovers $490,000 of unreimbursed past costs, plus future costs, and obligates the Settling Defendants to perform the Remedial Design/Remedial Action ("RD/RA") at the Site valued at approximately $1.4 million with a contingency groundwater remedy estimated to cost an additional $1 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Island Chemical Company,* et al., D.J. Ref. 90–11–2–954/2.

The Consent Decree may be examined at the Office of the United States Attorney, District of the Virgin Islands, P.O. Box 3239 Christiansted, St. Croix, U.S. Virgin Islands 00822, (contact Assistant United States Attorney Ernest A. Batenga) and at U.S. EPA Region II, 290 Broadway, New York, New York 10007–1866 (contact Assistant Regional Counsel Carol Berns). During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $41.50 (25 cents per page reproduction cost), payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31154 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M