

**Certain Flat-Rolled Carbon Steel Products From Argentina,
Australia, Austria, Belgium, Brazil, Canada, Finland,
France, Germany, Italy, Japan, Korea, Mexico,
the Netherlands, New Zealand, Poland,
Romania, Spain, Sweden, and the United Kingdom**

Investigations Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353 (Final)
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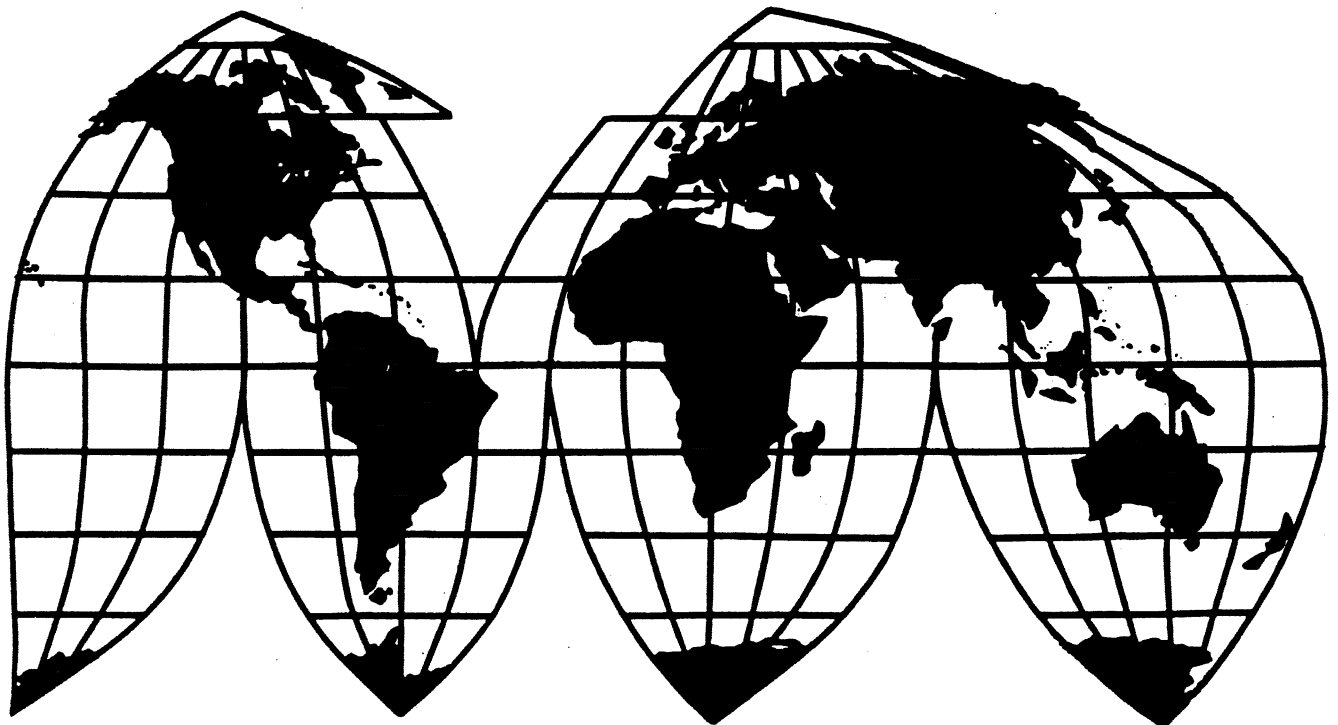
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COMMISSIONERS

Don E. Newquist, Chairman
Peter S. Watson, Vice Chairman
David B. Rohr
Anne E. Brunsdale
Carol T. Crawford
Janet A. Nuzum

Robert A. Rogowsky
Director of Operations

Staff assigned:

Jonathan Seiger, Office of Investigations
Peggy MacKnight, Office of Industries
Charles Yost, Office of Industries
Joseph Baremore, Office of Economics
Marshall Wade, Office of Investigations
Scott Andersen, Office of the General Counsel
Cynthia Johnson, Office of the General Counsel
Kathryn A. Gilchrist, Office of the General Counsel

Vera Libeau, Supervisory Investigator

Additional assistance provided by:

Fred Ruggles, James Stewart, and Douglas Corkran, Office of Investigations
Catherine DeFilippo and Anita Miller, Office of Economics
Kristina Zissis, Brooks Olbrys, and John Smollen, Office of the General Counsel

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-319-332, 334, 336-342, 344, 347-353
and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final)

CERTAIN FLAT-ROLLED CARBON STEEL PRODUCTS FROM ARGENTINA,
AUSTRALIA, AUSTRIA, BELGIUM, BRAZIL, CANADA, FINLAND, FRANCE,
GERMANY, ITALY, JAPAN, KOREA, MEXICO, THE NETHERLANDS,
NEW ZEALAND, POLAND, ROMANIA, SPAIN, SWEDEN, AND THE UNITED KINGDOM

Determinations

On the basis of the record¹ developed in the subject countervailing duty investigations, the Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)), that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following flat-rolled carbon steel products² that have been found by the Department of Commerce (Commerce) to be subsidized by the Governments of the specified countries:

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

² The products covered by the subject investigations (cut-to-length plate, hot-rolled products, cold-rolled products, and corrosion-resistant products) are provided for in headings/subheadings 7208, 7209, 7210.31, 7210.39, 7210.41, 7210.49, 7210.60, 7210.70, 7210.90, 7211, 7212.21, 7212.29, 7212.30, 7212.40, 7212.50, 7212.60, 7214, 7215, and 7217 of the Harmonized Tariff Schedule of the United States. Clad plate is defined as carbon steel plate that has been covered with a metallic coating (such as nickel, copper, stainless steel, or titanium) on one or both sides by a process that forms a physical bond between the cladding material and the carbon steel substrate. For a complete description of the products, see the Department of Commerce's final antidumping and countervailing duty determinations (58 FR 37062, July 9, 1993).

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products ¹
Belgium	701-TA-319			
Brazil	701-TA-320			
France				701-TA-348 ²
Germany	701-TA-322 ³		701-TA-340 ⁴	701-TA-349 ⁵
Korea			701-TA-342 ⁶	701-TA-350 ⁵
Mexico	701-TA-325			
Spain	701-TA-326 ⁷			
Sweden	701-TA-327			
United Kingdom .	701-TA-328 ³			

¹ Other than clad plate.

² Chairman Newquist and Commissioner Brunsdale dissenting.

³ Chairman Newquist, Commissioner Brunsdale, and Commissioner Crawford dissenting.

⁴ Commissioners Brunsdale and Crawford dissenting.

⁵ Commissioner Brunsdale dissenting.

⁶ Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford dissenting.

⁷ The Commission also determines, pursuant to section 705(b)(4)(a), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.

The Commission determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of the following flat-rolled carbon steel products that have been found by Commerce to have been subsidized by the Governments of the specified countries:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products ¹
Austria			701-TA-336	
Belgium		701-TA-329	701-TA-337 ²	
Brazil		701-TA-330 ³	701-TA-338 ²	701-TA-347 ⁴
France	701-TA-321 ⁴	701-TA-331 ³	701-TA-339 ²	
Germany		701-TA-332 ³		
Italy	701-TA-323 ⁵		701-TA-341 ⁶	
Korea	701-TA-324	701-TA-334 ³		
Mexico				701-TA-351 ⁷
New Zealand . . .				701-TA-352 ⁴
Spain			701-TA-344 ⁴	
Sweden				701-TA-353 ⁴

¹ Vice Chairman Watson and Commissioners Rohr, Brunsdale, Crawford, and Nuzum found two separate industries within this category; clad plate and corrosion-resistant products other than clad plate, and with regard to clad plate made negative determinations with regard to imports from France. (To the extent that any such determination is deemed necessary, the Commission would have made negative determinations with respect to subsidized imports from all other subject countries because there were no imports from those countries during the period examined.) Chairman Newquist did not find a separate industry producing clad plate; therefore, his determinations on clad plate correspond to his determinations on other corrosion-resistant products.

² Chairman Newquist and Commissioner Nuzum dissenting.

³ Chairman Newquist dissenting.

⁴ Commissioner Nuzum dissenting.

⁵ Vice Chairman Watson not participating.

⁶ Commissioner Nuzum dissenting, Vice Chairman Watson not participating.

⁷ Commissioners Rohr and Nuzum dissenting.

On the basis of the record developed in the subject antidumping investigations, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following flat-rolled carbon steel products that have been found by Commerce to have been sold in the United States at less than fair value (LTFV):

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products ¹
Australia				731-TA-612 ²
Belgium	731-TA-573			
Brazil	731-TA-574			
Canada	731-TA-575			731-TA-614 ²
Finland	731-TA-576			
France				731-TA-615 ³
Germany	731-TA-578 ⁴		731-TA-604 ⁵	731-TA-616 ²
Japan				731-TA-617 ^{2 6}
Korea			731-TA-607 ⁷	731-TA-618 ²
Mexico	731-TA-582			
Netherlands			731-TA-608 ⁷	
Poland	731-TA-583 ^{4 6}			
Romania	731-TA-584 ^{4 6}			
Spain	731-TA-585 ⁶			
Sweden	731-TA-586			
United Kingdom . .	731-TA-587 ⁴			

¹ Other than clad plate.

² Commissioner Brunsdale dissenting.

³ Chairman Newquist and Commissioner Brunsdale dissenting.

⁴ Chairman Newquist, Commissioner Brunsdale, and Commissioner Crawford dissenting.

⁵ Commissioners Brunsdale and Crawford dissenting.

⁶ The Commission also determines, pursuant to section 735(b)(4)(a), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.

⁷ Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford dissenting.

The Commission determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of the following flat-rolled carbon steel products that have been found by Commerce to have been sold at LTFV:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products ¹
Argentina			731-TA-597	
Austria			731-TA-599	
Belgium		731-TA-588	731-TA-600 ²	
Brazil		731-TA-589 ³	731-TA-601 ²	731-TA-613 ⁴
Canada		731-TA-590 ⁵	731-TA-602 ⁵	
France	731-TA-577 ⁴	731-TA-591 ³	731-TA-603 ²	
Germany		731-TA-592 ³		
Italy	731-TA-579 ⁶		731-TA-605 ⁷	
Japan		731-TA-594 ³	731-TA-606 ³	
Korea	731-TA-581	731-TA-595 ³		
Mexico				731-TA-619 ⁸
Netherlands		731-TA-596 ⁵		
Spain			731-TA-609 ⁴	

¹ Vice Chairman Watson and Commissioners Rohr, Brunsdale, Crawford, and Nuzum found two separate industries within this category; clad plate and corrosion-resistant products other than clad plate, and with regard to clad plate made negative determinations with regard to imports from France and Japan. (To the extent that any such determination is deemed necessary, the Commission would have made negative determinations with respect to LTFV imports from all other subject countries because there were no imports from those countries during the period examined.) Chairman Newquist did not find a separate industry producing clad plate; therefore, his determinations on clad plate correspond to his determinations on other corrosion-resistant products.

² Chairman Newquist and Commissioner Nuzum dissenting.

³ Chairman Newquist dissenting.

⁴ Commissioner Nuzum dissenting.

⁵ Chairman Newquist and Commissioner Rohr dissenting.

⁶ Vice Chairman Watson not participating.

⁷ Commissioner Nuzum dissenting, Vice Chairman Watson not participating.

⁸ Commissioners Rohr and Nuzum dissenting.

Background

The Commission instituted these investigations effective December 7, 1992, and February 4, 1993, following preliminary determinations by Commerce that imports of certain flat-rolled carbon steel products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and/or were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)).

Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the *Federal Register* of December 18, 1992 and February 18, 1993 (57 F.R. 60247; 58 F.R. 8974). The hearing was held in Washington, DC, on June 29 and 30, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

INTRODUCTION

Based on the record information before us, we find that there are five like products in these final investigations: (1) hot-rolled carbon steel flat products; (2) cold-rolled carbon steel flat products; (3) corrosion-resistant carbon steel flat products other than clad plate; (4) corrosion-resistant clad plate; (5) cut-to-length plate.^{1 2} We also find there are five domestic industries which correspond to these five like products. Our determinations are organized into four separate sets of Views which follow in the same order as specified.³ We have combined corrosion-resistant products other than clad plate and clad plate in the same set of Views. Appropriate cross-references to the various Views are made where necessary to avoid unnecessary repetition of statutory criteria and common analysis of various issues which apply to all or some combination of the four sets of Views.

¹ Hot-rolled flat products, cold-rolled flat products, and cut-to-length plate correspond to three classes or kinds found by Commerce in its final determinations. Corrosion-resistant and clad plate correspond to the fourth Commerce class or kind.

² Chairman Newquist does not find corrosion-resistant clad plate to be a separate like product from other corrosion-resistant product. His reasons therefor are articulated in the corrosion-resistant/clad plate section.

³ Chairman Newquist, Commissioner Brunsdale, Commissioner Crawford, and Commissioner Nuzum note that they each have Additional and Dissenting Views contained in a single opinion at the end of the four Commission determinations. Vice Chairman Watson has Additional or Dissenting Views following the Commission Determinations in the Hot-Rolled Steel, Cold-Rolled Steel and Corrosion-resistant investigations. Commissioner Rohr has Additional and Dissenting Views following each of the Commission Determinations.

HOT-ROLLED CARBON STEEL FLAT-ROLLED PRODUCTS⁴

Based on the information obtained in these final investigations,⁵ we determine that an industry in the United States producing hot-rolled carbon steel flat-rolled products is neither materially injured nor threatened with material injury by reason of less than fair value (LTFV) imports of hot-rolled products from Belgium, Brazil, Canada, France, Germany, Japan, Korea, and the Netherlands and subsidized hot-rolled imports Belgium, Brazil, France, Germany, and Korea.^{6 7}

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⁴ All Commissioners have joined portions of these Views as detailed below. Various Commissioners have also noted where they do not join certain sections, paragraphs, or statements within the Views. Chairman Newquist joins only the discussion of the like product, domestic industry, and condition of the domestic industry. Vice Chairman Watson joins the discussion of all portions of the Views. Commissioner Rohr joins all portions of the Views except threat on Canada and the Netherlands. Commissioner Brunsdale joins only in the discussion of like product, domestic industry, related parties, cumulation (except the discussion of negligible imports from the Netherlands), and threat. Commissioner Crawford joins all portions of the Views except the negligibility analysis for Brazil and the competition analysis for France. Commissioner Nuzum joins the Views except for the negligibility analyses for Belgium, Brazil, Germany and Japan.

⁵ Invs. Nos. 701-TA-329-332 and 334 (Final), and 731-TA-588-592, 594-596 (Final).

⁶ Material retardation of a domestic industry by reason of the subject imports is not an issue in these investigations, and therefore will not be discussed.

⁷ Commissioner Rohr finds that the domestic industry is threatened with material injury by reason of imports from Canada and the Netherlands.

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LIKE PRODUCT

A. Statutory Criteria

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant domestic industry as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. . . ."⁸ In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation. . . ."⁹

Our decision on the appropriate like product or products in an investigation is a factual determination, to which we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.¹⁰ Generally, we disregard minor variations and look for clear dividing lines between possible like products.¹¹

B. Background and the Continuum of Flat-Rolled Steel Products¹²

Although none of the parties to these final investigations challenged the basic definition of the four major like product groupings¹³ established by Commerce's scope and the Commission's preliminary determinations, different respondents argued for additional like products separate from those four product groupings.

Respondents argued that certain of these products are differentiated, to a greater or lesser extent, from other steel products if viewed solely on the basis of the six like product factors we typically consider. However, our consideration of the six like product factors is made on the continuum on which those steel products exist. The Commission traditionally has been reluctant to

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(10).

¹⁰ In defining the like product, we generally consider a number of factors including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and, where appropriate, (6) price. No single factor is dispositive, and we may consider other factors relevant to our like product determination in a particular investigation. See e.g., Asociacion Colombiana de Exportadores de Flores v. United States, 12 CIT 634, 638 n.5, 693 F. Supp. 1165, 1169 n.5 (1988); Calabrian Corp. v. United States, 16 CIT ___, 794 F. Supp. 377, 382 n.4 (1992).

¹¹ S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹² The discussion within this heading applies to all four sets of Views.

¹³ In the Preliminary Determinations we found four like products. Parties' briefs and arguments were, by and large, framed around those like products. Therefore, we will refer to those four like products -- hot-rolled flat products, cold-rolled flat-products, corrosion-resistant flat products, and cut-to-length plate flat products -- as the four "major" like products.

fragment its like product definitions where a continuum of products exists.¹⁴ To do so would result in a large number of separate, specialized steel like products characterized by distinct metallurgy, end uses, and customer perceptions, and would ignore the need to identify "clear dividing lines" between potential separate like products.¹⁵ General similarities in physical characteristics, production processes, channels of distribution and the perceptions of U.S. producers have been considered to outweigh specific differences among products in those cases where the goods may be viewed as "gradations along a spectrum of attributes," particularly when "literally dozens of separate like products" could result from an unduly narrow application of the like product factors.¹⁶

The Court of International Trade has affirmed Commission determinations finding such physical characteristics as width or size differences as not providing a sufficiently clear dividing line between products. The Court upheld this view in light of the legislative history to the Trade Agreements Act of 1979 indicating that

[t]he requirement that a product be 'like' the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the [domestic] product and [the imported] article are not 'like' each other nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of a industry adversely affected by the imports under investigation.¹⁷

In our view, there is a continuum of goods within each of the major like product groupings. We believe this appropriately reflects the significant versatility of various carbon steel products that permit a wide variety of end uses. The cases and our determinations referenced above demonstrate that it is appropriate to recognize the existence of such a continuum except where there are more than "minor differences" that distinguish products. Accordingly, in making our findings, we have carefully considered the asserted grounds for distinguishing various products in the context of the "continuum" nature of the steel products involved in these investigations.

C. Hot-Rolled Like Product Issues

Commerce has identified the following class or kind of hot-rolled merchandise subject to investigation:

Hot-rolled carbon steel flat products, of rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, in coils (whether or not in successively

¹⁴ See e.g., Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA-571 (Final), USITC Pub. 2658 (July 1993) at 8-9, 49-50; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Invs. Nos. 303-TA-19 and 20 (Final) and Invs. Nos. 731-TA-391-399 (Final), USITC Pub. 2185 (May 1989) at 26-27, aff'd, Torrington Co. v. United States, 14 CIT 648, 747 F. Supp. 744 (1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

¹⁵ S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁶ See Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea ("Pet Film"), Invs. Nos. 731-TA-458 and 459 (Final), USITC Pub. 2383 (May 1991) at 8-14.

¹⁷ Cambridge Lee Industries, Inc. v. United States, 13 CIT 1052, 1054-1055, 723 F. Supp. 748, 750-51 (1989) quoting S. Rep. No. 249, 86th Cong., 1st Sess. 90-91 (1979).

superimposed layers), or in straight lengths which are less than 4.75 millimeters in thickness and of a width measuring at least 10 times the thickness.¹⁸

In the preliminary investigations, we found that all hot-rolled steel products were part of one like product. In these final investigations, no party has challenged this general finding and there is no dispute among the parties as to the proper identification of most products within the hot-rolled like product category. There are two outstanding like product issues in these final investigations: 1) Petitioners have urged us (without argument or contradiction from respondents) to include plate in coils within the hot-rolled category; and 2) German respondents have proposed that hot-rolled floor plate be considered a separate like product. These issues are discussed below.

1. Plate in Coils

We reaffirm our preliminary determination that plate in coils is part of the hot-rolled like product rather than the cut-to-length plate like product. This determination is consistent with the fact that plate in coils is produced on a hot strip mill rather than a plate mill,¹⁹ and that the industry perceives plate in coils as a hot-rolled product.²⁰ Additionally, there is limited interchangeability between plate in coils and cut-to-length plate in most end uses.²¹ Because plate in coils appears to be distributed through producers' hot-strip divisions rather than their plate divisions,²² channels of distribution also differ between plate in coils and cut-to-length plate. Plate in coils does have a thicker gauge than other hot-rolled products and prices may differ between plate in coils and other hot-rolled products.²³ However, the Commission does not view these factors as sufficient to dictate a departure from its preliminary determination that plate in coils is appropriately part of the hot-rolled steel category.

2. Hot-Rolled Floor Plate

The German respondents contended for the first time in these final investigations that hot-rolled floor plate in coils²⁴ should be considered a separate like product. Petitioners argued that the Commission should treat this product as a specialty niche product within the hot-rolled like product as it did in the preliminary investigations.

¹⁸ 58 F.R. 37062 (July 9, 1993).

¹⁹ Report at I-18, I-20 and I-33.

²⁰ Petitioners noted that the American Iron and Steel Institute ("AISI") views coiled flat products in plate gauges as coiled sheet, rather than plate. Petitioners' Prehearing Br., Vol. 2, App. A at 3; see also Report at I-33, I-34.

²¹ Petitioners' Prehearing Br., Vol. 2, App. A at 10. For example, petitioners stated that the pipe and tube industry and the automotive industry are the largest consumers of domestic plate in coils and very small consumers of cut-to-length plate. On the other hand, the construction industry is the largest consumer of cut-to-length plate, but consumes a very small percentage of plate in coils. See Report at I-34.

²² Petitioners' Prehearing Br., Vol. 2, App. A at 9.

²³ Id. at 4-7.

²⁴ We note that cut-to-length floor plate is included within the plate like product category. No parties argued that cut-to-length floor plate should be considered a separate like product and we do not address that issue.

We determine that floor plate in coils is not a separate like product and is properly included within the hot-rolled like product based on its similarities with other hot-rolled products. Floor plate is a flat hot-rolled product that has a rolled raised figure at regular intervals on one surface of the plate.²⁵ In general, these patterns are produced to provide a nonskid surface, although the specific pattern used depends on the preferences of the customer.²⁶ The product is used for decks on trucks and ships and for floors in mines and industrial facilities.²⁷

Production processes and physical characteristics for floor plate are similar to those for other hot-rolled products except that the production process for floor plate requires passing the sheet through a roll having a pattern cut into it.²⁸ Additionally, channels of distribution overlap, as both floor plate and other hot-rolled products are sold to service centers to varying degrees.²⁹

Despite alleged differences in customer and producer perceptions,³⁰ interchangeability³¹ and price,³² the differences separating floor plate from other types of hot-rolled products are no more significant than differences separating other niche products, and are not significant enough to justify creation of a separate like product.

3. Summary

Based on the foregoing, we determine that the like product in these investigations consists of hot-rolled carbon steel flat products, including plate in coils and hot-rolled floor plate in coils.

²⁵ Report at I-18 n.11, I-21. See also Steel Products Manual Plates: Rolled Floor Plates Carbon, High Strength Low Alloy and Alloy Steel, August 1985, p. 62.

²⁶ Report at I-18 n.11, I-21.

²⁷ Id. at I-22.

²⁸ Id. at I-22.

²⁹ Petitioners' Posthearing Br., Vol. 3, App. B at 3.

³⁰ Respondents argued that different customer and producer perceptions are evidenced by the fact that only two domestic mills produce floor plate whereas over thirty domestic mills produce other hot-rolled products in general, and that customers request particular "extras" to suit their individual needs on floor plate and other hot-rolled products. Petitioners did not address these allegations. See Fried Krupp's Prehearing Br. at 6-7; see Report at I-21-22 (discussing customer perceptions). We note that the U.S. market for floor plate appears fairly small. Hence, demand for floor plate may not be sufficient to warrant production by a large number of producers.

³¹ Fried Krupp's PreHearing Br. at 4-5, stated that hot-rolled sheet and floor plate are not interchangeable because hot-rolled sheet has a lighter weight and smoother finish, and therefore cannot be a substitute for floor plate that is made of lower quality inflexible steel. Respondents pointed out that floor plate is sold to customers without specifications and could not be used for other purposes which require a higher quality, smoother steel product. Petitioners conceded that floor plate differs from other hot-rolled products at least on the basis of its raised surface. Petitioners' Posthearing Br., Vol.3, App. B at 3.

³² Fried Krupp's Prehearing Br. at 8-9 and Ex. H cites recent pricing according to American Metal Market, which quotes prices of \$21 per CWT for hot-rolled sheet, \$25.25 for hot-rolled plate, and \$26.75 for floor plate. Petitioners did not dispute this.

II. DOMESTIC INDUSTRY

Section 771(4)(A) of the Act defines the relevant domestic industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. . . ." ³³ The Commission is required to assess the effects of subsidized or dumped imports in relation to U.S. production of the like product within that industry. ³⁴ In these investigations, we find that there is one domestic industry consisting of all domestic producers of hot-rolled carbon steel products.

A. Captive Consumption Issue ^{35 36}

As in the preliminary investigations, we considered in these final investigations both captive and merchant market production data in our determination of whether there was material injury to the domestic industries under consideration. We are cognizant of the fact that a large percentage of both hot-rolled and cold-rolled production is consumed internally by integrated producers in the production of downstream products, ³⁷ and that LTFV and subsidized imports do not affect the captive segments of these industries in the same manner that they affect the merchant market segments of the industries. While the extent of captive consumption is relevant and important as a condition of competition in the domestic industries under consideration, we decline to evaluate competition and the effects of the subject imports solely on the basis of the merchant market segment of these industries. ³⁸

Petitioners argued that the Commission should assess the effects of the subsidized or dumped imports of flat-rolled carbon steel products in relation to U.S. production of corresponding like products sold only in the merchant market to avoid double or triple counting among the industries under consideration. They argued that hot-rolled and cold-rolled products destined for further processing into downstream products should be treated as "semifinished work-in-progress inventory" and be excluded from the measurements of apparent consumption, market share, and financial performance in the upstream industries.

Respondents collectively argued that the Commission correctly determined in the preliminary investigations that the applicable like product categories include captive and merchant market

³³ 19 U.S.C. § 1677(4)(A).

³⁴ 19 U.S.C. § 1677(4)(D).

³⁵ The discussion within this heading applies to all four sets of Views.

³⁶ Chairman Newquist only generally concurs with the majority's discussion of captive consumption throughout their Views. While he agrees that imports may affect open and captive markets differently, he notes that any conclusion that captive markets are "shielded" from the adverse effects of unfair imports ignores the economic and business realities of the interrelated nature of the industries.

³⁷ The Report indicates that approximately two-thirds of domestically produced hot-rolled products are internally consumed in the production of cold-rolled steel and that approximately one half of domestically produced cold-rolled products are internally consumed in the production of corrosion-resistant steel. Report at Table 9.

³⁸ We note that the pricing data evaluated by the Commission compare import prices and prices of U.S. shipments to the merchant market.

production.³⁹ They asserted that comparing import volume with the total domestic production for each like product does not understate the impact of imports but is in fact necessary to gain a full understanding of those domestic industries' conditions. Since captive production clearly is part of those domestic industries and does not directly compete with imports, respondents concluded that the fact that such production is shielded from competition with imports tends to show that imports are not causing injury to each of those industries as a whole.⁴⁰ We reject petitioners' proposed analysis. As noted above, in making our determination of whether a domestic industry is materially injured by reason of subsidized or LTFV imports, the Commission is required to evaluate the condition of the domestic producers as a whole of the like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.⁴¹ The impact of the subsidized or dumped imports must be evaluated in relation to U.S. production of a like product.^{42 43} Thus, the statute defines the domestic industry in terms of production, not in terms of markets, distribution channels, or similar factors.⁴⁴

Petitioners' proposal to exclude internal transfers of upstream or "semifinished" products from the calculations of apparent consumption, market share and financial performance relating to such products similarly is not supported by the statute, Commission practice⁴⁵ or judicial precedent⁴⁶

³⁹ Respondents cite as support of their argument Pet Film, USITC Pub. 2383; Industrial Phosphoric Acid from Belgium and Israel, Invs. Nos. 701-TA-286 and 731-TA-365-366 (Final), USITC Pub. 2000 (Aug. 1987). See Respondents' Joint Posthearing Br. at 6.

⁴⁰ Id. at 15.

⁴¹ 19 U.S.C. § 1677(4)(A) (emphasis added).

⁴² 19 U.S.C. § 1677(4)(D) (emphasis added); see also General Motors v. United States, 17 CIT ___, Slip Op. 93-128 at 10 (July 12, 1993).

⁴³ 19 U.S.C. § 1677(4)(D). The only exception to the statutory requirement that the Commission consider production of a like product as a whole is the "product line" provision contained in 19 U.S.C. § 1677(4)(D) which provides for evaluation of more inclusive rather than less inclusive lines of production. This provision applies if the Commission is unable to obtain specific data on the relevant industry and requires the Commission to examine the effect of subject imports on the narrowest group of products, which includes the like product, for which the necessary information can be provided (emphasis added). Petitioners' arguments would require the Commission to exclude from its analysis of the upstream industry a major proportion of the like product with respect to certain factors, even though the data are available, and would seemingly require us to consider the downstream industries' production in relation to the condition of the upstream industry. The "product line" provision is an exception to the general principle that the relevant operations are limited to those producing the like product, and the Commission declines to create additional exceptions to the requirements of the statute. See Minivans from Japan, Inv. No. 731-TA-522 (Final), USITC Pub. 2529 (July 1992) at 11, 64-65, aff'd General Motors, Slip. Op. 93-128.

⁴⁴ See Thermostatically Controlled Appliance Plugs from Canada, Japan, Malaysia, and Taiwan, Invs. Nos. 701-TA-292 and 731-TA-400 and 402-404 (Final), USITC Pub. 2152 at 8-9 (Jan. 1989).

⁴⁵ Petitioners' attempt to create a distinction between "captive" upstream production and "semifinished" upstream production is not consistent with the Commission's semifinished product analysis or its treatment of captive consumption in general. Unlike the situation here, the overwhelming majority of cases in which the Commission has applied a semifinished analysis involve situations in which the upstream product and the downstream product are within the same like product definition. In those few instances in which the Commission has found semifinished and finished products to constitute separate like products, the Commission has either used a product line

(continued...)

where investigations involve more than one industry. To accept their proposal, the Commission would have to manipulate its analysis of statutory factors for each of the five industries to reflect a larger steel "industry," encompassing all five individual steel industries, by virtue of the integrated nature of various producers of various products. Their proposal asks us to ignore factors relating to industry financial performance and apparent consumption in each individual industry that the statute requires us to consider and that are important to our analysis. Because the database for certain other factors that we traditionally review would arguably remain unchanged if petitioners' analysis were adopted (i.e., capacity, capacity utilization, employment, etc.), the practical effect of the proposal would be to skew our analysis.

Further, petitioners' argument that our analysis leads to double and triple counting in these injury determinations is unfounded. Their assertion ignores the necessary implications of our finding five different industries, as opposed to one "steel industry." Disregarding internal transfers for purposes of determining apparent consumption and market penetration by subject imports in upstream industries would not avoid double counting within one industry, but would instead preclude the Commission from analyzing production in each separate domestic industry as a whole. Because approximately two-thirds of domestic production of hot-rolled products and one half of domestic production of cold-rolled products are consumed internally, petitioners' suggested analysis would in fact preclude us from analyzing a "major proportion" of the total domestic production in each of these industries. We decline to adopt petitioners' arguments on these grounds.

Although title VII of Act requires captive production to be included in the domestic industry,⁴⁷ we have in previous cases recognized that imports may not affect merchant market production and captive market production in the same way. In such instances, we have given separate consideration to the effect of subject imports on the merchant market segment of the industry as part of our analysis in determining whether the imports are materially injuring the total domestic industry, including captive production.⁴⁸ We followed this approach in the preliminary

⁴⁵(...continued)

analysis or considered each industry separately, without any adjustments to account for internal consumption of the upstream product. See Certain Castor Oil Products from Brazil, Inv. No. 731-TA-236 (Preliminary), USITC Pub. 1646 (Feb. 1985); Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. 1733 (July 1985); Certain Mobile Telephones and Subassemblies Thereof from Japan, Inv. No. 731-TA-207 (Final), USITC Pub. 1786 (Dec. 1985); Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Preliminary), USITC Pub. 2081 (May 1988).

⁴⁶ In a number of cases, our reviewing courts have stated that the Commission must review data relating to the domestic industry as a whole and without reliance on data from other industries when determining injury to a specific industry unless the product line exception is legitimately met. See Alberta Pork Producers' Marketing Board v. United States, 11 CIT 563, 587, 669 F. Supp. 445, 464 (1987); Mitsubishi Electric Corp. v. United States, 12 CIT 1025, 1057, 700 F. Supp. 538 (1988), *aff'd*, 898 F.2d 1577 (Fed. Cir. 1990); General Motors, Slip Op. 93-128 at 10; National Association of Mirror Manufacturers v. United States, 12 CIT 771, 696 F. Supp. 642 (1988).

⁴⁷ 19 U.S.C. § 1677(4)(A). See also PET Film, USITC Pub. 2292; Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefore from Canada, Japan, Malaysia and Taiwan, Invs. Nos. 701-TA-292 and Invs. Nos. 731-TA-400 and 402-404 (Final), USITC Pub. 2152 (Jan. 1989); Industrial Phosphoric Acid from Belgium and Israel, Invs. Nos. 701-TA-286 and 731-TA-365-366 (Final), USITC Pub. 2000 (Aug. 1987).

⁴⁸ See Industrial Phosphoric Acid from Belgium and Israel, USITC Pub. 2000; Titanium Sponge from Japan and the United Kingdom, Invs. Nos. 731-TA-161 and 162 (Final), USITC Pub. 1600 (Nov. 1984); Electrolytic Manganese Dioxide from Greece and Japan, Invs. Nos. 731-TA-406 and 408 (Final), USITC Pub. 2177 (April 1989).

investigations of these industries⁴⁹ and adopt this analysis, when appropriate, in these final determinations.⁵⁰

Finally, petitioners argued that if the Commission did not accept their proposal, it is still within the Commission's discretion to evaluate the impact of the subject imports solely on merchant market shipments as "other economic factors . . . relevant to the material injury determination" under Section 771(7)(B)(ii) of the Act.⁵¹ The specific statutory instructions that require us to consider the effects on the domestic industry as a whole take precedence over this more general provision.⁵² While we consider the large percentage of hot-rolled and cold-rolled production that is internally transferred to make downstream products to be relevant to our determination of injury, we do so in the context of each domestic industry as a whole.

B. Related Parties

A detailed discussion of the issues pertaining to the related party provision of the Act is contained in the Cold-Rolled Views. We incorporate that discussion herein.

III. CONDITION OF THE DOMESTIC INDUSTRY

A. Legal Standards

In assessing whether the domestic industry is materially injured by reason of subsidized and LTFV imports from the subject countries, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. 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

⁴⁹ See Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, Invs. Nos. 701-TA-319-354 and 731-TA-573-620 (Preliminary), USITC Pub. 2549 (Aug. 1992) at 28 ("Preliminary Determinations").

⁵⁰ Petitioners correctly pointed out that in the 1982 and 1985 investigations of flat-rolled steel products, the Commission did not include captive production in production and shipment data relating to the domestic industries. The issue of captive production in relation to merchant production was apparently not raised by the parties nor considered by the Commission. The analysis used in those cases is inconsistent with the captive production analysis used by the Commission since those determinations and we do not believe there is anything inherently different about the steel industries subject to investigation to warrant a deviation from the Commission's current practice. We have not excluded captive production from our consideration of injury to the domestic industry in other determinations and we likewise decline to do so in these investigations. See e.g. Certain Special Quality Carbon and Alloy Hot-Rolled Steel Bars and Rods and Semifinished Products from Brazil, Inv. No. 731-TA-572 (Final), USITC Pub. 2662 (July 1993) at 21.

⁵¹ 19 U.S.C. § 1677(7)(B)(ii).

⁵² See General Motors Slip Op. 93-128 at 9; USX Corp. v. United States, 12 CIT 205, 207-213, 682 F. Supp. 60, 64-68 (1988); cf. Bingham & Taylor Division v. United States, 10 CIT 67, 74, 627 F. Supp. 793, 798 (1986) ("To the extent that the other statutory provisions cited by defendant are *in pari materia* with the cumulation provision, they must be harmonized with the clear Congressional purpose in broadly mandating cumulation."), *aff'd*, 815 F.2d 1482 (Fed. Cir. 1987).

is determinative, and the Commission considers all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁵³

B. General Conditions of Competition⁵⁴

There are several conditions of competition that affect all of the industries covered by these investigations to some extent. First, the period examined in these cases is contemporaneous with the recent recession experienced by the domestic economy in general. Both respondents and petitioners agreed that profitability in the domestic steel industries fluctuated much more widely than in other manufacturing industries during the recent recessionary period.⁵⁵ They agreed that the steel industries, because of their high ratio of fixed to total costs, are particularly susceptible to profit erosion in periods of weak demand.⁵⁶

Second, voluntary restraint agreements (VRAs) were in force until March 31, 1992 with respect to many of the countries subject to these investigations.⁵⁷ ⁵⁸ Although the structure of the arrangements varied from one country to another, each involved an agreement by a foreign government to limit the volume of exports to the United States of certain steel products including the flat-rolled products subject to these investigations.⁵⁹ In most cases, imports from the countries subject to these investigations did not rise markedly after the VRAs were lifted.⁶⁰

The statutory scheme implementing the VRA program required the major domestic steel producers to commit substantially all of their net cash flow from steel operations to re-investment,

⁵³ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁴ The discussion within this subheading applies to all four sets of Views.

⁵⁵ Respondents' Joint Prehearing Br. at 48; see also Petitioners' Prehearing Br., Vol. 5 at 55.

⁵⁶ Id.

⁵⁷ Report at I-12-13. We have previously determined that VRAs or other quantitative restraints are factors of trade to be considered in the Commission's injury determination and that their existence does not preclude a finding of material injury by reason of LTFV or subsidized imports. See Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-448-450 (Preliminary), USITC Pub. 2234 (Nov. 1989) at 24, n.74; Certain Steel Wire Rope from Argentina, Chile, India, Israel, Mexico, the People's Republic of China, Taiwan and Thailand, Invs. Nos. 701-TA-305 and 306 and 731-TA-476-482 (Preliminary), USITC Pub. 2343 (Dec. 1990); Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, Invs. Nos. 701-TA-311 (Preliminary), USITC Pub. 2454 (Nov. 1991).

⁵⁸ It is difficult to state how "binding" the VRAs were on imports of the subject products because the VRA categories for plate, hot-rolled, cold-rolled, and corrosion-resistant products were generally broader than those for the products subject to these investigations. However, we note that the final ceilings for individual flat-rolled products from subject countries were only filled to levels exceeding 95 percent in ten instances. The VRA limits were met in only three instances. See Report at I-12, see also Preliminary Determination at I-43.

⁵⁹ The aggregate volume of imports agreed to under the VRAs was not specifically designated to be at a level that was noninjurious to the domestic industry; they were negotiated levels. The VRAs explicitly preserved rights of U.S. producers to bring antidumping and countervailing duty actions.

⁶⁰ Report at Tables 93-96.

modernization and worker retraining.⁶¹ Further, the statute required that the industry take action to produce price-competitive and quality-competitive products, to control costs of production, and to improve productivity.⁶² Pursuant to these requirements, domestic producers engaged in extensive modernization programs.⁶³

Third, the industries under investigation have attracted new entrants in recent years in the form of minimills and reconstituted mills. Minimills are generally lower cost producers because they are more efficient in the steel making process and in many cases operate with different labor arrangements. Reconstituted mills are often lower cost producers because they typically have been relieved of large pension fund, health plan, and other financial liabilities through reorganization proceedings.⁶⁴ In response to the success⁶⁵ of these new entrants, some integrated producers have renovated their production facilities to include electric arc furnace production that competes more effectively with minimills.⁶⁶

C. Conditions of Competition in the Hot-Rolled Industry

Hot-rolled steel is most often an input into the production of cold-rolled sheet and strip or welded pipe.⁶⁷ Other industries employing hot-rolled steel include construction, automotive, machinery, and equipment.⁶⁸ Demand for hot-rolled steel varies by end-use application. Demand for hot-rolled steel reportedly increased in some sectors during the period examined because of growth in the automotive and auto parts markets and as a result of introduction of new end products that use hot-rolled steel as an input.⁶⁹ Demand reportedly declined in some sectors due to cyclical economic trends in general, and the substitution of cold-rolled and corrosion-resistant products for hot-rolled products in some applications.⁷⁰

⁶¹ See Sec. 806(b) of the Trade and Tariff Act of 1984, as amended (P.L. 98-573, title VIII as amended by P.L. 100-418 and P.L. 101-221).

⁶² Id.

⁶³ See Report at I-44, summarizing modernization programs by major domestic mills.

⁶⁴ Steel Industry Annual Report, Inv. 332-289, USITC Pub. 2436 (Sept. 1991) at 4-6; see also Respondents' Joint Prehearing Br. at 51, citing affidavit of John D. Correnti, President of Nucor (explaining Nucor's cost advantage).

⁶⁵ Report at I-44. For example, the success of Nucor is exhibited in its recent announcement to add 1.4 million tons of capacity to its two existing thin-slab facilities and to enter a joint venture with Oregon Steel to construct a 1.0 million ton-per-year mill on the West Coast.

⁶⁶ The majority of producers in the petitioning group are fully integrated steel producers. See EC-Q-082 at 10. Approximately 38 percent of raw steel production in the United States is now accomplished in electric arc furnaces. See Annual Statistical Report, American Iron and Steel Institute, 1992 at Table 24.

⁶⁷ Report at I-34.

⁶⁸ Id.

⁶⁹ Id. at I-162.

⁷⁰ Id.

Two-thirds of domestic production of hot-rolled steel is captively consumed in the production of downstream products.⁷¹ As discussed above,⁷² we have followed our practice of declining to exclude captive production and shipments from our analysis of the condition of the domestic hot-rolled industry. However, we have considered it important to our analysis that imports do not compete with captive shipments in the same way and to the same extent that they compete with merchant shipments. In fact, petitioners themselves strongly argued that competition between captive production of hot-rolled products and merchant market supply is virtually nonexistent.⁷³ While subject imports of hot-rolled steel arguably have an indirect effect on captive production of domestic integrated producers, the impact of imports on captive production appears to be greatly diminished in comparison to their impact on the domestic production destined for the merchant market. Thus, two-thirds of the production in this industry is shielded to a large extent from any potential adverse effects of subsidized and LTFV imports.⁷⁴

The condition of the domestic hot-rolled industry is also affected by "slab offerings" by domestic producers.⁷⁵ Slab offerings occur when producers sell prime quality or secondary products produced from slabs that were either not needed by, or did not meet the exact specifications of, the primary purchaser. Slab offerings are generally made to service centers and end users with less demanding specifications. Evidence on the record shows that approximately one-fourth of all responding purchasers bought some quantity of flat-rolled products through slab offerings over the past five years.⁷⁶ Prices for slab offerings are commonly discounted by five to twenty percent off prices for comparable products sold in the primary market.⁷⁷

D. Discussion of Condition Factors

These conditions of competition established the context within which we examine the indicators of industry performance. Apparent U.S. consumption (including captive consumption) dropped and then rose again, from 51.6 million tons in 1990 to 44.5 million tons in 1991 and to 50.6 million tons in 1992.⁷⁸ U.S. producers' share did not follow trends identical to apparent consumption in the aggregate, but instead decreased slightly throughout the period examined, starting at 94.4 percent in 1990, falling to 94.1 percent in 1991, and falling further to 93.3 percent in 1992.⁷⁹

⁷¹ Id. at I-20.

⁷² See supra section on Domestic Industry.

⁷³ Petitioners' Prehearing Br., Vol. 3 at 31, stating that imports do not compete with captive production because an integrated producer's operating efficiency and profit margins are dependent on production of both upstream and downstream products.

⁷⁴ Commissioner Rohr notes that while the extent of captive consumption reduces the effect of the imports, it does not eliminate such effects. See his Additional and Dissenting Views with regard to price sensitivity. He interprets the word "shielded" to refer to this lessened but not eliminated effect.

⁷⁵ Commissioner Rohr and Commissioner Nuzum find that slab offerings have a minimal effect on the domestic industry.

⁷⁶ Report at I-166.

⁷⁷ Id. at I-167. Slab offerings are usually accomplished by frequent distribution of lists showing all slab available from a particular mill. Buyers are usually required to take large quantities in a single purchase (usually around 2,000 tons per sale).

⁷⁸ Id. at Table 10.

⁷⁹ Id. at I-144.

Domestic production decreased slightly from 49.8 million tons in 1990 to 44.0 million tons in 1991, and then increased to 47.9 million tons in 1992, for an overall decrease during the period examined of 4.0 percent.⁸⁰ The domestic industry's total U.S. shipments, including company transfers, declined from 48.7 million tons in 1990 to 41.9 million tons in 1991, and then increased by 13.0 percent in 1992 to 47.3 million tons.⁸¹ Of those shipments, however, company transfers accounted for 32.6 million tons in 1990, 28.0 million tons in 1991, and 31.3 million tons in 1992.⁸² In terms of value, total U.S. shipments declined from \$14.2 million in 1990 to \$12.1 million in 1992, and then rose to \$13.4 million in 1992. Of those shipments, company transfers accounted for \$8.8 million in 1990, \$7.6 million in 1991, and \$8.4 million in 1992.⁸³

Domestic capacity declined from 60.6 million tons in 1990 to 57.1 million tons in 1991, and then increased to 59.6 million tons in 1992. Similarly, capacity utilization declined from 82.2 percent in 1990 to 77.0 percent in 1991, and then increased to 80.4 percent in 1992.⁸⁴

Despite the changes in apparent domestic consumption during the period examined, U.S. producers' inventories of hot-rolled steel products remained relatively constant, starting at 1.9 million tons in 1990, falling to 1.7 million tons in 1991, and rising again to 1.9 million tons in 1992. As a ratio to total shipments, inventories also remained steady, starting at 3.9 percent in 1990, rising to 4.1 percent in 1991, and falling back to 3.9 percent in 1992.⁸⁵

The number of production and related workers, reported on a nonallocated basis,⁸⁶ fell throughout the period, starting at 17,639 workers in 1990, falling to 16,685 workers in 1991, and falling further still to 16,177 workers in 1992. Hourly wages decreased from \$17.84 in 1990 to

⁸⁰ Id. at I-51, Table 15.

⁸¹ Id. at Table 16.

⁸² Id.

⁸³ Id.

⁸⁴ Id. at Table 15.

⁸⁵ Id. at Table 17.

⁸⁶ At the request of petitioners in these investigations, the Commission collected data relating to production and employment utilizing two different methods. The Report shows data on a "nonallocated" basis, in which reporting is limited to production and employment related data that can be directly associated with the production process for the like product and industry in question, and on an "allocated" basis, in which reporting is based on employment-related data that are directly associated with the production process as related to market sales of the like product, plus an allocated portion of the processes related to production of other articles not within the like product or industry in question. See Report at I-58.

As previously discussed, the statute requires us to consider the domestic industry as a whole and does not allow us to consider data relevant to other industries in our analysis of the condition of the domestic industry in question. See supra discussion on Domestic Industry. While we believe that the data reported on an allocated basis is useful in gaining an understanding of the integrated nature of the separate industries under consideration, we recognize that these data in part represent production and employment related information pertaining to other industries than the specific industry under consideration. We thus do not believe that the allocated data are an appropriate basis on which to judge the condition of the separate upstream domestic industries. As we previously noted, however, we have considered the fact that a substantial majority of the domestic production in the hot-rolled industry is captively-consumed and does not compete directly with the subject imports in our review of the condition of the domestic industry.

\$14.47 in 1991, and then rose sharply in 1992 to \$19.36. Similarly, total compensation fell from \$933.0 million in 1990 to \$916.9 million in 1991, and then rose to \$937.2 million in 1992. Productivity also fell from 1.1 tons produced per hour in 1990 to 0.8 tons per hour in 1991 and then rose to 1.2 tons per hour in 1992.⁸⁷

Net sales declined unevenly over the period, starting at \$14.9 billion in 1990, falling to \$12.1 billion in 1991 and then increasing to \$13.1 billion in 1992.⁸⁸ Operating income also fell, both in terms of value and as a ratio to net sales, from 1990 to 1991, and rose slightly from 1991 to 1992.⁸⁹ The industry showed operating income of \$39.0 million in 1990, and operating losses of \$1.5 billion in 1991 and \$1.3 billion in 1992.⁹⁰ Operating income as a share of net sales was 0.3 percent in 1990, negative 12.0 percent in 1991, and negative 10.0 percent in 1992. Cash flow on trade-only operations also decreased sharply between 1990 and 1991, falling from \$145.5 million to a negative \$558.5 million, and then increasing somewhat in 1992, to a negative \$400.0 million.⁹¹

Funds expended on research and development also fell throughout the period examined, starting at \$12.7 million in 1990, falling to \$11.5 million in 1991, and falling further still to \$10.0 million in 1992.⁹² Capital expenditures similarly decreased, falling from \$282.6 million in 1990 to \$229.6 million in 1991, and to \$140.4 million in 1992.⁹³ Several domestic producers also reported difficulty in raising capital during the period examined.^{94 95 96 97}

⁸⁷ Report at Table 18.

⁸⁸ Id. at Table 30.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Id. at Table 26.

⁹² Id. at Table 41.

⁹³ Id. at Table 43. Upon expiration of the VRA program in March 1992, domestic producers were no longer required to reinvest their net cash flow in modernization programs. It is unclear the extent to which termination of the VRA program accounts for reductions in capital expenditures.

⁹⁴ Id. at Appendix G.

⁹⁵ We note that the Commission was unable to consider general levels of return on investment as part of its analysis of the condition of the domestic hot-rolled industry because of certain difficulties in aggregating upstream assets of produced products. See Report at I-84. We note, however, that this factor is not independently significant in our review of the condition of the domestic industry and is one of many factors that the Commission generally reviews in determining the condition of the domestic industry. The presence or absence of these data do not change our analysis because we are confident that additional information on this factor would not change the overall picture of the condition of this industry or the trends apparent in other relevant data.

⁹⁶ Based on his analysis of the foregoing information, Chairman Newquist finds the domestic hot-rolled industry to be in a vulnerable condition.

⁹⁷ Based on his analysis of the information in the record, Commissioner Rohr determines that the domestic hot-rolled industry is materially injured.

IV. CUMULATION

In determining whether there is material injury by reason of the LTFV and subsidized imports, we are required to cumulatively assess the volume and effect of imports from two or more countries subject to investigation if such imports "compete with each other and with like products of the domestic industry in the United States market," and are reasonably coincident with one another.⁹⁸ Even if that test is satisfied, cumulation is not required when imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.⁹⁹

A number of respondents have argued that specific imports from a number of countries do not compete with either U.S.-produced hot-rolled products or subject imports of hot-rolled products from other countries. In addition, many respondents argued that cumulation is inappropriate because the imports from their countries are "negligible" in relation to U.S. production of the like product.¹⁰⁰ Both issues are addressed below.

A. Cumulation Legal Issues¹⁰¹

1. Competition-Related Requirements

We have found in these final investigations a reasonable overlap of competition between imports from all countries and the domestic products in each of the four major domestic industries, except for hot-rolled products from Korea.¹⁰² In making this assessment, we generally have considered four factors.¹⁰³ While no single factor is determinative, and the list of factors is not

⁹⁸ 19 U.S.C. § 1677(7)(C)(iv)(I); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990).

⁹⁹ 19 U.S.C. § 1677(7)(C)(v).

¹⁰⁰ Respondents also argued that imports from South Africa are not "subject to investigation" under the cumulation provision of the Act. This issue is also discussed below.

¹⁰¹ The discussion within this heading applies to four sets of Views.

¹⁰² Commissioner Rohr notes that his analysis began with a consideration of negligibility and then he considered whether those countries that were not negligible competed. He did this to avoid the possibility that an overlap of competition might be based on particular imports that would be excluded on negligibility grounds. He joins in this discussion as it pertains to those countries he found not negligible, that is, Canada, France, Korea, and the Netherlands. He takes no position on its applicability to other countries, specifically Belgium, Brazil, Germany, Japan, and South Africa.

¹⁰³ These four factors are:

(1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

(2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and

(continued...)

exclusive, these factors provide us with a framework for determining whether the imports compete with each other and with the domestic like product.¹⁰⁴ Only a "reasonable overlap" of competition is required.¹⁰⁵ Thus, we have held that even if a certain volume of subject imports from a country are of a type or specification not produced by the domestic industry, imports from that country will be cumulated if a sufficiently large number of the remaining imports "collectively do compete with the domestic like product (and with other imports)."¹⁰⁶

Respondents argued that the Commission must find a reasonable overlap of competition among all the subject imports from each country in order to cumulate these countries.¹⁰⁷ Petitioners asserted that there is no legal requirement to demonstrate a reasonable overlap of inter-country competition in order to cumulate imports from various countries.¹⁰⁸ The statute requires, for each determination, that "imports compete with each other and with like products of the domestic industry. . . ."¹⁰⁹ Beyond this, the statute does not define "compete," a term the Federal Circuit has held has no plain meaning.¹¹⁰ Contrary to petitioners' contentions, we previously have examined competition between imports by determining whether there is a reasonable overlap of competition between imports from each of the countries subject to investigation.¹¹¹ The Court of International Trade has affirmed findings of a reasonable overlap of competition between individual countries if substantial evidence of record supported that finding.¹¹² Accordingly, before cumulating the imports from each of the various countries, we found that there was a reasonable overlap of competition between imports from each of these countries and imports from each other country subject to investigation.

¹⁰³(...continued)

(4) whether the imports are simultaneously present in the market.

¹⁰⁴ Wieland Werke, AG v. United States, 13 CIT 561, 718 F. Supp. 50 (1989).

¹⁰⁵ Granges Metallverken AB v. United States, 13 CIT 471, 475-477, 716 F. Supp. 17, 21-22 (1989)("The Commission need not track each sale of individual sub-products and their counterparts to show that all imports compete with all other imports and all domestic like products . . . the Commission need only find evidence of reasonable overlap in competition").

¹⁰⁶ Torrington Co. v. United States, 16 CIT ___, 790 F. Supp. 1161 (1992), aff'd 991 F.2d 809 (Fed. Cir. 1993).

¹⁰⁷ Cold-rolled Japanese Respondents' Prehearing Br. at 10.

¹⁰⁸ Petitioners' Posthearing Br., Vol. I at 17-19.

¹⁰⁹ 19 U.S.C. § 1677(7)(C)(iv).

¹¹⁰ Chaparral Steel Co. v. United States, 901 F.2d 1097, 1101 (Fed. Cir. 1989).

¹¹¹ See e.g., Granges Metallverken, 13 CIT at 475, 716 F. Supp. at 21 ("competition among imports").

¹¹² Wieland Werke, 13 CIT at 562-566, 718 F. Supp. at 51-54.

Various respondents have asserted that there is no reasonable overlap of competition between imports and domestic like products when a substantial amount of the imports from a particular country are specialized "niche" products and there is little or no comparable domestic production.¹¹³ In response, petitioners made a number of statements to the effect that domestic producers have the capability, expertise, equipment, and experience to produce various niche products, although they have not produced them during the period examined due to competition from low priced subject imports.¹¹⁴ If all, or substantially all of the imports from one particular country did not compete with any domestic products then there would be no reasonable overlap of competition to justify cumulation.¹¹⁵ However, the domestic industry need not in fact be selling every subproduct within the overall like product for a reasonable overlap of competition to exist.¹¹⁶

Because we consider quality to be an important element of fungibility, we have taken quality differences among products into account in determining whether competition exists.^{117 118} We also have focused on the existence of common or similar channels of distribution,¹¹⁹ sales in a similar

¹¹³ Niche categories were developed in response to claims from various respondents that they imported specialized products of which there was no significant domestic or other foreign production. Both petitioners and respondents had significant input on the products selected for both commercial grade and niche product pricing comparisons. As discussed further below, our data show that there are actually very few niche categories in which there is no significant domestic production or foreign production by more than one respondent. These so-called "niche" products are described in the Report at F-3-F-10.

¹¹⁴ See e.g., Petitioners' Posthearing Br. Ex. 2, Affidavit of James D. Lawrence, at 2, ¶ 2; Petitioners' Prehearing Br. Vol. 6C, Ex. 41. We note that these investigations do not involve material retardation.

¹¹⁵ Compare United Engineering & Forging v. United States, 15 CIT 561, 583-584, 779 F. Supp. 1375, 1394 (1991)(cumulation of different countries upheld even where imports from each country were produced to customer specifications on a job-order basis because crankshafts of the same design produced by different manufacturers are generally interchangeable; the Court noted that "[o]f course, given the 'reasonable overlap' test, competition on a sale-by-sale basis would appear to be sufficient." *Id.* n.30).

¹¹⁶ Granges Metallverken, 13 CIT at 477, 716 F. Supp. at 22-23; Certain Welded Carbon Steel Pipes from India, Taiwan, and Turkey, Invs. Nos. 731-TA-271-273 (Final), USITC Pub. 1839 (April 1986)(pipe imported from India was primarily galvanized pipe, while pipe imported from India, Taiwan, Turkey, and Yugoslavia was black pipe; Commission found that cumulation was appropriate because there were minor differences between black pipe and galvanized pipe).

¹¹⁷ See Torrington, 790 F. Supp at 1171 (supporting Acting Chairman Brunsdale's conclusion not to cumulate Chinese ball bearings due to, inter alia, limits on fungibility caused by differences in quality).

¹¹⁸ Commissioner Rohr and Commissioner Nuzum note that while they have taken quality differences among products into account in determining whether competition exists, they have considered perceived quality differences to be less important than other factors.

¹¹⁹ High Tenacity Rayon Filament Yarn from Germany and the Netherlands, Invs. Nos. 731-TA-530 and 531 (Preliminary), USITC Pub. 2444 (Oct. 1991) at 14 (Commission cumulated imports even though respondents claimed that their product was of a higher quality and that the domestic product did not meet the specs of certain end users -- Commission noted similar channels of distribution).

segment of the market such as in the commodity grade products or the various niche products, simultaneous presence in the market,¹²⁰ and sales in a similar geographic market.¹²¹

We have assessed the issue of fungibility (the relative substitutability between domestic and subject imported products) in part by considering pricing data on commercial grade and niche products obtained from the Commission's questionnaires. All countries made at least some portion of their sales in these commercial grade and niche products covered by these questionnaires. Where this pricing data reflected mixed overselling and underselling within relatively close margins, we considered it as some evidence of greater substitutability. We have viewed consistent and significant price differentials, be it underselling or overselling, between what otherwise should be comparable domestic and imported products, as some evidence tending to support a finding of a lack of competition with respect to the particular goods.^{122 123} We recognize, however, that not all price differences can be explained by differences in the merchandise,¹²⁴ that different pricing does not necessarily reflect differences in merchandise,¹²⁵ and that nonprice considerations can also affect competition in the marketplace.¹²⁶

We have also considered common or similar channels of distribution for imports from different countries and the domestic like products. In this regard, we generally found that most imports and domestic like products moved in similar channels of distribution, *i.e.*, to end users and to steel service distribution centers. We also examined the extent of sales or offers to sell into the same geographic markets.¹²⁷

Finally, we considered whether subject imports were simultaneously present in the market. In the considerable majority of cases, subject imports from all countries were imported into the United States in every month of the investigation.¹²⁸

¹²⁰ PET Film, Invs. Nos. 731-TA-358-460 (Preliminary), USITC Pub. 2292 (June 1990) at 16-18.

¹²¹ Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Inv. Nos. 731-TA-439 (Final), USITC Pub. 2295 (June 1990) at 12-13 (Commission cumulated due to, among other things, sales in similar geographic markets despite alleged quality differences).

¹²² Commissioner Rohr does not view the margins of over and under selling to be probative of the presence or absence of competition. He has not based any of his conclusions with regard to competition in the context of cumulation, negligibility, causation or threat in this or any other of these Views on this factor.

¹²³ Commissioner Nuzum notes, however, that overselling alone is not sufficient to establish a lack of competition, and that imports may have adverse effects even though they oversell the domestic product. See *infra* n.156.

¹²⁴ S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987).

¹²⁵ See Metallwerken Nederland, B.V. v. United States, 13 CIT 1013, 1025, 728 F. Supp. 730, 740 (1989) (citing the Commission stating "while higher quality 'would normally imply that a price premium would be paid,' such a premium was not evident in the pricing data.").

¹²⁶ See General Motors, Slip Op. 93-128.

¹²⁷ See, e.g., Granges Metallwerken, 13 CIT at 472, 716 F. Supp. at 19.

¹²⁸ Report at Appendix L.

2. Negligible Import Issues¹²⁹

a. The Statute and Legislative History

Section 771(7)(C)(v) of the Act provides that we are not required to cumulate those imports of the merchandise subject to investigation if they "are negligible and have no discernible adverse impact on the domestic industry."¹³⁰ In determining whether imports are negligible, the statute directs us to consider all relevant economic factors including, but not limited to, whether:

- (I) the volume and market share of the imports are negligible,
- (II) sales transactions involving the imports are isolated and sporadic, and
- (III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.¹³¹

The "negligible import" exception originated in the Omnibus Trade and Competitiveness Act of 1988. The legislative history indicates that we are to apply the exception only where we determine that the facts "clearly justify" its application, and imports are "truly negligible and have no discernible adverse impact at all on the domestic industry."¹³² The legislative history states that whether a particular volume of imports is "negligible" may differ from industry to industry and for that reason the statute does not provide a specific numerical definition of negligibility.¹³³ Additionally, the House Ways and Means Committee Report notes that:

For an industry which is already suffering considerable injury and has long been battered by unfair import competition, very small additional quantities of unfair imports may be more than negligible. For another industry, not so deeply injured, small additional quantities of unfair imports may have no discernible effect at all.¹³⁴

¹²⁹ The discussion within this heading applies to all four sets of Views.

¹³⁰ 19 U.S.C. § 1677(7)(C)(v).

¹³¹ Id.

¹³² See H.R. Rep. No. 40, 100th Cong., 1st Sess., pt. 1, 131 (1987); H.R. Rep. No. 576, 100th Cong., 2d Sess. 621 (1988).

¹³³ H.R. Rep. No. 40 at 130, 131.

¹³⁴ H.R. Rep. No. 40 at 130 (emphasis supplied); see also Torrington, 790 F. Supp. at 1171.

¹³⁵ Vice Chairman Watson and Commissioner Rohr note that in the preliminary investigations, when applying the negligible imports exception, the Commission considered whether the flat-rolled steel industries at issue are industries that have been "already suffering considerable injury and ha[ve] long been battered by unfair import competition." H.R. Rep. 40 at 131. Although the Commission noted at page 50 in the preliminary determination that during the past decade these industries have suffered considerable injury in the form of numerous plant closings, worker layoffs, substantial losses and deferred capital improvements, a conclusion was not reached regarding whether the steel industry has long been battered by unfair import competition.

In these final investigations, they note that a majority of the Commission has found that during the three year period of investigation, the domestic industries producing hot-rolled and cold-
(continued...)

The legislative history also indicates this exception should be applied with "particular care in situations involving fungible products, where a small quantity of low-priced imports can have a very real effect on the market."¹³⁷ The legislative history of the 1988 Act stresses that we are to apply the exception sparingly and that it should not be used to subvert the purpose and general application of the mandatory cumulation provision of the statute.¹³⁸

We emphasize that we do not view our negligibility analysis to comprise a separate causation finding for each individual country. While imports that are negligible are not causing adverse impact, it is not true that imports that are to be cumulated must first each cause material injury.^{139 140 141}

¹³⁵ (...continued)

rolled products were not materially injured by reason of most of the subject imports. In making their determinations that imports from many of the countries under investigation are negligible, Vice Chairman Watson and Commissioner Rohr have considered the past history of the domestic steel industry prior to our period of investigation. Since 1984, when the Commission recommended to the President that certain imports of steel products were a substantial cause of serious injury to certain domestic industries in Inv. No. TA-201-51, the domestic steel industry has been protected by VRAs which only expired last year. As required by the VRA program, the domestic steel industry reinvested all of its cash flows in modernization and re-structuring. The re-structuring took place during a period of worldwide steel overcapacity, increasing domestic competition and recession. The petitioners indeed acknowledged during the ITC hearing that the re-structuring was a success and that the U.S. steel industry is now a world class competitor. See also, supra Conditions of the Domestic Industry, for a more extensive discussion of some of these factors.

Accordingly, in applying the negligible imports exception to the mandatory cumulation provision, we have been mindful of the guidance provided by pertinent legislative history as well as the past struggles of the domestic steel industry.

¹³⁶ Commissioner Brunsdale and Commissioner Crawford note that they consider the current condition of the domestic industry in deciding whether a given level of imports is negligible and whether those imports have a discernible adverse impact on the domestic industry. A quantity of imports that may have no discernible adverse impact on an industry that is performing well may have a discernible adverse impact on an industry that is not performing well, because it has long been battered by unfair import competition or is suffering from other economic factors.

¹³⁷ H.R. Rep. No. 40 at 130; see also H.R. Rep. No. 576, 100th Cong., 2d Sess. 621 (1988).

¹³⁸ H.R. Rep. No. 40 at 131.

¹³⁹ See generally, H.R. Rep. No. 40 at 131 ("The Committee does not intend for this narrow, limited exception to subvert the purpose and general application of the cumulation requirement."); H.R. Rep. No. 576, 100th Cong., 2d Sess. 621 (1988) (same).

¹⁴⁰ Vice Chairman Watson notes that in the Conference Report to the Trade and Tariff Act of 1984, the Conferees noted "(t)he (mandatory cumulation) provision requires cumulation of imports from various countries that each account individually for a small percentage of total market penetration but when combined may cause material injury. H.R. Rep. No. 1156, 98th Cong., 2d Sess. 173 (1984). He also notes that the legislative history indicates that the Commission is to apply the negligible imports exception to the cumulation requirement only where it determines that the facts clearly justify its application. See generally, H.R. Rep. No. 40; see also, H.R. Rep. No. 576 at 621 ("The Committee does not intend for this narrow, limited exception to subvert the purpose and general application of the cumulation requirement.")

Mindful of this legislative guidance, Vice Chairman Watson carefully considered the aggregate effect of excluding negligible imports from a number of countries in this case. He notes
(continued...)

b. Factors in negligibility analysis
considered in the final determinations

A majority of the Commission¹⁴² has found that hot-rolled steel imports from the following countries should not be cumulated because they are negligible and have no discernible adverse impact on the domestic industry: Belgium, Brazil, Germany, Japan and South Africa.

In reaching our final determinations regarding the numerous negligibility issues presented by these investigations, we have specifically considered the three statutory factors as well as other relevant economic factors discussed below.¹⁴³

In examining the statutory factor of volume and market share of imports, we stress that we used no numerical "bright line" for determining whether imports were negligible. We have made our determinations on all the imports subject to Commerce's final affirmative determinations and have not segregated those imports from any particular country that are arguably "noncompetitive" from other more "competitive" imports from the same country in deciding whether or not to apply the negligibility exception.¹⁴⁴ Instead, we considered total penetration figures in light of the fact that a portion of those imports may not impact the domestic industry as heavily as other portions of those imports.^{145 146}

¹⁴⁰(...continued)

that his overall negative present injury determination would not have changed even if he had not excluded any negligible imports. A comparison of import related data for both the cold-rolled and hot-rolled industries indicates that the trends of import market shares and pricing comparisons are quite similar regardless of whether he excluded certain countries as negligible. See Report at I-144-146. Accordingly, his application of the negligible imports exception does not, therefore, "subvert the purpose and general application of the cumulation requirement."

¹⁴¹ Commissioner Rohr notes that negligibility also played a role in this threat determinations. In various cases, the fact that imports, though currently at negligible levels, were rising and were almost at a nonnegligible and therefore cumulable level was a factor in determining that they posed a threat of material injury to the domestic industry.

¹⁴² Commissioner Crawford finds that imports from Brazil are not negligible, but that imports from France are negligible in addition to those countries identified here. Commissioner Brunsdale finds that imports from the Netherlands are negligible in addition to those from the countries identified here. Commissioner Nuzum declines to apply the negligibility exception to imports from any country in the hot-rolled investigations.

¹⁴³ Commissioner Nuzum has considered additional factors in her analysis of negligibility. See her Additional and Dissenting Views.

¹⁴⁴ See H.R. Rep. No. 40 at 130; See also Torrington, 790 F. Supp. 1170-1171.

¹⁴⁵ Congress has stated that there is no specific numerical standard for what constitutes "negligible" imports and that this standard may differ from industry to industry. Congress intended that "negligibility" be interpreted in light of industry conditions, and in a manner that makes sense given the realities of the marketplace. See H.R. Rep. No. 40 at 131.

¹⁴⁶ Vice Chairman Watson also considered the share of imports in the merchant or open market.

In assessing the volume and import penetration, we have examined closely the trends of imports. Where import penetration has increased even by small amounts, we have looked more carefully at the existence of a discernible adverse impact from such imports.^{147 148}

In assessing the statutory element of "isolated and sporadic" sales, we have examined whether the imports from each country were sold in most or all months during the investigation. In addition, we have considered whether the imports from each country were present in the four major marketing regions of the United States in which imports were sold -- East, Gulf, Great Lakes, and West.¹⁴⁹ We further considered the number of importers or consignees through which imports were sold. We caution, however, that even where imports are sold through one importer, the sale may be to a steel service center, which then distributes the steel to a number of different end users in other locations. On the other hand, we recognize that imports that are not isolated and sporadic may, in appropriate circumstances, still be negligible.¹⁵⁰

In deciding whether imports from a particular country are negligible, we also considered the extent of direct competition between the particular imports from a country and the domestic industry.¹⁵¹ We looked at the substitutability between imports and the domestic products in terms of any quality or technical differences. We also analyzed whether the domestic industry in fact produced products of a type and quality close to the subject imports under consideration.

We have also considered pricing data¹⁵² in determining whether there was a discernible adverse impact from imports from a particular country.¹⁵³ We have considered consistent underselling by imports as suggesting in some circumstances that a particular volume of a particular country's imports had a greater impact than might otherwise be the case. We have considered consistent overselling and underselling^{154 155} as tending to suggest less of an impact or less

¹⁴⁷ See Groundwood Paper, USITC Pub. 2359 at 312 (discussion of France and United Kingdom).

¹⁴⁸ Commissioner Rohr notes that he looked at the trend in imports more from the perspective of the threat posed by the imports than in the context of negligibility.

¹⁴⁹ In these investigations, we find that imports can be closely correlated with sales transactions because transportation costs constrain sales of imports to areas in close proximity to the port of entry. Additionally, inventories tend to be low relative to shipments. See Report at I-168 and Table C-2. As such, for the purpose of this discussion, we have referenced imports in determining whether sales transactions are isolated and sporadic.

¹⁵⁰ Torrington, 790 F. Supp. at 1171, aff'd, 991 F.2d. 809 (1993).

¹⁵¹ In Groundwood Paper, although the Commission determined that "all imports from the subject countries compete with one another and with the domestic product," it found the "attenuated" nature of the competition of some of the imports a pertinent factor in determining those imports to be negligible. Id. at 24, 33-36.

¹⁵² Granges, 716 F. Supp. at 24. These pricing data include questionnaire responses on the various commercial grade products selected for pricing comparisons in the four major like products, as well as unit values for the very specific niche products.

¹⁵³ Commissioner Brunsdale does not join in the discussion of this paragraph.

¹⁵⁴ Vice Chairman Watson also considered high average unit values as supporting overselling data on noncompetition arguments made by respondents. Although he recognizes that average unit values may sometimes not be an accurate indication of prices or competition where the product mix is diverse, he finds that the average unit values here are useful and support the significant overselling in the pricing data.

substitutability.¹⁵⁶ However, we have placed less emphasis on pricing data where there were very low volumes of imports.¹⁵⁷ Where such low volumes existed, we generally have found imports to be negligible even in a more price sensitive market, and even when there was some evidence of underselling by imports.¹⁵⁸

The third factor the statute directs us to consider in determining whether to apply the negligible import exception is the price sensitivity of the market for the like product.¹⁵⁹ We note that the Commission has in the past applied the exception notwithstanding the price sensitive nature of the market.^{160 161 162 163 164}

¹⁵⁵(...continued)

¹⁵⁵ Commissioner Crawford does not place great weight on the underselling price comparisons in determining the impact of the subject imports on the domestic like product where these comparisons show persistent and consistent high margins of overselling or underselling. In these instances, the prices being compared might well reflect quality or other nonprice differences, making these comparisons less useful in assessing price effects.

¹⁵⁶ However, overselling alone does not necessarily mean that imports are having no adverse effects on pricing; imports may have adverse effects even though they oversell the domestic product. See e.g., Tianjin Machinery Import and Export Corp. v. United States, 16 CIT ___, Slip Op. 92-214 (Dec. 1, 1992) at 13 ("economic factors other than price comparisons sufficiently indicated material injury by reason of imports"); Cemex, S.A. v. United States, 16 CIT ___, 790 F. Supp. 290, 299 (1992) ("To require findings of underselling would be inconsistent with the proposition that price suppression or depression is sufficient."), *aff'd*, ___, F.2d ___ (Fed. Cir. 1993); Florex v. United States, 13 CIT 28, 40, 705 F. Supp. 582, 593 (1989) ("injury need not be based on a finding of injury by specific price underselling"); Maine Potato Council v. United States, 9 CIT 293, 302, 613 F. Supp. 1237, 1245 (1985) (higher quality imports may have price suppressing effects notwithstanding their higher price).

¹⁵⁷ Commissioner Nuzum does not join this or the following statement. See her Additional and Dissenting Views.

¹⁵⁸ See H.R. Rep. No. 40 at 131 (focusing on volume, not price).

¹⁵⁹ Finally, we have considered petitioners' arguments that all imports are not negligible which were advanced principally through their economic experts Professor Sanford Grossman and Professor Kenneth Arrow. We reject such arguments based on the reasons set forth in the Economics Memorandum at A-3 -A-8 which we adopt for the purposes of these Views. Commissioner Nuzum does not join in this footnote.

¹⁶⁰ See e.g., Groundwood Paper, USITC Pub. 2359 at 28, 33-36 (negligible import exception invoked with respect to four countries although domestic market determined to be price sensitive); PET Film, USITC Pub. 2292 at 20.

¹⁶¹ Commissioner Rohr and Commissioner Nuzum find the hot-rolled market to be moderately price sensitive. See their respective Additional and Dissenting Views.

¹⁶² While Vice Chairman Watson acknowledges that the Commission is not bound by the guidance given and the standards enunciated in the legislative history of our controlling statutes, he notes that the House Ways and Means Committee indicated that if "the ITC finds price sensitivity then it generally should cumulate imports with respect to that product, if even small quantities of imports could affect the market and injure domestic producers. If the ITC finds, however, that the product market is not particularly price sensitive and also finds that the volume and market share of the imports are negligible...then the ITC may refrain from cumulation." H.R. Rep. 40, at 129,130. In making his determinations regarding cumulation, the Vice-Chairman carefully considered the issue of
(continued...)

3. Cumulation of South Africa

Respondents argued that it was inappropriate to cumulate imports from South Africa in these final investigation because, *inter alia*, they are still subject to preliminary investigation by Commerce and because preliminary margins have not yet been announced.¹⁶⁵ The Court of International Trade has affirmed previous Commission determinations cumulating imports from countries subject to investigation when Commerce had not yet made a final determination of LTFV or subsidized imports.¹⁶⁶ The Commission has previously held that countries such as South Africa that are not entitled to an injury investigation pursuant to 19 U.S.C. § 1303, but that are the subject of an investigation by Commerce are "subject to investigation" for the purposes of cumulation.¹⁶⁷ Accordingly, for the purposes of these final investigations, we find that imports from South Africa are "subject to investigation" within the meaning of the cumulation provisions of the statute.¹⁶⁸

B. Analysis of Particular Cumulation Issues

1. Hot-Rolled Cumulation Issues

With the exception of Canada, respondents from all countries subject to the hot-rolled investigations argued that their imports should not be cumulated. French, Japanese, Korean and Dutch respondents argued that their imports should not be cumulated based on noncompetition and negligibility grounds. Belgian, Brazilian, and German respondents argued that their imports should not be cumulated based on negligibility alone.

¹⁶²(...continued)

price sensitivity. He finds that the domestic plate market is more price sensitive than the hot-rolled, cold-rolled and corrosion-resistant markets. He also finds that all four of these markets are generally not price sensitive. Although there may be certain differences in the relative price sensitivity among the hot-rolled, cold-rolled and corrosion-resistant markets, Vice Chairman Watson does not find it necessary to reach a conclusion regarding the relative price sensitivity among those markets. *See Infra*, the discussion of price sensitivity in the Additional and Dissenting Views of Commissioner Carol T. Crawford in which Vice Chairman Watson concurs.

¹⁶³ Commissioner Crawford does not find the hot-rolled market to be price sensitive as defined in 19 U.S.C. § 1677(c)(v)(III). *See* Additional and Dissenting Views of Commissioner Carol T. Crawford contained herein.

¹⁶⁴ *See* Additional and Dissenting Views of Commissioner Anne E. Brunsdale for her analysis of price sensitivity in these investigations.

¹⁶⁵ Joint Plate Respondents' Br. at 27-32.

¹⁶⁶ *See e.g., Cemex*, 790 F. Supp. at 297; *United Engineering & Forging*, 15 CIT at 582, 779 F. Supp. at 1393 (cumulation of Japanese imports subject to preliminary negative Commerce investigation).

¹⁶⁷ *See, e.g., Certain Fresh Cut Flowers from Canada, Chile, Columbia, Costa Rica, Ecuador, Israel, Kenya, Mexico, the Netherlands, and Peru*, Invs. Nos. 303-TA-17-18, 701-TA-275-278 and 731-TA-327-334 (Final), USITC Pub. 1956 (July 1986).

¹⁶⁸ Petitioners argued that all EC and EFTA countries should be cumulated. Petitioners' Prehearing Br. Vol. XX at 20. We do not find this argument persuasive for the reasons set forth in the discussion of General Threat Issues *infra*. Commissioner Nuzum does not join in this footnote. *See* her Additional and Dissenting Views.

a. Competition Issues

With the exception of imports from Korea, which are discussed separately below, we find that imported hot-rolled steel from each country competes with all other countries' imports and with the domestic like product.¹⁶⁹ Regarding the factor of fungibility, the Commission collected extensive data indicating that all countries involved in the hot-rolled investigations exported to, and sold commercial grade products in, the United States.¹⁷⁰ The Commission also collected data on so-called "niche" products. All eight countries sold imports in some niche categories and seven of the eight countries sold products in one or more of the same niche categories.¹⁷¹ The domestic industry sold products in all but two of those niche categories.¹⁷² Analysis of these data indicate that: (1) each of the eight countries sold at least some of the same commercial grade and/or niche products as all other countries and domestic producers; (2) imports of commercial grade and/or niche products from each country were present simultaneously in the market with comparable imported and domestic product; and (3) niche categories in which there was no domestic production constituted a small percentage of the subject imports from any country subject to these investigations.

The imports and domestic hot-rolled products are sold through the same channels of distribution -- to end users and steel service centers.¹⁷³ Imports from all countries were present in the U.S. market in most, if not all, months of the period examined.¹⁷⁴ Imports from all countries were also sold in all four marketing regions of the United States.¹⁷⁵

More specific competition issues raised by the parties are discussed below on a country-by-country basis.

Canada

Canadian respondents¹⁷⁶ did not raise any noncompetition arguments in these final investigations.¹⁷⁷ Petitioners argued that imports from Canada compete with the domestic like product and other subject imports and urged that any differences in channels of distribution between

¹⁶⁹ Commissioner Rohr refers to his view regarding competition between the imports as set forth above.

¹⁷⁰ Report at App. N. All eight countries sold at least some amount of Products 5 and 6, and five of the eight countries subject to investigation sold some amount of Product 7.

¹⁷¹ Report at I-140, Table 98. Seven countries sold in two of the same niche category, six countries sold in one of the same niche categories, five countries sold in three of the same niche categories, four countries sold in another niche category, three sold in two of the same niche categories, and two countries sold in two of the same niche categories.

¹⁷² Report at Table F-2.

¹⁷³ Report at App. N.

¹⁷⁴ *Id.* at Table L-1.

¹⁷⁵ Report at M-6, Table M-2.

¹⁷⁶ Stelco, Inc., Dofasco, Inc. Ipsco, Inc., and Algoma Steel, Inc.

¹⁷⁷ This position is in contrast to the preliminary investigations in which the Canadian respondents argued that their imports did not compete with other imports because channels of distribution differ and because they sell primarily to end-users rather than service centers. See Preliminary Determination at 59.

Canadian products and other subject sources arising by virtue of Canada's proximity to its customers are irrelevant. They asserted that Canadian respondents import no niche products which domestic producers cannot make.¹⁷⁸

We determine that imports from Canada compete with other subject imports and the domestic like product. Domestic producers and other subject importers sold products in each of the commercial grades and niche categories in which imports from Canada were sold.¹⁷⁹ Additionally, the majority of purchasers questioned believe that Canadian and domestic products are comparable in quality.¹⁸⁰ Although a large portion of Canadian products are shipped by truck rather than by ship into the Great Lakes region, and thus may be able to meet just-in-time delivery requirements, other subject imports and the domestic like product are sold in this same region and domestic producers can also offer just-in-time delivery.¹⁸¹ Thus, while modes of delivery may differ to some extent between imports from Canada and other subject sources, there is no evidence that Canadian products are not simultaneously present in the market with other imports and the domestic like product or that they do not compete with the domestic like product and other subject imports.

France¹⁸²

French respondent Usinor Sacilor ("Sacilor") argued that its imports do not compete with domestic products because its niche products serve market segments not supplied by the domestic industry and because its niche and commercial grade products offer quality advantages over the domestic like product and other subject imports.¹⁸³ Sacilor conceded that a certain percentage of its products arguably compete with domestic like products but argued that these imports are insignificant when viewed separately from French specialty products which do not compete with domestic and other foreign products.¹⁸⁴

Petitioners claimed that Sacilor's niche product arguments are invalid because domestic producers make products within these categories and, in fact, have produced more of certain specialty products than were imported from French producers.¹⁸⁵ Petitioners also argued that domestic products are of comparable quality to French products.¹⁸⁶

¹⁷⁸ Petitioners' Prehearing Br., Vol. 4 at 63, citing Prehearing Report (APO Version) at I-263, Table 100.

¹⁷⁹ Report at Table F-2.

¹⁸⁰ *Id.* at Table 109, citing 12 purchasers who believe quality is comparable compared to 1 purchaser who believes quality of Canadian goods are inferior and 1 purchaser who believes Canadian goods are of superior quality.

¹⁸¹ *Id.* at Table M-2; see also Petitioners' Prehearing Br. Vol. 4 at 63.

¹⁸² Commissioner Crawford finds imports from France to be negligible and she does not join this section of the Views of the Commission.

¹⁸³ French Respondents' Prehearing Br., Hot-Rolled Section, at 12-13.

¹⁸⁴ *Id.* at 22-23. As noted below, we reject Sacilor's argument that the Commission should view "competing" imports separately from arguably "noncompeting" imports.

¹⁸⁵ Petitioners' Prehearing Br., Vol. 4 at 64.

¹⁸⁶ *Id.* at Vol. 6B, Attachment A.

We find that French imports compete with other subject imports and the domestic like product. Sacilor itself conceded that a substantial minority of its products do compete with the domestic like product and other subject imports.¹⁸⁷ Record evidence indicates that a substantial minority of French products are sold in commercial grades where there is relatively more substitutability.¹⁸⁸ Even within the product categories identified as "niches," all but one such product imported from Sacilor is also imported from at least one other subject country.¹⁸⁹ Additionally, all niche products imported from France are also produced domestically.¹⁹⁰ French products were imported through all marketing regions in 1992,¹⁹¹ and were sold in every month during the period examined.¹⁹² We thus find that imports from France were simultaneously present in the marketplace with other imports and the domestic like product and moved in the same channels of distribution as other imports and the domestic like product.

Sacilor argued that a large percentage of French products do not compete with other subject imports and the domestic like product because of higher quality and because domestic manufacturers are unable to manufacture similar products.¹⁹³ Record evidence shows, however, that domestic producers do sell products in the same niche categories in which Sacilor sells in the United States.¹⁹⁴ Additionally, while the majority of purchasers questioned did find French products to be higher in quality, this finding was not universal.¹⁹⁵ We find, however, that even if competition is attenuated to some degree by these factors, the significant minority of products which do compete more directly is sufficient to constitute a reasonable overlap in competition.

The Netherlands

Dutch respondent Hoogovens Groep BV ("Hoogovens") argued that its imports should not be cumulated because the majority of its products are specialty niche products of high quality which do not compete with domestic or other foreign products on the basis of price and service. Hoogovens asserted that the remaining portion of its imports, which may arguably compete, are not of sufficient volume to constitute a reasonable overlap of competition.

Petitioners argued that there is a reasonable overlap of competition because Dutch commercial grade products compete with identical products from U.S. and foreign sources and because domestic producers can make products in the same niche categories as the Dutch imports.

¹⁸⁷ French Posthearing Br., Hot-Rolled Section at 9.

¹⁸⁸ Report at Table 98. Commercial grade products in the hot-rolled investigation include product numbers 5, 6, and 7. See Report at I-169.

¹⁸⁹ We note that the percentage of imports in niche categories from France in which there was no significant domestic production or imports from subject sources constituted [***] percent of French imports in 1990, [***] percent in 1991, and [***] percent in 1992. Compare Report at Table 98 and Table F-2.

¹⁹⁰ Report at Table F-2.

¹⁹¹ Id. at Table M-2.

¹⁹² Id. at Table L-1.

¹⁹³ French Prehearing Br., Hot-Rolled Section, at 9.

¹⁹⁴ Report at Table F-2.

¹⁹⁵ Id. at Table 109, showing that one purchaser believed French products were of comparable quality and nine purchasers believed that French products were of superior quality.

They pointed out that there were numerous instances of underselling by Dutch products during the period examined and that domestic sources shipped substantially more of certain niche products than was sold by Hoogovens.¹⁹⁶

We find that Dutch imports compete with other subject imports and domestic like products. Respondent admitted that a substantial minority of its imports are in commercial grades that compete with domestic and other foreign sources.¹⁹⁷ All niche products imported from the Dutch respondent are also imported from other subject countries and are produced by domestic sources.¹⁹⁸ With respect to Hoogovens' assertion that superior quality and service support a finding of noncompetition, we note that two of three purchasers questioned stated that Dutch products were of comparable quality to domestic products.¹⁹⁹ Mixed evidence of overselling and underselling at relatively low margins also undermines Dutch assertions of nonsubstitutability.²⁰⁰ Dutch products were sold in all marketing regions and in all months during the period examined.²⁰¹ Thus, the evidence on qualitative superiority of Dutch products is disputed. Even if this evidence were undisputed, and were found to attenuate competition with respect to certain niche products, we find that there is sufficient competition with respect to both niche and commercial grade products to constitute a reasonable overlap for purposes of cumulation.²⁰²

b. No Competition between Imports from Korea and Other Imports

Korean respondents, the Korean Iron and Steel Association and Pohang Iron and Steel Company ("POSCO"), and UPI argued that cumulation of Korean imports is inappropriate because the overwhelming majority²⁰³ of Korean imports are destined to supply UPI and therefore do not compete with domestic sources. They premised their noncompetition arguments on the fact that the

¹⁹⁶ Petitioners' Prehearing Br., Vol. 4 at 81-82.

¹⁹⁷ Report at Table 98.

¹⁹⁸ *Id.* at Table 98, and at Table F-2.

¹⁹⁹ *Id.* at Table 109.

²⁰⁰ There were 26 instances of Dutch products underselling domestic products by margins ranging from 0.2 percent - 11.3 percent compared to 18 instances of Dutch products overselling domestic products by margins ranging from 0.7 percent - 23.9 percent. *See* Report at Tables 110-113.

²⁰¹ *Id.* at Tables L-1 and M-2.

²⁰² We also specifically reject the Dutch respondent's arguments that the Commission has the "inherent authority" to exclude from its cumulation analysis a certain portion of a country's imports that are found to be noncompetitive with the domestic like product and other subject sources. We have consistently declined to exclude a portion of a country's imports which may be less than completely substitutable with domestic products and other imported sources and only analyze competition with respect to the remaining imports. *See Sandvik AB v. United States*, 13 CIT 738, 750, 721 F. Supp. 1322, 1333 (1989) (Swedish importers argued that the Commission should have excluded their noncompetitive imports from its analysis of import volume and penetration; the court held that the Commission does not have the authority to exclude merchandise from the like product designation and that the ITA controls the scope of the investigation); *see also Cambridge Lee; Algoma Steel Corp. v. United States*, 12 CIT 518, 520, 688 F. Supp. 639, 642, 644 (1988), *aff'd*, 865 F.2d 240, 242 (Fed. Cir. 1989), *cert. denied*, 492 U.S. 919 (1989).

²⁰³ UPI's Prehearing Br. at 40, citing to 1992 figures set forth in the Prehearing Staff Report at I-273.

joint venture between USX and POSCO that formed UPI included the understanding that POSCO would supply UPI's hot-band needs, and as such, they argued that POSCO's shipments to UPI do not displace sales by any U.S. producer.²⁰⁴ They also argued that POSCO's shipments to UPI are noncompetitive because UPI needs a captive source of hot-band to be viable and has been unable to find any U.S. producer capable of producing the grades or the volumes of high quality hot-bands to permit UPI to remain single or double sourced.²⁰⁵

Respondents stated that the fact that UPI's imports from POSCO do not compete with domestic and other imported sources is supported by evidence that UPI has received no credible offers from unaffiliated companies to supply UPI's hot-band needs. They argued that channels of distribution through which POSCO supplies UPI are unique because UPI is operationally and contractually obligated to purchase all of its hot-bands from its affiliates.²⁰⁶ Finally, respondents claimed that POSCO's exports to UPI are not simultaneously present in the market place because UPI has been contractually obligated to source from POSCO since 1986.²⁰⁷

Petitioners argued that POSCO's supply of hot-rolled product to UPI is not the "captive" supply of an integrated producer, but is rather based on a long term commercial contract²⁰⁸ and that the Commission has previously rejected the claim that captive imports should be treated any differently than open market shipments for purposes of cumulation.²⁰⁹ Petitioners pointed out that UPI's arguments that it needs a single or dual source of hot-bands ignores UPI's history of multiple sourcing throughout the period examined and the fact that other domestic sources are able to supply UPI.²¹⁰ Finally, petitioners argued that, regardless of how the Commission views POSCO's exports to UPI, the Commission should cumulate imports from Korea based on a reasonable overlap between non-UPI imports and domestic and other imported products.

In making our determination on imports from Korea, we first considered whether imports from Korea sold in the merchant market were sufficient in and of themselves to constitute a reasonable overlap of competition so as to obviate any need to evaluate competition for POSCO's exports to UPI. Respondents did not argue that the extremely small percentage of imports from Korea sold in the merchant market were noncompetitive with other imports or domestic sources.²¹¹ Record evidence supports a finding that there is likely some competition with respect to these

²⁰⁴ POSCO's Prehearing Br. at 5.

²⁰⁵ *Id.* at 6; UPI Prehearing Br. at 31.

²⁰⁶ UPI's Prehearing Br. at 35.

²⁰⁷ *Id.*

²⁰⁸ Petitioners' Prehearing Br., Vol. 4 at 69.

²⁰⁹ *Id.* at 70, citing Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, USITC Pub. 2046; Certain High Information Content Flat Panel Displays and Display Glass Therefor from Japan, Inv. No. 731-TA-469 (Final), USITC Pub. 2413 (Aug. 1991) at 6, n.6; Industrial Nitrocellulose From Brazil, Japan, the Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Invs. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1991) at 8.

²¹⁰ Petitioners' Prehearing Br., Vol. 4 at 72 and 74.

²¹¹ UPI's Prehearing Br. at 40.

products.²¹² These imports move in the same channels of distribution as other imports, and are simultaneously present in the market with domestic like products and other imports.²¹³ While these imports may thus compete with other subject imports and domestic products, their volume is small, both absolutely and as a share of total imports from Korea.²¹⁴ We find that these imports do not in and of themselves constitute a reasonable overlap of competition for purposes of cumulation.²¹⁵

The overwhelming majority of imports from Korea are destined to supply UPI exclusively. Evidence on the record establishes that these imports are in certain niche categories in which there were no other imports from subject countries during the period examined.²¹⁶ Accordingly, because there was no competition with other imports, we find that imports from Korea need not be cumulated under the statute.

We thus need not address the issue of competition with the domestic product in the context of our cumulation analysis. We note that no unaffiliated domestic producer is currently able to supply UPI with more than a small percentage of its requirements, nor does the evidence indicate that any such domestic producer would have the necessary capacity to supply UPI in the near term.²¹⁷ Moreover, while we recognize that theoretically there could have been domestic competition for the right to supply UPI through the joint venture contract through which UPI was formed, and that such competition could be considered "indirect" competition for the current supply of UPI, there is no evidence tending to show that this was actually the case. Any such "theoretical competition" would be too speculative and attenuated to support a reasonable overlap finding on the facts of this case.²¹⁸

²¹² With respect to substitutability of these Korean products and domestic products, we note that 3 purchasers considered Korean hot-band to be of comparable quality to domestic hot-band and that 3 purchasers considered Korean hot-band to be of superior quality. See Report at Table 109. Additionally, there was one unconfirmed lost sales allegation concerning Korean hot-rolled products. See Report at Table 117. There were 31 instances of overselling of Korean products 5 and 6 compared to 8 instances of underselling. Overselling margins ranged from 1.9 percent to 44 percent and underselling margins range from 0.9 percent to 9.6 percent. See Report at Tables 110 - 113. An equal number of purchasers believed Korean imports are of comparable or superior quality to domestic products. See Report at Table 109.

²¹³ Report at Table N-23 and N-24 (showing sales of Korean Product 5 and 6 to distributors and service centers in all quarters during the period examined). See also Report at Table M-5, showing that Korean products were imported by 13 different importers during the period examined.

²¹⁴ See UPI's Prehearing Br. at 40.

²¹⁵ We note that the volume of Korean imports sold in the merchant market is less than the volume of imports from any of the countries that we have cumulated in these hot-rolled investigations.

²¹⁶ Report at Table 98, and Table F-2.

²¹⁷ Questionnaire responses indicate that USX produces the vast majority of domestic production of one niche product required by UPI and that only one other domestic producer has any capacity to produce this product. This unaffiliated producer does not have sufficient capacity to supply UPI's needs alone. Additionally, no other domestic producer reported that it would have capacity to produce this product in the near future. See also Report at Table 98.

²¹⁸ Our discussion of imports from Korea destined for UPI does not turn on the fact that there exists a contract (however labeled) for the supply of UPI. The Commission is expressly not making a determination that any type of contractual supply relationship precludes a finding of competition. Rather, in this instance, imports from Korea would not support a finding of a reasonable overlap of competition because the purchaser of the imported material, regardless of its relationship with the
(continued...)

Based on the unusual facts and circumstances of this case, we decline to cumulate imports from Korea with other subject imports based on grounds of noncompetition.

c. Negligibility Exception to Mandatory Cumulation

All respondents in the hot-rolled investigations except Canada argued that their shipments to the United States fit within the negligibility exception to mandatory cumulation. We determine that imports from Canada, France²¹⁹ and the Netherlands²²⁰ are not negligible and that imports from the other countries subject to the hot-rolled investigations are negligible and have no discernible impact on the domestic industry.²²¹

We determine that imports from Canada, France and the Netherlands are not negligible because the market share and absolute volumes and values of imports from these countries were not insignificant.²²² Imports from each of these countries were not isolated and sporadic; they entered the United States in every month during the period examined and were sold through every marketing region in the country.^{223 224}

²¹⁸(...continued)

importer, does not source any significant portion of its requirements from any imported source other than its current supplier. It is also speculative at best to assume that the purchaser could purchase all its requirements domestically.

²¹⁹ Commission Crawford does not join in the discussion of France as she found that imports from France are negligible. See her Additional and Dissenting Views.

²²⁰ Commissioner Brunsdale finds that imports from the Netherlands are negligible. See her Additional and Dissenting Views.

²²¹ Commissioner Nuzum dissents from the majority's negligibility determinations with respect to Belgium, Brazil, Germany, Japan, and South Africa. See her Additional and Dissenting Views.

²²² Report at Table 94 and Table 103. Canada's share of apparent domestic consumption was 1.2 percent in 1990, 1.3 percent in 1991, and 1.9 percent in 1992. The value of Canadian products shipped to the United States was \$238.4 million in 1990, \$220.9 million in 1991, and \$319.4 million in 1992. France's share of apparent domestic consumption was 0.9 percent in 1990, 0.6 percent in 1991, and 0.8 percent in 1992. The value of imports from France was \$172.1 million in 1990, \$97.3 million in 1991, and \$139.4 million in 1992. The Netherlands' share of apparent domestic consumption was 0.4 percent in 1990, 0.5 percent in 1991 and 0.6 percent in 1992. The value of imports from the Netherlands was \$72.1 million in 1990, \$76.6 million in 1991, and \$90.3 million in 1992.

²²³ Report at Table L-1 and Table M-2.

²²⁴ Hoogovens also argued that its "competing" shipments were isolated and sporadic because its business strategy is to develop long-term relationships with a few customers. Hoogovens concluded that because it targets its sales in this fashion, they can have little, if any, impact on the larger steel market. See Dutch Posthearing Br. at 18-19. We do not believe that this factor is significant in light of the evidence that Dutch imports were imported in every month and into every marketing region of the country.

19 U.S.C. § 1677(7)(C)(v)(II) requires the Commission to determine whether sales transactions are isolated and sporadic. Thus the Commission practice is to determine whether the sales are geographically isolated and how frequently they occur. See Ferrosilicon from Russia and Venezuela, Invs. Nos. 303-TA-23 (Final) and 731-TA-568 and 570 (Final), USITC Pub. 2650 (June 1993) at 29 (finding that imports from Egypt were not isolated and sporadic because, while they

(continued...)

In reaching these determinations, we considered whether certain alleged quality differences, with respect to imports from France and the Netherlands, and marketing differences, with respect to imports from the Netherlands, reduced the potential adverse impact of these products on the domestic industry. Both France and the Netherlands export to the United States a significant minority of products that do compete with the domestic like product and other subject imports.²²⁵ We determine that even if these quality and marketing differences do attenuate competition among these imports, other subject imports and the domestic like product to some degree, there remains a sufficient degree of competition, with respect to both niche and commercial grade products imported from France and the Netherlands, to warrant not applying the negligibility exception to these countries.

d. Application of Negligibility Exception to Imports from Belgium, Brazil, Germany, Japan, and South Africa²²⁶

Petitioners argued that none of the subject hot-rolled imports were negligible because the domestic hot-rolled market is price sensitive and thus even small amounts of imports can have a discernible adverse impact on the domestic industry.²²⁷ They also argued that none of the subject imports were isolated and sporadic.²²⁸

We find that imports from Belgium, Brazil, Germany, Japan and South Africa are negligible and we decline to include them in our cumulative analysis of injury to the domestic industry.

Belgium

The Belgian share of apparent domestic hot-rolled consumption by volume for the period examined was 0.1 percent in 1990, 0.2 percent in 1991, and was statistically insignificant in 1992.²²⁹ The value of hot-rolled products shipped from Belgium was \$13.5 million in 1990, \$25.6 million in 1991, and \$907,000 in 1992.²³⁰ While imports did rise in 1991 relative to 1990, they decreased dramatically from 1991 to 1992 to insignificant levels.²³¹ Imports from Belgium were not isolated and sporadic, however, having been made in 32 out of 36 months during the period examined,

²²⁴(...continued)

were sold in only 3 of 15 quarters during the period examined, the products were sold to processors who in turn resold them in a form which competed more directly with the like product over a longer period of time.)

²²⁵ See discussion supra on reasonable overlap of competition with respect to imports from France and the Netherlands.

²²⁶ Commissioner Nuzum declines to apply the negligibility exception to hot-rolled steel imports from any country and therefore does not join in this discussion. See her Additional and Dissenting Views.

²²⁷ Petitioners' Prehearing Br., Vol. 4 at 28.

²²⁸ Id. at 26.

²²⁹ Report at Table 103.

²³⁰ Id. at Table 94.

²³¹ Belgian respondents stated that a surge in their exports to the United States occurred in 1991 in response to short U.S. supply resulting from a plant shut down and strike rumors. See Belgian Prehearing Br. at 5. The sharp decline in imports following 1991 supports a finding that this increase was aberrational.

entered through all marketing regions,²³² and sold through five different importers during the period examined.²³³ There is some evidence indicating that Belgian products are somewhat substitutable with domestic products and other subject imports.²³⁴ However, given the predominant level of overselling²³⁵ and extremely low and declining volume and market share of imports from Belgium, we determine that these imports are negligible and had no discernible adverse impact on the domestic industry.^{236 237}

Brazil

Brazil's share of apparent domestic hot-rolled consumption by volume was 0.3 percent in 1990, 0.2 percent in 1991, and 0.3 percent in 1992.²³⁸ The value of hot-rolled imports from Brazil was \$43.2 million in 1990, \$31.0 million in 1991, and \$46.7 million in 1992.²³⁹ Imports from Brazil are not isolated and sporadic, having been imported in every month during the period examined, through every marketing region and through seventeen different importers.²⁴⁰ In considering the impact of Brazilian products on domestic prices, we note that Brazilian products are primarily imported in commercial grades where there is somewhat greater substitutability.²⁴¹ Additionally, some degree of substitutability may be indicated by a pattern of mixed underselling and overselling of Brazilian products and by purchasers' statements that Brazilian products are comparable in quality to domestic products.²⁴² Despite this evidence of some substitutability between Brazilian products and the domestic like product, we find that Brazilian products are negligible and have no discernible

²³² Report at Tables L-1 and M-2.

²³³ Id. at Table M-5.

²³⁴ Belgian imports consisted primarily of commercial grade products. See Report at Table 98. Additionally, the fact that domestic consumers looked to Belgian sources to respond to short supply in the domestic industry in 1991 also indicates some degree of substitutability with domestic products. See Belgian Prehearing Br. at 5. Finally, other importers and domestic producers sell products in the same niche categories as the Belgian respondents. See Report at Table F-2.

²³⁵ Report at Tables 110-113, showing 16 instances of overselling at margins ranging from 3.0 percent to 61.5 percent compared to 3 instances of underselling at margins ranging from 4.1 percent to 6.2 percent.

²³⁶ Vice Chairman Watson notes that subject imports from Belgium were insignificant and declining in 1992 and are projected to decline further in 1993. In addition, the overselling data are supported by unit value comparisons.

²³⁷ See each Commissioner's Additional and Dissenting Views concerning price sensitivity issues relevant to this negligibility analysis.

²³⁸ Report at Table 103.

²³⁹ Id. at Table 94.

²⁴⁰ Id. at Tables L-1, M-2 and M-5.

²⁴¹ Id. at Table 98.

²⁴² Brazilian products oversold domestic products in 21 instances by margins ranging from 0.1 percent to 26.2 percent, compared to 14 instances of underselling by margins ranging from 0.1 percent to 13.0 percent. See Report at Tables 110-113. See also Report at Table 109, stating that 8 purchasers believed domestic and Brazilian products to be comparable in quality.

adverse impact on the domestic industry given the extremely low volume and market share of these imports.²⁴³

Germany

Germany's share of apparent domestic hot-rolled consumption by volume was 0.6 percent in 1990, 0.5 percent in 1991, and 0.4 percent in 1992.²⁴⁴ The value of hot-rolled products shipped from Germany was \$111.0 million in 1990, \$91.0 million in 1991, and \$71.2 million in 1992.²⁴⁵ German shipments were not isolated and sporadic, having been sold in every marketing region and in every month during the period examined.²⁴⁶ Further, while the record suggests that there is some competition between domestic products, German products and other subject sources,²⁴⁷ we believe that the volume and market share of the imports alone, together with the fact that there was significant overselling of German products,²⁴⁸ indicates that German imports are negligible and had no discernible adverse impact on the domestic industry during the period examined.²⁴⁹

Japan

Japan's share of apparent domestic hot-rolled consumption by volume was 0.4 percent in 1990, 0.3 percent in 1991, and 0.3 percent in 1992.²⁵⁰ The value of imports of hot-rolled product from Japan was \$85.9 million in 1990, \$66.6 million in 1991, and \$62.3 million in 1992.²⁵¹ Imports from Japan were not isolated and sporadic, having been imported in every month during the period examined and through every major marketing region.²⁵²

Imports from Japan are unlikely to have had any impact on the domestic industry because of their low volume and market share. Any potential impact that could exist by virtue of their volume and market share alone is also diminished by the fact that Japanese products consistently oversold the

²⁴³ See each Commissioner's Additional and Dissenting Views concerning price sensitivity issues relevant to this negligibility analysis.

²⁴⁴ Report at Table 103.

²⁴⁵ *Id.*, Table 94.

²⁴⁶ *Id.* at Tables L-1 and M-2.

²⁴⁷ For instance, there is evidence that domestic and other subject foreign sources do produce products within the same niche categories as the German producers and that 7 of 11 purchasers questioned believe German products to be of comparable quality to domestic products. See Report at Table 98, Table 109, and Table F-2.

²⁴⁸ German products oversold domestic products in 62 instances by margins ranging from 0.1 percent to 57.9 percent, compared to 4 instances of underselling by margins ranging from 0.1 percent to 35.1 percent. See Report at Tables 110-113.

²⁴⁹ See each Commissioner's Additional and Dissenting Views concerning price sensitivity issues relevant to this negligibility analysis.

²⁵⁰ Report at Table 103.

²⁵¹ *Id.* at Table 94.

²⁵² *Id.* at Tables L-1 and M-2. We reject Japanese respondents' argument that sales of a product in a particular market segment renders those sales "isolated and sporadic". See *supra*, discussion of similar argument by Dutch respondents.

domestic like product by substantial margins throughout the period examined.²⁵³ Additionally, the majority of consumers questioned found Japanese products superior in quality to domestic products.^{254 255}

While we recognize that the domestic industry claims to be able to produce products within many of the niche categories in which the Japanese companies import, the price differences between the products indicate that competition between domestic and Japanese products is attenuated.^{256 257} Considering this factor together with the very low and declining volume and market share of imports from Japan, we find that Japanese imports were negligible and have had no adverse impact on the domestic market.²⁵⁸

South Africa

South Africa's share of apparent domestic hot-rolled consumption by volume was 0.0 percent in 1990 and 1991, and 0.1 percent in 1992. Imports from South Africa first entered the United States during the period examined in April 1992 and were imported in six of the eight months thereafter.²⁵⁹ The value of hot-rolled imports from South Africa was \$10 million in 1992. South African products appear to have been fairly widely distributed, since all seven importers of South African hot-rolled steel were distribution centers, and imports were made in all four marketing regions of the country.²⁶⁰ The Commission has no specific information concerning the grades of hot-rolled products which make up the South African imports. However, even if imports from South Africa are completely substitutable, we find that the low volume and market share of imports from South Africa during a very limited portion of the period examined are in and of themselves sufficient grounds on which to find them negligible.²⁶¹

V. MATERIAL INJURY ANALYSIS

In determining whether the domestic industry is materially injured by reason of the imports under investigation, the statute directs us to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation;

²⁵³ Japanese products oversold domestic products in 67 instances with margins ranging from 3.7 percent to 78.2 percent and did not undersell domestic products in any instance.

²⁵⁴ Ten purchasers found Japanese products to be of higher quality than domestic products and two purchasers found Japanese products to be of similar quality to domestic products.

²⁵⁵ Vice Chairman Watson notes that Japanese average unit values of hot-rolled band were significantly higher than values from all other countries throughout the period examined. In addition, the overselling by Japanese imports was particularly frequent and the margins were significant. Report at Appendix N.

²⁵⁶ See Report at Tables 110-113.

²⁵⁷ Commissioner Rohr notes that he did not consider the margins of overselling or underselling relevant to whether competition was attenuated.

²⁵⁸ See each Commissioner's Additional and Dissenting Views concerning price sensitivity issues relevant to this negligibility analysis.

²⁵⁹ Report at Table 94 and at B-1.

²⁶⁰ Id. See also Office of Investigations Memorandum INV-Q-118, July 21, 1993.

²⁶¹ See each Commissioner's Additional and Dissenting Views concerning price sensitivity issues relevant to this negligibility analysis.

(II) the effect of imports of that merchandise on prices in the United States for like products; and

(III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States.²⁶²

In making this determination, we consider "such other economic factors as are relevant to the determination" ²⁶³ However, we do not weigh causes. ^{264 265 266 267}

²⁶² 19 U.S.C. § 1677(7)(B)(i).

²⁶³ 19 U.S.C. § 1677(7)(B)(ii).

²⁶⁴ See, e.g., Citrosuco Paulista, S.A. v. United States, 12 CIT 1196, 1228, 704 F. Supp. 1075, 1101 (1988).

²⁶⁵ Commissioner Rohr and Commissioner Nuzum note that the Commission need not determine that imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249, 96th Cong., 1st Sess. 57 and 74 (1979). Rather, a finding that imports are a cause of material injury is sufficient. E.g., Metallverken Nederland, 13 CIT at 1026-1027, 728 F. Supp. at 741; Citrosuco, 12 CIT at 1228, 704 F. Supp. at 1101.

²⁶⁶ Vice Chairman Watson notes that the courts have interpreted the statutory requirement that the Commission consider whether there is material injury "by reason of" the subject imports in a number of different ways. Compare, e.g., United Engineering & Forging, 15 CIT at 580, 779 F. Supp. at 1391 (1991) ("rather it must determine whether unfairly-traded imports are contributing to such injury to the domestic industry. Such imports, therefore, need not be the only cause of harm to the domestic industry" (citations omitted)); Metallverken Nederland, 13 CIT at 1026-1027, 728 F. Supp. at 741 (affirming a determination by two Commissioners that "the imports were a cause of material injury"); USX Corporation v. United States, 12 CIT 205, 211, 682 F. Supp. 60, 67 (1988) ("any causation analysis must have at its core the issue of whether the imports at issue cause, in a non *de minimis* manner, the material injury to the industry. . . .").

Accordingly, Vice Chairman Watson has decided to adhere to the standard . . . articulated by Congress in the legislative history of the pertinent provisions, which state that the Commission must satisfy itself that, in light of all the information presented, there is a "sufficient causal link between the less-than-fair-value imports and the requisite injury." S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979).

²⁶⁷ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the LTFV and subsidized imports. She finds that the clear meaning of the statute is to require a determination on whether the domestic industry is materially injured by reason of LTFV and subsidized imports, not by reason of LTFV and subsidized imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently is causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than the less-than-fair-value imports." S. Rep. No. 249 at 75. However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317 at 47. The Commission is not to determine if the LTFV imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249 at 74. Rather it is to determine whether any injury "by reason of" the LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must

(continued...)

A. No Material Injury by Reason of Cumulated Imports²⁶⁸

1. Volume Effects

We do not find the volume effect of the cumulated LTFV and subsidized imports of hot-rolled products to be significant.²⁶⁹ While the four Commissioners joining in this determination use different combinations of cumulated subject imports in their analysis, the volume and value of cumulated subject imports used by each Commissioner as a percentage of apparent domestic consumption were low throughout the period examined.²⁷⁰ The volume of imports from the cumulated subject countries remained low relative to the market as a whole over the period examined, both absolutely and relative to consumption, but were at somewhat higher levels in 1992 compared to 1990.²⁷¹

Domestic producers' share of apparent domestic consumption fell slightly over the period examined, from 94.4 percent in 1990, to 93.3 percent in 1992.²⁷² Although subject cumulated import share of apparent domestic consumption rose, we find that this increase had no significant volume

²⁶⁷(...continued)

consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry. S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added).

²⁶⁸ This portion of the Views of the Commission is joined by Vice-Chairman Watson, Commissioner Rohr, Commissioner Crawford, and Commissioner Nuzum, except where otherwise noted.

²⁶⁹ The four Commissioners participating in this portion of the determination cumulated different countries as follows: Vice-Chairman Watson and Commissioner Rohr: Canada, France and the Netherlands; Commissioner Crawford: Brazil, Canada, and the Netherlands. Commissioner Nuzum: Belgium, Brazil, Canada, France, Germany, Japan, the Netherlands, and South Africa. Thus, all four Commissioners cumulated Canada and the Netherlands, and three of the Commissioners also cumulated France.

²⁷⁰ Vice-Chairman Watson's and Commissioner Rohr's cumulated countries' volume and value in 1992 represented 3.3 and 3.7 percent of apparent domestic consumption, respectively. Commissioner Crawford's cumulated countries' volume and value in 1992 totalled 2.8 and 3.1 percent respectively. Commissioner Nuzum's cumulated countries' volume totalled 4.4 percent. Commissioner Nuzum notes that 1992 cumulated import penetration in the merchant market was 11.3 percent.

²⁷¹ The various Commissioners' cumulated total volume of imports are as follows (stated in 1,000s of short tons):

	<u>1990</u>	<u>1991</u>	<u>1992</u>
Vice Chairman Watson and Commissioner Rohr:	1,265	1,108	1,663
Commissioner Crawford:	948	931	1,420
Commissioner Nuzum:	1,941	1,675	2,188

The various Commissioners' cumulated volume of imports relative to consumption are as follows:

Vice Chairman Watson and Commissioner Rohr:	2.5%	2.4%	3.3%
Commissioner Crawford:	1.9%	2.0%	2.8%
Commissioner Nuzum:	3.8%	3.8%	4.4%

²⁷² Report at Table 103.

impact on the domestic industry. We have evaluated the increase in the volume and market share of subject imports during the period examined in light of the low level of subject cumulated imports throughout the period. Based on this, and in view of the price and nonprice-related factors set forth below,²⁷³ we do not find the volume and market share or the increases in volume and market share of cumulated subsidized and LTFV imports to be significant.

2. Price Effects

In evaluating the effect of subsidized and LTFV imports on prices, the Commission considers whether "there has been significant price underselling by the imported merchandise as compared with prices of like products of the United States," and whether "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."²⁷⁴

A number of factors are relevant to a determination of whether there has been significant underselling or significant price suppression or depression by the cumulated imports. These include the degree of substitutability²⁷⁵ between domestic and imported hot-rolled products. The more substitutable products are, the more likely that potential purchasers will make their purchasing decisions based on price differences between the products.²⁷⁶

Data gathered in the course of these investigations show that there is substantial variation in the degree of substitutability in the various categories of hot-rolled products.²⁷⁷ For example, certain products are closer to "commodity" products, while others more closely fit the definition of a "niche" or "specialty" products that are used in specific applications and may not be as widely produced.²⁷⁸ Even with respect to the more substitutable of the hot-rolled products, however, record evidence shows that price is not necessarily the determining factor in a customer's purchase decision.

²⁷³ Commissioner Rohr concurs in his colleagues' conclusion that the volume effects of the unfairly traded imports were insignificant but does not base his conclusion about the significance on volume or price considerations, which are discussed separately below.

²⁷⁴ 19 U.S.C. § 1677(7)(C)(ii).

²⁷⁵ Commissioner Nuzum notes that she includes substitutability within the many factors that contribute to her overall analysis; this single factor, however, is not necessarily more important than any other factor.

²⁷⁶ See each Commissioner's Additional and Dissenting Views concerning issues of price sensitivity pertaining to each Commissioner's causation analysis.

²⁷⁷ Commissioner Rohr does not join this discussion of substitutability of hot-rolled products. He finds the products to be relatively substitutable and the price sensitivity of this market to be moderate. He believes that even in the context of such price sensitivity, the price effects discussed below are not significant.

²⁷⁸ For example, pricing product numbers 5, 6, and 7 were considered to be "commercial grade" products for pricing comparisons. These products were produced to some extent by the domestic industry and by almost all countries subject to investigation. Report at I-169. Conversely, we identified a number of "niche" products that are not as widely produced, such as product number 25 (produced in limited quantities by domestic, French and Japanese sources), and product number 27 (produced by Korean and domestic sources only). See Report at F-10, and Appendix F in general.

Record evidence shows that purchasers of both domestic and imported products cite several nonprice factors as more important than price.²⁷⁹ Of the approximately ninety purchasers who listed the factors they consider "critical" in a purchasing decision, 56 purchasers listed "quality", 40 purchasers listed "suppliers' qualifications", 37 purchasers listed "availability", and 30 purchasers listed "price".²⁸⁰ Of factors considered "very important" by purchasers, 53 purchasers listed "long-standing relationships", 51 purchasers listed "lead time", and 49 purchasers listed "price".²⁸¹ Additionally, of purchasers providing reasons for purchasing foreign steel even when a comparable domestic product was available at a lower delivered price, 48 cited "superior quality," 7 cited "more reliable supply" and 6 cited "better technical support".²⁸² Conversely, of purchasers providing reasons for purchasing domestic steel even when comparable foreign steel was available at a lower price, 48 cited "shorter lead times", 26 cited "Buy American policies", 25 cited "smaller minimum order sizes" and 24 cited "more reliable supply".^{283 284}

Prices of cumulated imports were generally higher than those of domestic products.²⁸⁵ Prices of domestically produced hot-rolled products fell slightly during the period examined.²⁸⁶ While prices for the cumulated subject imports also fell over the period, those prices fluctuated, showing no clear trends, and in general fell less than domestic prices. In fact, some prices of some of the cumulated imports rose during the later portion of 1992.²⁸⁷

²⁷⁹ Commissioner Rohr and Commissioner Nuzum note that while they have considered the reported ranking of purchaser criteria, they have given that less weight than other factors.

²⁸⁰ Report at I-158.

²⁸¹ *Id.*

²⁸² Report at I-156. Although 145 purchasers were questioned, not all responded to this question, and of those that did, some cited more than one reason.

²⁸³ *Id.* at I-156.

²⁸⁴ Both domestic and foreign manufacturers produce hot-rolled products on the basis of orders received from service centers or end users, or according to the terms of negotiated purchase agreements. In addition, discounts are commonly given off published price lists based on a number of different factors including competing quotes, the size of the sale, the mill's existing capacity utilization rate, the expected profit margin on the sale, etc. The more specialized the product, the smaller the discounts generally are off the published prices.

Both producers and importers sell hot-rolled products through purchase agreements and by spot sales. Contract sales are more commonly made to automotive, appliance, and other original equipment manufacturers needing products manufactured to exacting specifications, while spot sales are more often made to service centers and distributors needing products that can be put to a variety of end uses.

Lead times between order and delivery can vary somewhat among domestic and foreign producers depending on factors such as a mill's level of capacity utilization, the tonnage ordered, and the extent to which a product requires specific materials or production processes. With the exception of imports from Canada, overall lead times for imported hot-rolled products are generally longer than domestic products in the same categories; differences in lead times between different countries are a function of the geographic proximity to the United States. *See* Report at I-151-155.

²⁸⁵ Report at Appendix N; *see also* EC-Q-080.

²⁸⁶ *Id.* at I-171.

²⁸⁷ *Id.* at Appendix N. *See also* EC-Q-080.

We note that imports cumulated by each Commissioner showed considerably more overselling than underselling.^{288 289} Margins of overselling for the cumulated imports were also generally greater than margins of underselling.²⁹⁰ Finally, there was not one confirmed lost sale or revenue allegation concerning the cumulated subject imports, which further supports our finding of no significant adverse price effects.^{291 292 293}

We recognize that evidence of overselling by itself is not dispositive of whether the cumulated imports significantly contributed to the decline of prices or otherwise adversely affected domestic prices. One way in which we analyzed whether price suppressive or depressive effects exist was to examine closely the relative price movements of domestic products and cumulated imports of commercial grade products for which pricing comparisons were obtained.²⁹⁴ The data showed no discernible pattern indicating significant price depression by the cumulated imports. In fact, price trends of cumulated imports generally showed that import prices fell less than domestic prices during the same period.²⁹⁵ For example, pricing trends for some products show import prices rising in comparison to domestic prices over the same period.²⁹⁶ Comparisons of pricing trends of other products show import and domestic prices declining, but import prices declining less than domestic prices.²⁹⁷ While we recognize that these examples are not indicative of all comparisons between cumulated import prices and domestic prices, we find that the conflicting patterns in the Commission's data do not support a finding of significant price suppression or depression by reason of the subject cumulated imports.

Our conclusion is also supported by the fact that a large number of purchasers indicated that domestic producers, not the foreign producers of the cumulated imports, led price declines in the

²⁸⁸ Imports from France, Canada and the Netherlands cumulated by Vice Chairman Watson and Commissioner Rohr showed overselling in 135 instances compared to 47 instances of underselling. Imports from Belgium, Brazil, Canada, France, Germany, Japan, the Netherlands and South Africa cumulated by Commissioner Nuzum showed overselling in 301 instances compared to underselling in 68 instances.

²⁸⁹ While we recognize that price suppression can occur where a higher-priced but better "valued" good is sold in competition with a lower-priced but lower-valued good, there is no evidence that this has occurred in this case. Compare Maine Potato Council v. United States, 9 CIT 293, 302, 613 F. Supp. 1237, 1245 (1985).

²⁹⁰ Report at Tables 110-113.

²⁹¹ EC-Q-084 at I-43. The Commission contacted almost 76 percent of purchasers named in lost sales or revenue allegations. Lost sales and revenue allegations totalled 171,510 tons and \$61,698,202 of hot-rolled products.

²⁹² Compare Lone Star Steel v. United States, 10 CIT 731, 734, 650 F. Supp. 183, 186 (1986).

²⁹³ Commissioner Crawford does not rely on anecdotal evidence of lost sales and revenues showing that competition from the subject imports caused domestic producers to lose particular sales or forced them to reduce their prices on other sales in reaching her determination.

²⁹⁴ See generally EC-Q-080.

²⁹⁵ Report at Appendix N.

²⁹⁶ See, e.g. EC-Q-080 and Report at Appendix N.

²⁹⁷ EC-Q-080 and Report at Appendix N.

domestic market.²⁹⁸ Of the 62 purchasers providing responses to the Commission's questionnaire, 52 listed only domestic producers as price leaders, and only four purchasers listed foreign suppliers alone as the price leaders.²⁹⁹

We note that there is other evidence that domestic producers were leading prices downwards. We previously noted that in recent years several minimills and reconstituted mills entered the hot-rolled industry. Minimills often have certain cost advantages over large integrated mills based on more efficient production methods. Reconstituted mills also frequently have cost advantages over integrated mills because they operate without the burden of large pension funds, debt service, and other large cost items which reduce integrated producers' profitability.³⁰⁰ Integrated mills must contend with these lower cost members of their industry in setting their own prices.³⁰¹

Additionally, Vice Chairman Watson and Commissioner Crawford find evidence suggesting that domestic slab offerings may have placed downward pressure on domestic prices for prime products.³⁰² While evidence on the extent of the impact of slab offerings on domestic prices is mixed, they find that slab offerings may have contributed to downward pressure on prices during the period examined.³⁰³

We carefully considered petitioners' arguments that the pricing data used by the Commission in these investigations do not accurately reflect the degree of underselling by cumulated imports in the domestic hot-rolled market.³⁰⁴ Petitioners argued that the Commission's pricing data were flawed because the Commission made comparisons of small volume sales of imports to large volume sales of domestic products without taking into account the volume discounts in some large domestic sales. To test for such possible bias, we recalculated pricing data based solely on total quarterly sales of

²⁹⁸ Commissioner Rohr and Commissioner Nuzum do not place great weight on the role of price leadership in these investigations.

²⁹⁹ See July 19, 1993 Memorandum to Vice Chairman Watson from International Economist.

³⁰⁰ See supra, discussion of Condition of the Domestic Industry; see also Report at I-44 and Steel Industry Annual Report on Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize, USITC Pub. 2436 (Sept. 1991); see also, Respondents' Joint Prehearing Br. at 51.

³⁰¹ Vice Chairman Watson notes that petitioners state that the domestic industry are price leaders in leading prices up and that imports are price leaders in leading prices down. Petitioners' Posthearing Br., Vol. 1 at 67. Petitioners seem to suggest that there may have been some confusion by purchasers in their questionnaire responses as to the meaning of "price leadership", and that this confusion may have led to purchasers identifying domestic producers as price leaders in the majority of their responses. Vice Chairman Watson finds this unlikely. Prices generally declined for the hot-rolled industry over the period of investigation. During a period of declining prices, therefore, purchasers are more likely to identify price leaders as those who would lead prices down, rather than those who would lead prices up. In this respect, the record indicates that various domestic producers who were cited as price leaders by the purchasers were indeed leading prices down. Respondents' Posthearing Br., Appendix 11.

³⁰² See supra discussion of Condition of the Domestic Industry.

³⁰³ They note that the price depressing effects from both domestic competition and slab offerings are conditions of competition considered in their determinations. The issue before the Commission, however, is whether subject imports caused significant price depression or suppression.

³⁰⁴ See Petitioners' Prehearing Br., Vol. 6B at 33-40 and Petitioners' Posthearing Br., Vol. 3 at 32-45.

quantities less than or equal to one thousand tons to reduce the possibility that discounts on large sales would skew pricing trends in general.³⁰⁵ This methodology did not change the trends in the pricing data, but rather continued to show that cumulated imports oversold domestic products in the majority of comparisons.³⁰⁶

We also considered the petitioners' assertion that our pricing data did not properly address the effect of transportation costs on domestic prices. Petitioners argued that the collection of data based on F.O.B. port of entry or mill prices did not allow the Commission to determine whether the total delivered prices paid by particular consumers for imported products were higher or lower than prices paid for the domestic product.³⁰⁷ Petitioners argued that "many consumers" of hot-rolled products are located far from a domestic mill, but close to a port of entry, and that the domestic mills are required to absorb a significant amount of freight to ship a product to a customer at the same price at which they can purchase an imported product.³⁰⁸ Thus, they argue that domestic mills' prices appear to be lower than import prices when the effect of freight cost is removed.

We reject this argument. The methodology used in this case has previously been upheld by our reviewing courts.³⁰⁹ Further, the record does not support petitioners' contention that customers of hot-rolled products are generally located closer to ports of entry than to domestic mills. Rather, the record shows that most purchasers are located within a distance of 500 miles from their supply source. As such, domestic mills located far from a port of entry do not normally compete for a sale to an end-user close to that same port of entry. Conversely, U.S. inland transportation costs are not significantly different for foreign and domestic sources selling to a particular set of customers.³¹⁰ Petitioners have offered no evidence to the contrary. Finally, we note that petitioners made no mention of their concerns when they provided extensive comments on the draft questionnaires used in these investigations; only after the data had been collected and results analyzed, did petitioners raise this issue.³¹¹

³⁰⁵ See EC-Q-084. Our data indicate that the vast majority of U.S. producers' and importers' sales during the period examined were in quantities of 1,000 tons or less.

³⁰⁶ We also note that, despite ample opportunity to comment on pricing methodology in our questionnaires, prior to the public hearing petitioners did not request any changes to our methodology to reduce the "bias" they now claim exists.

³⁰⁷ Petitioners' Posthearing Br. Vol. 1 at 37.

³⁰⁸ *Id.*

³⁰⁹ See *Copperweld Corp. v. United States*, 12 CIT 148, 163, 682 F. Supp. 552, 567 (1988) (the Commission was not required to factor into the analysis the value of freight absorption and other service offered on imported Canadian steel pipes and tubes as additional costs to be quantified in order that the prices measured reflect the true level of underselling, as information obtained by the Commission was specifically designed to eliminate differences in transportation costs and the instructions for the pricing section of questionnaires explicitly provided that prices were to exclude the cost of freight to customers.) Compare *Keyes Fiber v. United States*, 12 CIT 687, 691 F. Supp. 376 (1988); 12 CIT 223, 229-230, 682 F. Supp. 583, 588-89 (1988) (transportation costs may need to be evaluated where sales are being analyzed at different levels of trade).

³¹⁰ Report at I-168.

³¹¹ We also considered petitioners' arguments that pricing data collected in these investigations are flawed because they do not account for "overgrading" of foreign products or the effect of related party transfers, and because the data are sparse in general. We found no evidence in the record supporting petitioners' overgrading allegations. Additionally, the questionnaires in these

(continued...)

Finally, petitioners argued that the fact that domestic mills were successful in enforcing several price increases after the preliminary bond requirements took effect pursuant to these investigations shows that the cumulated imports were suppressing or depressing domestic prices.³¹² As discussed above, there is extensive evidence on the record suggesting that the subject imports did not significantly suppress or depress prices during the period examined. In light of this evidence, and evidence of improved economic conditions in general in 1993 as compared to the full three year period examined, we are unable to conclude that the domestic producers' ability to enforce price increases after bond requirements were in place definitively shows there was price suppression or depression during the period examined.

On the basis of the above discussion, we find that significant underselling does not exist and that domestic prices have not been suppressed or depressed to a significant degree by the subsidized and LTFV cumulated imports.

3. Impact on the Affected Domestic Industry

In assessing the impact of subsidized and LTFV imports on the domestic industry we consider, among other relevant factors, U.S. consumption, production, shipments, capacity utilization, employment, wages, financial performance, capital investments and research and development expenses.³¹³

As we have discussed, a number of factors have affected the domestic hot-rolled steel industry during the period examined including the recession, the entrance of lower cost domestic producers in the industry, and the possible effect of slab offerings by the domestic industry. While these factors independently or collectively may have had an impact on the domestic industry, the Act requires that we determine whether the domestic industry is materially injured by reason of the subject imports.

Based on our analysis of the financial condition of the domestic industry and the volume, price and nonprice factors discussed above, we find a lack of causal nexus between any injury the industry may be suffering and the subsidized and LTFV cumulated imports. The domestic industry's profitability declined sharply during the period examined, starting with operating income of \$39 million in 1990 and ending with operating losses of \$1.3 billion in 1992. Yet, the domestic industry's market share declined by only one percent during the same period. Consequently, we find no causal nexus between increases in import penetration and pricing and declines in the domestic industry's performance.³¹⁴ For example, the market share of the cumulated subject imports increased

³¹¹ (...continued)

investigations provided explicit instructions on how to account for related party transactions, and we have no reason to believe that these instructions were not generally followed by responding parties. Finally, with respect to the coverage of our data in general, we note that counsel to both petitioners and respondents were given ample opportunity to comment on, and provide revisions or alternatives to, the Commission's questionnaires. To the fullest extent possible, the Commission addressed the concerns of all parties regarding product definitions, expected coverage, and the extent of direct competition between domestic and foreign products. All parties were in general agreement on the methodology used to collect pricing data in these investigations. See Report at I-168, n. 219.

³¹² Petitioners' Prehearing Br., Vol. 6B at 19.

³¹³ See 19 U.S.C. § 1677(7)(C)(iii).

³¹⁴ Vice Chairman Watson has considered the decline in operating income over the period of investigation. A significant percentage of this decline is attributable to declines in average unit values in both the merchant market and the captive portion of the market. Pro forma evaluations
(continued...)

more from 1991 to 1992 than from 1990 to 1991. Conversely, profitability of the domestic industry declined more from 1990 to 1991 and rebounded slightly from 1991 to 1992.³¹⁵ Thus, there is no clear indication that the cumulated subject imports had a significant adverse impact on the domestic industry.

Moreover, the cumulated imports directly competed only with one-third of domestic production. Nearly two-thirds of domestic production is captively consumed by domestic mills in the production of cold-rolled and corrosion resistant products.³¹⁶ By petitioners' own account, integrated steel mills have strong incentives to use their own hot-rolled material in the production of downstream products because they have better control over the upstream inputs and are able to keep their plant and equipment in use to offset their high fixed cost of production.³¹⁷ The cumulated imports thus had little or no effect on the largest portion of the hot-rolled steel industry's production.

While we recognize that any effect of subsidized and LTFV imports on the domestic industry may be intensified because of the high fixed cost structure of the industry, we find that any impact they may have had on one third of the domestic industry's operations is not significant when evaluated in terms of their effect on the domestic industry as a whole. Moreover, even in the merchant sector of the domestic industry, cumulated imports have not had a significant impact on the domestic industry because of their limited substitutability resulting from quality differences, reliability of supply, lead time differences, and numerous other nonprice factors that influence a purchaser's buying decisions.^{318 319} We also find that impact on the merchant sector of the domestic industry is limited because the cumulated imports oversold domestic products by significant degrees.

4. Conclusion

Based on the foregoing, we are not persuaded that the record supports a conclusion that cumulated subject imports had a significant price or a significant volume effect on the domestic

³¹⁴(...continued)

confirm that operating income would have been significantly higher had average unit values for both the merchant market and the captive market (i.e., transfer prices) not declined over the period examined. Given the significant percentage of captive shipments to total shipments and the declines in average unit values on captive shipments over the period of investigation, Vice Chairman Watson concludes that the captive portion may have made a significant contribution to the declines in operating income. See Memorandum INV-Q-119, July 21, 1993.

³¹⁵ Report at Table 30, showing e.g., that the cost of goods sold as a ratio of net sales increased by 11.5 percent between 1990 and 1991, and decreased by 1.9 percent between 1991 and 1992. Similarly, gross profit decreased by 192.5 percent between 1990 and 1991, and increased by 25 percent between 1991 and 1992.

³¹⁶ See EC-Q-082 at 26.

³¹⁷ Id., see also Petitioners' Prehearing Br., Vol. 3 at 31 and 34 (. . . there is "effectively no competition in the market between merchant hot-rolled products and semifinished cold-rolled products" because domestic integrated producers would not purchase merchant market hot-rolled steel unless the merchant market price dropped below the variable cost of production and variable costs can be as low as one half the total cost of production)(emphasis in original).

³¹⁸ See supra discussion of these factors in section on Price Effects.

³¹⁹ Commissioner Rohr and Commissioner Nuzum do not join in this statement.

industry. Accordingly, we find that the domestic industry producing hot-rolled steel products is not materially injured by reason of the cumulated subject LTFV and subsidized imports.^{320 321}

B. No Material Injury By Reason of Imports from Korea³²²

We do not find the volume effect of the LTFV and subsidized hot-rolled imports from Korea to be significant. The market share of imports from Korea was relatively low throughout the period, at 1.2 percent of apparent domestic consumption in 1990, 1.6 percent in 1991, and 1.7 percent in 1992.³²³ The absolute volume of imports from Korea was similarly relatively low, at 619,091 short tons in 1990, 716,634 short tons in 1991, and 880,301 short tons in 1992.³²⁴

As discussed above with respect to cumulated imports, we find no evidence that the volume, increase in volume, or the share of apparent domestic consumption of imports from Korea had any significant adverse impact on the domestic industry. The overwhelming majority of imports from Korea are shipped from POSCO to its affiliate UPI and do not compete with domestic hot-rolled products.³²⁵ The record shows that UPI has been unable to source from any domestic producer other than its parent USX during 1990 - 92.³²⁶ There is also evidence suggesting that USX does not desire

³²⁰ Our conclusion would not differ in this case if we had determined that there is a reasonable overlap of competition between imports from Korea and the domestic like product and other imports, and had therefore included them within our cumulated analysis. As we discussed above and summarize again below, imports from Korea were almost exclusively consumed by UPI and imports destined to the merchant market were minuscule. With such a low volume and value of imports interacting with the domestic merchant market, they could have virtually no adverse impact on the domestic hot-rolled industry. Commissioner Rohr does not join this conclusion.

³²¹ Vice Chairman Watson notes that some financial indicators in the period changed between 1991 and 1992 and support the conclusion that the health of the hot-rolled industry is improving. Production increased as did capacity utilization and productivity. At the same time, unit cost of goods sold declined partly as a result of declining unit labor costs. Report at Table C-2.

Current 1993 public data support this conclusion. Market prices on flat-rolled carbon steel products have been rising recently. During the first five months of 1993, prices on hot-rolled, cold-rolled, and plate products have steadily risen. (Steel Market Outlook, WEFA, formerly known as Wharton Econometrics Forecasting Associates, 1993.) See also Transcript at 872. He also notes that U.S. imports of carbon steel slabs rose by 26 percent during the first five months of 1993 compared with the same period of the previous year to 956,000 tons valued at \$178 million. (Imports of Steel Mill Products, American Iron & Steel Imports, May 1992, 1993; compiled from Official Statistics of the U.S. Department of Commerce.) According to Horst Buelte, president of the American Institute for International Steel, these semi-finished materials were bound for U.S. steelmakers who are constrained by their own hot metal capacity. According to the official, producers have been operating at full capacity in recent months. Their heavy reliance on imported semi-finished material suggest their finishing facilities are operating beyond the capacity of their smelting and refining stages. (American Metal Market, July 20, 1993, p.2)

³²² This section of the Views of the Commission is joined by Vice Chairman Watson, Commissioner Rohr, Commissioner Crawford, and Commissioner Nuzum.

³²³ Report at Table 103.

³²⁴ Id. at Table 94.

³²⁵ See supra, discussion of imports from Korea in Cumulation Section.

³²⁶ See supra discussion of Korea in Cumulation Section.

to, or cannot, increase its supply of hot-bands to UPI.³²⁷ The only domestic competition that could be said to exist for the right to supply UPI is speculative -- i.e., the possible ability to supply UPI in the future, or theoretical competition for the right to participate in the joint venture contract which formed UPI.³²⁸

While there are some imports from Korea sold on the merchant market, this volume of imports is extremely small and some of these types are sold in niche categories.³²⁹ Given the very limited competition between imports from Korea and domestic products, we find that the volume of imports from Korea, and their share of apparent domestic consumption, and any increase in that volume or market share, were not significant.

We also find no significant underselling and that domestic prices have not been suppressed or depressed to a significant degree by subsidized and LTFV imports from Korea. Imports from Korea sold in the merchant market oversold domestic products in forty instances compared to nine instances of underselling.³³⁰ Margins of overselling were also significantly greater than margins of underselling, with overselling margins ranging from 1.9 percent to 44 percent and underselling margins ranging from 0.9 percent to 9.6 percent.³³¹ Additionally, there was not one confirmed lost sales or revenue allegation concerning imports from Korea.³³² A review of the price trends of Korean products compared to domestic products also shows no discernible price suppression or depression.³³³

The discussion set forth with respect to price suppression and depression by cumulated imports is generally applicable to imports from Korea as well, and is not reiterated in full here. In addition, however, we find that price suppression or depression is extremely unlikely with respect to Korea in particular, given the fact that the overwhelming majority of imports from Korea are consumed by UPI and do not compete to any significant degree with domestic products.³³⁴ The very small volume of imports from Korea sold on the merchant market are primarily specialty niche products, thus also implying somewhat limited substitutability, as discussed above.³³⁵ In light of this evidence, and particularly because of the unique conditions under which the vast majority of imports from Korea are imported, we conclude that domestic prices have not been significantly suppressed or depressed by imports from Korea.

We conclude that there is a lack of causal nexus between imports from Korea and any material injury to the domestic industry. The general discussion concerning a lack of impact on the domestic industry from cumulated imports applies to imports from Korea as well. In addition to

³²⁷ Id.

³²⁸ Commissioner Rohr notes that no other domestic producers currently have the ability to supply UPI with a significant amount of production and that while certain domestic producers have indicated that such production will be coming on line in the future, such expansions are not imminent.

³²⁹ Report at Table 98.

³³⁰ Id. at Tables 110-113.

³³¹ Report at Appenidx N; see also Tables 110-113.

³³² EC-Q-084 at I-43.

³³³ See EC-Q-080 at figures 9, 10 and 12.

³³⁴ See supra, discussion in Cumulation section.

³³⁵ See supra discussion in Cumulation Section.

these factors, any possible impact from these imports is almost totally negated by the fact that the vast majority of imports from Korea are consumed by UPI and do not affect the domestic industry in any significant manner.

C. No Material Injury By Reason of Negligible Imports³³⁶

As discussed above in the cumulation section of this determination, imports from noncumulated subject countries were insignificant in absolute volume and as a share of domestic consumption.³³⁷ The general discussion above concerning the cumulated subject hot-rolled imports also supports a finding of the insignificance of the volume of these individual imports.³³⁸ The volume of imports from each of these countries was low throughout the period, both absolutely and relative to consumption. Market shares of each of these countries declined over the period examined.³³⁹ Although domestic producers' share of apparent domestic consumption fell slightly over the period examined,³⁴⁰ we find no evidence that the declining market shares and low absolute volumes of any of the noncumulated subject countries had any adverse impact on the domestic industry. We therefore do not find the volumes and market shares of the noncumulated subject countries to be significant.

The record does not contain persuasive evidence that small volumes of imports from any of these countries independently had a significant suppressing or depressing effect on domestic prices. As discussed above with respect to cumulated imports, the evidence of some substitutability between noncumulated subject imports and domestic products is outweighed by nonprice factors influencing purchasing decisions.³⁴¹ Additionally, there is evidence of significant overselling by each of the noncumulated subject countries.³⁴² There are no confirmed lost sales or lost revenue allegations with respect to any of the noncumulated subject countries.³⁴³ We conclude that the volume, value and

³³⁶ This section of the Views of the Commission is joined by Vice Chairman Watson, Commissioner Rohr and Commissioner Crawford. Commissioner Nuzum does not join this section. See her Additional and Dissenting Views.

³³⁷ For Vice Chairman Watson and Commissioner Rohr, these countries include Belgium, Brazil, Germany, and Japan. For Commissioner Crawford, these countries include Belgium, France, Germany and Japan.

³³⁸ Commissioner Rohr notes that under the bifurcated analysis that he employs it is conceivable that imports which are having discernible adverse impacts may not yet be having impacts on the domestic industry which are a cause of injury, but that the converse does not seem logically possible. Having determined these imports negligible, he found they were not having any adverse impact on the domestic industry. Therefore, they cannot currently be a cause of injury.

³³⁹ See supra, Negligibility section for volumes and market shares of these countries.

³⁴⁰ See supra, discussion of No Material Injury By Reason of Cumulated Imports.

³⁴¹ See supra, discussion of price effects of cumulated imports on the domestic industry.

³⁴² Report at Table 110, showing that: i) Belgian products oversold domestic products in 16 instances compared to 3 instances of underselling; ii) Brazilian products oversold domestic products in 21 instances compared to 14 instances of underselling; iii) French products oversold domestic products in 61 instances compared to 7 instances of underselling; iv) German products oversold domestic products in 62 instances compared to 4 instances of underselling; and v) Japanese products oversold domestic products in 67 instances with no instances of underselling. Margins of overselling of each noncumulated subject country generally exceeded margins of underselling.

³⁴³ EC-Q-084 at I-43.

market share of imports from each of these countries were too small in and of themselves to have any significant effect on domestic prices. In light of these conclusions and our previous determination in the cumulation analysis above that imports from each one of these countries did not have any discernible adverse impact on the domestic industry,³⁴⁴ we determine that none of the noncumulated countries' imports were a cause of material injury to the domestic industry.

VI. DETERMINATIONS REGARDING THREAT OF MATERIAL INJURY

We determine that there is no threat of material injury from subject hot-rolled imports from any country subject to these investigations.

19 U.S.C. Section 771(7)(F) directs the Commission to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent,"³⁴⁵ and directs us to consider a number of criteria which are addressed below.³⁴⁶ While an analysis of the statutory threat factors necessarily involves projection of future events, "[s]uch a determination may not be made on the basis of mere conjecture or supposition."³⁴⁷ In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.³⁴⁸

A. General Threat Issues³⁴⁹

1. Petitioners' Cartel Argument

Petitioners alleged that all four major domestic industries are threatened with material injury because trade in steel between most of the world's other major industrialized nations is highly restricted by cartels and nontariff barriers to trade.³⁵⁰ We find insufficient evidence to infer for the purposes of these title VII investigations that the U.S. market has been or is likely to become a magnet for steel imports as a result of the alleged market access barriers or international cartels. Accepting petitioners' cartel arguments would require us to conclude that there are such cartels, identify their past and current impact on imports to the U.S. market, and conclude that such impact would result in greater volume and price effects in the future. We are unable to reach these

³⁴⁴ See supra discussion of each country in the Cumulation section of these Views.

³⁴⁵ 19 U.S.C. § 1677(7)(F)(ii).

³⁴⁶ See 19 U.S.C. § 1677(7)(F)(iii).

³⁴⁷ 19 U.S.C. § 1677(7)(F)(ii). See also S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); Metallverken Nederland, 14 CIT 481, 488, 744 F. Supp. 281, 287 (1990).

³⁴⁸ 19 U.S.C. § 1677(7)(F)(iii)(I). These antidumping investigations do not involve agricultural products.

³⁴⁹ The discussion in this heading applies to all four sets of Views.

³⁵⁰ See Petitioners' Prehearing Br., Vol. 7A at 10-18. The alleged cartels include the so-called East of Burma or London Agreement between EUROFER (the European integrated steel producers' trade association) and the Japanese mills which restricts EC-Japan direct trade, as well as trade between the EC and Japanese "spheres of influence" in the Eastern Hemisphere. In addition, petitioners claimed that mill-to-mill agreements restrict direct trade between Japan, on the one hand, and Korea, Taiwan, Australia, New Zealand, Brazil, South Africa, and Indonesia on the other. Petitioners further asserted that an agreement between POSCO and EUROFER restricts steel trade between Korea and the EC, and limits POSCO deliveries in Scandinavia, Switzerland, Austria, and Eastern Europe.

conclusions based on the evidence of record now before us. The Commission is required to base its threat analysis on factors which demonstrate that the threat of material injury to the domestic industry is real, and not based on speculation or conjecture.

2. Petitioners' Nontariff Barriers Argument

Petitioners also claimed that a series of nontariff barriers limiting imports of steel into the EC, EFTA, and Japanese markets will result in increased imports to the U.S. market.³⁵¹ We reject petitioners' argument that alleged nontariff barriers in the EC and EFTA countries and in Japan pose a threat of material injury to the domestic steel industry. The mere allegations that nontariff barriers exist in Japan and Europe do not provide sufficient evidence of real threat and actual imminent injury to the domestic industry required for an affirmative threat determination.

3. Petitioners' Product Shifting Argument

Petitioners contended that the potential for product-shifting in these cases is very high. They asserted that if final duties are imposed on imports of one product from a foreign producer but not on a second product from that same producer, that producer will shift its product mix exported to the United States, thus undermining the intended remedial effect of any duties.³⁵² This is possible, petitioners stated, because the processes necessary to make various steel flat-rolled products are flexible and can be shifted between product groups.³⁵³

We reject petitioners' argument that potential product shifting requires the Commission in all instances to find a threat of material injury to the domestic industry. Without other evidence warranting an affirmative threat determination, we do not find the possibility of such product shifting to mandate affirmative threat findings in these investigations.³⁵⁴ For example, there is no evidence in the record that most steel exporters can shift production between product groups in order to avoid duties imposed in this investigation and, thereby, increase exports to injurious levels in the U.S. market. As these investigations have shown, many steel producers produce specialized products and maintain long-term relationships with their customers. Furthermore, production processes for the various like products are not interchangeable and shifts in production in many instances would require capital expenditures unlikely to be justified by the small percentage of total steel production exported by most of the subject countries to the United States.

³⁵¹ Petitioners' Prehearing Br., Vol.7A at 20-26. Petitioners asserted that informal pressure and national quotas limit imports into the EC. These allegedly include unilateral quotas imposed on steel products from the Czech and Slovak Republics intended as a warning to other East European steel producers to adopt fair price and volume steel policies, and the extension of quotas on steel imports from Romania, Bulgaria and the nations of the former Soviet Union. Petitioners also asserted that steel trade between the EC and the EFTA was regulated between 1976 and 1989 by an annual exchange of letters setting minimum prices and delivery quotas, and since 1989, by letters instructing exporters to spread steel deliveries out over the year, across a fairly wide product range, and throughout the EC. Finally, petitioners alleged that integrated mills in Japan use informal pressure including the threat of cutting off domestic supplies to effectively compel distributors and consumers to limit their use of imported steel.

³⁵² *Id.* at 34.

³⁵³ *Id.* at 36.

³⁵⁴ Commissioner Nuzum notes, however, that she did consider the plausibility of such product shifting as one of several factors relevant to her threat determinations.

B. No Threat of Material Injury By Reason of Hot-Rolled Imports from Belgium, Brazil, Canada, France, Germany, Japan, Korea, and the Netherlands

1. Cumulation³⁵⁵

As a threshold matter, we must consider whether to cumulate imports from the eight subject countries for purposes of our threat analysis. The statute indicates that, in its threat analysis, "[t]o the extent practicable . . . the Commission may cumulatively assess the volume and price effect of imports from two or more countries. . . ."³⁵⁶ Hence, cumulation for a threat analysis, in contrast to cumulation for a material injury analysis, is discretionary.

We have determined to exercise our discretion not to cumulate any of the subject imports in the hot-rolled investigations for a number of reasons. First, there is a noticeable lack of uniformity of pricing trends among the subject countries.³⁵⁷ Similarly, volume and market penetration trends vary to some extent among the subject countries.³⁵⁸ These factors, which render meaningful cumulative analysis difficult in the context of threat, have been held to constitute a sufficient basis for the Commission to decline to cumulate for a threat analysis.³⁵⁹

Moreover, the market shares of many of the subject countries were extremely low during the period examined; all but two countries had market shares under 1.0 percent.³⁶⁰ Based, in part, on these very low market shares, Vice Chairman Watson, Commissioner Rohr, Commissioner Brunsdale and Commissioner Crawford applied the negligible import exception to mandatory cumulation to the majority of the countries importing subject products.³⁶¹ We find that the existence of negligible imports is a factor weighing against discretionary cumulation for a threat analysis.^{362 363}

³⁵⁵ Commissioner Rohr notes that while he generally does not formally cumulate imports for purposes of his threat determinations he will, under appropriate circumstances, consider other unfairly traded imports as to which he is making affirmative findings as another demonstrable adverse trend affecting the industry. As explained in his Additional and Dissenting Views, the trends for the imports for which he has made affirmative findings are similar and he therefore did consider such imports as another demonstrable adverse trend.

³⁵⁶ 19 U.S.C. § 1677(7)(F)(iv) (emphasis added).

³⁵⁷ Report at Appendix N; see also EC-Q-080.

³⁵⁸ Id. at Table 94 and Table 103.

³⁵⁹ Asociacion Colombiana de Exportadores de Flores v. United States, 12 CIT 1174, 1178, 704 F. Supp. 1068, 1072 (1988).

³⁶⁰ Report at Table 103.

³⁶¹ Vice Chairman Watson and Commission Rohr applied the negligibility exception to imports from Belgium, Brazil, Germany, Japan, and South Africa. Commissioner Crawford applied the negligibility exception to imports from Belgium, France, Germany, Japan, and South Africa. Commissioner Brunsdale applied the negligibility exception to imports from Belgium, Brazil, Germany, Japan and the Netherlands. Commissioner Nuzum did not apply the negligibility exception to hot-rolled steel imports from any country subject to investigation.

³⁶² 19 U.S.C. § 1677(7)(F)(IV) and 1677(7)(C)(V).

³⁶³ Commissioner Rohr does not join in this conclusion.

Accordingly, we make a separate threat determination for each subject country. In each instance, we have considered all statutory considerations applicable to these investigations.³⁶⁴ We considered no single factor to be dispositive.

2. No Threat of Material Injury³⁶⁵

Belgium³⁶⁶

Imports from Belgium had a very small presence in the United States market during the period examined. Market penetration of Belgian hot-rolled products reached its high at 0.2 percent in 1991, and decreased by 0.1 percent during the period as a whole.³⁶⁷ The volume of imports from Belgium was also small throughout the period, and declined to almost zero in 1992. Consequently, we conclude that there is no likelihood that the volume or penetration of imports from Belgium will increase to an injurious level. The fact that importers of Belgian products maintained [***] inventories in the United States during the period examined also supports a negative determination on threat.³⁶⁸

While Belgian producers' capacity increased and capacity utilization declined during the period examined, the data also show that home market shipments as a percentage of total shipments are rising and that a very low and declining percentage of Belgian production is exported to the United States.³⁶⁹ Considered together, these factors support a negative threat determination.

There does not appear to be a significant probability that imports from Belgium will have a suppressing or depressing effect on domestic prices. This conclusion is based on our finding in the material injury analysis that the subject imports from Belgium have no present effect on prices and that any price suppression or depression occurring in the domestic market was caused by factors unrelated to the subject imports.³⁷⁰ No credible evidence has been presented indicating that imports from Belgium will have an adverse price effect in the immediate future.

Finally, we do not find that hot-rolled steel imports from Belgium have or will have a negative effect on the development and production efforts of the domestic hot-rolled industry. While research and development expenditures and capital expenditures for hot-rolled products declined over the period examined, we find that the volume and market share of imports from Belgium were too small to be a factor in these declines.³⁷¹

³⁶⁴ Because these investigations do not concern agricultural products, statutory factor (IX) is inapplicable. Statutory factor (I), concerning subsidies, is applicable to all countries except Canada, Japan and the Netherlands.

³⁶⁵ Vice Chairman Watson, Commissioner Rohr, Commissioner Brunsdale, Commissioner Crawford and Commissioner Nuzum join in this section of the Views of the Commission except as otherwise noted below.

³⁶⁶ Vice Chairman Watson, Commissioner Rohr, Commissioner Brunsdale and Commissioner Crawford found imports from Belgium to be negligible during the period examined.

³⁶⁷ Report at Table 103. Commissioner Nuzum also considered merchant market shares.

³⁶⁸ Report at Table 46.

³⁶⁹ Id. at Table 53.

³⁷⁰ See supra, Discussion of No Material Injury.

³⁷¹ Report at Tables 41 and 43.

We have identified no other adverse trend that would suggest a threat of material injury by reason of the subject imports from Belgium.³⁷²

Brazil³⁷³

Imports from Brazil have had a very small presence in the United States market during the period examined. Market penetration of Brazilian hot-rolled products did not "increase rapidly", but instead remained very low during the period examined, never exceeding 0.3 percent of apparent domestic consumption.³⁷⁴ Although fluctuating to some extent, the absolute volume of imports from Brazil was also small.³⁷⁵ We conclude that there is no likelihood that volume or penetration of imports from Brazil will increase to an injurious level.

U.S.-based inventories of Brazilian products decreased significantly from 1990 to 1992 and inventories in Brazil remained relatively stable at low levels.³⁷⁶ These factors also support a finding that imports from Brazil do not threaten the domestic industry.

While data show increasing Brazilian capacity during the period examined, capacity utilization also increased. Additionally, exports to the United States were a very low percentage of total exports, declined throughout the period, and are expected to decline further in 1993.³⁷⁷ Additionally, exports to third countries increased throughout the period.³⁷⁸

The Commerce Department determined that hot-rolled producers in Brazil were receiving subsidies of over thirty percent, of which less than one percent were considered export subsidies.³⁷⁹ However, given the very low volume and market share of imports from Brazil throughout the period examined and the fact that Brazilian producers project no exports to the United States in 1993,³⁸⁰ we do not consider this factor to be sufficient to warrant an affirmative threat determination.

Further, there does not appear to be a significant probability that imports from Brazil will have a suppressing or depressing effect on domestic prices. This finding is based on our finding in

³⁷² Commerce found no export related subsidies on Belgian hot-rolled products and, for all companies except Cockerill, very low levels of subsidies in general. Although Cockerill's subsidies were high at 25.97 percent, we do not find the nature of these subsidies to warrant an affirmative threat determination in light of the low volume and market share of imports from Belgium during the period examined. See Report at Table 7.

³⁷³ Vice Chairman Watson, Commissioner Rohr and Commissioner Brunsdale found imports from Brazil to be negligible during the period examined. Commissioner Crawford and Commissioner Nuzum did not find imports from Brazil to be negligible.

³⁷⁴ Report at Table 103. Commissioner Nuzum also considered merchant market shares.

³⁷⁵ *Id.* at Table 94, showing volume of imports from Brazil rising from 136.6 short tons to 155.7 short tons over the period examined.

³⁷⁶ *Id.* at Table 46, and at Table 56.

³⁷⁷ *Id.* at Table 56.

³⁷⁸ *Id.* at Table 46, and at Table 56.

³⁷⁹ *Id.* at E-10.

³⁸⁰ Commissioner Rohr reiterates that he does not place great weight about projections regarding shipments, including exports to the United States.

the causation and negligibility³⁸¹ analyses that the subject imports from Brazil have no present effect on prices and that any price suppression or depression occurring in the domestic market was caused by factors unrelated to the subject imports.³⁸² No credible evidence has been presented indicating that imports will have an adverse price effect in the immediate future.

We do not find that hot-rolled steel imports from Brazil have or will have a negative effect on the development and production efforts of the domestic industry. While research and development expenditures and capital expenditures for hot-rolled steel declined over the period examined, we find that the volume and market share of imports from Brazil were too small to be a factor in these declines.³⁸³

We have identified no other adverse trend that would suggest a threat of material injury by reason of the subject imports from Brazil.

Canada^{384 385}

Canadian market penetration levels increased from 1.2 percent in 1990 to 1.9 percent of domestic consumption in 1992 as exports to the U.S. increased.³⁸⁶ Evidence suggests however that this increase in imports is not likely to increase to injurious levels as exports to the United States are projected to decline in 1993. Moreover, Canadian home market shipments as well as exports to all other markets show a significant increase over the period examined.³⁸⁷

Production capacity for Canadian hot-rolled products increased over the period of investigation, however, projected capacity for 1993 is expected to decline from 1992 levels.³⁸⁸ Capacity utilization also increased from 1990 to 1992, but is projected to decline in 1993.³⁸⁹

Pricing comparisons, as supported by unit values, show significant overselling by subject imports.³⁹⁰ In addition, there were no confirmed lost sales of any hot-rolled product from Canada. We also note that in the causation section we found that imports from Canada, even when cumulated with imports from several other countries, have no present effect on prices. Thus, we find no evidence that imports of hot-rolled steel from Canada will enter the United States at prices that will have a suppressing or depressing effect on U.S. prices.

³⁸¹ Commissioner Crawford and Commissioner Nuzum did not find that imports from Brazil were negligible during the period examined.

³⁸² See supra, Discussion of No Material Injury.

³⁸³ Report at Tables 41 and 43.

³⁸⁴ Vice Chairman Watson, Commissioner Brunsdale, Commissioner Crawford and Commissioner Nuzum join in this section of the Views of the Commission.

³⁸⁵ Commissioner Rohr does not join in this section of the Views of the Commission. See his Additional and Dissenting Views.

³⁸⁶ Report at Table 103. Commissioner Nuzum also considered merchant market shares.

³⁸⁷ Id. at Table 60.

³⁸⁸ Although capacity utilization has risen over the period of investigation, [***] Report at I-103.

³⁸⁹ Report at Table 60.

³⁹⁰ Id. at C-2 and Appendix N.

France.⁴⁰⁶ While Sacilor's home market shipments have fallen throughout the period, its exports to the United States have also fallen and its exports to third countries have increased.⁴⁰⁷

We do not find that imports from France of hot-rolled products have or are likely to have a negative effect on the development and production efforts of the domestic industry. While research and development expenditures and capital expenditures for hot-rolled steel declined over the period examined, we find that the volume and market share of imports from France were too small to be a factor in these declines.⁴⁰⁸

We have identified no other adverse trend that would suggest a threat of material injury by reason of LTFV and subsidized imports from France.^{409 410}

Germany⁴¹¹

Imports from Germany did not "increase rapidly" over the period examined, but instead have decreased steadily both in terms of volume and market share and were at very low levels overall.⁴¹² In light of these downward trends and the other factors discussed below, we conclude that there is no likelihood that penetration of imports from Germany will increase to an injurious level.

Production of hot-rolled products in Germany dropped by six percent from 1991 to 1992, after having been virtually unchanged from 1990 to 1991.⁴¹³ Capacity grew overall during the period, but capacity utilization remained well over ninety percent during most of the period.⁴¹⁴ Especially considering the high level of capacity utilization, these factors do not support an affirmative threat determination.

⁴⁰⁶ Id. at Table 65.

⁴⁰⁷ Id.

⁴⁰⁸ Id. at Tables 41 and 43.

⁴⁰⁹ The Commerce Department did not distinguish between classes or kinds of merchandise in its calculation of subsidies granted to Sacilor. Although Commerce determined that Sacilor benefited from subsidies of over fifteen percent, none of the subsidies were identified as export subsidies. Together with the factors discussed above, we find that the nature of these subsidies does not warrant an affirmative threat determination.

⁴¹⁰ We do not believe that there exists a realistic potential for product shifting from production of corrosion-resistant steel to hot-rolled steel in response to our affirmative determination in the corrosion-resistant investigation. This possibility is particularly speculative given that production of hot-rolled steel is two steps removed from production of corrosion-resistant steel. Our general discussion of product shifting set forth in our discussion on Germany applies here as well.

⁴¹¹ Vice Chairman Watson, Commissioner Crawford, Commissioner Rohr and Commissioner Brunsdale found imports from Germany to be negligible.

⁴¹² Report at Table 94 and Table 103, showing the volume of imports from Germany declining from 304.1 short tons in 1990 to 197.3 short tons in 1992, and the market share of imports from Germany declining from 0.6 percent in 1990 to 0.4 percent in 1992. Commissioner Nuzum also considered merchant market shares.

⁴¹³ Report at Table 69.

⁴¹⁴ Id.

We find no probability that imports of hot-rolled product from Germany will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based on our finding in the causation and negligibility analyses that imports from Germany have no present effect on prices. No credible evidence has been presented which indicates that imports will have an adverse price effect in the immediate future.

Although United States inventories of German hot-rolled products rose somewhat over the period,⁴¹⁵ the ratios of German-based inventories to production and of German-based inventories to total shipments decreased overall.⁴¹⁶ Germany's home market shipments have remained relatively steady, as have its shipments to third countries. Shipments to the United States as a ratio of total shipments fell throughout the period.⁴¹⁷

We do not find that imports from Germany of hot-rolled products have or will have a negative effect on the development and production efforts of the domestic industry. While research and development expenditures and capital expenditures for hot-rolled steel declined over the period examined, we find that the volume and market share of imports from Germany were too small to be a factor in these declines.⁴¹⁸

We have considered whether there is a realistic potential for product shifting in Germany to production of hot-rolled from either cold-rolled or corrosion resistant steel in response to our affirmative determinations in the two other investigations. We recognize that there is a possibility that product shifting might occur, especially given the relatively high dumping margins found by the Commerce Department on cold-rolled products.⁴¹⁹ We have therefore not based our negative threat determination solely on a lack of potential for product shifting. We note, however, that the record does not provide sufficient concrete evidence that this is likely to warrant an affirmative threat finding, especially in light of the very low volumes of hot-rolled products imported from Germany during the period examined. Petitioners themselves concede that integrated steel producers normally have a large incentive to make as much higher value-added cold-rolled and corrosion-resistant products as they can to recoup the cost of investment in downstream production facilities.⁴²⁰

⁴¹⁵ Id. at Table 46.

⁴¹⁶ Id. at Table 69.

⁴¹⁷ Id.

⁴¹⁸ Id. at Tables 41 and 43.

⁴¹⁹ Id. at Table 7.

⁴²⁰ Petitioners mention that the imposition of dumping margins on downstream products but not upstream products might provide incentive for foreign integrated producers to shift to upstream production. See Petitioners' Prehearing Br., Vol. 3 at 34, n. 38. We find this proposition to be too speculative in the case at hand to demonstrate a real and imminent threat of material injury to the domestic industry.

Inventories of Canadian hot-rolled steel increased over the period examined but are projected to decline in 1993.³⁹¹ These small volumes of inventories are not likely to pose a threat of material injury to the domestic hot-rolled steel industry as the percentage of inventories to total shipments is small.³⁹²

In light of the Commission's affirmative material injury determination with respect to corrosion-resistant steel from Canada, there is the possibility of product shifting from corrosion-resistant to hot-rolled products. However, we note that only two of the five producers of hot-rolled products in Canada also produce corrosion-resistant products.³⁹³ Although we recognize the possibility of increased hot-rolled production at the expense of the downstream corrosion-resistant product given the captive nature of these products, we find this to be unlikely. The corrosion-resistant production lines represent a substantial investment, with the new Z line of Stelco being the only line of its type operating in Canada. In addition, petitioners conceded that integrated steel producers normally have a large incentive to make as much higher value-added products as possible to recoup the cost of investment in downstream production facilities.³⁹⁴ We find it unlikely that following such a substantial investment to create the Z line that Stelco would severely limit its operations by selling the hot-rolled feedstock to the U.S. market. While we recognize that there is the potential for product shifting, we find that this possibility is not significant in and of itself to mandate an affirmative threat determination.

We also do not find that imports from Canada of hot-rolled products have or will have a negative effect on the development and production efforts of the domestic industry. Fixed assets for hot-rolled steel (at both original cost and book value) increased significantly over the period examined.³⁹⁵

In addition to the above, we have considered certain other relevant economic factors and unique conditions of trade in reaching our determination. There is evidence on the record indicating that during the period examined, approximately 50 percent of the increase in the volume of shipments of the subject imports from Canada to the United States is attributable to the fact that many Canadian steel processors have recently moved to the United States and that these processors retained their supply relationships with Canadian producers after their relocations.³⁹⁶ These processors typically maintain long term relationships with a particular producer that will manufacture hot-rolled steel to particular specifications needed by the processor.³⁹⁷ In light of these circumstances, a significant portion of Canadian hot-rolled shipments to the United States have not displaced domestic shipments.

³⁹¹ Id. at I-103.

³⁹² Id. at I-103.

³⁹³ Id. at I-103-104.

³⁹⁴ See Petitioners' Prehearing Br. Vol.3 at 34.

³⁹⁵ Report at I-85.

³⁹⁶ Canadian Prehearing Br. at 6. Vice Chairman Watson notes that there has been a substantial reduction of trade barriers for steel and steel products between the U.S. and Canada. Under the U.S.-Canada Automotive Pact, auto parts made of steel are traded duty-free between the two countries. In addition, tariffs on steel itself have been substantially reduced under the U.S.-Canada Free Trade Agreement and are scheduled to be eliminated.

³⁹⁷ Id.

In addition, there is evidence that U.S. and Canadian companies compete for business from consumers, principally large companies with operations on both sides of the border.³⁹⁸ A Canadian mill may compete with both U.S. and Canadian mills for a customer in Canada and find that its steel is ultimately shipped to the U.S.³⁹⁹ According to a Canadian industry official, approximately only [***] percent of their firm's hot-rolled contract exports to the U.S. are predestined to U.S. purchasers.⁴⁰⁰

We find no other demonstrable adverse trend or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports. We conclude that subject imports from Canada do not demonstrate a real threat of material injury and actual injury to the domestic hot-rolled industry is not imminent.

France

Over the period examined as a whole, imports from France did not "increase rapidly" but instead have decreased both in terms of volume and market share.⁴⁰¹ In light of these downward trends and the other factors discussed below, we conclude that there is no likelihood that penetration of imports from France will increase to an injurious level.

Production of hot-rolled products in France fluctuated during the period examined, but declined overall.⁴⁰² While capacity remained unchanged, and capacity utilization fell, utilization remained at a very high level overall.⁴⁰³ Especially considering the high level of capacity utilization, these factors do not support an affirmative threat determination.

We find no probability that imports of hot-rolled products from France will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based on our finding in the causation section that imports from France, even when cumulated with imports from several other countries, have no present effect on prices. We note that the overselling by French products, and evidence that some French products are of superior quality than domestic products, strongly suggests that French products will not enter the United States at prices that suppress or depress domestic prices.⁴⁰⁴ No credible evidence has been presented which indicates that imports will have an adverse price effect in the immediate future.

United States inventories of French hot-rolled products were small overall and steadily declined throughout the period examined.⁴⁰⁵ Sacilor retains [***] inventories of hot-rolled product in

³⁹⁸ Commissioner Nuzum does not join the discussion in this paragraph.

³⁹⁹ [***]

⁴⁰⁰ Telephone conversation with Canadian producer.

⁴⁰¹ Report at Table 94 and Table 103, showing that the market share of imports from France was 0.9 percent in 1990, 0.6 percent in 1991, and 0.8 percent in 1992. The volume of imports from France was 454.4 short tons in 1990, 270.7 short tons in 1991, and 399.0 short tons in 1992. Commissioner Nuzum also considered merchant market shares.

⁴⁰² Report at Table 65.

⁴⁰³ Id.

⁴⁰⁴ See supra, Discussion of France in Cumulation Section; see also Report at Tables 110-113.

⁴⁰⁵ Report at Table 46.

We have identified no other adverse trend that would suggest a threat of material injury by reason of the LTFV and subsidized imports from Germany.⁴²¹

Japan⁴²²

We find that there was not any rapid increase in United States market penetration of imports from Japan and that there is no likelihood that the penetration will increase to an injurious level. Imports from Japan maintained a very small presence in the domestic market during the period examined, declining both in terms of market share and absolute volume.⁴²³ In light of these downward trends and the other factors discussed below, we conclude that there is no likelihood that penetration of imports from Japan will increase to an injurious level.

We do not believe that data showing slight declines in production and capacity utilization⁴²⁴ in Japan support an affirmative threat determination. This is especially true in light of other information showing that home market shipments are rising and that a very low and declining percentage of Japanese production is exported to the United States.⁴²⁵ We also note that exports to the United States in 1993 are expected to decline to 0.1 percent of total shipments, and that exports to other countries are expected to increase.⁴²⁶

There does not appear to be a significant probability that imports from Japan will have a suppressing or depressing effect on domestic prices. This finding is based on our finding in the causation and negligibility analysis above that the subject imports from Japan have no present effect on prices and that any price suppression or depression occurring in the domestic market was caused by factors unrelated to the subject imports.⁴²⁷ No credible evidence has been presented indicating that imports from Japan will have an adverse price effect in the immediate future.⁴²⁸

While inventories of Japanese products in the United States have fluctuated between six and twelve percent of their total shipments during the period examined,⁴²⁹ the ratio of inventories in Japan to total shipments has decreased throughout the period and inventories in Japan have decreased

⁴²¹ Commerce found no export related subsidies on German hot-rolled product and very low levels of subsidies in general, at slightly over 1 percent. Report at E-11. We do not find these subsidies to provide a basis for an affirmative finding of threat.

⁴²² Vice Chairman Watson, Commissioner Rohr, Commissioner Brunsdale and Commissioner Crawford found imports from Japan to be negligible.

⁴²³ Id. Table 94 and Table 103, showing that the volume of imports from Japan declined from 197.9 tons in 1990 to 135.8 tons in 1992 and that market share declined from 0.4 percent to 0.3 percent from 1990 to 1992. Commissioner Nuzum also considered merchant market shares.

⁴²⁴ Report at Table 74.

⁴²⁵ Id.

⁴²⁶ Id. at Table 74.

⁴²⁷ See supra, Discussion of No Material Injury.

⁴²⁸ Petitioners argued that imports from Japan are a threat to the domestic hot-rolled industry based on the tendency of Japanese companies to increase export sales in periods of weak demand in their home economy. We do not find this argument persuasive because it is based on speculation and is not substantiated by evidence on the record.

⁴²⁹ Report at Table 46.

overall.⁴³⁰ Additionally, we do not find levels of inventory located in the United States to be significant in light of the low levels of imports from Japan overall.

Finally, we do not find that hot-rolled steel imports from Japan have had or will have a negative effect on the development and production efforts of the domestic industry. While research and development expenditures and capital expenditures for hot-rolled steel declined over the period examined, we find that the volume and market share of imports from Japan were too small to be a factor in these declines.⁴³¹

We have identified no other adverse trend that would suggest a threat of material injury by reason of the subject imports from Japan.⁴³²

Korea

While the increase in market share and volume of imports from Korea over the period examined could possibly be characterized as "rapid",⁴³³ we find that both the market share and volume of imports from Korea are too low overall to provide any likelihood of these imports rising to an injurious level and presenting any threat of material injury. The fact that the overwhelming majority of imports from Korea is currently consumed by UPI and does not compete on the open market further supports a finding that imports from Korea are not likely to rise to injurious levels in the immediate future.⁴³⁴

Korean capacity and capacity utilization rates increased during the period examined.⁴³⁵ Capacity utilization rates are currently very high, and are projected to rise even further in 1993.⁴³⁶ Shipments to the home market as a ratio of total shipments have remained relatively steady over the period, and are not projected to change significantly in 1993. Shipments to the United States as a ratio to total shipments have also fluctuated within a relatively small range and are expected to decline in 1993. Finally, we note that shipments to third countries as a ratio of total shipments have increased throughout the period and are expected to increase further in 1993.⁴³⁷ Together with the unique conditions under which the majority of Korean products are exported to the United States, these trends support a finding that imports from Korea do not present a threat of material injury to the domestic industry.

⁴³⁰ Id. at Table 74.

⁴³¹ Id. at Tables 41 and 43.

⁴³² We do not believe that there exists a realistic potential for product shifting from production of corrosion-resistant steel to hot-rolled steel in response to our affirmative determination in the corrosion resistant investigation. This possibility is particularly speculative given that production of hot-rolled steel is two steps removed from production of corrosion-resistant steel. Our general discussion of product shifting set forth in our discussion on Germany applies here as well.

⁴³³ Report at Table 94 and Table 103, showing that the volume of imports from Korea increased from 619.1 short tons to 880.3 short tons, and that Korean market share increased from 1.2 percent to 1.7 percent over the period examined. Commissioner Nuzum also considered merchant market shares.

⁴³⁴ See supra discussion of imports from Korea in Cumulation and Material Injury Sections.

⁴³⁵ Report at Table 78.

⁴³⁶ Id.

⁴³⁷ Id. at Table 78.

There does not appear to be a significant probability that imports from Korea will have a suppressing or depressing effect on domestic prices. This finding is based on our finding in the causation analyses that the subject imports from Korea have no present significant effect on prices and that any price suppression or depression occurring in the domestic market was caused by factors unrelated to the subject imports.⁴³⁸ Other factors supporting a negative determination include the facts that (1) the vast majority of imports from Korea do not enter the merchant market; (2) merchant imports from Korea are primarily in specialty niche categories products; and (3) merchant imports from Korea have oversold the domestic product in the majority of comparisons. We find that no credible evidence has been presented indicating that imports from Korea will have an adverse price effect in the immediate future. United States inventories of Korean hot-rolled steel sold in the merchant market were virtually nonexistent throughout the period⁴³⁹ and the ratios of Korean-based inventories to production decreased overall.⁴⁴⁰ These factors also support a negative threat determination.

We do not find that imports from Korea of hot-rolled products have or will have a negative effect on the development and production efforts of the domestic industry. While research and development expenditures and capital expenditures for hot-rolled steel declined over the period examined, we find that the volume or market share of imports from Korea were too small to be a factor in these declines.⁴⁴¹

We have considered whether there is a realistic potential for product shifting in Korea to production of hot-rolled from either cold-rolled or corrosion resistant steel in response to our affirmative determinations in the two other investigations. We recognize that there is a possibility that product shifting might occur.⁴⁴² We have therefore not based our negative threat determination solely a lack of potential for product shifting. We do note, however, that the record does not provide sufficient concrete evidence that this is likely to warrant an affirmative threat finding. Petitioners themselves concede that integrated steel producers normally have large incentive to make as much higher value-added cold-rolled and corrosion-resistant products as they can to recoup the cost of investment in downstream production facilities.⁴⁴³

The Commerce Department determined that hot-rolled steel producers in Korea were receiving subsidies of slightly over four percent, of which 0.2 percent were considered export subsidies.⁴⁴⁴ However, given this very low rate, we do not consider this factor to be sufficient to warrant an affirmative threat determination.

⁴³⁸ See supra, Discussion of No Material Injury.

⁴³⁹ Report at Table 46.

⁴⁴⁰ Id. at Table 78.

⁴⁴¹ Id. at Tables 41 and 43.

⁴⁴² Dumping margins in the cold-rolled and corrosion resistant case were lower (ranging from 14 to 18 percent) than in the case of Germany discussed above. See Report at Table 7. We thus find any theoretical potential for product shifting that might otherwise exist to be even less likely in this case.

⁴⁴³ Petitioners mention that the imposition of dumping margins on downstream products but not upstream products might provide incentive for foreign integrated producers to shift to upstream production. See Petitioners' Prehearing Br., Vol. 3 at 34, n. 38. We find this proposition to be too speculative in the case at hand to demonstrate a real threat of material injury to the domestic industry.

⁴⁴⁴ Report at E-12.

We have identified no other adverse trend that would suggest a threat of material injury by reason of the LTFV and subsidized imports from Korea.

The Netherlands⁴⁴⁵ ⁴⁴⁶

While the increase in volume of imports from the Netherlands could possibly be characterized as "rapid", market share increased by only 0.2 percentage points during the period examined.⁴⁴⁷ We find that the absolute volume and market share of imports from the Netherlands are too low to provide any likelihood of these imports rising to an injurious level and presenting any real threat of material injury.⁴⁴⁸

While Dutch capacity increased during the period examined, capacity utilization rates fluctuated slightly at very high levels.⁴⁴⁹ Capacity utilization rates are projected to rise slightly in 1993.⁴⁵⁰ Shipments to the home market as a ratio of total shipments have remained relatively steady over the period, although they have declined slightly in 1992 and are expected to decline further in 1993. Shipments to the United States as a ratio of total shipments also rose somewhat during the period, but are expected to decline in 1993. Finally, we note that shipments to third countries as a ratio of total shipments declined during the period, but are expected to increase in 1993.⁴⁵¹ In light of the high capacity utilization rate and the relatively low volume and market share of Dutch imports in the United States during the period examined, these trends also do not support an affirmative threat determination.

There does not appear to be a significant probability that imports from the Netherlands will have a suppressing or depressing effect on domestic prices. This finding is based on our finding in the causation and cumulation analyses that the subject imports from the Netherlands, even when cumulated with other imports, have no present effect on prices and that any price suppression or depression occurring in the domestic market was caused by factors unrelated to the subject imports.⁴⁵² We find that no credible evidence has been obtained indicating that imports from the Netherlands will have an adverse price effect in the immediate future.

⁴⁴⁵ This portion of the Views of the Commission is joined by Vice Chairman Watson, Commissioner Brunsdale, Commissioner Crawford and Commissioner Nuzum.

⁴⁴⁶ Commissioner Rohr does not join this section of the Views of the Commission. See his Additional and Dissenting Views.

⁴⁴⁷ Report at Table 94 and Table 103, showing that the volume of imports from the Netherlands increased from 214 short tons to 288.2 short tons and that market share increased from 0.4 percent to 0.6 percent during the period examined. Commissioner Nuzum also considered merchant market shares.

⁴⁴⁸ Commissioner Brunsdale found imports from the Netherlands to be negligible.

⁴⁴⁹ Report at Table 83.

⁴⁵⁰ Id.

⁴⁵¹ Id.

⁴⁵² See supra, Discussion of No Material Injury.

United States inventories of Dutch hot-rolled steel were virtually nonexistent throughout the period⁴⁵³ and the ratios of Dutch-based inventories to production decreased overall.⁴⁵⁴ These factors also support a negative threat determination.

We do not find that imports from the Netherlands of hot-rolled products have or will have a negative effect on the development and production efforts of the domestic industry. While research and development expenditures and capital expenditures for hot-rolled steel declined over the period examined, we find that the volume or market share of imports from the Netherlands were too small to be a factor in these declines.⁴⁵⁵

We have considered whether there is a realistic potential for product shifting in the Netherlands to production of hot-rolled from cold-rolled material in response to our affirmative determination in the cold-rolled investigation. We recognize that there is a possibility that product shifting might occur, especially in light of the relatively high margins of dumping found by Commerce in the cold-rolled investigation.⁴⁵⁶ We have therefore not based our negative threat determination solely on a lack of potential for product shifting. We note, however, that the record does not provide sufficient concrete evidence that this is likely to warrant an affirmative threat finding. Petitioners themselves concede that integrated steel producers normally have enormous incentive to make as much higher value-added cold-rolled and corrosion-resistant products as they can to recoup the cost of investment in downstream production facilities.⁴⁵⁷

We have identified no other adverse trend that would suggest a threat of material injury by reason of the LTFV imports from the Netherlands.

⁴⁵³ Report at Table 46.

⁴⁵⁴ *Id.* at Table 83.

⁴⁵⁵ *Id.* at Tables 41 and 43.

⁴⁵⁶ *Id.* at Table 7.

⁴⁵⁷ Petitioners mention that the imposition of dumping margins on downstream products but not upstream products might provide incentive for a foreign integrated producers to shift to upstream production. See Petitioners' Prehearing Br, Vol. 3 at 34, n. 38. We find this proposition to be too speculative in the case at hand to demonstrate a real threat of material injury to the domestic industry.

ADDITIONAL VIEWS OF VICE CHAIRMAN WATSON

A. Imports of Hot-Rolled Products from Korea Should Not be Cumulated with Other Imports.

In making my determination whether to cumulate imports of hot-rolled products from Korea, I first considered whether POSCO's shipments to purchasers other than UPI were sufficient in and of themselves to constitute a reasonable overlap of competition.¹ During the POI, POSCO did sell a very small percentage of hot-rolled steel on the open market.² The record supports the conclusion that the small amount of Korean imports sold on the open market did compete to some extent with domestic product and with other subject imports that were simultaneously present in the market place.³ Although these imports may compete, their volume is minuscule, both in absolute volume and as a share of domestic consumption. I find, as do my colleagues, that these imports do not in and of themselves constitute a reasonable overlap of competition for purposes of cumulation.

I next considered whether POSCO's captive shipments to UPI competed with imports from other subject countries. The record supports a finding that the vast majority of POSCO's shipments to UPI were in certain niche categories in which there were no other imports from subject countries during the POI.⁴ Considering the specific requirements of UPI and the relative lack of fungibility between the POSCO shipments to UPI and the other subject imports, I find no reasonable overlap of competition exists between POSCO's shipments and the other subject imports. Accordingly, because there was no reasonable overlap of competition with other imports, I find that imports from Korea need not be cumulated.

Not only do I find insufficient competition between POSCO's shipments and the other subject imports, I also find no reasonable overlap of competition between POSCO's shipments and all domestic product, including hot-rolled products produced by USX. The weight of the evidence supports a finding that no unaffiliated domestic producer is currently able to supply UPI with more than a small percentage of its requirements.⁵ Moreover, the evidence does not indicate that any

¹ All of the subject imports from Korea during the period of investigation were shipments from POSCO to the United States. Report at I-120.

² See, e.g., questionnaire responses of Hyundai Corp., Daewoo Corp., and Samsung America. [***]

³ An equal number of purchasers believe Korean imports are of comparable quality to domestic products. See Report at table 109. Additionally, there was one unconfirmed lost sale allegation concerning hot-rolled imports from Korea. See Report at table 117. There were 31 instances of overselling and only 8 instances of underselling. See Report at tables N-5, N-6, N-23, N-24, N-57 and N-58.

⁴ Report at I-140, table 98, and F-9, table F-2.

⁵ Questionnaire responses indicate that USX produces the vast majority of domestic production of one niche product required by UPI and that only one other domestic producer has any capacity to produce this product. This unaffiliated producer does not have the capacity to supply UPI's needs alone. Additionally, no other producer reported that it would have the capacity to produce this product in the near future. See also Report at I-140, table 98.

The record also supports the conclusion that domestic producers of hot-rolled products, other than USX, are unwilling or unable at present to supply UPI. UPI's pre-hearing brief, appendix A.

domestic producer would have the necessary capacity or ability to supply UPI with its specialized requirements in the near term.⁶

Although USX has shipped hot-rolled band to UPI during the POI, those shipments cannot be considered to reasonably compete with POSCO's shipments to UPI.⁷ The record supports the conclusion that the relationship among UPI, USX and POSCO is unique. The record indicates that USX and POSCO often collaborate and decide who will provide UPI with their requirements.⁸ It is clear that the UPI Partnership Agreement and the collateral POSCO Hot Band Requirements preclude competition between USX and POSCO by mandating POSCO as UPI's primary supplier utilizing a predetermined pricing formula.⁹ The record indicates that UPI does not receive favorable pricing from POSCO.¹⁰ Moreover, UPI's financial data do not lead me to conclude that it has benefited appreciably as a result of receiving subject imports from POSCO during the POI.¹¹ Accordingly, on the basis of non-competition with domestic product, the subject imports from Korea also need not be cumulated.

Even if the Act's competition requirement can be said to be satisfied, the subject imports from Korea meet the negligibility exception to mandatory cumulation. In determining if the Korean imports are negligible, the Commission is required to consider several specifically mentioned statutory factors as well as "all relevant economic factors" such as the degree of competition and recent import trends.¹² It is, therefore, appropriate to give special consideration to whether the volume and market share of only those Korean shipments destined for the open market have a discernable adverse impact on the domestic industry. As discussed above, the vast majority of Korean imports do not, in any ordinary sense of the word, compete with domestic shipments of hot-rolled band. The volume and market share of the Korean shipments sold on the open market are minuscule.¹³ Moreover, because the vast majority of imports from Korea are POSCO's shipments to UPI, they are isolated to one purchaser and do not affect market prices. Finally, there is no evidence that the small quantity of Korean imports sold on the open market have suppressed or

⁶ Although it is doubtful that UPI would cease operations if its current source of hot-rolled products from POSCO were terminated, because of UPI's unique requirements it is likely that it would be some time before a satisfactory domestic source of hot-rolled products could be secured. See, Transcript of Hearing at 583. I also note that domestic producers when contacted by a UPI representative indicated that they were currently unable to supply UPI's requirements. UPI's prehearing brief, appendix A.

⁷ Transcript at 692.

⁸ Transcript at 692.

⁹ My determination here that there is no reasonable overlap of competition is not based on the existence of a joint venture or the existence of a supply contract. It is, however, based in large part on the unique relationship among USX, UPI and POSCO. I note that if the evidence had indicated that another domestic producer was ready, willing and able to supply UPI with hot band, I might well have determined otherwise.

¹⁰ Transcript at 694.

¹¹ Report at Table 32. UPI accounted for [***] of domestic cold-rolled production, and [***] of domestic corrosion-resistant production. Report at I-43, Table 12.

¹² 19 U.S.C. §1677 (7)(C)(iii).

¹³ See footnote 2.

depressed prices. Pricing data indicate that those Korean imports predominantly oversold the domestic product.¹⁴

B. The U.S. Hot-Rolled Sheet and Strip Products Industry is not Threatened with Material Injury by Reason of Imports from the Netherlands.

I decline to cumulate the subject imports of hot-rolled sheet and strip from the Netherlands with other hot-rolled subject imports because I find a disparity in the patterns of volume increases and pricing between imports from the Netherlands and from those other countries.¹⁵ Moreover, the condition of trade between several of the subject countries and the United States is sufficiently unique to find that cumulation is inappropriate in this industry.

Capacity and production [***] during the period of investigation and are projected to continue to [***] in 1993.¹⁶ Capacity utilization, which has also [***] over the period of investigation, is [***] and is expected to [***] to over [***] in 1993. In terms of quantity and value, imports from the Netherlands [***] of U.S. market share over the period of investigation.¹⁷ Although the level of imports from the Netherlands has [***], their relative share [***]. In sum, the record does not support a conclusion that there is a likelihood that market penetration will increase to injurious levels. Netherlands's shipments to the U.S. are, in fact, projected to [***] in 1993, while shipments to other countries are projected to [***] in 1993.¹⁸

The pricing data are inconclusive and do not support a conclusion that imports from the Netherlands will have a price depressing or suppressing effect on domestic prices. Price comparisons made with subject imports from the Netherlands and comparable domestic product indicate slightly more instances of overselling than underselling by the subject imports.¹⁹ Unit values were slightly below average.²⁰

U.S. importers held only [***] inventories during the period of investigation. The quantity of inventories held by respondent Hoogovens during the period of investigation was also relatively [***].²¹ In conclusion, the Netherlands has had a consistent and small presence in the United States and there is no evidence that its market position will change in the imminent future.

¹⁴ Report at Appendix N.

¹⁵ Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1172 (CIT 1988).

¹⁶ Report at I-125.

¹⁷ Supplementary Memo, INV-Q-095, June 17, 1993 at A-8, 9.

¹⁸ Id.

¹⁹ Id. at I-168-175.

²⁰ Report at appendix N.

²¹ Report at I-92, I-125.

ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER DAVID B. ROHR CONCERNING HOT-ROLLED PRODUCTS

Threat of Material Injury by Reason of Imports from Canada and the Netherlands

I. General Observations

I note that a general issue which affects the Commission's analysis of virtually all issues throughout all of these investigations is the issue of the degree to which the various products, markets, or industries are sensitive to price. There is very little agreement, either among the parties or the Commission, as to the degree to which any of the products, markets, or industries are in fact price sensitive. Part of this disagreement merely reflects semantic differences about the proper words to use to describe how sensitive a particular product, market, or industry is to price, a part reflects slight differences in the degree of price sensitivity, and a part reflects fundamental differences about how sensitive the products, markets or industries are on both an absolute and a relative basis.

In my view, the most significant differences arise because different parties and different Commissioners appear to mean different things when they use the term "price sensitivity." It can be seen to refer, in a technical sense, to the price elasticity of supply and demand, or to price competition, or substitutability of products and many other aspects of the markets or industries. This observation is not meant as a criticism but as a caution that even when the term "price sensitivity" is used in the majority draft by more than one Commissioner, this does not mean that all Commissioners were interpreting the term in the same manner.

As for my use of the "price sensitivity," I am not using the term in any technical sense at all. I use the term generally to mean the responsiveness of the condition of the domestic industry to price in general. Specifically, I am looking at the extent to which changes in the various indicators of the industries performance, such as the trade-related indicators, the employment indicators and the financial indicators are affected by the price the industry can obtain for its products as a whole.

In trying to analyze the issue of price sensitivity for purposes of my own analysis, I considered both the relative price sensitivity of the four product categories subject to these investigations and also absolute sensitivity of each of them. I first considered various factors which made the products, markets or industries more or less sensitive to price. I then made a judgement about how these various factors affect each of the four products, markets or industries. An important factor in my judgement is that I was looking at the price sensitivity relevant to each of the products categories as a whole, as opposed to making a judgement about some subsegment of the product category.

First, I note that the nature of the products affects price sensitivity. The more a product is a commodity-type product, the more sensitive the industry producing that product will be to price. Conversely, the more highly specialized and differentiated a product category is, the less price sensitive it will be. There are two reasons for this. First, in a highly differentiated product category, it is less likely for the prices of one differentiated product to affect the price of another differentiated product. The effect of imports on any particular differentiated product is thus lessened when considering the product category as a whole. Second, the more specialized the individual products within a product category the more nonprice factors, such as quality, specialized production processes, long term relationships, qualification requirements, and similar factors, are likely to be more important than price.

Second, the degree to which production of a product is captive consumed affects the degree to which price will affect the industry. All of the parties seem to agree that price is a relatively less important factor in captive sales. Price does have an impact on captive sales. For purposes of my analysis, I considered it important to value internal transfers at market prices and thus market prices

affect my assessment of the financial performance of the industry. It is nevertheless true that price is not a significant factor in a captive producer's decision about transferring the captive production to the upstream product. On balance, I considered the degree to which production of a product category is captively consumed to lessen the price sensitivity of particular product categories.

Third, I considered the distributor market to be somewhat more sensitive to price than the end user market. Thus, the greater an industry's sales in the distributor market, the greater its sensitivity to price will be. I do not mean to imply that there is an enormous difference in this factor. However, the nature of the role of a distributor is to make its profit specifically by the difference at which it buys and sells steel for its end user customers. Price is thus a more direct factor for distributors.

Fourth, the number of producers producing a particular product affects the price sensitivity of that product. The fewer the number of sellers of any product, the less the price sensitivity. The availability of a product from a large number of producers obviously raises the importance of price. This factor also obviously reinforces the price effects of commodity versus specialized and differentiated products, either increasing or decreasing the sensitivity of particular products depending on the number of producers.

I discuss the application of these factors and my judgement about their effect on each of the four product categories in my individual Additional and Dissenting Views with respect to that product.

With regard to hot-rolled products and the hot-rolled market, and consequently the hot-rolled industry, I note that while slightly more differentiated than plate, hot-rolled products are not highly differentiated. This factor points to greater price sensitivity. Similarly, most of the major products are made by most of the domestic and foreign producers. This also points to a greater price sensitivity. On the other hand the vast majority of hot-rolled products are captively consumed. This points to a lessened price sensitivity. A large percentage of open market sales are through distributors, which points to a greater price sensitivity, but since this portion of the market is small this factor does not appear particularly significant.

On balance, I view the price sensitivity of the market as significantly less than plate, but still moderately price sensitive. I find the amount of captive consumption to be particularly important to my finding in this regard. I note that while captive consumption lessens price sensitivity, it does not eliminate price as a factor affecting the industry. This is a principal reason why I still find this industry to be moderately price sensitive.

II. Threat

I note that I generally concur with my colleagues with regard to the threat or lack thereof posed by imports from the various countries subject to these investigations. I also generally concur with the analysis of the generalized threat arguments contained in the Commission's majority views. I disagree with the Commission's majority views only with respect to whether imports from Canada and the Netherlands pose a threat to the domestic industry. My reasons for concluding that such imports do pose a threat are set forth herein.

19 U.S.C. section 771(7)(F) directs the Commission to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent,"¹ and directs us to consider a number of criteria which are addressed below.² While an analysis of the statutory threat factors

¹ 19 U.S.C. § 1677(7)(F)(ii).

² See 19 U.S.C. § 1677(7)(F)(iii).

necessarily involves projection of future events, "[s]uch a determination may not be made on the basis of mere conjecture or supposition."³ In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.⁴

I note that my analysis of this statutory mandate involves an assessment of the vulnerability of the domestic industry and the capabilities and intentions of the imports, as reflected in the list of statutory factors. I note that I did find this industry to be materially injured. It is therefore, by definition vulnerable to the effects of imports.

Canada

The Canadian industry has a significant amount of capacity to produce hot-rolled products.⁵ The Canadian capacity by some percent from 1991 to 1992, while capacity utilization was only percent. The industry was thus capable of producing around additional tons of hot-rolled product. As to where this tonnage might be directed, I note that from 1990 to 1992 home market shipments from percent to percent of shipments. Further U.S. exports from percent to percent of shipments, and also by percentage points as a ratio to Canadian production. The U.S. is the export market for the Canadian industry and the relative importance of the U.S. market percentage points as a ratio to total exports. These factors suggest that the excess capacity is likely to be used to expand exports to the United States.

Canadian exports to the United States and market share also increased rapidly over the period of investigation. Imports from Canada increased 63.4 percent over the period of investigation, from 597 thousand tons in 1990 to 976 thousand tons in 1992, the largest increase from any country.⁶ Market share increased from 1.2 percent to 1.9 percent, also the largest increase of any country.⁷

With respect to pricing, I concur with my colleagues that the raw data show a significant amount of overselling by the Canadian product. On a product by product basis however, the data reveal consistent overselling in certain products and markets and underselling or mixed patterns in others.⁸ Comparing the price trends, I find that even when the Canadian prices were higher than U.S. prices, the Canadian prices were declining more rapidly than the U.S. price in 4 out of 6 instances. While, in the circumstances of this industry, I do not place a disproportionate weight upon the price effects, I find that, as noted above, the evidence regarding such effects is mixed and support, albeit marginally, a finding of threat.

I note that there are significant inventories of Canadian product both in the United States and in Canada.⁹ These inventories represented in 1992, percent of the quantity of total imports from Canada and in 1992 amounted to over percent of total U.S. consumption.

³ 19 U.S.C. § 1677(7)(F)(ii). See also S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (CIT 1990).

⁴ 19 U.S.C. § 1677(7)(F)(iii)(I). These investigations do not involve agricultural products.

⁵ Report at Table 60.

⁶ Report at Table 94.

⁷ Report at Table 103.

⁸ Report at Appendix N.

⁹ Report at Tables 45 and 60.

On the basis of the foregoing, I find that Canadian imports do pose a real threat of imminent injury to the domestic industry.¹⁰

The Netherlands

The increase in volume of imports from the Netherlands can only be characterized as "rapid", as it increased 35 percent over the period of investigation, from 214 thousand tons in 1990 to 288 thousand tons in 1992. The Dutch market share increased from 0.4 percent to 0.6 percent over the period of the investigation.¹¹

Dutch capacity during the period of investigation, although capacity utilization rates at levels around percent.¹² Dutch capacity was projected to in 1993. Given this projected in capacity, the Dutch industry has the capacity to produce tons of additional hot-rolled product.

With regard to where this additional product may be directed, I note that shipments to the Dutch home market as a ratio of total shipments over the period, although they in 1992 and are expected to somewhat more in 1993. Shipments to the United States as a ratio to total shipments during the period from to percent. I further note that Dutch exports to the United States as a percent of both Dutch production and total Dutch exports, indicating the importance of the U.S. market to the Dutch industry. Finally, I note that shipments to third countries as a ratio to total shipments during the period.¹³ I find that these trends support the conclusion that the Dutch capacity will result in increased exports to the United States.

I find that although Dutch imports are not currently having a price depressive effect, the pattern exhibited supports the conclusion that such an effect is likely with the increasing volumes that are likely. I note that while Dutch imports oversold the domestic product in 18 comparisons, they undersold the domestic product in 26.¹⁴ In four out of four products, they either undersold the domestic product or fell more rapidly than the domestic product.

Inventories of Dutch hot-rolled products located in either the United States or the Netherlands were but represented, in 1992, over percent of imports from the Netherlands and more than percent of total U.S. consumption.¹⁵ These factors also support an affirmative threat determination.

¹⁰ Pursuant to the requirements of section 735(b)(4)(B), I further determine that I would not have found injury but for the suspension of liquidation of imports. The trends discussed above with regard the Canadian imports are not so pronounced that had they continued throughout the period after the suspension of liquidation they would have been a cause of material injury at the time of my final determination.

¹¹ Report at I-135, table 94 and I-144, table 103, showing that the volume of imports from the Netherlands increased from 214 thousand short tons to 288.2 thousand short tons and that market share increased from 0.4 percent to 0.6 percent during the period of investigation.

¹² Report at I-125, table 83.

¹³ *Id.*

¹⁴ Report at Appendix N.

¹⁵ Report at I-135, table 46.

I therefore conclude that there is a real threat of imminent material injury to the domestic industry by reason of the Dutch imports.¹⁶

¹⁶ Pursuant to the requirements of section 735(b)(4)(B), I further determine that I would not have found injury but for the suspension of liquidation of imports. The trends discussed above with regard the imports from the Netherlands are not so pronounced that had they continued throughout the period after the suspension of liquidation they would have been a cause of material injury at the time of my final determination.

COLD-ROLLED CARBON STEEL FLAT-ROLLED PRODUCTS¹

Based on the information obtained in these final investigations,² we determine that an industry in the United States producing cold-rolled carbon steel flat products is neither materially injured nor threatened with material injury by reason of less than fair value (LTFV) imports of cold-rolled carbon steel flat products from Argentina, Austria, Belgium, Brazil, Canada, France, Italy, Japan, and Spain, and subsidized imports of cold-rolled carbon steel flat products from Austria, Belgium, Brazil, France, Italy, and Spain. We further determine that the industry in the United States producing cold-rolled carbon steel flat products is being threatened with material injury by reason of LTFV and subsidized imports of cold-rolled carbon steel flat products from Germany.³

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¹ All Commissioners have joined portions of these Views as detailed below. Various Commissioners have also noted where they do not join certain sections, paragraphs, or statements within the Views and reference their Additional and Dissenting Views for those sections Views from which they dissent. Chairman Newquist joins only the discussion of like product, domestic industry, and condition of the domestic industry. Vice-Chairman Watson joins the discussion of all portions of the Views, except those that relate to Italy. Commissioner Rohr joins all portions of the Views except the negligibility analysis for Brazil, Korea, and the Netherlands, and the threat analysis for Canada which he finds pose a threat of material injury. Commissioner Brunsdale joins only in the discussion of like product, domestic industry, related parties, cumulation (except the negligibility analysis of Brazil, Canada, Korea, and the Netherlands), and threat except she dissents from the majority's affirmative threat finding for Germany. Commissioner Crawford joins all portions of the Views except the negligibility analysis for Brazil and the Netherlands, and the threat analysis for Germany. Commissioner Nuzum joins all portions of these Views except for the negligibility analysis for Belgium, France, Italy, Spain, and South Africa, the cumulation for threat analysis, and the threat analysis for Belgium, Brazil, France, Germany, Italy, and Spain which she finds pose a threat of material injury. The analysis of threat of material injury for the Netherlands and Korea is set forth in the Additional and Dissenting Views of the Commissioners.

² The investigations covered by this determination include the following: 701-TA-336 through 342, 344 (Final), and 731-TA-597, 599 through 609 (Final).

³ Material retardation of a domestic industry by reason of the subject imports is not an issue in these investigations, and therefore will not be discussed.

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I. LIKE PRODUCT

A. Statutory Criteria

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant domestic industry as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product" In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation"⁴

Our decision on the appropriate like product or products in an investigation is a factual determination, to which we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁵ Generally, we disregard minor variations and look for clear dividing lines between possible like products.

B. Cold-Rolled Like Product Issues

The Department of Commerce has identified the cold-rolled carbon steel flat products subject to investigation as follows:

Cold-rolled (cold-reduced) carbon steel flat products, of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least ten times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness.⁶

In the preliminary investigations, we addressed three proposed separate like product breakouts from the cold-rolled steel category, but declined to define any of them as separate like products. We specifically addressed and rejected arguments by respondents seeking separate like

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

⁶ In defining the like product, we generally consider a number of factors including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and, where appropriate, (6) price. No single factor is dispositive, and we may consider other factors relevant to our like product determination in a particular investigation. See, e.g., *Asociacion Colombiana de Exportadores de Flores v. United States*, 693 F. Supp. 1165, 1169 n.5 (CIT 1988); *Calabrian Corp. v. United States*, 794 F. Supp. 377, 382 n.4 (CIT 1992).

⁷ S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979). We adopt the discussion of "Background and the Continuum of Flat-rolled Steel Products" in § I(B) of the Hot-rolled Carbon Steel Flat Products Investigations ("Hot-rolled Views").

⁸ 57 Fed. Reg. 33488 (July 29, 1992).

product treatment for cold-rolled motor lamination steel (CRML) and tin mill black plate (TMBP).⁹ We noted that respondents had failed to provide sufficient information concerning price for CRML, and information concerning price, channels of distribution, and customer perceptions for TMBP.¹⁰ We also considered whether hardened carbon steel was appropriately considered a separate like product and indicated that while the record was not sufficient to make this determination, we would reconsider its status in any final investigations.¹¹

In these final investigations, no party contested that cold-rolled steel was a like product. The joint cold-rolled respondents and/or individual respondents or domestic purchasers of foreign-produced cold-rolled steels have argued that the following products be considered as separate like products: ultra-bright steel; TMBP; CRML; high carbon steel including spring steel; hardened carbon steel; seat belt retractor steel; and strapping steel. As discussed below, we find that all of these cold-rolled products are part of the single like product, cold-rolled steel flat products.

1. Ultra-Bright Steel

Ultra-bright steel is a cold-rolled product distinguished by its mirror bright and very smooth surface.¹² As defined by respondents, the proposed ultra-bright steel like product would include the following two categories of bright finish cold-rolled steels: (1) TMBP steel greater than 48 inches in width, ASTM A625-76 (niche¹³ product 53); and (2) cold-rolled sheet in coils greater than 0.0142 through 0.50 inches in gauge and between 30.5 to 48 inches in width, ASTM A366 (niche product 54). Excluded from the proposed like product would be any identical products below 30.5 or above 48 inches in width.¹⁴

While there are certain specialized uses for ultra-bright steel,¹⁵ physical characteristics other than surface finish, production employees, production equipment and production process for thicker

⁹ USITC Pub. 2549 at 22-23.

¹⁰ *Id.* at 23-24.

¹¹ *Id.* at 22.

¹² Petitioners' Posthearing Br. Vol. 4, ex. 2 at 25. The smooth surface of ultra-bright is typically under 3.3 micro-inches Ra (industry measure of surface roughness). Petitioners' acknowledge that ultra-bright steel is brighter than other cold-rolled products, but note that surface brightness is a characteristic of all cold-rolled products which distinguishes them from hot-rolled products. *Id.*

¹³ Niche categories in the cold-rolled investigations were developed in response to claims from various respondents that they imported specialized products of which there was no significant domestic or other foreign production. Both petitioners and respondents had significant input on the products selected for both commercial grade and niche product pricing comparisons.

¹⁴ Respondents' Posthearing Br. at 1-2. Niche product 32 is also described as an "ultra-bright" product. Report F-1.

¹⁵ The parties agree that ultra-bright steel is not wholly interchangeable with all cold-rolled sheet. The end uses of ultra-bright steel include electroplating with chromium, nickel, copper and brass for ornamental applications in appliances, appliance trim, and light fixtures. Other cold-rolled products generally are not suitable for such electroplating.

ultra-bright steel products are identical in all respects to comparable gauge cold-rolled sheet.¹⁶ Similarly, TMBP ultra-bright steel is comparable to TMBP. Finally, ultra-bright steel is priced comparably to other specialized cold-rolled products and is sold through the same channels of distribution. We determine that ultra-bright steel is cold-rolled steel and not a separate like product.¹⁷

2. Tin Mill Black Plate (Ultra-Thin Cold-Rolled Steel)

TMBP is a thin cold-rolled product between 0.0055 inches and 0.0142 inches in gauge.¹⁸ Thinner cold-rolled sheet products (near 0.014 inches) are generally identical to TMBP in terms of metallurgy, width, appearance, and other characteristics, with the only difference being TMBP's thinner gauge.¹⁹ TMBP, like other cold-rolled sheet, is usually made from a low-carbon base metal.²⁰ TMBP, like other cold-rolled steels, receives no metallic coating during production. Approximately 93 percent of TMBP is captively consumed and coated with tin to produce tinplate.²¹ That portion of TMBP sold in the merchant market is distributed like many other types of cold-rolled products to end-users and through steel service centers.²²

Our finding that TMBP is not a separate like product is based in part on the fact that the cold-rolled carbon steel flat products contain a wide variety of carbon steels with many specific characteristics, widths, gauges, relatively limited end uses, production processes, customer perceptions, and prices. The differences separating TMBP from other types of cold-rolled products, while in some respects more significant than those separating other types of cold-rolled products, are not so significant as to warrant a separate like product finding.²³

¹⁶ The basic manufacturing processes, equipment, and workers for ultra-bright steel are identical to those for other cold-rolled products. Respondent's Prehearing Br. at 3-4. The only change in production of ultra-bright steel involves the use of highly polished mirror finished rolls in the final tempering process. *Id.*; Report I-26.

¹⁷ Ultra-bright commands a higher price than some other cold-rolled products because of its surface finish. This pricing, however, is consistent with the value added by the additional processing step in much the same way as higher prices reflect value added to other specialized cold-rolled products. Report, appendix N; *Id.* table F-3.

¹⁸ Report I-23.

¹⁹ Hearing Tr. 344-45. We note that one domestic purchaser of "ultra thin" indicated that it purchases what it describes as "ultra thin" in gauges of 0.0129, "0.0182," and 0.0209." Prehearing Brief of Cold-rolled Respondents ("Respondents' Prehearing Br.") ex. 42. The latter two gauges are thinner cold-rolled sheet, while the first gauge would be black plate.

²⁰ Petitioners' Prehearing Br. Vol. 2 at 40.

²¹ Report I-23.

²² Petitioners' Prehearing Br. Vol. 2 at 43.

²³ We note that the arguments raised by several parties concerning ultra-bright steel discussed *supra*, highlight the anomalies involved in fragmenting the cold-rolled like product. Ultra-bright encompasses both cold-rolled sheet and TMBP. Thus, niche product 53 is an ultra-bright TMBP product while niche product 54 is an ultra-bright product of a slightly thicker gauge. If we were to find a separate like product of TMBP, it would presumably have to include ultra-bright TMBP. However ultra-bright cold-rolled sheet would not be included within that like product, even though it is arguably much more "like" the ultra-bright TMBP.

There is a continuum of gauge thicknesses in cold-rolled products, with the thicker gauges of TMBP being very close to the thinner gauges of cold-rolled sheet. There do not appear to be significant differences in metallurgy, width, strength, or appearance between thinner cold-rolled sheet and TMBP.²⁴ There is a certain degree of interchangeability between thinner cold-rolled sheet and thicker TMBP, particularly at the product design stage.²⁵ For that portion of TMBP not consumed to make tinned products, there are similar channels of distribution, i.e., to steel service centers and end users. The prices of many types of TMBP and cold-rolled sheet are different, with TMBP selling at a premium. There is evidence in the record, however, that thicker TMBP and thinner cold-rolled sheet sell at comparable prices.²⁶

That most TMBP is cold-rolled in separate tin mill facilities would appear to suggest a separate like product.²⁷ However, one U.S. producer, however, makes TMBP on cold-rolling mills, and two U.S. producers make cold-rolled sheet on TMBP mills.²⁸ Another domestic producer makes black plate and cold-rolled sheet on the same mill.²⁹ Even where TMBP is produced on a separate TMBP mill, this production involves the same basic equipment and processes used to produce cold-

²⁴ Compare Certain Special Quality Hot- and Semifinished Carbon and Alloy Steel Products from Brazil, Inv. No. 731-TA-572 (Final), USITC Pub. 2662 (July 1993)(Commission combined in the same like products hot-rolled bars and cut-to-length rods of widely differing diameters -- from 1/2 inch to 14 inches and different shapes (round, square, hexagonal)).

²⁵ Within the seven percent of TMBP market not consumed internally to make tinned products, TMBP and thin gauged cold-rolled products are sold for some of the same end use applications. Petitioners' Prehearing Br. Vol. II at 41-42; Post-Hearing Brief of Cold-rolled Respondents ("Respondents' Posthearing Br.") ex. 1 at 5. See also Petitioners' Posthearing Br. Vol. 4 ex. 7 at 10; Respondents Prehearing Br. ex. 42; Hearing Tr. 345-46; Respondents' Posthearing Br. ex. 1 at 5. At the design stage, both thinner gauge cold-rolled and TMBP are interchangeable in a number of end use applications for such products as appliance wrappings, small battery shells, metal gaskets, oil filter parts, metal siding, baking sheet, pails, and containers. Once a particular purchaser has designed his product specifications and/or production processes to accommodate thinner TMBP, or somewhat thicker cold-rolled sheet, that purchaser is unlikely to switch from one product to the other. Petitioners' Prehearing Br. Vol. II at 42. n.42; Respondents' Posthearing Br. ex. 7 at 5.

²⁶ Petitioners' Prehearing Br. Vol. II at 45-47. TMBP is priced higher than the average price of all other types of cold-rolled, but is priced lower than some types of cold-rolled products which require additional processing. Respondents' Prehearing Br. at 124-25 (unrefuted by petitioners in their posthearing submissions). Cold-rolled products which are priced higher than black plate include other types of cold-rolled products which require additional processes such as high carbon steel, and hardened carbon steel. See Japanese Respondents' Prehearing Br. at 26-28.

²⁷ Report I-23.

²⁸ Bethlehem, a party to these investigations, uses separate mills for the production of most of the TMBP and cold-rolled sheet. Hearing Tr. at 346. However, depending on the width of product required and mill loads, Bethlehem rolls some of its total TMBP on its 56 inch cold-rolling tandem mill, and rolls some of its cold-rolled sheet products on its 48 inch tandem TMBP mill. Id. at 345; Petitioners' Posthearing Br. Vol. 4 ex. 2 at 7. Similarly, some of the output of another U.S. mill's five-stand tandem mill normally used to roll all tin mill products, is used to make cold-rolled products. July 14, 1993 letter from M.T. Goedeke, Bethlehem Steel Corporation, to Staff.

²⁹ UPI, which accounts for a portion of U.S. TMBP shipments, uses highly advanced computer controlled rolling mills to produce cold-rolled sheet and TMBP on the same tandem cold mill. Report I-23. UPI's continuous processing lines also have a continuous pickle and annealing processes for both cold-rolled and TMBP products. Hearing Tr. 583-84

roll sheet.³⁰ Moreover, TMBP and cold-rolled sheet originate from the same hot-rolled bands, and are subject to additional processing after cold-rolling in the same facilities.³¹

We recognize that 93 percent of TMBP is internally consumed to produce tinned products in separate tinning mills. However, similar physical characteristics, similarity of and actual overlap of production, some overlap of production facilities, and similar price with other specialty cold-rolled products, make it difficult to discern a clear dividing line in the continuum of gauges of cold-rolled products. We, therefore, find that TMBP is cold-rolled steel and not a separate like product.

3. Cold-Rolled Motor Lamination Steels

Respondents claim that CRML steels are a separate like product and part of a separate grouping of electrical steels, with distinct metallurgy, production processes, and end uses from other types of cold-rolled steel.³² Petitioners assert that CRML steels are not a separate like product based on similar physical characteristics, production processes, perceptions, channels of distribution, and price.³³

We find that CRML steels are not a separate like product. CRML steels are cold-rolled steels that contain small amounts of silicon (0.6 or less percent) added in the melting stage.³⁴ The silicon added to CRML steels gives them properties suitable for use in electrical devices which operate more efficiently by minimizing the amount of electricity which is lost and converted to heat.³⁵

Production of CRML steels generally involves the same facilities, processes and workers as other cold-rolled steels.³⁶ Aside from the addition of small amounts of silicon, there are no

³⁰ Both TMBP and cold-rolled steel are downstream products originating with hot-rolled band and both are normally produced in the same integrated facilities. The majority of TMBP is manufactured by cold-rolling hot-rolled band in a tin mill as the first step in making tinned products. Most cold-rolled strip, on the other hand, is produced by cold-reducing hot-rolled band in a cold-rolling mill. Both cold-reduction processes generally involve the same types of equipment and rollers, although respondents indicate that TMBP mills have more powerful rollers. TMBP and cold-rolled strip are rolled from hot-rolled bands of the same thickness, and in some cases, the same metallurgy. Report I-23.

³¹ After leaving the separate Bethlehem mills, TMBP and cold-rolled sheet go to the same washer, the same annealing line, the same temper mill, and if a coating is required, the same cleaning and oiling line. *Id.* Petitioners' Prehearing Br. Vol. II at 44.

³² Respondents' Prehearing Br. at 88-100.

³³ Petitioners' Prehearing Br. Vol. II at 25-39.

³⁴ Report I-23.

³⁵ U.S. Steel, Sheet Products Directory, at 28 (1987).

³⁶ Report I-23. Contrary to respondents' assertions, there are major differences between the production of CRML steels and electrical alloy steels. Petitioners' Posthearing Br. Vol. 4 ex. 2 at 2. As noted above, CRML steels are produced in integrated steel mills on the same equipment used for other cold-rolled products. The major producers of electrical steel do not produce the CRML steels covered by these investigations. Electrical alloy steels are produced in totally different facilities by separate electrical steel producers in separate facilities. Petitioners' Prehearing Br. Vol. II at 29-30 (not refuted by respondents in their posthearing submissions). Electrical alloy steels are annealed at far higher temperatures than CRML steels in specially designed furnaces. *Id.*

differences between the production of the carbon steel for CRML steels and other cold-rolled steels. Both are continuously cast and hot-rolled, move through the cold-reduction mill, and are coiled.³⁷ Like most cold-rolled products, CRML steels are then heat-treated in an annealing furnace to restore the ductility lost during the cold-rolling process.³⁸ Thereafter, CRML steels, like many other types of cold-rolled products, are passed through a temper mill to make them harder and flatter and to improve their surface quality.³⁹

As with other specialty cold-rolled products, there are some like product factors which arguably support a separate like product determination for CRML steels. In view of its electrical qualities, CRML has distinct end uses in the manufacture of small electrical motors, generators and transformers, and is not interchangeable with other cold-rolled steels for these end uses. In addition, there are minor differences in production processes between CRML and other cold-rolled steels. However, when viewed in the continuum of all cold-rolled products, these differences in end uses and production processes are no greater than many other types of cold-rolled steel, and do not create a clear distinction between CRML steels and other cold-rolled steels.⁴⁰ Based on the foregoing, we find that CRML steel is cold-rolled steel and not a separate like product.⁴¹

4. High Carbon Cold-Rolled Steels

Respondents argue that steel with 0.35 percent or more carbon is a high carbon steel and should be a separate like product. Petitioners contend that the U.S. industry defines high carbon steel as steel with a minimum carbon content of 0.25 instead of 0.35 percent. The domestic industry association definition of "high carbon" cold-rolled steel is all steel containing in excess of 0.25 percent carbon.⁴²

³⁷ *Id.*

³⁸ *Id.*

³⁹ Respondents' Posthearing Br. ex. 1 at 3.

⁴⁰ The prices for CRML steels are within the spectrum of prices for other cold-rolled products such as high-strength commercial bright and deep drawing special killed steels. However, CRML steels tend to have a price higher than the average price for all types of cold-rolled products. Prices of CRML steels follow the trend in cold-rolled products, not the trends in electrical steel products. Hearing Tr. 344.

⁴¹ Respondents have incorrectly focused on attempting to demonstrate that CRML steels are like alloy electrical steels. The relevant issue is whether CRML steels are like other cold-rolled steels. CRML steels have more in common with other cold-rolled steels than with electrical steels; it is labeled, treated, and thus perceived as a cold-rolled carbon steel by all industry specifications; it is produced by cold-rolled producers in the same facilities as other cold-rolled products; and it is priced in the same range as other high quality cold-rolled products that are technically difficult to produce.

⁴² Petitioners' Posthearing Br. Vol 4, ex. 2 at 5. The cold-rolled respondents define high carbon steel as steel with minimum 0.35 percent carbon. Within this broad definition, there are a number of subcategories of various high carbon products for which various parties seek separate like product treatment. Strapping steel with a carbon content between 0.15 and 0.38 percent has some overlap with high carbon steels. Spring steel as defined by one respondent is cold-rolled steel with a carbon content from 0.46 to 0.80 percent, a width of between 36 and 50 inches, but not identical product of widths below 36 inches. Hardened carbon steel (discussed separately below) has a minimum carbon content of 0.60 percent. Seat belt retractor spring steel is a hardened carbon product with a carbon content between 0.65 and 0.95 percent.

Higher carbon content is the primary physical characteristic distinguishing these products from lower carbon cold-rolled products. High carbon steels are used in applications where hardness is important.⁴³ Common applications of high carbon steel include the manufacture of fasteners and springs for the automotive industry, blades for tools, cutlery, brake parts for airplanes, security locks, seatbelt retractor springs, and safety shoe toe caps.⁴⁴ These high carbon products are produced for durability and longevity for use in high stress applications.⁴⁵

We determine that high carbon steel is not a separate like product. Even as defined more narrowly by various respondents (0.35 percent carbon), high carbon steels are part of a broad continuum of cold-rolled steel products with various ranges of carbon content and a wide array of end uses. Many of the basic production processes, equipment, and workers,⁴⁶ and channels of distribution for high and low carbon content cold-rolled products are essentially the same.⁴⁷ In addition to some overlap in end use between certain types of high and low carbon content cold-rolled products, there is some limited interchangeability⁴⁸ between many high carbon steels and low carbon steels. There are also overlaps in customer and producer perceptions⁴⁹ as with many other specialized cold-rolled products. Finally, while the price differential between some high carbon and low carbon products is substantial,⁵⁰ many high carbon steel prices are in line with other specialized

⁴³ *Id.* at ex. 7 at 7; Report I-24.

⁴⁴ Respondents' Prehearing Br. at 102.

⁴⁵ *Id.*

⁴⁶ Production of higher carbon steel involves essentially the same cold-rolling equipment, production processes, facilities, and workers as other lower carbon cold-rolled steel products. Petitioners' Posthearing Br. Vol. 4 ex. 2 at 5. Hearing Tr. 348. The production of high carbon steels require special melting procedures to enhance carbon content; multiple, as opposed to single, rolling and annealing processes; and more careful control of temperatures during annealing. Respondents' Posthearing Br. ex. 7 at 7. There are additional processing steps required for various high carbon hardened steel products discussed below in the discussion of hardened carbon steel.

⁴⁷ High carbon steel is sold directly to end-users or through specialized service centers. Hearing Tr. at 349. This pattern is similar to other specialized cold-rolled products with equally specific, end-user requirements. *Id.* Much of the production of high carbon steels is sold to end users by "rerollers" who do multiple rolling and annealing processes. *Id.* at 348-49.

⁴⁸ As the carbon level and price of high carbon steel increases, the use of high carbon steels for a number of applications would not be cost effective; hence, interchangeability becomes progressively more limited as tensile strength requirements increase. Respondents' Posthearing Br. ex. 7 at 7; Petitioners' Prehearing Br. Vol. II at 52 n.66. However, automotive clutches can be made from a low carbon or high carbon, hardened and tempered steel. Hearing Tr. 349. This lack of interchangeability for the upper levels of high carbon steels is no different than for many cold-rolled products produced to specific metallurgical, gauge, and width requirements.

⁴⁹ The parties agree that high carbon steel is perceived as a specialty, premium high-end product by customers. Petitioners' Prehearing Br. Vol. II at 55; Respondents' Posthearing Br. ex. 7 at 7.

⁵⁰ Many high carbon products sell at a premium over most lower carbon cold-rolled products, but are comparable in price to other specialty low carbon products such as low-carbon high-strength steel. Petitioners' Posthearing Br. Vol. 4 ex. 2 at 9 (not disputed by Respondents). However, certain high specialized carbon steels, such as hardened carbon steels, sell at even more of a premium over other cold-rolled steels.

lower carbon cold-rolled products. We find that high carbon steel is cold-rolled steel and not a separate like product.

5. Hardened Carbon Steel

Various respondents argue for a separate like product of hardened carbon steel. Japanese respondent Hitachi Metals (Hitachi) defines hardened carbon steel as limited to only niche product number 38.⁵¹ Brazilian respondents define hardened carbon steel slightly differently, as steel with a minimum carbon content of 0.60 percent which has been annealed in a 100 percent hydrogen atmosphere furnace and processed in a hardening and tempering furnace.⁵² Included within the hardened carbon categories are some precision spring, seat belt retractor spring, and band saw steels.⁵³

We determine that hardened carbon steel is not a separate like product from cold-rolled steel. Hardened carbon steel constitutes a very small portion of total cold-rolled steel production and is at the outer boundary of the continuum of cold-rolled products. Thus, the case for a separate like product for hardened carbon steel, when comparing it to low carbon cold-rolled sheet, is relatively stronger based on distinctions in physical characteristics, end uses, additional expensive heat treating and tempering processing steps, and a greater price premium.⁵⁴

We find that there is no clear dividing line on the continuum from low to high or from hard to harder carbon steels. There are overlapping end uses and distribution channels for certain hardened carbon products with other high carbon products.⁵⁵ Except for the final hardening steps, hardened carbon steel products are produced in the same facilities as other low and high carbon

⁵¹ This is defined as follows:

Cold-rolled carbon steel flat products ("hardened carbon steel") with a carbon content of 0.65 percent or more, that have been processed through vacuum melting and a hardening and tempering furnace in addition to traditional cold-rolled processing, having high bending and impact fatigue strength, used for flapper valves in automotive compressors and shock absorbers and other applications, having a tensile strength of 152/mm² or more and hardness of 450 or more by Vickers hardness. . .

Report F-3. Hearing Tr. 768; Hitachi Prehearing Br. at 1, 3, 8, App. 1 and 2.

⁵² Positrade Posthearing Br. at 5; J.N. Eberle and CIE of Germany Prehearing Br. at 16.

⁵³ Hardened carbon steel products have significantly greater bending fatigue strength and impact fatigue strength than other high carbon cold-rolled products. Respondents assert that these products also have greater purity and a more finely polished surface. Positrade Posthearing Br. at 6. However, both hardened and non-hardened high strength carbon steels are produced from the same base metal. Petitioners' Posthearing Br. Vol. 4 ex. 2 at 20. Thus, both hardened and non-hardened high strength steels are produced from high-carbon steel, the most common grades being AISI 1050, 1065, 1074, 1075, 1080, and 1095. *Id.*

⁵⁴ Hardened carbon steel sells at the high end of the cold-rolled carbon steel product range at a price premium of at least fifty percent versus unhardened steel due to the additional costs of special hardening (baking and quenching). Petitioners' Posthearing Br. Vol. 4, ex. 2 at 21.

⁵⁵ Hardened carbon steel products are sold predominantly to end users with minor sales to service centers. Hitachi Prehearing Br. at 9, Petitioners' Posthearing Br. Vol 4, ex. 8 at 2.

steels using the same workers and processes,⁵⁶ and are sold through the same distribution channels as other specialized cold-rolled products. While certain hardened carbon steels have distinct physical characteristics and customer perceptions⁵⁷ when compared to low carbon cold-rolled steels, such distinctions diminish when compared to the high carbon steels. These steels have similar hardness, tensile strength, and fatigue resistance as well as some overlapping end uses.^{58 59}

6. Seat Belt Retractor Steel

Seat belt retractor steel is a specialty hardened carbon steel used to make seat belt retractor springs. Respondents argue that seat belt retractor steel is a separate like product from other cold-rolled lower carbon steels based upon its higher carbon content, superior cleanliness, and higher tensile strength.⁶⁰

We find that seat belt retractor steel is not a separate like product from cold-rolled steel. This steel is distinguished from other high carbon steels to the extent that it is heat treated prior to

⁵⁶ Production of hardened carbon steel involves the same basic processes, facilities, and workers in hot-rolling, cold-rolling, annealing, and temper rolling as all other types of cold-rolled steel. *Id.* at ex. 2 at 17. The domestic firms that produce hardened carbon steel also manufacture various other types of cold-rolled flat products, using common manufacturing equipment and production employees. *Id.* at 20-21. The principal production difference between hardened carbon steel and other cold-rolled products (including high carbon products) is that the former undergoes specialized heat-treating after cold-rolling, followed by rapid cooling, and additional reheating in specialized hardening and tempering ovens. *Id.* at ex. 8 at 1-2.; Hitachi Prehearing Br. at 4; Positrade Prehearing Br. 159. Hitachi claims that production of hardened steel requires use of vacuum melting in a vacuum induction furnace or ladle degassing process in the hot-melt stage. However, petitioners deny this, stating that hardened carbon steel is melted using the same equipment as other high carbon cold-rolled products. Petitioners' Posthearing Br. Vol. 4, ex. 8 at 2.

⁵⁷ Hardened carbon steel is perceived as a highly technical product of higher quality by both producers and purchasers. *Id.* at ex. 2 at 17.

⁵⁸ Hardened carbon steel products are used for flapper valves in automotive compressors, shock absorbers, automotive flasher blinkers, "doctor blades" in papermaking machines, fasteners, professional quality metalworking tools, textile knitting machines, hand saws, band saws, circular saws, and springs. Hitachi Metals Prehearing Br. at 3. High-strength, non hardened cold-rolled steels are interchangeable with other specially hardened steels. Petitioners' Posthearing Br. Vol 4 ex. 2 at 20.

⁵⁹ Finally, we note that finding hardened carbon steels to be a separate like product would create anomalies given the fact that certain spring steels and band saw steels include both hardened and nonhardened carbon steel. Band saw steel is a high carbon (1.25 percent carbon) product which may or may not also be hardened and tempered. *Id.* at ex. 2 at 22. Band saw producers purchase and use both hardened carbon band saw steel and nonhardened high-carbon cold-rolled steel products. *Id.*

⁶⁰ Seat belt retractor steel is defined by German importer respondent, Kern-Liebers USA, as a high-carbon cold-rolled product having a carbon content of 0.65 to 0.95 percent, a width of less than 200 mm (7.9 inches), and both the low inclusion rate and high tensile strength required by U.S. Federal Motor Vehicle Safety Specification 209. Kern-Liebers Prehearing Br. App.1 (USA importer of hot-rolled products from Germany and a converter of such products into cold-rolled seat belt retractor spring steel).

being cold-rolled.⁶¹ However, most other production processes, facilities, and workers are the same for this and other types of cold-rolled steel.⁶² Like other specialized high and hardened carbon steels (as well as specialized lower carbon steels), it has particular end uses, is primarily distributed to end users, and has a price premium reflecting the considerably greater energy usage required to produce these steels. While this product, like other types of specialized high carbon steel such as band saw steel, is near the upper boundary of the continuum of high carbon steels, we do not perceive a clear distinction between this narrow, specialized steel and the continuum of many different specialized cold-rolled steels with unique specifications, processes and end uses.

7. Strapping Steel

Canadian respondents argue that strapping steel, used for the bundling and securing of loads, should be a separate like product.⁶³ Strapping steel is a cold-rolled product that undergoes the additional steps of painting and slitting in separate facilities.

We find that strapping steel is not a separate like product from cold-rolled steel. While strapping steel may be thought of as a "packaging product", made to particular specifications and slit to narrow widths,⁶⁴ these differences are less significant than the similarities between this product and other unannealed cold-rolled steel products⁶⁵ sold by the domestic industry to steel coaters.⁶⁶ Strapping steel falls somewhere in the middle of the continuum of low to high carbon steel products, is produced on the same facilities and by the same workers as other cold-rolled steel products,⁶⁷ is sold through distribution channels similar to other high carbon cold-rolled products, and is sold at prices comparable to other specialized high carbon products.⁶⁸

⁶¹ *Id.* at 7; Petitioners' Posthearing Br. Vol. 4 ex. 2 at 24. See also Kern-Liebers' Prehearing Br. at 7 (higher percentage roll reduction, creating significantly higher tensile strength, and price premium).

⁶² Seat belt retractor steel is produced in the same manufacturing facilities used to produce other hardened carbon steels, high carbon steels, and cold-rolled steels. Petitioners' Posthearing Br. Vol. 4 ex. 2 at 25.

⁶³ They define strapping steel as steel with a width of not more than 1.25 inches, a carbon content of 0.15 to 0.38 percent, a manganese content of 0.3 to 1.5 percent, with a water-based paint or zinc epoxy coating, sold in coils of less than 125 pounds. As noted above, this definition places certain strapping steel within the high carbon range.

⁶⁴ Respondents' Prehearing Br. at 4-5.

⁶⁵ Unlike other types of high carbon and low carbon cold-rolled steels, strapping steel is a "full hard" steel that is unannealed (heat treated after cold-rolling). However, there are a large number of cold-rolled products which are unannealed, and petitioners indicate that they sell "tremendous volumes of unannealed steel to steel coaters." Petitioners' Posthearing Br. Vol. 4 ex. 2 at 15.

⁶⁶ Strapping steel is interchangeable with other cold-rolled products which meet the required certification standards. *Id.* (not disputed by respondents).

⁶⁷ Cold-rolled strapping steel, prior to slitting and painting, is produced on the same manufacturing facilities using the same processes and production workers as many other cold-rolled steels.

⁶⁸ *Id.*

II. DOMESTIC INDUSTRY

Section 771(4)(A) of the Act defines the relevant domestic industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. . . ." ⁶⁹ The Commission is required to assess the effects of subsidized or dumped imports in relation to the United States production of the like product within that industry. ⁷⁰

We adopt the analysis of captive consumption issues addressed at length in § II(A) of the Commission's Hot-rolled Views. Set forth below is the analysis of the related parties issues applicable to the Commission's determinations in all four of the separate Views.

A. Legal Standards for Related Parties Analysis

Under section 771(4)(B) of the Tariff Act of 1930, producers which are related to the exporters or importers, or which are themselves importers of the dumped or subsidized merchandise, may be excluded from the domestic industry in appropriate circumstances. ⁷¹

Application of the related parties provision is within the Commission's discretion based upon the facts presented in each case. ⁷² If a company is "related" under section 771(4)(B), ⁷³ the Commission then determines, in view of the producer's related status, whether "appropriate circumstances" exist for excluding the company in question from the definition of the domestic industry. ⁷⁴ The purpose of providing for exclusion of a related party from the domestic industry is to avoid distortions in aggregate industry data that would result from the inclusion of a producer that was shielded from, or was benefitted by, the unfairly traded imports. ⁷⁵

The primary factors we have examined in deciding whether appropriate circumstances exist to exclude a related party include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reasons the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and

⁶⁹ 19 U.S.C. § 1677(4)(A).

⁷⁰ 19 U.S.C. § 1677(4)(D).

⁷¹ See 19 U.S.C. § 1677(4)(B).

⁷² E.g., Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987).

⁷³ A "related party" is a producer who is "related to the exporters or importers, or are themselves importers of the allegedly subsidized and dumped merchandise . . ." 19 U.S.C. § 1677(4)(13).

⁷⁴ See, e.g., Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (Jan. 1989) at 15.

⁷⁵ See, e.g., Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989) (related party appeared to benefit from dumped imports), aff'd mem., 904 F.2d 46 (Fed. Cir. 1990); Heavy Forged Handtools From the People's Republic of China, Inv. No. 731-TA-457 (Final), USITC Pub. 2357 (Feb. 1991) at 18.

(3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.⁷⁶

We have also considered whether each company's books are kept separately from those of related companies and whether the primary interests of the related producers lie in domestic production or in importation.⁷⁷

B. Identification of the "related" producers

There are a large number of related producers in these investigations, due to the fact that numerous domestic producers have entered joint ventures, or alternatively, are partly or wholly owned by a foreign entity that exports subject merchandise to the United States.⁷⁸ Additionally, seven U.S. producers reported imports of certain flat-rolled carbon steel products during the period examined.⁷⁹ With one exception, none of these producers reported substantial levels of imports over the three year period.⁸⁰ Petitioners acknowledge that one petitioning company imports subject cold-rolled merchandise, and that several petitioning companies purchased minor quantities of imported subject corrosion-resistant products through trading companies during the period of investigation. Based on these relationships, all of these parties are considered to be related in at least some of the industries under investigation. However, no party argued for exclusion of any of these related parties, except that petitioners argued for the exclusion of U.S.S.-Posco ("UPI") from the domestic industry. We will, therefore, address UPI separately.

⁷⁶ See Torrington Co. v. United States, 790 F. Supp. 1161, 1171 (CIT 1992) (affirming Commission's application of the related party provision).

⁷⁷ See, e.g., PET Film, Inv. Nos. 731-TA-458 & 459 (Final), USITC Pub. 2383 (May 1991) at 17-18.

⁷⁸ See, e.g., Report at I-46. The following relationships are noted: Plate -- British Steel of the U.K. owns 100 percent of Tuscaloosa; Hot-Rolled -- Kawasaki of Japan owns 49 percent along with Armco of facilities in Ohio and Kentucky; Kawasaki of Japan and CVRD of Brazil each own 50 percent of a California Steel facility in Fontana, California; Nippon of Japan owns 13 percent of Inland; Ivaco of Canada owns 49 percent of Laclede; NKK of Japan owns 70 percent of National; Dofasco/Co-Steel of Canada own 100 percent of a Gallatin facility in Gallatin, KY; Cold-Rolled -- Kawasaki of Japan owns 49 percent with Armco of facilities in Ohio and Kentucky; Kawasaki of Japan and CVRD of Brazil each own 50 percent of a California Steel facility in Fontana, California; Nippon of Japan, along with Inland, own 40 percent of I/N Tek in Indiana; NKK of Japan owns 70 percent of National Steel; Posco of Korea owns 50 percent of UPI; Corrosion-Resistant -- Kawasaki of Japan owns 49 percent of a new Armco line scheduled to come on line in 1994; National/NKK of Japan own 50 percent of a Bethlehem Double G coating line in Jackson, MS; Kawasaki of Japan and CVRD of Brazil each own 50 percent of a California Steel facility in Fontana, California; Nippon of Japan, along with Inland, owns 50 percent of I/N Kote; Sumitomo of Japan, owns 40 percent of L-S Electro and L-S II Electro, along with LTV; NKK of Japan owns 70 percent of a National Steel facility in Ecorse, MI; Kobe of Japan, owns 50 percent, along with USX of Protec Coating Co., Nisshin of Japan owns 80 percent of a Wheeling-Pitt facility in Follansbee, WV; Posco of Korea, along with USX, owns UPI. Additionally, Sumitomo of Japan has invested \$200 million in LTV stock. We note that this listing does not include any clad plate relationships.

⁷⁹ Id. at I-47.

⁸⁰ Id.

1. Whether UPI is a related party under the statute

UPI is a joint venture between USX, a petitioner in these investigations, and Pohang Iron and Steel Company (POSCO), a Korean respondent engaged in the manufacture of flat-rolled products. POSCO is an exporter of hot-rolled, cold-rolled, and corrosion-resistant products to the United States. UPI is a domestic producer of cold-rolled and corrosion-resistant products. UPI imports hot-rolled band from POSCO for use in the manufacture of cold-rolled and corrosion-resistant products. While POSCO exports cold-rolled and corrosion resistant products, UPI does not import those products from POSCO.

Petitioners have advanced two theories on which to find UPI related: the first based on POSCO's co-ownership of UPI; and the second, based on UPI's importation of the hot-rolled steel "band" from POSCO.⁸¹ We reject petitioners' argument that UPI's importation of hot-rolled band establishes it as a "related party" producer in the separate domestic industries producing cold-rolled and corrosion resistant products.

We base our finding that UPI is a related party solely on UPI's corporate relationship with POSCO and the fact that POSCO also exports to the United States cold-rolled and corrosion-resistant steel. We have previously stated that, to be considered a related party, a corporate affiliation or relationship between an exporter and domestic producer must pertain to the unfairly traded articles under investigation.⁸² In this case, POSCO exports cold-rolled and corrosion resistant steel and UPI produces those products. UPI is not a related party by reason of its imports of hot-rolled steel, however, because it does not produce hot-rolled steel and therefore is not a member of the hot-rolled steel industry. Thus, UPI's related party status depends solely on its production of products exported by POSCO rather than its imports of hot-rolled products from POSCO.⁸³

2. Whether Appropriate Circumstances Exist for the Exclusion of UPI

Petitioners asserted that appropriate circumstances exist for UPI's exclusion from the domestic cold-rolled and corrosion-resistant steel industries because of UPI's purchases of dumped and subsidized hot-rolled imports from its Korean parent, POSCO, which are used as inputs for UPI's cold-rolled and corrosion-resistant steel production. Petitioners asserted that these inputs are sold to UPI at favorable prices based on a predetermined pricing formula established by POSCO and USX and therefore, place UPI in a unique position in the domestic industry.⁸⁴ Petitioners also contended that neither the statutory language nor the legislative history precludes a finding that exclusion is warranted when a related party imports dumped or subsidized inputs.

As stated above, we do not consider UPI to be a related party in the cold-rolled or corrosion-resistant steel industries because of its importation of hot-rolled merchandise.⁸⁵ Instead, UPI is related in the cold-rolled and corrosion-resistant industries by virtue of its corporate affiliation with

⁸¹ Petitioners' Posthearing Br. Vol. 2 at 10 n.22.

⁸² Minivans from Japan, 731-TA-522 (Final), USITC Pub. 2529 (July 1992) at 14 n.45.

⁸³ We note that we have considered equity interests, joint ventures, and significant interests in the industry under an investigation to be bases for considering whether producers were related. See e.g., Id. at 14.

⁸⁴ Petitioners' Posthearing Br. Vol. 2 at 12.

⁸⁵ We note, however, that in assessing the condition of UPI vis-a-vis the rest of the domestic industry, any cost benefits incurred by UPI in its importation of hot-rolled band may be reflected in its financial performance.

POSCO, a foreign exporter of cold-rolled and corrosion-resistant steels. The relevant analytical framework for deciding whether appropriate circumstances exist for UPI's exclusion from these industries includes certain traditional factors. Viewing UPI in the context of these factors, we note that in 1992, UPI accounted for a relatively small percentage of cold-rolled and corrosion-resistant production.⁸⁶ With respect to the reasons that the U.S. producer has decided to import the product subject to investigation, we note that UPI does not import cold-rolled or corrosion-resistant flat-rolled products.

In considering whether the exclusion of UPI's data would "skew" the data on the corrosion resistant and cold-rolled industries, we note that UPI's financial performance, as reflected in the ratio of operating income to net sales for both the cold-rolled and corrosion-resistant steel industries, is not significantly better than that of other members of the industry.⁸⁷ Thus, it does not appear that UPI's cold-rolled or corrosion-resistant steel operations are benefitting from UPI's relationship to POSCO. Moreover, as stated above, UPI does not itself import either cold-rolled or corrosion-resistant steel products; its interests appear to be those of a domestic producer in the cold-rolled and corrosion-resistant steel industries. Finally, we note that UPI keeps its books separate from POSCO.⁸⁸ On balance, we do not believe that appropriate circumstances exist to exclude UPI from the domestic cold-rolled and corrosion-resistant steel industries.

C. Whether Appropriate Circumstances Exist to Exclude Other "Related" Producers

We next address all other related parties in these investigations. As noted above, no party has urged the exclusion of any of these related parties.

A substantial percentage (and in some industries under investigation, the overwhelming majority) of domestic producers have some financial relationship with foreign steel companies, either through equity ownership or joint ventures, and to a much lesser extent through importation of subject products. Exclusion of the petitioning companies, in particular, would likely skew the domestic industries' data because they make up a substantial portion of those industries. Because the financial indicators for specific companies are confidential, we cannot discuss any individual company. However, we note generally that it is difficult to assess the impact of the financial performance of any one "related" domestic producer vis-a-vis the other "unrelated" producers in any particular industry given the extensive number of the "related parties" in each of the industries under investigation.⁸⁹ The petitioning companies as a group, which are responsible for the overwhelming majority of production in each of the four major industries under investigation, are actively seeking to impose antidumping or countervailing duties on some of the very parties to which they are related, which does not support the proposition that the related domestic producers are "shielded" from the

⁸⁶ Report table 12.

⁸⁷ See e.g., *Id.* at tables 32, 37.

⁸⁸ See e.g., Respondents' Cold-rolled Posthearing Br. ex. 5 at 12.

⁸⁹ Compare Ball Bearings, Mounted or Unmounted, and Parts Thereof from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey, and Yugoslavia, Inv. No. 731-TA-307 and 731-TA-498-511 (Preliminary), USITC Pub. 2374 (April 1991), *aff'd*, Torrington Co. v. United States, 790 F. Supp. 1161, 1171 (1992)(citing in part "global nature" of industry).

effects of dumped imports to any significant degree.⁹⁰ Moreover, due to the sporadic and low level of importation by members of the domestic industries, as discussed above, it appears that the interests of all of the domestic producers are primarily in domestic production rather than importation.

Petitioners confirmed that each of the petitioning companies named as related parties maintains separate books and records and separate financial and accounting data from their U.S.-foreign joint ventures and/or the related foreign companies.⁹¹ Finally, no party has asked for the exclusion of any domestic producer, with the exception of UPI. On balance, we find an insufficient basis to exclude any of the related domestic producers from the domestic industries as related parties. Accordingly, we find that there is one domestic industry consisting of all the domestic producers of cold-rolled carbon steel flat-rolled products.

III. CONDITION OF THE DOMESTIC INDUSTRY

A. Legal Standards

In assessing whether the domestic industry is materially injured by reason of subsidized and LTFV imports from the subject countries, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. 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 determinative, and the Commission considers all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁹²

B. Conditions of Competition⁹³

Cold-rolled steel is most often used in the production of corrosion-resistant flat-rolled products, as panels in electrical equipment and appliances, or for unexposed body parts and roofs in automobiles.⁹⁴ Demand for cold-rolled products depends largely on the level of overall economic activity.⁹⁵ Generally, over the past five years demand for cold-rolled products has increased due to increased auto production in the United States, especially from the Japanese "transplants," and a shift from hot-rolled to cold-rolled products for some applications.⁹⁶ However, weak demand in the

⁹⁰ While any individual company's position on the petition is confidential, we note that the some of the "related" companies opposed the petition, others supported it, and several took no position. Additionally, we note that not all companies comprising the petitioning coalition are petitioners in all investigations. Report at table 12.

⁹¹ See e.g. Petitioners' Posthearing Br. Vol. 4 at 7; *Id.*, Vol. 5 ex. 7 at 2. Petitioners indicated that they were unable to confirm whether the nonpetitioning companies, California Steel and Wheeling-Pitt, maintain separate books and records, although they believe that to be the case since these companies appear to operate as separate entities. *Id.*

⁹² *Id.*

⁹³ We adopt the discussion in § III(B) of the Hot-rolled Views regarding general conditions of competition.

⁹⁴ Report I-35, table 9.

⁹⁵ *Id.* at I-38.

⁹⁶ *Id.* at I-162.

domestic U.S. automobile and related auto parts sectors, and in the appliance and construction sectors during 1991 contributed to declines in apparent U.S. consumption of cold-rolled products. Demand for these end use products increased somewhat in the latter portion of 1991 and in 1992.⁹⁷

The large majority of U.S. mills and foreign producers of the subject imports produce cold-rolled products based on orders received from service centers and end users or expected periodic shipments resulting from negotiated purchase agreements.⁹⁸ Production of cold-rolled products domestically and of the subject cold-rolled imports is almost never undertaken on speculation or to stock inventories.⁹⁹ The holding of inventories of cold-rolled products by mills and steel service centers is limited because of the large cost associated with carrying such inventories.

The majority of cold-rolled purchasers providing questionnaire responses reported that they or their customers require suppliers to become certified or pre-qualified in order to ensure that the cold-rolled products they purchase meet all of their internal quality and performance standards necessary to produce an end product.¹⁰⁰ Auto manufacturers have the most stringent requirements among all categories of end users. Qualification and certification among major end users such as automobile and appliance manufacturers can take between six months and two years. However, other purchasers report that the qualification process for less specialized cold-rolled products takes only between one and three months.¹⁰¹ Because of the certification requirements, most purchasers typically maintain a few approved suppliers and do not readily switch suppliers from order to order due to an isolated lower quoted price or any other single factor.¹⁰² More than half of all purchasers reported that they switched suppliers at some time over the past five years, typically from one or two suppliers to one or two other suppliers.¹⁰³

Another condition of competition in the cold-rolled industry is the fact that approximately half of the domestic cold-rolled products were captively consumed in the production of downstream products.¹⁰⁴ For the most part, these captively consumed cold-rolled products are sent to internal or affiliated coating lines, where they are transformed into corrosion-resistant steel or into other coated products not subject to these investigations (e.g., tinplate, terneplate).¹⁰⁵ Petitioners acknowledge that competition between captive shipments of cold-rolled products and merchant market shipments is virtually nonexistent.¹⁰⁶

⁹⁷ Id. at I-162.

⁹⁸ Id. at I-154.

⁹⁹ Id. at I-154.

¹⁰⁰ Id. at I-165.

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Id. at I-165.

¹⁰⁴ Id. at I-34.

¹⁰⁵ Id.

¹⁰⁶ Petitioners' Prehearing Br. Vol. 3 at 31.

C. Discussion of Condition Factors

Apparent U.S. consumption of cold-rolled steel products (including captive consumption of such products) increased 1.1 percent between 1990 and 1992, first declining 12.1 percent from 14.1 million short tons in 1990 to 12.4 million short tons in 1991, and then increasing by 15.3 percent to 14.3 million short tons in 1992.¹⁰⁷ U.S. producers' market share of total apparent consumption by quantity fell slightly from 93.0 percent in 1990 to 92.9 percent in 1991 before increasing to 93.1 percent in 1992.¹⁰⁸ U.S. producers' market share by value increased slightly from 91.1 percent in 1990 to 91.2 percent in 1991, and increased again to 91.4 percent in 1992.¹⁰⁹

The capacity of the domestic industry producing cold-rolled products increased steadily from 33.2 million tons in 1990 to 33.4 million tons in 1991 to 34.4 million tons in 1992.¹¹⁰ Capacity utilization fell from 82.2 percent in 1990 to 70.9 percent in 1991, then rose to 77.2 percent in 1992.¹¹¹ U.S. shipments by quantity (including captive shipments) declined by 0.5 percent over the period examined, falling from 26.6 million tons in 1990 to 23.6 million tons in 1991, before rising in 1992 to nearly the same level as at the beginning of the period of examined, 26.5 million tons.¹¹² U.S. shipments by value declined 2.9 percent over the period examined, declining by 11.6 percent from 1990 to 1991, and increasing by 10.1 percent in 1992.¹¹³

Productivity was constant throughout the period.¹¹⁴ The average number of production and related workers and of hours worked declined over the period, falling from 1990 to 1991 before rising from 1991 to 1992, but to levels below those of 1990.¹¹⁵ Wages and total compensation paid increased slightly over the period, also falling from 1990 to 1991 before rising from 1991 to 1992.¹¹⁶ The average hourly wage for production and related workers producing cold-rolled products rose steadily between 1990 and 1992.¹¹⁷

Profitability in the cold-rolled steel product industry as measured by operating income was positive in 1990 (\$378 million), turned negative in 1991 with a loss of \$447 million, and improved somewhat in 1992 to a loss of \$397 million.¹¹⁸ Net sales declined from 1990 to 1991 and rose in

¹⁰⁷ Report I-40, table 11.

¹⁰⁸ Id. at table C-3.

¹⁰⁹ Id.

¹¹⁰ Id. at I-51, table 15.

¹¹¹ Id.

¹¹² Id. at I-54, table 16.

¹¹³ Id.

¹¹⁴ Id. at I-60, table 18.

¹¹⁵ Id. at I-59, table 18.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Id. at I-79, table 35.

1992.¹¹⁹ Gross profit declined from \$880 million in 1990 to \$32 million in 1991, before rising to \$83 million in 1992.¹²⁰ The cost of goods sold as a percentage of net sales increased from 92.0 percent in 1990 to 99.6 percent in 1991, and then declined slightly to 99.2 percent in 1992.¹²¹ Operating income as a percentage of net sales declined from 3.4 percent in 1990, falling to -4.9 percent in 1991, then improved to -3.9 percent in 1992.¹²² Capital expenditures by producers declined from \$348 million in 1990 to \$213.4 million in 1991, and further declined to \$186.3 million in 1992.¹²³ Research and development expenses declined by approximately 2 percent in both 1991 and 1992.^{124 125 126}

IV. CUMULATION

In determining whether there is material injury by reason of the LTFV and subsidized imports, we are required to assess the cumulative volume and effect of imports from two or more countries subject to investigation if such imports "compete with each other and with like products of the domestic industry in the United States market," and are reasonably coincident with one another.¹²⁷ Even if that test is satisfied, cumulation is not required when imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.¹²⁸

We adopt the discussion of competition and negligibility legal standards as well as the factors considered by the Commission¹²⁹ in applying these legal standards contained in § IV(A) of the Hot-rolled Views.¹³⁰ The Japanese respondents argue that subject imports from Japan do not compete with subject cold-rolled imports from any other country, and the French respondents argue that

¹¹⁹ Id. at I-76.

¹²⁰ Id.

¹²¹ Id.

¹²² Id.

¹²³ Id. at I-86, table 43. Upon expiration of the VRA program in March 1992, domestic producers were no longer required to reinvest their net cash flow in modernization programs. It is unclear the extent to which termination of the VRA program accounts for reductions in capital expenditures.

¹²⁴ Id. at I-84, table 41.

¹²⁵ Based upon his analysis of the foregoing information, Chairman Newquist finds the domestic cold-rolled industry to be in a vulnerable condition.

¹²⁶ Based on the factors noted above, Commissioner Rohr concludes that the domestic cold-rolled industry is currently experiencing material injury.

¹²⁷ 19 U.S.C. § 1677(7)(C)(iv)(I); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990).

¹²⁸ 19 U.S.C. § 1677(7)(C)(v).

¹²⁹ Commissioner Nuzum has considered additional factors in her analysis of negligibility. See her Additional and Dissenting Views.

¹³⁰ Respondents also argue that imports from South Africa are not "subject to investigation" under the cumulation provision of the statute. We disagree for the reasons set forth in § IV(A)(3) of the Commission's Hot-rolled Views.

subject imports from France do not compete with products of the domestic industry. Respondents from Argentina, Austria, Belgium, France, Italy, the Netherlands, and Spain argued respectively that imports from each of these countries should not be cumulated because they are negligible in relation to U.S. production of cold-rolled products. These cumulation issues are addressed below.

A. General Competition Issues

None of the respondents from Argentina, Austria, Belgium, Brazil, Canada, Germany, Italy, Korea, the Netherlands, or Spain argued that imports from their respective countries or South Africa should not be cumulated because of either a lack of competition between their imports and imports from any other countries or a lack of competition between their imports and domestic cold-rolled products. France and Japan have raised competition arguments which are addressed separately below.

We find a reasonable overlap of competition between cold-rolled imports from all countries and products of the domestic industry, and between the imports of each of the different countries.¹³¹ With respect to fungibility, the Commission collected extensive data which indicate that all twelve countries involved in the cold-rolled investigations as well as the domestic industry sold certain commercial grade cold-rolled products.¹³² Most countries sold at least some volume of the same four commercial grade products identified in the Commission's questionnaires.¹³³

The Commission also collected data on specialized or "niche" products. Analysis of these data indicate that each of the twelve countries sold at least some of the same commercial grade and/or niche products as all other countries;¹³⁴ eight countries¹³⁵ had sales of at least two of these

¹³¹ Commissioner Rohr notes that as with the other industries in these investigations, he considered negligibility before deciding whether the non-negligible countries competed with one another. He concurs in the analysis presented herein as describing the overlap of competition between Canada, Germany and Japan, the three countries he did not find to be negligible. He takes no position on the applicability of this analysis to any other countries.

¹³² Report, appendix N. However, as noted in our discussion of causation in § V *infra*, a number of the cumulated countries' imports were concentrated in specialized cold-rolled products which have higher value, greater quality requirements, and more demanding end use applications.

¹³³ *Id.* Thus, all 12 countries sold at least some amount of Products 8 and 9, all countries except Argentina, Canada, Netherlands, and Spain sold Product 10, all countries except Argentina, Italy and Spain sold product 11. Only Japan and Canada sold product 12. There were reported sales by the domestic industry in four out of five products, and reported purchases from domestic producers in all five products.

¹³⁴ The Commission collected no pricing data for South Africa. We note that none of the parties argued that there is not a reasonable overlap of competition between imports from South Africa, other imports, and the domestic cold-rolled products. We have data regarding unit values of South African imports which are very close to domestic unit values, and somewhat lower than some unit values of other countries. *Id.* at I-137, table 95. We also note that South African products entered the United States after March 1992 in all months except October, through five steel distribution service centers in all four regions of the United States. INV Supplementary memorandum, INV-Q-118, July 21, 1993 at B-1. Based on these facts, and the absence of any argument to the contrary, we find that there is a reasonable overlap of competition between South African imports, other imports, and domestic cold-rolled products.

¹³⁵ Argentina, Brazil, Canada, France, Germany, Japan, Korea, and the Netherlands.

niche products, six countries sold at least three,¹³⁶ and seven sold niche product 33.¹³⁷ The data reveal that some of the same cold-rolled niche products were produced by the domestic industry.¹³⁸ In addition, imports of commodity grade and/or niche products from each of the twelve countries were present simultaneously in the market with comparable domestic product.

The imports from all countries generally were sold in the same channels of distribution (end users and steel service centers) as other subject imports and as domestic cold-rolled products.¹³⁹ Imports from all countries involved in the cold-rolled investigation were present in the U.S. market in most, if not all, months of the period of investigation.¹⁴⁰ Imports from all countries were sold in at least three out of four marketing regions of the United States during the period of investigation, with most countries' imports being present in all four regions.¹⁴¹

In sum, we find a reasonable overlap of competition among all countries and with the domestic industry.¹⁴²

B. Specific Country Arguments Concerning Competition

France¹⁴³

The French producer, Usinor Sacilor (Usinor), argues that imports should not be cumulated because the "vast bulk" of cold-rolled imports from France do not compete with the domestic like product. It makes no arguments regarding competition of imports from France with other imports. Usinor claims that its sales to its longstanding U.S. customers are geographically dispersed, higher priced, and in specialty products which the domestic mills are either unwilling to produce or incapable of producing.¹⁴⁴

¹³⁶ Brazil, Canada, France, Germany, Japan, Netherlands.

¹³⁷ Argentina, Brazil, Canada, France, Germany, Japan, and Korea.

¹³⁸ Report, tables 99, F-3. There were a number of niche products accounting for a very small portion of apparent domestic consumption of cold-rolled steel for which there was no domestic production. These are in niche products 30-32, 37, 53-60, and 62. Id.

¹³⁹ Id. at appendix N. However, many of the cumulated imports analyzed in the causation analysis in § V infra, were sold directly to end users.

¹⁴⁰ Id. at table L-1.

¹⁴¹ Id. at M-5, table M-3.

¹⁴² As we discuss later in finding that imports of cold-rolled products from a number of different countries are negligible, there are differences in the product mix, import values, pricing patterns, and perceived quality between imports from some countries and the domestic cold-rolled products. Such differences may lessen the degree of competition between such imports and the domestic products and thus are relevant in some instances to our assessment of negligibility. However, such attenuated competition is not so significant with respect to these imports as to preclude our finding that there is a reasonable overlap of competition.

¹⁴³ Commissioner Rohr does not join in this section because he found imports from France to be negligible. See note 131, supra.

¹⁴⁴ Pre-Hearing Brief on behalf of Usinor Sacilor ("Usinor Prehearing Br.") at 1-14.

Petitioners argue that there is a reasonable overlap of competition between imports from France, other imports, and domestic product, noting that a substantial majority of imports from France are of commercial quality product sold to both service centers and end users, were not geographically isolated, and were present in every quarter of the investigation.¹⁴⁵

Imports of French cold-rolled product were shipped to all regions of the United States, during all 36 months of the period of investigation to both end users and steel distribution service centers.¹⁴⁶ At least some portion of these imports were sold simultaneously with similar domestic and imported product throughout the period of investigation in cold-rolled commercial grades 8, 9, and 11 in the Commission's pricing series.¹⁴⁷ A certain percentage of imports from France were "niche" products not produced by domestic suppliers.¹⁴⁸

With respect to the degree of substitutability between domestic and cold-rolled imports from France, Usinor's assertion that its products are of a substantially higher quality, as indicated by price premiums, is not supported with sufficient consistency by the evidence obtained in this investigation to warrant a finding of "no reasonable overlap of competition."¹⁴⁹ More than half the purchasers responding to our questionnaires indicated that they viewed French and U.S. cold-rolled steel to be comparable in quality.¹⁵⁰ In addition, our pricing data do not show a consistent pattern of overselling by the imports from France in the commercial grades.¹⁵¹

Based on the foregoing, we find a reasonable overlap of competition between imports from France, other imports, and U.S. cold-rolled products.¹⁵²

Japan

The Japanese respondents argue that imports of cold-rolled steel from Japan should not be cumulated because they do not compete with other imports of cold-rolled flat products. The Japanese respondents state that only a small percentage of their imports are in commercial grade products in

¹⁴⁵ Petitioners Posthearing Br. Vol. 4 at 16-17.

¹⁴⁶ Report M-5.

¹⁴⁷ *Id.* at appendix N, tables N-8, N-9, N-11.

¹⁴⁸ *Id.* at table F-3.

¹⁴⁹ However, Usinor's evidence does suggest that competition between its imports and the domestic industry is somewhat attenuated. This evidence is relevant to our finding that Usinor's imports are negligible, discussed *infra*. Commissioner Nuzum does not join in this statement as she found that imports of cold-rolled products from France were not negligible. See her Additional and Dissenting Views.

¹⁵⁰ Report I-159.

¹⁵¹ *Id.* at I-172, table 110.

¹⁵² In assessing Usinor's competition arguments, we note the absence of any arguments by Usinor that its products do not compete with other imports. Given the evidence that there is a reasonable overlap of competition between all other imports with the domestic industry in commercial grade products, this supports the conclusion that French imports also compete with at least some domestic cold-rolled products.

contrast to all other subject imports.¹⁵³ These respondents do not assert that imports from Japan do not compete with domestic cold-rolled flat products. Defining competition to mean products whose prices are within a five percent range,¹⁵⁴ they assert that there is limited competition between Japan and subject imports from other countries in commercial grade products including CRML, TMBP, and hardened carbon steel, as well as in the various niche products.¹⁵⁵

The Japanese respondents also assert that 24.3 percent of total 1992 imports from Japan consisted of mill proprietary products with which they allege no competition from other import sources.¹⁵⁶ They claim these mill proprietary products are not within any of the commodity or niche product categories identified by respondents.¹⁵⁷ The Japanese respondents assert that their commercial grade products are made with unique manufacturing processes and equipment not used by other countries exporting cold-rolled steel to the United States.¹⁵⁸ They also state that the "vast majority of Japanese mills' cold-rolled products never cross market channels with other imports" because Japanese products are sold either directly to end-users or by special service centers that buy to precise end use specifications.¹⁵⁹

No party has argued that there is not a reasonable overlap of competition between imports of cold-rolled products from Japan and domestic cold-rolled products. Japanese imports of cold-rolled generally are priced significantly higher than domestic products, are in many cases of a higher quality, and are concentrated in many specialty grades. A certain portion of Japanese imports fall within commercial grades of products produced by the domestic industry.¹⁶⁰ Japanese products were present in all regions of the United States, in all quarters of the period of investigation, and distributed in 1992 through a total of 26 different importers.¹⁶¹ This is sufficient to establish a reasonable overlap of competition between cold-rolled imports from Japan and domestic cold-rolled products.

In assessing whether there is a reasonable overlap of competition between imports of cold-rolled products from Japan and imports of cold-rolled from all the other countries, we note that many

¹⁵³ Japanese Respondents' Prehearing Br. ex. 4.

¹⁵⁴ Japanese Respondents' Posthearing Br. ex. 5.

¹⁵⁵ Japanese Respondents' Prehearing Br. at 16-38.

¹⁵⁶ Japanese Respondents' Posthearing Br. at 3 n.1.

¹⁵⁷ No specific information has been provided by the Japanese respondents as to the grades, types, end uses of these mill proprietary products which they claim represent almost one-quarter of imports of cold-rolled products from Japan. The Japanese respondents were responsible for identifying a number of niche products for which the Commission collected information. They failed to request the Commission to collect data on these mill proprietary products at the time they provided the list of niche products for the Commission to investigate.

¹⁵⁸ Japanese Respondents' Prehearing Br. at 39-41.

¹⁵⁹ *Id.* at 41-43.

¹⁶⁰ See e.g. Report appendix N (commodity grade pricing comparisons); table F-3 (niche products where domestic industry production); table 99.

¹⁶¹ Report, tables M-3, M-5, appendix N.

of the subject cold-rolled imports are concentrated in specialty products such as TMBP,¹⁶² high carbon steel,¹⁶³ commercial grade products,¹⁶⁴ and a number of the so-called niches.¹⁶⁵ Further, the Japanese respondents have provided little information concerning the specifications, grades, general type, category, end uses, or customers for such products and there is little basis for accepting their claim that such imports constitute 25 percent of the imports from Japan.¹⁶⁶ In any event, these mill proprietary imports are alleged to account for only 25 percent of imports from Japan which, even were we to accept the Japanese respondents' argument, would not provide a basis for finding no reasonable overlap of competition.

The Japanese respondents have focused their lack of substitutability arguments on the fact that imports from Japan of cold-rolled products are higher quality, as reflected in higher prices than other imports.¹⁶⁷ The Commission generally has not treated overselling or underselling as a definitive indicator of noncompetition.¹⁶⁸ We note that the Belgian, French, Korean, and Netherlands respondents claimed that their products are also high priced, high quality products. The record indicates that the prices of Japanese products are generally higher than those of most other imports the majority of the time.¹⁶⁹ However, there were some instances when Japanese products were priced

¹⁶² Japanese Respondents' Prehearing Br. at 25.

¹⁶³ *Id.* at 19.

¹⁶⁴ Report, appendix N. Commercial grade products in the Commission's pricing series set forth in appendix N reveals the following overlap of competition in cold-rolled commercial grade products: Product 8 (all 12 countries); Product 9 (all 12 countries); Product 10 (all countries except Argentina, Canada, Netherlands, and Spain); Product 11 (all countries except Argentina, Italy, and Spain); Product 12 (only Canada and Japan).

¹⁶⁵ *Id.* at table F-3. Niche product 33 (Argentina, Brazil, Canada, France, Germany, Japan, and Korea); Niche product 36 (Brazil, Canada, France, Japan, Korea, and Netherlands); Niche product 37 (Japan, Germany and France); Niche product 38 (Brazil, Germany, and Japan). The record does indicate that there was not competition in a number of niches between Japan and any other country.

¹⁶⁶ See Japanese Respondents' Posthearing Br. at 3 n.1; Hearing Tr. 823-24.

¹⁶⁷ The crucial assumption in the Japanese respondents' argument is that there can be no competition if such imports are priced more than five percent higher or lower than other imports. Japanese Respondents' Prehearing Br. at 5-39; Hearing Tr. 423-24 (clarifying that this 5 percent assumption allegedly only applies to some of the products in the Commission's pricing series). The Japanese respondents correctly acknowledge that "neither the statute nor Commission precedent have adopted a numerical definition for "reasonable overlap in competition." Japanese Respondents' Posthearing Br. ex. 5. Furthermore, we decline to agree that a 5 percent price differential signifies the complete absence of competition.

¹⁶⁸ Commissioner Crawford does not place great weight on the underselling price comparisons in determining the impact of the subject imports on the domestic like product where these comparisons show persistent and consistent high margins of overselling or underselling. In these instances, the prices being compared might well reflect quality or other nonprice differences, making these comparisons less useful in assessing price effects.

¹⁶⁹ Report appendix N.

below other imports.^{170 171} Moreover, the unit values of Japanese imports of certain niche products were comparable to the unit values of other countries.¹⁷²

While there is evidence that the Japanese products are of generally higher quality than most other imports, a majority of Japanese imports are within the same specification and grades¹⁷³ as cold-rolled imports from other countries, and were simultaneously present in the market in all regions and in all months with almost all other imports. Therefore, we find that there is a reasonable overlap of competition between imports from Japan and domestic products and imports of cold-rolled products from all other countries.

C. General Negligibility Issues^{174 175}

Respondents from five countries did not assert that their respective imports were negligible: Brazil, Canada, Germany, Japan, and Korea. The import shares of apparent domestic consumption¹⁷⁶ for each of these five countries are at levels, by quantity and value,¹⁷⁷ that we do not find insignificant in this market. The sales of imports from these countries were not isolated or sporadic;

¹⁷⁰ *Id.* table N-8 (Product 8: German, Canadian imports in fourth quarter of 1992); table N-9 (Product 9, Canadian imports all quarters, Korean first quarter of 1992); table N-29 (Product 8, Austria first, third and fourth quarters of 1990, France, third quarter of 1990, Korea, first two quarters of 1990); table N-27 (Product 9, Canada, all quarters except one, Korea, first two quarters of 1990); table N-28 (Product 10, Korea, 7 out of 12 quarters); table N-55 (Product 10, Germany all quarters).

¹⁷¹ The margins of overselling by imports from Japan with other countries' imports of cold-rolled products vary with the products and purchasers; some margins are within 10 percent for Germany, Korea, and Canada. *Id.* at tables N-11, N-12, N-24. Other margins of overselling by cold-rolled from Japan are significantly higher. *See e.g. id.* at tables N-8, N-9.

¹⁷² Japanese Respondents' Prehearing Br. at 22.

¹⁷³ We recognize that the mere fact that imported or domestic products are within the same grade and specification does not mean that they are necessarily of comparable quality or highly substitutable. There are a number of factors discussed in our material injury analysis which indicate that certain subject imports (*i.e.*, many of the cumulated imports) are not highly substitutable with the domestic cold-rolled products.

¹⁷⁴ Commissioner Rohr does not join this section of the determination with respect to Brazil, Korea, and the Netherlands. Commissioner Brunsdale does not join this section of the determination with respect to Brazil, Canada, Germany, and Korea. Commissioner Crawford does not join this section of the determination with respect to Brazil.

¹⁷⁵ Commissioner Rohr does not view the margins of over- and underselling to be probative of the presence or absence of competition. He has not based any of his conclusions with regard to competition in the context of cumulation, negligibility, causation or threat in this or any other views on this factor. He does not join any statements in any of these Views to the extent they reference such margins of over- or underselling.

¹⁷⁶ Report I-147, table 105 (in 1992, Brazil 0.5, Canada 0.8, Germany 1.2, Japan 1.3, Korea 0.6).

¹⁷⁷ *Id.* at I-137, table 95 (In 1992: Brazil 139,764 tons worth \$54.6 million, Canada 238,973 tons worth \$110.0 million, Germany 335,533 tons worth \$166.3 million, Japan 378,546 tons worth \$232.9 million, and Korea 172,639 tons worth \$72.6 million).

they were present in the market in all 36 months in the period of investigation;¹⁷⁸ each country's imports were present in all four regions of the United States throughout the period of investigation except Korea (which was present in 3 out of 4 regions);¹⁷⁹ and their imports were sold through a large number of importers.¹⁸⁰ While the cold-rolled market is not particularly price sensitive and less price sensitive¹⁸¹ than the cut-to-length plate market because of its greater product segmentation based on quality, availability, and product differentiation, many of the cold-rolled imports from all five of these countries are in commercial grade products which directly compete with other imports and with the products of the domestic cold-rolled industry.^{182 183 184} These facts, together with the lack of evidence presented by any party that these imports are negligible, supports our conclusion that these imports are not negligible.

D. Analysis of Arguments of Specific Countries

Argentina

The two Argentine respondents, Propulsora Siderurgica SAIC and Aceros Parana S.A. Somisa ("Argentine Respondents"), assert that imports from Argentina of cold-rolled steel are negligible based on the size and decline in the Argentinian market share during the period of investigation.¹⁸⁵ They argue that their sales in 1992 were sporadic and isolated in that there were only a handful of smaller volume sales in categories that were geographically dispersed throughout the United States.¹⁸⁶

Petitioners contend that imports from Argentina are not negligible and should be cumulated. They assert that most of the imports from Argentina are commercial grade products that compete with the domestic industry.¹⁸⁷

The Argentine percentage share of apparent domestic consumption for cold-rolled products increased from 0.1 percent in 1990 to 0.3 percent in 1991 and then declined to 0.1 percent in 1992.¹⁸⁸ These imports totalled 27,809 tons in 1990, increased to 70,302 tons in 1991, before

¹⁷⁸ Id. at table L-1.

¹⁷⁹ Id. at table M-3.

¹⁸⁰ Id. at table M-5.

¹⁸¹ Commissioner Nuzum does not join the discussion of price sensitivity for the cold-rolled market. See her Additional and Dissenting Views.

¹⁸² Commissioner Crawford does not find the cold-rolled market to be price sensitive as defined in 19 U.S.C. § 1677(C)(v)(III). See her Additional and Dissenting Views.

¹⁸³ See Commissioner Rohr's Additional and Dissenting Views for additional factors he considered in analyzing the price sensitivity of this product and market.

¹⁸⁴ See Commissioner Brunsdale's Additional and Dissenting Views for her analysis on the issue of price sensitivity.

¹⁸⁵ Propulsora Siderurgica Saic and Aceros Parana S.A. ("Propulsora") Posthearing Br. at 8.

¹⁸⁶ Id. at 11.

¹⁸⁷ Petitioners' Posthearing Br. Vol. 4 at 16-17.

¹⁸⁸ Report I-147.

declining to 33,779 tons in 1992.¹⁸⁹ Imports from Argentina were sold in 1992 in all four marketing regions through a total of seven importers/consignees.¹⁹⁰ Sales of Argentine imports were more sporadic than imports from other countries, as they entered the United States in only 3 months of 1990, 10 months of 1991, and 6 months of 1992.¹⁹¹

There is only limited substitutability between Argentine imports and the domestic like product. Argentine imports both undersold and oversold¹⁹² the domestic products in the pricing comparisons collected by the Commission.¹⁹³ Nevertheless, in light of the extremely low volume and market share of Argentine imports, the somewhat sporadic nature of Argentine sales transactions, and not particularly price sensitive nature of the cold-rolled market, we find that these imports are negligible and had no discernible adverse impact on the domestic industry.

Austria

The Austrian producer, Voest, argued that imports from Austria are negligible based on a dramatic decrease in import penetration in 1992 and the substantial increases in the prices of imports from Austria.¹⁹⁴ Voest asserts that imports from Austria were sporadic as they were sold to only a limited number of customers.¹⁹⁵ Voest also claims that the majority of its sales were of a specialized steel in widths not available from U.S. manufacturers.¹⁹⁶

Petitioners argue that imports of cold-rolled steel from Austria are neither negligible nor isolated and sporadic as they entered the market in every month of 1990, 1991, and 1992.¹⁹⁷ Petitioners argue that the substantial majority of Austrian products are commercial quality goods which undersold domestic products in 16 of 27 pricing comparisons.¹⁹⁸

Market penetration of imports of Austrian cold-rolled products fell from [***] percent in 1990 to [***] percent in 1991, and further declined to less than [***] percent in 1992.¹⁹⁹ The volume of these imports steadily declined from 87,703 tons in 1990 to 66,714 tons in 1991, and further declined to only 2,330 tons in 1992.²⁰⁰ Sales of imports from Austria were somewhat isolated

¹⁸⁹ *Id.* at I-137.

¹⁹⁰ *Id.* at M-5, Propulsora Posthearing Br. at 11.

¹⁹¹ *Id.* at L-2, table L-1.

¹⁹² *Id.* at I-150, table 108.

¹⁹³ The Commission was unable to confirm any lost sales or lost revenue allegations with respect to Argentine imports.

¹⁹⁴ Voest-Alpine Stahl AG ("Voest") Prehearing Br. at 22, 24.

¹⁹⁵ *Id.* at 8.

¹⁹⁶ Voest Posthearing Br., Attachment.

¹⁹⁷ Petitioners' Prehearing Br. Vol. 4 at 83.

¹⁹⁸ *Id.*

¹⁹⁹ Voest Prehearing Br. at 6.

²⁰⁰ Report I-137.

but not sporadic; they were sold through four importers in only two out of four regions in 1992, but entered in all 36 months of the period of investigation.²⁰¹

Most Austrian cold-rolled imports of commercial quality products both oversold and undersold domestic products.²⁰² There was one confirmed lost sale as a result of imports from Austria.²⁰³ Nevertheless, in view of the extremely low volumes and the not particularly price sensitive nature of the cold-rolled market, we find these imports are negligible and have no discernible adverse impact on the domestic industry.

Belgium²⁰⁴

Belgian Respondents Sidmar N.V. and Tradearbed, Inc. ("Belgian Respondents") argue that imports of cold-rolled products are negligible based on low and declining market share and a lack of competition between a substantial percentage of Belgian products which they assert are higher quality than domestic products.²⁰⁵ The Belgian respondents argue that in 1992 their sales were isolated and sporadic as they were made through a limited number of importers, in essentially only two regions of the United States, and in small volumes to only a limited number of customers.²⁰⁶

Petitioners do not respond to the negligibility arguments of the Belgian respondents. Instead, they argue that there is a reasonable overlap of competition between Belgian imports and the domestic product based on evidence of mixed over and underselling pricing comparisons and the fungible nature of Belgian imports.²⁰⁷

The Belgian share of apparent domestic consumption increased from 0.4 percent in 1990 to 0.5 percent in 1991 before declining to 0.4 percent in 1992.²⁰⁸ Belgian imports of cold-rolled products were neither isolated nor sporadic; they were sold through six importers²⁰⁹ in primarily three regions of the United States in all 36 months of the period of investigation.²¹⁰

While certain Belgian imports appear to be somewhat substitutable with commercial grade domestic products, there is attenuated competition between a substantial portion of Belgian imports

²⁰¹ Id. at M-3, table M-5; Id. table M-3; Voest Prehearing Br. at 8.

²⁰² Id. at appendix N.

²⁰³ Id. at I-179, table 116.

²⁰⁴ Commissioner Nuzum dissents from the majority's Views on negligibility with respect to imports from Belgium and therefore does not join in this discussion. See her Additional and Dissenting Views.

²⁰⁵ Prehearing Brief of Sidmar N.V. and Tradearbed, Inc. ("Belgian Respondents' Prehearing Br. at 1-11.

²⁰⁶ Id. at 10-12.

²⁰⁷ Petitioners' Prehearing Br. Vol. 4 at 84-86.

²⁰⁸ Report I-147, table 105.

²⁰⁹ Id. table M-5. The Belgian Respondents dispute this. See Belgian Respondents' Prehearing Br. at 11 n.30.

²¹⁰ Report, table L-1, M-5.

and domestic cold-rolled products.²¹¹ The Belgian respondents produced affidavits from a number of domestic purchasers of their cold-rolled products who attested that certain Belgian imports have widths, gauge tolerances, quality, and delivery availability not provided by domestic cold-rolled products.²¹² A considerable percentage of Belgian sales in the United States were to customers who had specifically ordered Belgian steel for particular end use applications.²¹³ In addition, two purchasers reported that Belgian products were superior in quality to domestic products.²¹⁴ This existence of attenuated competition²¹⁵ is further supported by the fact that Belgian imports oversold domestic products in 23 out of 31 pricing comparisons by margins up to 11.5 percent.²¹⁶

Based on the foregoing, particularly the low Belgian market share, the relatively stable volumes of Belgian imports, the attenuated competition between Belgian and domestic cold-rolled products, and the not particularly price sensitive nature of the cold-rolled market, we find that these imports from Belgian are negligible and have no discernible adverse impact on the domestic cold-rolled industry.

France²¹⁷

Usinor asserts that its imports are negligible based on low and stable volume, insignificant and declining market share, and isolated geographic sales.²¹⁸ Usinor also argues that the cold-rolled market is so highly differentiated that it is not price sensitive, and that "competition between French imports and domestic products is extremely attenuated due to the qualitative superiority of the French products and the strategy of targeting segments of the market in which competition with domestic mills can be avoided."²¹⁹

The share of apparent domestic consumption of imports from France rose from 0.4 percent in 1990 to 0.5 percent in 1991, before falling to 0.4 percent in 1992.²²⁰ The volume of imports from France by quantity rose from 125,405 tons in 1990 to 129,280 tons in 1991 before falling to 125,290 tons in 1992.²²¹ Sales of cold-rolled imports from France were not isolated or sporadic; they were

²¹¹ *Id.* at appendix N. Belgian Respondents' Prehearing Br. at 9-10.

²¹² Belgian Respondents' Prehearing Br. ex. 2.

²¹³ Belgian Respondents' Posthearing Br. at 4-5.

²¹⁴ Report I-163, table 109.

²¹⁵ The Commission was unable to confirm any lost sales or lost revenue allegations with respect to Belgian imports.

²¹⁶ *Id.* at I-175, table 113.

²¹⁷ Commissioner Nuzum dissents from the majority's View on negligibility with respect to imports from France and therefore does not join in this discussion. See her Additional and Dissenting Views.

²¹⁸ Usinor Posthearing Br. at 10-11.

²¹⁹ *Id.* at 14.

²²⁰ Report I-147, table 105.

²²¹ *Id.* at I-137, table 95.

conducted through a total of at least 8 importers in all four regions of the U.S. during 1992, and were sold in all 36 months of the period of investigation.²²²

Import penetration levels from France declined over the final two years of the period of investigation. Moreover, the pricing comparisons clearly showed predominant overselling by French imports, as supported by unit value comparisons.²²³ In addition, niche products for which there is no domestic production also constituted some of the total cold-rolled imports from France.²²⁴ Three purchasers mentioned that French imports were of higher quality than domestic cold-rolled products.²²⁵

In view of the small import volumes and share of apparent domestic consumption, the attenuated competition between French imports and the domestic products, and the not particularly price sensitive nature of the cold-rolled market, we find that imports from France are negligible and have no discernible adverse impact on the domestic industry.²²⁶

Italy²²⁷

The Italian respondent, ILVA, argues that its imports are negligible based on the low import share and the non-substitutable, specialized, high value products it sells in the United States that are not produced by the domestic industry.²²⁸ ILVA claims that the cold-rolled market is not price sensitive and that its imports were isolated and sporadic, occurring in only 16 of 42 customs districts during the period of investigation.²²⁹

Petitioners argue that imports from Italy are not negligible because almost all Italian imports are of commercial quality and only a small percentage are niche products not produced by the domestic industry. Petitioners note that there are allegations of lost sales²³⁰ and two reports of lost

²²² *Id.* at L-3, table I-1, M-7 at table M-3, M-9, table M-5.

²²³ *Id.* at appendix N.

²²⁴ *Id.* at F-30.

²²⁵ *Id.* at I-163, table 109.

²²⁶ We note that there were three confirmed allegations of lost revenue to cold-rolled products from France involving very small volumes. Report I-290, table 116. We have considered these lost sales but find that in view of the other factors mentioned that they do not tip the balance in favor of a non-negligibility finding.

²²⁷ Commissioner Nuzum dissents from the majority's Views on negligibility with respect to imports from Italy and therefore does not join in this discussion. See her Additional and Dissenting Views. Vice-Chairman Watson did not participate in the decision regarding Italy.

²²⁸ ILVA S.P.A. and ILVA USA, Inc. ("ILVA") Prehearing Br. at 14.

²²⁹ ILVA Posthearing Br. at 11. ILVA reports market penetration of 0.43% in the East Region, 0.35% in the Gulf Region, 0.04% in the Great Lakes Region, and 0.16% in the West Region.

²³⁰ Commissioner Crawford and Commissioner Brunsdale do not rely on anecdotal evidence of lost sales and revenues showing that competition from the subject imports caused domestic producers to lose particular sales or forced them to reduce their prices on other sales in reaching her determinations.

revenue as well as underselling by Italian imports with margins from 4.2 to 22.2 percent or a weighted average of 6.5 percent.²³¹

Imports of Italian cold-rolled products increased from 0.1 percent of apparent domestic consumption in 1990 to 0.2 percent in 1991 where it remained in 1992.²³² The volume of Italian imports increased from 40,992 tons in 1990 to 44,526 tons in 1991, and further increased to 47,749 tons in 1992.²³³ Imports from Italy were sold through three importers during 1992 and in three out of four regions in the United States in 1990 and 1991²³⁴ and all four regions in 1992.²³⁵ Imports from Italy entered the market in 11 of 12 months during 1990 and in all twelve months of 1991 and 1992.²³⁶

We find that the significant portion of imports of cold-rolled steel from Italy are commercial grade products.²³⁷ Purchasers reported that imports of Italian cold-rolled products were of both inferior and higher quality than domestic product.²³⁸ No niche product imports from Italy were reported in response to Commission questionnaires. Imports of cold-rolled steel from Italy undersold domestic product for sales to manufacturers/end users in all 8 instances with margins from 1 to 19.5 percent.²³⁹ There also were two confirmed lost sales allegations involving 1,750 tons worth \$781,500.²⁴⁰

Although certain evidence suggests that Italian imports are relatively substitutable with domestic products, we find that Italian imports are negligible and have no discernible adverse impact based on the very low and relatively stable volume of imports from Italy, the low market share of apparent domestic consumption, and the not particularly price sensitive nature of the cold-rolled market.

The Netherlands²⁴¹

The Dutch importer Hoogovens Groep BV (Hoogovens) asserts that Dutch imports are negligible based on the alleged low volume and isolated nature of its sales of cold-rolled products to

²³¹ Id.

²³² Report I-147.

²³³ Id. at I-137.

²³⁴ Imports in the fourth region occurred but were extremely small. Id. at table M-3.

²³⁵ Id. at M-5, table M-5.

²³⁶ Id. at table L-1.

²³⁷ Id. at appendix N.

²³⁸ Id. at I-163, table 109.

²³⁹ Id. at I-172.

²⁴⁰ Id. at I-179, table 116.

²⁴¹ Commissioner Rohr, Commissioner Brunsdale, and Commissioner Crawford do not join in this discussion. See their Additional and Dissenting Views.

a small number of longstanding, loyal customers.²⁴² Hoogovens argues that the domestic cold-rolled market is not price sensitive because price is not the principal motivation behind its customers' purchases of highly differentiated products with particular specifications requiring the highest quality, which are not available from the domestic industry.²⁴³

Petitioners assert that sales of cold-rolled products from the Netherlands are not isolated or sporadic; they were sold in every region of the United States in every month of the period of investigation.²⁴⁴ Petitioners also state that Hoogovens' products were not differentiated from domestic products as they "more often than not undersold comparable domestic product."²⁴⁵ Petitioners also note that the portion of Dutch imports which did not compete with domestic products represented a small percentage of all imports from the Netherlands.²⁴⁶

The volume of imports from the Netherlands increased from 156,206 tons worth \$70.4 million in 1990, to 172,441 tons worth \$71.9 million in 1992.²⁴⁷ The Dutch share of apparent domestic consumption of cold-rolled products increased from 0.5 percent in 1990 to 0.6 percent in 1992.²⁴⁸ Sales of cold-rolled imports from the Netherlands were not isolated or sporadic; in 1992, they were conducted through a total of [***] importers which included steel service centers located in different parts of the United States.²⁴⁹ Cold-rolled products from the Netherlands were sold in all four regions of the United States during 1992, and were sold in every month of the period of investigation.²⁵⁰

In assessing the degree of competition between imports from the Netherlands and domestic cold-rolled products, Hoogovens admitted that a substantial percentage of its imports were of generic cold-rolled steel that competed with the domestic like products.²⁵¹ Only a very small percentage of the 172,441 tons of Dutch sales of cold-rolled steel in the United States in 1992 were niche products for which there was no domestic production.²⁵² Hoogovens provided some evidence suggesting that a certain segment of its imports were not available from domestic producers at a level of quality sufficient to satisfy the demands of Hoogovens' customers.²⁵³ However, we are not satisfied that this evidence supports a finding that competition is so attenuated that imports from the Netherlands are negligible and have no discernible adverse effect on the domestic industry.

²⁴² Hoogovens' Prehearing Br. at 15-19.

²⁴³ *Id.* at 19-20.

²⁴⁴ Report tables L-1, M-3.

²⁴⁵ Petitioners' Prehearing Br. Vol. 4 at 95.

²⁴⁶ *Id.* at 97.

²⁴⁷ Report I-137, table 95.

²⁴⁸ *Id.* at 147, table 105.

²⁴⁹ Hoogovens' Prehearing Br. ex. 1.

²⁵⁰ Report tables L-1, M-3, M-5.

²⁵¹ Hoogovens Prehearing Br. at 17.

²⁵² Report, table F-3 (Product 30).

²⁵³ Hoogovens' Posthearing Br. at 11-17; Hoogovens' Prehearing Br. ex. 1.

Contrary to Hoogovens' arguments that the majority of its products do not compete because they sell at a price premium, most imports from the Netherlands undersold domestic products within a relatively small range of margins.²⁵⁴ Analysis of several niche products where Dutch and domestic products compete indicates relatively close unit values.²⁵⁵

In light of the volume, value and rising share of apparent domestic consumption of imports from the Netherlands, and the evidence that a substantial percentage of these imports were moderately substitutable with domestic products, we find that imports of cold-rolled products from the Netherlands are not negligible.

South Africa²⁵⁶

Petitioners²⁵⁷ argue that imports from South Africa should be cumulated because there is evidence they compete with domestic and imported cold-rolled products.²⁵⁸ They note that South Africa's average unit values were lower than subject imports from other countries as well as domestic products suggesting that these imports undercut U.S. prices.²⁵⁹

Cold-rolled imports from South Africa first entered the United States in April 1992. A total of 44,379 net tons of cold-rolled products valued at \$17.07 million entered the United States in 1992²⁶⁰ between April and December; there were no such imports in October 1992.²⁶¹ There were only five importers of South African cold-rolled steel.²⁶² Imports of cold-rolled steel from South Africa in 1992 were present in all four regions of the United States.²⁶³

We have no specific information concerning the grades of cold-rolled products which make up the South African imports, *i.e.*, whether they are commodity or specialized niche products. The unit values of these imports are lower than other subject imports and are comparable with domestic unit values.²⁶⁴

²⁵⁴ Report, table N-11, N-32, and N-34.

²⁵⁵ *Id.* at table F-3 (Product 32).

²⁵⁶ Commissioner Nuzum dissents from the majority's Views on negligibility with respect to imports from South Africa, and therefore does not join in this discussion. See her Additional and Dissenting Views.

²⁵⁷ The cold-rolled respondents do not make any assertions regarding competition between South Africa and other imports and the domestic products. Legal arguments relating to cumulating South Africa were made in the Joint Posthearing Brief of the Plate Respondents and are addressed at § supra.

²⁵⁸ Petitioners' Posthearing Br. Vol. 1 at 34-35.

²⁵⁹ *Id.*

²⁶⁰ Report I-137, table 95.

²⁶¹ *Id.* at B-1.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.* at I-137, table 95.

Based on the foregoing, and in particular the small volume and market share of apparent domestic consumption, and the not particularly price sensitive nature of the cold-rolled market, we find that imports from South Africa are negligible and have no discernible impact.

Spain²⁶⁵

The Spanish Respondents²⁶⁶ argue that their imports are negligible based on the lowest volume and import market share (0.1 percent in 1992) of any other country involved in these investigations.²⁶⁷ These respondents also assert that their imports are isolated and sporadic as they were entered through only three ports in 1991 and five ports in 1992, and no shipments were made during a six month period between July 1991 and January 1992.²⁶⁸ Spanish sales were to only a handful of steel distributors in relatively small quantities averaging 500 tons.²⁶⁹

Petitioners assert that imports of cold-rolled from Spain are in commodity grade products and not concentrated in niche product categories.²⁷⁰ Petitioners further state that they lost some revenue due to unfairly traded Spanish imports.²⁷¹

Subject cold-rolled imports from Spain fell between 1990 and 1991, before rising to a high of 32,138 tons in 1992²⁷² representing 0.1 percent of apparent domestic consumption.²⁷³ These imports were purchased by steel distribution centers in three regions of the United States and shipments were made during 34 out of 36 months of the period of investigation.²⁷⁴

The record suggests that imports from Spain were concentrated in commodity grade categories.²⁷⁵ We are persuaded by the Spanish respondents' argument that they do not produce steel specifically for the U.S. market, but instead offer U.S. service centers the particular types of steel that they are already planning to produce for their primary customers in Europe.²⁷⁶ None of the

²⁶⁵ Commissioner Nuzum dissents from the majority's Views on negligibility with respect to imports from Spain and therefore does not join in this discussion. See her Additional and Dissenting Views.

²⁶⁶ Government of Spain, Empresa Nacional Siderurgica, S.A., Union de Empresas Siderurgicas, and Altos Hornos de Vizcaya, S.A. ("Spanish Respondents").

²⁶⁷ Spanish Respondents' Posthearing Br. at 4-5.

²⁶⁸ Id. at 9-10.

²⁶⁹ Id. at 10-11.

²⁷⁰ Petitioners' Posthearing Br. Vol. 4 at 19-20.

²⁷¹ Id. at 20.

²⁷² Report I-137, table 95 n.1 (these totals exclude nonrectangular products ("circles") which have been excluded by Commerce from the scope of the investigation).

²⁷³ Id. at I-147, table 105.

²⁷⁴ Id. at tables L-1, M-5.

²⁷⁵ Petitioners' Posthearing Br. Vol.4 at 19-20 n.55.

²⁷⁶ Spanish Respondents' Posthearing Br. at 10.

Spanish imports were reported to be in any of the niche categories where there was no domestic production.²⁷⁷ Spanish imports were reported by purchasers to be of similar quality with domestic cold-rolled steel.²⁷⁸ Imports from Spain undersold domestic cold-rolled product in 18 of 19 instances at margins between 10 and 27 percent, with only one instance of overselling.^{279 280}

Although certain evidence suggests that imports from Spain are moderately substitutable with domestic cold-rolled products, we find that these imports are negligible and have no discernible impact based on very low volume and market share, and the not particularly price sensitive nature of the cold-rolled market.

V. NO MATERIAL INJURY BY REASON OF LTFV AND SUBSIDIZED IMPORTS

In determining whether the domestic industry is materially injured by reason of the imports under investigation, the statute directs us to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation;
- (II) the effect of imports of that merchandise on prices in the United States for like products; and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States.²⁸¹

In making this determination, we consider "such other economic factors as are relevant to the determination"²⁸² However, we do not weigh causes.^{283 284}

²⁷⁷ Report, table F-3.

²⁷⁸ *Id.* at table 109.

²⁷⁹ *Id.* at I-172, table 110.

²⁸⁰ The Commission was unable to confirm petitioners' allegation of lost revenue to imports from Spain.

²⁸¹ 19 U.S.C. § 1677(7)(B)(i).

²⁸² 19 U.S.C. § 1677(7)(B)(ii).

²⁸³ See, e.g., *Citrosuco Paulista, S.A. v. United States*, 704 F. Supp. 1075, 1101 (CIT 1988).

²⁸⁴ Vice-Chairman Watson, Commissioner Rohr, Commissioner Crawford, and Commissioner Nuzum set forth their various views regarding their material injury causation standards contained in separate footnotes in § V of the Commission's Hot-rolled Views.

A. Cumulated Imports

1. Volume effects

We do not find the volume effect of the LTFV and subsidized cumulated imports of cold-rolled products to be significant.²⁸⁵ While the four Commissioners joining in these Views use different combinations of cumulated countries in their analyses, the volume of cumulated imports used by each Commissioner as a percentage of apparent domestic consumption was low throughout the period examined.²⁸⁶ The cumulated import share of apparent domestic consumption used by each Commissioner rose slightly over the period examined.

During the recessionary period from 1990 to 1991, domestic producer shipments declined by 3.1 million tons. The volume of cumulated imports also fell during this period. As overall demand began to increase in 1992, the domestic industry's shipments increased by 2.9 million tons to a total of 26.5 million tons. From 1991 to 1992, domestic producers increased their share of apparent domestic consumption from 92.9 to 93.1 percent.²⁸⁷ The volume of cumulated imports also increased during this post-recessionary period. A decrease in the volume of nonsubject imports, which declined in 1991 by 0.1 million tons and fell further in 1992, appears to offset a similar small net increase in volume of the cumulated imports in 1992. The share of apparent domestic consumption held by nonsubject imports fell from 0.9 percent in 1990 to 0.7 percent in 1991, and declined further to 0.4 percent in 1992.²⁸⁸

Given the generally stable and very high U.S. industry market share, the shift in market share among the various import sources, and in view of the price and nonprice-related factors discussed below,²⁸⁹ we do not find that, overall, the volume and market share of the cumulated imports were significant.

2. Price effects

In evaluating the effect of LTFV and subsidized imports on prices, the Commission considers whether "there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States," and whether "the effect of imports of such

²⁸⁵ The four Commissioners participating in this portion of the determination cumulated different countries as follows: Vice-Chairman Watson: Brazil, Canada, Germany, Japan, Korea, and the Netherlands; Commissioner Rohr: Canada, Germany, and Japan; Commissioner Crawford: Canada, Germany, Japan, and Korea; Commissioner Nuzum: Belgium, Brazil, Canada, France, Germany, Italy, Japan, Korea, Netherlands, Spain, and South Africa; Thus, all four Commissioners cumulated the three countries with the largest volumes of imports: Japan, Germany, and Canada.

²⁸⁶ Vice-Chairman Watson: quantity rose from 4.8 percent declining to 4.7 percent in 1991, before rising to 5.3 percent in 1992; Commissioner Rohr: quantity remained at 3.1 percent in 1990-91, increasing to 3.3 percent in 1992; Commissioner Crawford: quantity remained at 3.5 percent in 1990-91, increasing to 3.9 percent in 1992; Commissioner Nuzum: quantity rose from 5.7 percent in 1990 to 5.8 percent in 1991, rising to 6.4 percent in 1992 in terms of the total market; quantity rose in the open market from 11.5 percent in 1990 to 12.0 percent in 1991, and to 12.8 percent in 1992.

²⁸⁷ Report I-147, table 105.

²⁸⁸ *Id.*

²⁸⁹ Commissioner Rohr concurs in his colleagues' conclusion that the volume effects of the unfairly traded imports were significant but does not base his conclusion about the significance of volume on price considerations, which are discussed separately below.

merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree."²⁹⁰

A number of factors are relevant to a determination of whether there has been significant price underselling or significant price suppression or depression by the cumulated imports. These factors include the degree of substitutability between domestic and imported cold-rolled products.²⁹¹ The less substitutable products are, the less likely that potential purchasers will make their purchasing decisions based upon price differences between the products.²⁹² As addressed below, the record indicates that the substitutability between the cumulated cold-rolled imports and domestic cold-rolled products is limited.

In assessing the substitutability of imported and domestic products, we considered a number of factors. Cold-rolled products are almost never sold on speculation or to stock steel service centers or end users inventories.²⁹³ They are either sold on the merchant market to unrelated service centers or end users who use these products in the production of a finished product, or to other producers of corrosion-resistant products, or transferred internally to a mill's coating line to be used in the production of corrosion-resistant products.²⁹⁴ In any case, a reliable source of supply with consistent quality is essential to most end users, who often must modify their equipment to accommodate a particular mill's product.²⁹⁵

The record in these investigations shows that there are varying degrees of substitutability for the various categories of cold-rolled products.²⁹⁶ The cold-rolled steel market can be roughly divided into the commercial grade products and specialty (niche), higher priced products used in specific end

²⁹⁰ 19 U.S.C. § 1677(C)(ii).

²⁹¹ Commissioner Nuzum notes that she includes substitutability within the many factors that contribute to her overall analysis; this single factor, however, is not necessarily more important than any other factor.

²⁹² Commissioner Rohr notes that there are a number of other factors which affect the price sensitivity of the market including the degree to which the product category is composed of differentiated niche products as opposed to commodity products and the degree of captive as opposed to open market sales. See his Additional and Dissenting Views concerning Hot-rolled products.

²⁹³ Report I-154.

²⁹⁴ Id. at I-48.

²⁹⁵ Hearing Tr. 754, 758.

²⁹⁶ Vice-Chairman Watson, Commissioner Rohr, and Commissioner Nuzum note that there is evidence of competition between certain imports from Germany and domestic cold-rolled products, as well as evidence that certain imports from Germany may have had adverse impacts on prices for some product categories at certain times during the period of investigation. They have taken this fact into account in their findings that imports from Germany pose a threat of material injury discussed infra, and in their Additional and Dissenting Views. However, the existence of this evidence is not sufficient to create a current significant price suppressing or depressing effect on the domestic industry. Commissioner Rohr notes that these statements are also true for Canada, Korea, and the Netherlands for which he has also made an affirmative threat finding.

use applications.²⁹⁷ The cumulated imports are much more heavily concentrated than the domestic industry in these specialty and niche cold-rolled products such as ultra-bright, ultra-thin (TMBP), cold-rolled motor lamination steel, high carbon steel, hardened carbon steel, and various niche products.²⁹⁸ Many of these specialized products are produced by only a few domestic producers, and in some cases, none.²⁹⁹ In addition, many of the cold-rolled products (and particularly specialized products) are sold on a contract basis to end users, as opposed to spot sales to steel distribution centers.³⁰⁰ These facts further support our conclusion that there is less substitutability between the domestic products and the cumulated imports.

Another factor limiting the substitutability between the cumulated imports and domestic products is the considerable time and expense frequently required by end users to qualify a mill's products. This is particularly true with the highly specialized cold-rolled products where cumulated imports are more concentrated than domestic products.³⁰¹ This factor limits an end-user's ability to switch suppliers³⁰² in response to price changes as reflected in the fact that most purchasers typically

²⁹⁷ For example, product numbers 8, 9, and 11 are considered to be "commercial grade" products for pricing comparisons. All three of these products were produced by a number of domestic producers and there were reported cumulated imports from the cumulated countries of each Commissioner. Products 10 (high carbon steel) and Product 12 (ultra-thin steel) are more specialty products with far fewer domestic producers. In addition, the parties identified a number of "niche" and specialty cold-rolled products that are not widely produced by either the domestic industry or by all cumulated countries, such as niche product numbers 30, 32, 37, 53-60, and 62 where is no domestic production and only a few cumulated countries produce the products. Report, table F-3.

²⁹⁸ In analyzing this issue, we looked at combined totals of cumulated imports from the various Commissioners in 1992 of the following products: CRML, high carbon, ultra-thin, Niche products 31-33, 35-38, 54-62 and divided by the total reported cumulated imports used by each Commissioner. For Vice-Chairman Watson, 27.0 percent; Commissioner Rohr, 33.9 percent; Commissioner Crawford, 29.7 percent; and Commissioner Nuzum, 24.4 percent. By contrast, domestic cold-rolled producers had only 8.4 percent of their production in 1992 of these specialty products, and only 4.14 percent of specialty products in 1991. *Id.* at appendix F; appendix N; Cold-rolled Respondents' Prehearing Br. at 24-25.

²⁹⁹ Petitioners' Prehearing Br. Vol. 6C ex. 41.

³⁰⁰ Both domestic mills and importers report that cold-rolled prices are determined principally by negotiation. Report at I-151. An important factor in price negotiations is the degree to which the cold-rolled product under consideration is specialized in terms of its chemistry, width, gauge, and tolerance; in general, the more specialized the product, the smaller the discount off the published prices. *Id.* Products with very specific tolerances, chemical compositions, widths, and gauges are most frequently sold on a contract basis to manufacturers and end users. *Id.* at I-152. The products sold on a spot basis are usually more standardized and can be put to a variety of end uses. *Id.*

³⁰¹ The majority of cold-rolled purchasers providing questionnaire responses reported that they or their customers require their suppliers to become certified or pre-qualified in order to ensure that the cold-rolled products they purchase meet all of their internal quality and performance standards necessary to produce an end product. *Id.* at I-165. Qualification and certification among major end users such as automobile and appliance manufacturers can take between six months and two years. *Id.* See also Cold-rolled Respondents' Prehearing Br. at 24-25; Cold-rolled Japanese Respondents' Prehearing Br. at 16-32 and Posthearing Br. ex. 4.

³⁰² Indeed, over the prior five year period, only 41 percent of the purchasers answering the questionnaires had ever changed suppliers. Response to Purchaser Questionnaire Question III.C.7 indicate that 48 purchasers did not change a supplier while 34 did.

maintain only a few approved suppliers and do not readily switch suppliers from order to order because of an isolated lower quoted price or any other single factor.

The responses to the Commission's purchaser questionnaires³⁰³ show that "product quality" was identified by 71 responding purchasers as "critical," while "price" was listed by 40 as critical, followed by "suppliers qualification on certain products" and "current availability" by 37 and 36 purchasers respectively.³⁰⁴ Sixty purchasers listed "lead times between order and delivery"³⁰⁵ as very important, 55 listed "long-standing relationships with certain domestic or foreign suppliers," 53 stated that "current availability," and price was listed by 52 purchases as "very important."³⁰⁶

Based on the foregoing discussion, we find that the market for cold-rolled products is not particularly price sensitive.³⁰⁷

Cumulated imports used by each of the individual Commissioners showed considerably more overselling than underselling in the commercial grade products investigated by the Commission over the period examined.³⁰⁸ In addition, cumulated import unit values for the highly specialized niche products were higher in many instances than domestic unit values.³⁰⁹ These data and the factors

³⁰³ Commissioner Rohr and Commissioner Nuzum note that while they have considered the reported relative ranking of purchase criteria, they have given that less weight than other factors.

³⁰⁴ Report I-159.

³⁰⁵ Another factor indicating less substitutability between imported cold-rolled products and the domestic cold-rolled products is the difference in lead times. Lead times between order and delivery can vary somewhat among domestic and foreign producers depending on factors such as a mill's level of capacity utilization, the tonnage ordered, and the extent to which a product requires specific materials or production processes. *Id.* at I-154. With the exception of imports from Canada, overall lead times for imported cold-rolled products are generally longer than domestic products in the same categories; differences in lead times between different countries is generally a function of the geographic proximity to the United States. *Id.* at I-155. Lead times for domestic cold-rolled mills have increased significantly in the first two quarters of 1993 as demand for cold-rolled products from the domestic producers has continued to accelerate. *Id.* at 154.

³⁰⁶ *Id.*

³⁰⁷ See Commissioner Rohr's Additional and Dissenting Views concerning Hot-rolled Products for additional factors he considered relevant to the conclusion that the U.S. market for cold-rolled products is not particularly price sensitive.

³⁰⁸ Vice-Chairman Watson: 327 overselling to 225 underselling; Commissioner Rohr: 248 overselling to 121 underselling; Commissioner Nuzum: 405 overselling to 319 underselling; Commissioner Crawford: 305 overselling to 159 underselling. Even if we were to exclude product 10 from the analysis as argued by petitioners, these trends and our analysis would not change. See *Id.* at N-13, table N-44; Petitioners' Prehearing Br. Vol. 6C at 38 n.96.

³⁰⁹ Report F-10, table F-3 (product 33, Japan; product 34, Germany; product 36, Brazil, Canada, France, Japan, Korea; product 38, Japan and Germany; product 61, Japan). Unit values of cumulated imports from some countries were lower than domestic products in some of the niche products.

identified herein support our conclusion that there is no significant price underselling by the cumulated imports.³¹⁰

We next examine the pricing data for evidence of significant price suppression or depression. We recognize that this evidence of overselling is not in and of itself conclusive of whether the cumulated imports contributed to any price decline or otherwise suppressed domestic prices. Prices of domestically-produced cold-rolled products generally showed flat or slightly declining trends between 1990 and 1992.³¹¹ Price trends for the cumulated imported products also generally declined, although trends for cumulated imported products were more inconsistent and some cumulated import prices rose during the latter portion of 1992.³¹²

One way in which we analyzed whether such price suppression or depression was occurring was to examine closely the relative price movements of domestic products and of the cumulated imports. We examined these movements for the cold-rolled products within the Commission's pricing analysis within the various quarters of the period of investigation.³¹³ We were unable to find any discernible pattern in these data. For example, there were a number of quarters during the period examined where the prices of different cumulated country's products rose at the same time

³¹⁰ We do not accept petitioners' assertions that the pricing comparisons of the Commission are suspect because of overgrading or the providing of "extras" by subject imports at less cost than the domestic industry. Upon being asked to "suggest a method for [the Commission] to see if our pricing data is indeed affected by the overgrading and extras," counsel for petitioners stated that "[o]n the overgrading, it is very, very difficult. We have not come up with a means of doing this because the invoices won't show it." Hearing Tr. 254. We have examined the record and found very little support petitioners' assertions regarding extras for cold-rolled imports from cumulated countries. See e.g., Hearing Tr. 226 (not specifying whether cold-rolled or corrosion); Petitioners' Posthearing Br. Vol. 4, ex. 3 (referencing extras for only cold-rolled imports from Brazil and Italy).

³¹¹ Report I-176.

³¹² *Id.* at appendix N, tables N-8, N-9, N-28. Petitioners claim that price suppression exists in the cold-rolled market because "the subject import average unit values declined by 6.9 percent while the domestic average unit value declined by 3.8 percent over the period of investigation." Petitioners Posthearing Br. Vol. 4 at 50. We do not place significant weight on average unit values measured at the beginning and end of the period of investigation in assessing whether price suppression or depression is occurring within the period of investigation. We have reviewed weighted average cumulated import pricing data from data contained in appendix N to assess whether cumulated import prices declined faster than domestic prices. This analysis does reflect some instances in which cumulated imports for each Commissioner declined faster than domestic prices. Product 8 and 11 (distributors/service centers), Product 9, 11 (manufacturers/end users). However, there was an instance where import prices declined and domestic prices rose. Product 8 (manufacturers/end users)(all except Commissioner Nuzum). There was also an instance in which domestic prices declined while cumulated import prices stayed the same. Product 12 (manufacturers/end users)(all Commissioners). Domestic prices and imported prices in another instance declined at approximately the same rate. Product 9 (distributors/service centers). Having weighed this evidence with all of the other evidence discussed herein, we are not persuaded that it demonstrates significant price suppression or depression. We note that petitioners acknowledge that the decline in the average unit values for the niche products for subject imports (4.0 percent) was practically the same for domestic producers (3.8 percent) during the period of investigation. *Id.* at 51.

³¹³ Products 8, 9, and 11 of these five products are commercial grade, non-specialty products where there is a large volume of domestic production. Products 10 (high carbon) and product 12 (TMBP) are among the specialty products identified in these Views where cumulated imports have a larger share. As discussed *infra*, we did not rely on product 10 in our analysis of trends.

that the prices of domestic products declined.³¹⁴ In a few instances, domestic prices increased while different cumulated country import prices declined.³¹⁵ There were also some quarters where domestic products and cumulated country imports declined in roughly the same pattern.³¹⁶ While we recognize that these examples are not indicative of all comparisons between cumulated import and domestic prices, we find that these conflicting patterns do not support a finding of significant price suppression or depression by reason of the cumulated imports.³¹⁷

The absence of persuasive evidence of price suppression or depression is consistent with the fact that some of the cumulated imports are perceived as higher quality, less substitutable products by domestic purchasers.^{318 319} These purchasers identified many of the cumulated imports, particularly

³¹⁴ EC-Q-080, figure 15 (Germany); figure 16 (Japan, Korea), figure 17 (Korea, Japan, Germany); figure 18 (Korea, Canada, Japan); figure 22 (Japan), figure 23 (Japan).

³¹⁵ *Id.* figure 15 (Korea); figure 17 (Germany).

³¹⁶ *Id.* figure 18 (Brazil); figure 22 (Korea); figure 23 (Canada).

³¹⁷ Our finding of a lack of price suppressive or depressive effect by the individual cumulated country pricing data analyzed above is also confirmed by weighted average pricing data which combines all the pricing data for the total of each Commissioner's cumulated imports. Report, appendix N. In examining this data, we found little correlation between the price movements across a series of quarters within the period of investigation. Domestic prices were flat or slightly declining while imported prices were much more erratic. With respect to sales to distributors, the cumulated import price of product 8 (distributors) rose in five quarters at the same time that domestic prices were flat or declining. For product 9 (distributors), beginning in the fourth quarter of 1991, the cumulated imported prices rose while the domestic price declined slightly. However, import prices for Product 11 (distributors) declined in roughly the same pattern as domestic prices. For prices obtained from manufacturers and end users, product 11 cumulated import prices fluctuated with prices rising in three quarters while domestic prices stayed the same. Similarly, with product 12, imported prices increased steadily from the middle of 1991 at the same time that domestic prices declined slightly. However, cumulated import prices for products 8 and 9 declined in roughly the same pattern as domestic prices. All the results noted above existed with respect to each of the four Commissioners' cumulated countries' data. We have weighed this evidence and do not find that it supports a finding that there has been significant price suppression or depression by the cumulated imports.

³¹⁸ The results of the survey of purchasers' comparison of quality of the domestic and subject import cold rolled products for the various cumulated imports indicates the following: Japan -- 23 purchasers stated that imports from Japan were higher quality based on size ranges, flatness, surface, gauge control, hardness, formability, cleanliness, yield, mechanical properties and shape; 6 stated Japanese products were of the same quality; Germany -- 5 purchasers stated that imports from Germany were higher quality based on flatness, gauge control, shape, finish and surface; 9 purchasers stated that German products were of the same quality; Canada - 3 purchasers stated that imports from Canada were higher quality based on surface, flatness, gauge control, hardness, and paint adhesion; 6 stated that Canadian imports were of the same quality; Korea -- 2 purchasers stated that imports from Korea were higher quality based on gauge control; 9 purchasers stated that Korean products were of the same quality; Netherlands -- 1 purchaser stated that imports from the Netherlands were higher quality based on shape and gauge control; 1 purchaser stated that Dutch products were comparable; France -- 3 purchasers stated that imports from France were higher quality based on size range, shape, consistency, flatness, and surface; 5 stated that French products were comparable in quality; Belgium -- 2 purchasers stated that imports from Belgium were higher quality based on gauge control, flatness, and surface quality; 1 purchaser stated that the Belgium products were comparable in quality. Brazil -- 2 purchasers stated that Brazilian products were

(continued...)

those from Japan, as being of a more consistent quality in terms of gauge, flatness, brightness, or other critical characteristics of the steel that affect the efficiency of downstream operations.³²⁰ Some domestic purchasers indicated that they preferred cumulated imports, particularly those from Japan, of the same specified product because of the savings to be obtained from faster production, lower rates of equipment downtime, greater productivity, and higher quality end products.³²¹

The parties agree that in the past decade the quality of the cold-rolled products produced by the domestic industry has improved, particularly for large domestic auto and appliance end users.³²² There are some indications in the record, however, that domestic purchasers which used both foreign and domestic cold-rolled steel continue to perceive substantial differences in quality between certain subject imports and domestic cold-rolled steel products.³²³ At least with respect to Japanese products, the higher quality and prices are a result, in part, of equipment and processes that are available on only a more limited basis, if at all, in many domestic mills.³²⁴ Other purchasers indicated that domestic producers were unable to produce certain gauges and widths of cold-rolled products available in the cumulated imports.³²⁵

We find that the quality differences between some cumulated imports and the domestic cold-rolled products result limited substitutability and attenuated competition in the particular high end cold-rolled commercial market segments where many of the cumulated imports compete with

³¹⁸(...continued)

higher quality based on surface, gauge control, temper rolling, and shape; 4 purchasers stated that Brazilian products were comparable, and 1 purchaser stated that Brazilian products were inferior based on gauge control and surface. Report I-163, table 109.

³¹⁹ Commissioner Rohr does not join in this or the following two paragraphs.

³²⁰ *Id.* Petitioners argue (without citation) that "evidence on the record of these investigations shows that there are not significant differences in the quality of the imported and domestic cold-rolled products." Petitioners' Posthearing Br. Vol. 4 at 36. We have weighed the evidence in the record and find that there are significant quality differences in many of the cumulated imports and the domestic industry. The fact that both imported and domestic products are manufactured to the same specifications does not, as assumed by petitioners, necessarily mean that the quality of the products are identical. As detailed herein, there are numerous examples where the domestic and cumulated imported products meet the same specification, but where the imported product is perceived by purchasers to be of a better quality, in part because the imported products exceed the specifications. Cold-rolled Japanese Respondents' Prehearing Br. ex. 10.

³²¹ Hearing Tr. 754-57, 764-65; Cold-rolled Japanese Respondents Prehearing Br. ex. 10 and Posthearing Br. ex. 4.

³²² Respondents' Posthearing Br., ex. 2 at 6.

³²³ Hearing Tr. 756-68, 805-12, 833-40, 844-48; Cold-rolled Japanese Respondents' Prehearing Br. ex. 10 and Posthearing Br. ex. 4; Hoogovens' Prehearing Br. exhibits 1-7, 10, 12, 14-17, 22; Usinor's Cold-rolled Prehearing Br. ex. 5.

³²⁴ Cold-rolled Respondents' Posthearing Br. ex. B, C; Cold-rolled Japanese Respondents' Prehearing Br. ex. 7; Hearing Tr. 757, 834-35.

³²⁵ Cold-rolled Respondents' Posthearing Br. ex. A, D, E, H, J; Japanese Cold-rolled Respondents' Prehearing Br. ex. 10 and Posthearing Br. ex. 4; Hoogovens' Posthearing Br. ex. 1, 5; Hearing Tr. 757, 760-61, 763-65, 834-36, 840.

domestic products.³²⁶ In addition, there was attenuated competition between the domestic industry and the cumulated imports in those cold-rolled niche products where the Commission obtained no reports of production by the domestic industry.³²⁷ The evidence of quality differences and the absence of real competition in the niche products identified above, together with the lack of a pattern in price trends leads us to find that the cumulated imports had no significant price suppressing or depressing effect on domestic cold-rolled steel prices.³²⁸

Another factor we³²⁹ considered which supports our conclusion that there has been no significant price suppressing or depressing effects is the evidence that domestic producers were the price leaders in the cold-rolled market of declining prices. A large number of purchasers indicating that domestic producers, not the foreign producers of the cumulated imports, were the cold-rolled market price leaders.³³⁰ Of the 77 purchasers providing responses to the Commission's questionnaire, 69 listed only domestic producers as price leaders, and only two purchasers listed foreign suppliers alone as the price leaders.^{331 332}

³²⁶ Many of the imported cold-rolled products compete in the following product segments where quality has particular significance: TMBP or ultra-thin products, high carbon and hardened carbon steel, cold-rolled motor lamination steel, ultra-bright steel, the various niche products listed in appendix F of the Report, and other commodity grade products where domestic purchasers have identified cumulated imports as meeting tighter tolerances than ASTM specifications.

³²⁷ There were no reported domestic production from the Commission's questionnaire responses for niche products 30, 32, 37, 53-60, 62. These products represented the following percentages of each Commissioner's cumulated imports in 1992: Vice-Chairman Watson, 6.5 percent; Commissioner Rohr, 9.0 percent; Commissioner Crawford, 7.6 percent; Commissioner Nuzum, 5.7 percent. As we discussed in greater detail in the general cumulation provisions in § III(A)(1) of the Hot-rolled Views, the mere fact that the domestic industry claims that it can produce these niche products does not create competition between the subject imports and the domestic cold-rolled products.

³²⁸ Petitioners argue that cold-rolled products are "essentially fungible products, especially for products meeting the same specifications" and [g]iven these market characteristics, it is unlikely that significant underselling or overselling can persist." Petitioners' Prehearing Br. Vol. 6C at 16-17. In our view, the existence of persistent overselling of certain cumulated cold-rolled products is some evidence that certain cold-rolled products are not "essentially fungible." Commissioner Rohr does not agree with or join in this statement.

³²⁹ Commissioner Nuzum does not place great weight on the role of price leadership in these investigations.

³³⁰ Petitioners argue that the term "price leader" is ambiguous and that "many people associated with the industry who discuss price leadership generally mean it to include those producers who lead prices up, not down." Petitioners' Posthearing Br. Vol. 1, ex. 8 at 4-5 ¶¶10-11. In our view, petitioners' argument is flawed by the fact that prices generally declined for most cold-rolled products during the period examined, the time period to which the purchasers were responding in answering the questionnaire. Under these circumstances, the only price leader could be one who led prices down. Moreover, we note that petitioners had several opportunities to comment on the terminology used in the questionnaires and only raised this issue after the results were tabulated.

³³¹ See July 19, 1993 memorandum to Vice-Chairman Watson from International Economist. Vice-Chairman Watson notes that in further assessing whether the cumulated imported products caused substantial price suppression or depression, downward pressure on domestic prices appears to have come from certain domestic producers who increased their shipments during the period examined by a total of 1,001,856 tons. Cold-rolled Respondents' Posthearing Br. at 24-28, exhibits (continued...)

We have also examined the record for other evidence of adverse price³³³ effects by the subject imports, in connection with allegations of lost sales and lost revenues. The record supports some of petitioners' allegations of lost sales and lost revenues.³³⁴ The number of confirmed lost sales and lost revenue allegations from the cumulated countries, while different for each of the three Commissioners that rely upon such evidence,³³⁵ was limited in relation to total revenues and sales of

³³¹(...continued)

10-12. These same companies who increased their domestic shipments and market share in 1992 also tended to have the lowest average unit revenues by company in 1992. *Id.* This evidence suggests that there was intense domestic competition in the cold-rolled market.

³³² Petitioners assert that the definition of product 10 was too broad and that there were problems in the interpretation of the product definition by purchasers, noting that there were no domestic producers of the product 10 (defined as high carbon steel of two different grades in widths between 36" and 51" in width of various thicknesses). Petitioners' Prehearing Br. Vol.6C at 18-20. Petitioners had the opportunity to and made no comments on product 10 prior to the issuance of the questionnaires; nor did they request clarification in the supplemental questionnaires sent to producers and importers. Because product 10 had the same number of instances of overselling and underselling sales reported for Japan, Germany, and Korea, the exclusion of this product would not have changed our conclusion that there was not significant underselling. As noted above, we have analyzed underselling and overselling by cumulated imports in relation to domestic prices. Moreover, there were no domestic sales of product 10 to manufacturers or to distributors (only sales to distributors/end users), so we did not rely on this data in our trends analysis.

³³³ In light of the evidence of more overselling than underselling, lack of substitutability, and the relatively low market share of the cumulated imports, and the factors discussed below, we do not find that there has been a "cost/price" squeeze such as the Commission as found in § V(A)(2) of the Cut-to-length Views which resulted in significant price suppression or depression. Between 1991 and 1992, price declines in the cold-rolled market were not as adverse as they were for the plate market, as reflected by the declining cost of goods sold (COGS)/sales ratio which declined from 99.6 to 99.2. During this period, increased sales quantities and decreased unit COGS more than offset decreased sales prices, resulting in a decreased COGS/sales ratio. This suggests that the domestic cold-rolled industry's profitability ratio improved slightly between 1991 and 1992.

³³⁴ Report I-180, table 117. However, the relatively small number of confirmed lost sales and revenue allegations involving the cumulated imports, together with other evidence discussed above, creates serious doubts about the extent to which domestic purchasers use foreign price quotes to leverage domestic producers to lower their prices as alleged by petitioners. Petitioners' Posthearing Br. Vol. 4 at 35. Moreover, virtually all of the purchasers contacted reported that they would never directly shop a foreign quote around to domestic producers to try to get them to lower their prices. Report I-181.

³³⁵ Vice-Chairman Watson: 9 lost sales/revenue of 6,525 tons worth \$3,474,000; Commissioner Rohr: 4 lost sales/revenues of 1,825 tons worth \$855,000; Commissioner Nuzum: 14 lost sales/revenues of 11,775 tons worth \$5,869,800.

Of the allegations concerning lost sales/revenues made by petitioners, the Commission contacted purchasers involved in approximately 52 percent of the tonnage and 60 percent of the value alleged to have been lost. EC-Q-084. Even assuming that there would have been a corresponding increase in the number of confirmed lost sales and revenue if all contacts had been made, we do not find that the volume and value of such lost sales/revenues indicate significant price effects from the cumulated imports due to their small size relative to the total domestic industry.

the industry as a whole during the period examined, and is not sufficient, in and of itself, to demonstrate significant adverse price effects.^{336 337}

We carefully considered petitioners' arguments that the pricing data used by the Commission in these investigations do not accurately reflect the degree of underselling by cumulated imports in the domestic cold-rolled market.³³⁸ Petitioners argued that the Commission's pricing data were flawed because they compared small volume sales of imports to large volume sales of domestic products without taking into account volume discounts in some large domestic sales.³³⁹ To test for such possible bias, we recalculated pricing data based solely on total quarterly sales of quantities less than or equal to one thousand tons to reduce the possibility that discounts on large sales would skew pricing trends in general.³⁴⁰ This methodology did not change the trends in the pricing data, but rather continued to show that cumulated imports oversold domestic products in the majority of comparisons.³⁴¹

³³⁶ During the three year period examined covered by the lost sales and lost revenue allegations, the total volume of sales for the domestic cold-rolled industry was 70,979,000 tons worth \$30,215,000,000. *Id.* at C-5, table C-3.

³³⁷ We are cognizant that significant price suppression can occur where higher priced but better valued goods are sold in competition with a lower priced but lower-valued goods. Compare Maine Potato Council v. United States, 613 F.Supp. 1237, 1245 (CIT 1985). We do not find that this dynamic occurred in these investigations given the absence of identifiable, consistent patterns of price depression in the analysis of pricing, the limited substitutability between many the cumulated imports and the domestic products, the absence of significant volumes of cumulated imports, as well as the other factors we have identified herein.

³³⁸ See Petitioners' Posthearing Br. Vol. 3 at 32-45, Vol. 4 at 37-38.

³³⁹ *Id.*

³⁴⁰ See EC-Q-084. Our data indicate that the vast majority of U.S. producers and importers' sales during the period of investigation were in quantities of 1,000 short tons or less.

³⁴¹ Petitioners claim that there were a number of deficiencies in the manner in which the Commission created the pricing database for cold-rolled products. Petitioners' Prehearing Br. Vol. 6C at 18 ex. 13. We reject these complaints for the following reasons: First, half of the purchaser data set was only included in the prehearing report, while the entire purchaser data base including all pricing comparisons was set forth in the final report; this disposes of 20 of the 34 complaints relating to alleged missing data. Second, petitioners make a number of incorrect assertions; product 8 data was included for [***]; we included the two quarters of data of product 9 reported by [***]; we did not include data for product 9 [***] for [***] because the company purchased its imports through a service center and not mill direct; and [***] combined pricing for products 8 and 9 which made the data unusable. Third, two complaints were addressed in the final report regarding revised data for product 8 for [***], and [***] sales to end users of Product 9. Fourth, we omitted data concerning product 10 purchased by service centers because of the manner in which the questionnaire respondent rounded its data led to extraordinarily large prices for the first quarter of 1990 and the second quarter of 1992. Fifth, we reject petitioners assertion that an average unit value of [***] product 9 should have been included because we found this to be an unrealistically low number. Sixth, we reject petitioners vague and unsubstantiated complaints concerning product 8 [***] end users, product 9 domestic service centers, product 9 [***] service centers, and product 9 [***] service centers, Seventh, for the reasons set forth in the related parties discussion, we reject petitioners' complaint that data for UPI [***].

Finally, petitioners argued that the fact that domestic mills were successful in enforcing several price increases after the preliminary bond requirements took effect pursuant to these investigations shows that the cumulated imports were suppressing or depressing domestic prices.³⁴² As discussed above, there is extensive evidence on the record suggesting that the subject imports did not significantly suppress or depress prices during the period examined. In light of this evidence, and evidence of improved economic conditions in 1993 as compared to the full three-year period examined, we are unable to conclude that the domestic producers' ability to enforce price increases after bond requirements were in place definitively shows there was price suppression or depression during the period examined.^{343 344}

3. Impact on the Affected Domestic Industry

In assessing the impact of subsidized and LTFV imports on the domestic industry we consider, among other relevant factors, U.S. output, sales, inventories, capacity utilization, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development.³⁴⁵

The domestic industry's financial and operating performance did decline throughout the period, but improved somewhat with increased demand resulting from the improved U.S. economy in 1992.³⁴⁶ Profitability in the industry declined markedly, starting with operating income of \$378

³⁴² Petitioners' Prehearing Br. Vol. 6B at 19.

³⁴³ Consistent with its longstanding policy, the Commission has not collected data outside of the three year period of investigation concerning U.S. consumption, shipments, value, capacity, prices or other data which would indicate whether demand continued to increase during 1993 and domestic capacity utilization increased at the time that petitioners alleged that prices have increased. We decline simply to accept petitioners' assertions that the price increases in 1993 were attributable to the imposition of preliminary bond requirements resulting from these investigations without analysis of the underlying economic factors which could explain such increases. We note that there were increased lead times for receipt of cold-rolled products from domestic producers in 1993. Petitioners' Posthearing Br. Vol. 4, ex. 3 ¶ 3, ex. 21 ¶ 4. This may suggest that increased domestic demand from such large consumers of cold-rolled steel, such as domestic automakers, and not these investigations, has generated the price increases alleged by petitioners. See generally General Motors v. United States, Slip. Op. 93-128 (July 12, 1993 CIT) at 11-14.

³⁴⁴ Commissioner Rohr does not rely on conditions in 1993 in reaching his conclusions.

³⁴⁵ See 19 U.S.C. § 1677(7)(C)(iii).

³⁴⁶ Vice Chairman Watson notes that some financial indicators in the period change between 1991 and 1992 and support the conclusion that the health of the cold-rolled industry is improving. Production, capacity utilization, shipments, operating income and market share all improved between 1991 and 1992. At the same time, unit cost of goods sold declined partly as a result of declining unit labor costs. Report at C-3.

Current (1993) public data support this conclusion. Market prices of flat-rolled carbon steel products have been rising recently. During the first five months of 1993, prices on hot-rolled, cold-rolled, and plate products have steadily risen. (Steel Market Outlook, WEFA, formerly known as Wharton Econometrics Forecasting Group, 1993.) See also Hearing Tr. at 872. He also notes that U.S. imports of carbon steel slabs rose by 26% during the first five months of 1993 compared with the same period of the previous year to 956,000 tons valued at \$178 million. (Compiled from official statistics of the U.S. Department of Commerce). According to Horst Buelte, president of the American Institute for International Steel, these semi-finished materials were bound for U.S. steelmakers who are constrained by their own hot metal capacity. According to the official,

(continued...)

million in 1990 and ending with operating losses of \$397 million in 1992. Yet, the domestic industry increased market share by a small amount during the period examined.

Additionally, just over half of the production in the domestic industry is captively consumed and is shielded to a large extent from any potential adverse effects of subsidized and LTFV imports. Petitioners admit that integrated steel mills have strong incentives to use their own cold-rolled material in the production of downstream products because they have better control over the upstream inputs and are able to keep their plant and equipment in use to offset their high fixed cost of production.³⁴⁷ While we recognize that any effect of subsidized and LTFV imports on the domestic industry may be intensified because of the high fixed cost structure of the industry, we find that any limited impact the cumulated imports may have had on the domestic industry's operations is not so significant as to impact the domestic industry as a whole to a degree that warrants an affirmative determination.³⁴⁸ Finally, as detailed above, cumulated imports maintained a low volume and market share throughout the period examined and had no significant volume or adverse price effects.

4. Conclusion

Based on the foregoing, we find that the record does not support a conclusion that cumulated imports had a significant adverse volume or significant price depressive or suppressive effect on the domestic industry. Nor do we find that there was significant underselling by the cumulated imports. Accordingly, we find that the domestic industry producing cold-rolled steel products is not materially injured by reason of the cumulated LTFV and subsidized imports.

B. Non-cumulated Negligible Imports³⁴⁹

As discussed above in the cumulation section of this determination, individual country imports from Argentina, Austria, Belgium, France, Italy, and Spain were insignificant in absolute volume³⁵⁰ and as a share of domestic consumption.³⁵¹ The general material injury discussion above

³⁴⁶ (...continued)

"producers have been operating at full capacity in recent months. Their heavy reliance on imported semi-finished material suggest their finishing facilities are operating beyond the capacity of their smelting and refining stages." (American Metal Market, July 20, 1993, p.2.)

³⁴⁷ Petitioners' Prehearing Br. Vol. 3 at 31, 34.

³⁴⁸ Even in the merchant market sector of the domestic industry, cumulated imports have not had a significant impact on the domestic industry because of their limited substitutability resulting from quality and other nonprice factors discussed in the price effects section, supra.

³⁴⁹ Vice-Chairman Watson does not join in the discussion of Italy; Commissioner Rohr also found imports from Brazil, Korea, and the Netherlands to be negligible as addressed in his Additional and Dissenting Views; Commissioner Crawford also found Brazil and the Netherlands to be negligible as addressed in her Additional and Dissenting Views. Commissioner Nuzum joins in this discussion only as it relates to Argentina and Austria, and sets forth her analysis regarding cumulation of the other countries in her Additional and Dissenting Views.

³⁵⁰ The absolute volumes from each of these countries in 1992 is as follows: Argentina 33,779 tons; Austria 2,330; Belgium 126,775; France 125,290; Italy 47,749; and Spain 44,922.

³⁵¹ The 1992 volume share of apparent domestic consumption of these countries is as follows: Argentina 0.1 percent; Austria 0.007 percent; Belgium 0.4 percent; France 0.4 percent; Italy 0.2
(continued...)

concerning the cumulated cold-rolled imports also supports a finding of the insignificance of the volume of these individual imports; in particular, the increasing volume of domestic producers during 1991-92, the domestic industry's steady share of apparent domestic consumption throughout the period of investigation, and the decrease in share of apparent domestic consumption held by non-subject imports.

In light of the fact that the cold-rolled market is not particularly price sensitive, the record does not contain persuasive evidence that the small volume of imports from any one of these countries, considered independently, had a significant suppressing or depressing effect on domestic prices. We find this to be true even where there is evidence that these subject imports were moderately substitutable with domestic products, and where there was evidence of underselling. We also note that there were relatively few lost sales from the individual negligible countries.³⁵² In sum, we conclude that the volume, value and market share of imports from each country were too small, individually, to have any significant effect on domestic prices.

In light of these conclusions and our previous determinations in the cumulation analysis above that imports from each one of these countries did not have any discernible adverse impact on the domestic industry,³⁵³ we determine that the domestic industry producing cold-rolled flat products is not materially injured by reason of subject imports from any of the noncumulated countries' imports of cold-rolled products.

VI. DETERMINATIONS REGARDING THREAT OF MATERIAL INJURY³⁵⁴

We determine that there is a threat of material injury from cold-rolled subject imports from Germany. We determine that there is no threat of material injury from subject imports from Argentina, Austria, Belgium, Brazil, Canada, France, Italy, Japan, and Spain.³⁵⁵

A. Legal Standards

Section 771(7)(F) of the Act directs the Commission to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the

³⁵¹ (...continued)
percent; and Spain 0.1 percent. Report I-147. Commissioner Nuzum notes that cold-rolled imports from Argentina and Austria accounted for 0.2 percent and less than 0.1 percent, respectively, of 1992 merchant consumption.

³⁵² Report I-179, table 115. Among the negligible countries, only Austria (1), France (3), and Italy (2) had any lost sales allegations confirmed.

³⁵³ See supra, discussion of each country in the Cumulation section of this determination.

³⁵⁴ Vice Chairman Watson joins in all portions of this section of the Views except Italy. Commissioner Rohr joins in all portions of this section of the Views, and also determines that imports from Canada, Korea, and the Netherlands pose a threat of material injury to the domestic industry. Commissioner Brunsdale and Commissioner Crawford join in all portions of this section of the Views except for the discussion of Germany; Commissioner Nuzum joins only the discussion of Argentina, Austria, Canada and Japan and presents her analysis with regard to her affirmative threat determinations in her Additional and Dissenting Views.

³⁵⁵ We adopt the discussion of general threat issues contained in § VI(A) of the Commission's Hot-rolled Views.

threat of material injury is real and that actual injury is imminent,"³⁵⁶ and directs us to consider a number of criteria which are addressed below.³⁵⁷ While an analysis of the statutory threat factors necessarily involves projection of likely future events, "[s]uch a determination may not be made on the basis of mere conjecture or supposition."³⁵⁸ In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.³⁵⁹

B. Cumulation for threat analysis^{360 361}

As a threshold matter, we must consider whether to cumulate imports from the twelve subject countries, or any subset of these countries, for purposes of our threat analysis. The statute indicates that, in its threat analysis, "[t]o the extent practicable . . . the Commission may cumulatively assess the volume and price effect of imports from two or more countries. . . ."³⁶² Hence, cumulation for threat analysis, in contrast to cumulation for material injury analysis, is discretionary.

We have determined to exercise our discretion not to cumulate any of the subject imports for a number of reasons. First, there is a lack of uniformity of pricing trends among the twelve subject countries.³⁶³ Similarly, volume and market penetration trends vary among the subject countries.³⁶⁴ Moreover, the market shares of many of the subject countries are extremely low; seven have market shares of less than 0.5 percent.³⁶⁵ These factors, which render meaningful cumulative analysis

³⁵⁶ 19 U.S.C. § 1677(7)(F)(ii).

³⁵⁷ See 19 U.S.C. § 1677(7)(F)(iii).

³⁵⁸ 19 U.S.C. § 1677(7)(F)(ii). See also S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (CIT 1990).

³⁵⁹ 19 U.S.C. § 1677(7)(F)(iii)(I). These investigations do not involve agricultural products.

³⁶⁰ Commissioner Nuzum and Commissioner Rohr do not join in this discussion. See their separate Additional and Dissenting Views.

³⁶¹ Commissioner Rohr notes that while he does not formally cumulate imports for purposes of his threat analysis he will, in appropriate circumstances, view the presence of other unfairly traded imports as another demonstrable adverse trend affecting the industry. He notes that the four countries he has cumulated tend to have similar trends and he did consider the presence of such imports as another demonstrable adverse trend.

³⁶² 19 U.S.C. § 1677(7)(F)(iv) (emphasis added).

³⁶³ Report, appendix N. For example, imports of cold-rolled from Japan oversold the domestic industry by large margins while other countries such as Italy, Brazil, the Netherlands, and Spain had considerably more underselling than overselling; other countries such as Austria and Argentina had mixed over and underselling.

³⁶⁴ *Id.* at I-137, table 95 and I-147, table 105. For example, in 1992, Japan has a market share of 1.3 percent while Austria has a market share of 0.007 percent; The Japanese, Argentine, and Belgium market shares declined over the period of investigation, while imports from Korea, Germany, Canada, and Spain increased.

³⁶⁵ *Id.* at I-147, table 105.

difficult in the context of threat, have been held to constitute a sufficient basis for the Commission to decline to cumulate for threat analysis.³⁶⁶

We also find that the same negligibility factors which we based our determination not to cumulate certain countries for cumulation for purposes of material injury also support the determination not to cumulate for threat. The market shares for Argentina, Austria, Belgium, France, Italy, and Spain were very low, and in most cases declined over the period of investigation. In addition, we found that these imports had no discernible adverse impact on the domestic industry. Having found that these countries should not be cumulated for material injury, we find no evidence in the record which compels us to conclude that these countries should now be cumulated for our threat analysis.

Accordingly, we make a separate threat determination for each subject country. In each instance, we consider all statutory considerations applicable to these investigations.³⁶⁷ We consider no single factor to be dispositive.

C. Affirmative Threat Determinations: Germany^{368 369}

The subsidies determined by the Commerce department provided to German producers in this case did not include export subsidies.³⁷⁰ German productive capacity for cold-rolled steel products declined over the period of investigation.³⁷¹ Capacity utilization rates increased slowly over the period, but they remain at relatively low levels.³⁷²

We find, however, that imports from Germany pose a threat of material injury to the domestic cold-rolled industry. Market penetration of German imports by quantity increased over the period, rising to 1.2 percent in 1992; by value, German market penetration was relatively constant

³⁶⁶ The CIT has held that disparity in the patterns of volume increases and decreases and varied pricing patterns are a sufficient basis to decline to cumulate the subject imports from various countries. Asociación Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988). In addition, as discussed in our threat of material injury analysis, we reject petitioners' argument that the threat of market-shifting agreements between subject countries is high because of the alleged existence of cartels and non-tariff barriers. Petitioners' Prehearing Br. Vol. 7A at 32.

³⁶⁷ Because these investigations do not concern agricultural products, statutory factor (IX) is inapplicable. Statutory factor (I), concerning subsidies, is applicable to all countries except Argentina, Canada, Japan, and the Netherlands.

³⁶⁸ Vice-Chairman Watson and Commissioner Rohr join in this discussion. Commissioner Brunsdale and Commissioner Crawford do not join in this discussion. See their separate Additional and Dissenting Views. Commissioner Nuzum also made affirmative threat determinations with respect to imports from Germany, but for the reasons stated in her Additional and Dissenting Views; she does not join in this discussion.

³⁶⁹ For affirmative threat determinations for Korea and the Netherlands see the Additional and Dissenting Views of Commissioner Newquist, the Additional and Dissenting Views of Commissioner Nuzum, and the Additional and Dissenting Views of Commissioner Rohr.

³⁷⁰ Report appendix E, E-13.

³⁷¹ Id. at I-112, table 70.

³⁷² Id.

despite average price declines, and ended the period at 1.5 percent. Volumes of imports from Germany increased from 322,230 tons in 1990 to 335,533 tons in 1992.³⁷³

As a share of domestic German production, German exports to the United States increased over the period of investigation.³⁷⁴ Home market shipments declined, indicating that German home market demand is weak and falling.³⁷⁵ Exports to countries other than the United States as a share of total shipments also declined.³⁷⁶ Thus over the period of investigation, Germany has shifted exports from the home market and third country markets to the U.S. market.³⁷⁷ Partially fueling this increase in exports has been an increase in German steel imports from Eastern Europe with imports from the former Czechoslovakia and Poland increasing rapidly.³⁷⁸

We also find a probability that imports of cold-rolled steel from Germany will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. German average import prices for cold-rolled steel products declined steadily over the period of investigation.³⁷⁹ In addition, pricing comparisons collected by the Commission show 71 instances of underselling and 64 instances of overselling by German cold-rolled products.³⁸⁰ Many German cold-rolled products, as contrasted with cold-rolled products from Japan, were concentrated in relatively fungible commodity grade products which directly competed with the domestic industry.³⁸¹

While inventories of German cold-rolled steel products [***] over the period of investigation, they are expected to [***] in 1993.³⁸²

In addition, given the Commission's affirmative material injury determination on corrosion-resistant products from Germany, there would be the possibility of a shift of cold-rolled feedstock from the production of corrosion to cold-rolled sales. The four German producers of cold-rolled products also produce corrosion-resistant products.³⁸³ The increase in German production of corrosion-resistant products between 1990 to 1992 was accounted for almost exclusively by increases in sales in the U.S. market.³⁸⁴ In addition, German exports of corrosion-resistant steel are projected

³⁷³ Id. at I-137, table 95.

³⁷⁴ Id. at I-112, table 70.

³⁷⁵ Id.; Petitioners' Prehearing Br. Vol. 7A at 55.

³⁷⁶ Report I-112, table 70.

³⁷⁷ Id.

³⁷⁸ German steel gloom deepens, Steel Times, Nov. 1992, at 500.

³⁷⁹ Report I-112, table 70.

³⁸⁰ Id. at I-72-75.

³⁸¹ Id. at appendix N.

³⁸² Id. at I-112, table 70.

³⁸³ Id. at I-112, I-113.

³⁸⁴ Id. at I-113.

to decline in 1993.³⁸⁵ While we recognize that these four German producers have an incentive to maintain production of their corrosion facilities in light of significant investments, the facts outlined above suggest that there is the possibility that some of the captive cold-rolled products used in corrosion-resistant steel would be diverted for sale as cold-rolled products. While this possibility might increase the threat, we regard the other evidence of threat to be a sufficient basis to make an affirmative threat finding in this case.

Finally, we find that given the size and nature of the German imports of cold-rolled products during the period of investigation, and the potential for injurious levels of such imports to enter the United States in the future, that there is a possible negative effect on the existing development and production efforts of the domestic industry. While we note that this effect is not quantifiable, there are planned improvements by domestic cold-rolled producers scheduled to begin between 1993 through 1996 as well as ongoing improvements scheduled to be completed between 1993 and 1996 which could be detrimentally affected by the increasing volumes of LTFV and subsidized imports from Germany.³⁸⁶

In accordance with 19 U.S.C. § 1673d(b)(4)(B), we must make an additional finding as to whether material injury by reason of the imports would have been found but for the suspension of liquidation of entries of such imports. This finding is required so that Commerce may impose dumping duties as of the appropriate date. Suspension of liquidation on the subsidized imports from Germany became effective on December 7, 1992,³⁸⁷ and for the LTFV imports from Germany on February 4, 1993.³⁸⁸ We find that the financial health of the cold-rolled industry had not deteriorated to the point where the subject imports from Germany would have resulted in material injury but for either suspension of liquidation. Accordingly, we do not find that, had there not been suspension of liquidation, the domestic industry would have been materially injured by reason of the subject imports.

In light of the foregoing, we find there is a threat of material injury by reason of imports of cold-rolled products from Germany.³⁸⁹

³⁸⁵ Id.

³⁸⁶ Id. at I-87; see also, Id. at appendix G.

³⁸⁷ 57 F.R. 57750, December 7, 1992.

³⁸⁸ 58 F.R. 7066, February 4, 1993.

³⁸⁹ Commissioner Rohr notes that he did consider the volumes of unfairly traded imports from Canada, Korea and the Netherlands, as to which he made affirmative threat findings, as another demonstrable adverse trend affecting the domestic industry.

D. Negative Threat Determinations^{390 391}

Argentina³⁹²

Argentine productive capacity for cold-rolled steel products [***] throughout the period of investigation.³⁹³ Capacity utilization rates [***] to [***] by the end of the period of investigation.³⁹⁴ There is evidence which suggests that privatization of Argentine plants will result in the consolidation and downsizing of Argentine production facilities in the future.³⁹⁵

Market penetration of Argentine imports did not "rapidly increase" between 1990 and 1992; despite an increase from 1990 to 1991, market penetration in 1992 fell back to its 1990 level.³⁹⁶ No evidence suggests that this small level of imports is likely to increase to injurious levels in the immediate future.

We find no probability that imports of cold-rolled steel from Argentina will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based on our finding as discussed above in the negligibility analysis that the subject imports from Argentina have no adverse impact on the domestic industry, as well as for the reasons set forth in our general discussion of causation. No credible evidence has been presented which indicates that imports will have an adverse price effect in the immediate future.

While inventories of Argentine cold-rolled steel [***] both from 1990 to 1991 and from 1991 to 1992, inventories as a percent of production [***] over the period of investigation.³⁹⁷ In addition, both inventories and inventories as a percent of production are [***] in 1993.³⁹⁸ The record, therefore, does not indicate any substantial future increase in inventories which would threaten the domestic industry.

³⁹⁰ Commissioner Nuzum joins this discussion only as it relates to Argentina, Austria, Canada, and Japan.

³⁹¹ Commissioner Rohr notes that he generally did not place great weight on the projections made by foreign respondents as to production levels or shipments. He did not rely on such projections as a basis for his negative threat determinations.

³⁹² We have considered petitioners' threat arguments for all subject countries in their prehearing and posthearing briefs. Since the Commission is required to analyze threat based upon total industry data including captive shipments, we do not respond to all of petitioners' assertions individually which were based primarily upon merchant market industry data only. See Petitioners' Prehearing Br. Vol. 7A at 119-126 and Petitioners' Posthearing Br. Vol. 4 ex. 16.

³⁹³ Report I-140, table 49.

³⁹⁴ Id. Argentine respondents state that high capacity utilization of cold-rolled lines eliminates the likelihood of product shifting and they also state that no other facilities could be shifted to produce cold-rolled products. Argentine Respondents' Prehearing Br. at 28.

³⁹⁵ Id. at 24-28.

³⁹⁶ Report I-147, table 105.

³⁹⁷ Id. at I-96.

³⁹⁸ Id.

Argentine home market shipments [***] as a share of total shipments in 1992.³⁹⁹ Exports of Argentine steel are expected to [***].⁴⁰⁰ In addition, petitioners' allegation that the privatization of SOMISA will lead to excess capacity in Argentina is contradicted by the record.⁴⁰¹ Argentina is currently subject to a countervailing duty order (issued in 1984) on its exports of cold-rolled products to the United States.⁴⁰²

Finally, we do not find that imports from Argentina of cold-rolled steel products have or will have a negative effect on the development and production efforts of the domestic industry. Research and development expenditures for cold-rolled steel remained stable during the period.⁴⁰³ Moreover, we do not find that the small volume of imports from Argentina were a causal factor in the decline in capital expenditures over the period or are likely to contribute to further decline.⁴⁰⁴

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports from Argentina.

Austria

The subsidies determined by the Commerce Department provided to Austrian producers in this case were relatively small and did not include export subsidies.⁴⁰⁵ In addition, Austrian productive capacity for cold-rolled steel products [***] throughout the period of investigation and is projected [***] in 1993.⁴⁰⁶ Capacity utilization ratios [***] but remained at [***] over the period of investigation; the ratio for 1993 is projected to [***].⁴⁰⁷

³⁹⁹ Id.

⁴⁰⁰ Id.

⁴⁰¹ The capacity utilization data in the Report does not support petitioners' assertion that the privatization of SOMISA will result in significant excess cold-rolling capacity in Argentina. Id. at I-96, table 49; Petitioners' Prehearing Br. Vol. 7A at 120. Indeed, the Argentine respondents provide evidence that the Argentine cold-rolled industry has downsized, cutting capacity and employment and increasing capacity utilization over the period of investigation. Prehearing Br. of Propulsora Sederurgica SAIC and Aceros Parana S.A. ("Argentine Respondents") at 25.

⁴⁰² Id.

⁴⁰³ Report I-84, table 41 and I-79, table 35.

⁴⁰⁴ Id. at I-86.

⁴⁰⁵ Id. at appendix E, E-12.

⁴⁰⁶ Id. at I-97, table 51. Petitioners allege that Austria has plans to add capacity by 1995, but this future increase is not reflected in the projected capacity figures for 1993, and respondents rightly point out that this information obtained in a news article is conjecture and does not represent evidence, and even if true, does not pose an imminent threat of material injury. Petitioners' Prehearing Br. Vol. 7A at 121; Posthearing Br. of Voest-Alpine Stahl AG ("Austrian Respondents") at 17. In addition, respondents state that they are a strong market participant in the EC and EFTA and are increasing shipments to Eastern Europe. These regions, they state, account for the vast majority of export shipments where demand is strong for their high quality cold-rolled steel. We find these statements to be credible and conclude that Austrian producers do not have excess capacity for increased sales to the U.S. market. Id. at 16.

⁴⁰⁷ Report I-97, table 51.

Market penetration of Austrian imports did not "rapidly increase" between 1990 and 1992; market penetration by quantity and by value was constant between 1990 and 1991 at 0.3 percent, and in 1992 market penetration fell to less than 0.01 percent.⁴⁰⁸ No evidence suggests that this small level of imports is likely to increase to injurious levels in the immediate future.

We find no probability that imports of cold-rolled steel from Austria will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based on our finding as discussed above in the negligibility analysis that the subject imports from Austria have no significant present effect on prices. No credible evidence has been presented which indicates that imports will have an adverse price effect in the immediate future.

Inventories of Austrian cold-rolled steel [***] from 1990 to 1991 [***] in 1992.⁴⁰⁹ Inventories as a percent of Austrian production [***] between 1990 and 1992.⁴¹⁰ While inventories are projected to [***] in 1993, the [***] of such cold-rolled products inventories does not suggest a threat of material injury to the domestic industry.

As a share of production, Austrian exports to the United States [***].⁴¹¹ Home market shipments [***] over the period of investigation, but they [***] as a share of total shipments.⁴¹² Exports of Austrian steel are expected to [***] in 1993 with exports to the U.S. market [***].⁴¹³ In addition, Austrian respondents state that their basic strategy is [***].⁴¹⁴

Finally, we do not find that imports from Austria of cold-rolled steel products have or will have a negative effect on the development and production efforts of the domestic industry. Research and development expenditures for cold-rolled steel remained stable at a relatively low percentage of trade sales during the period of investigation.⁴¹⁵ Moreover, we do not find that the small volume of imports from Austria were a factor in the decline in capital expenditures over the period of investigation or are likely to contribute to further declines.⁴¹⁶

We find no threat of material injury to the domestic industry producing cold-rolled flat products by reason of the LTFV imports from Austria.

⁴⁰⁸ Id. at I-147, table 105.

⁴⁰⁹ Id. at I-197, table 51.

⁴¹⁰ Id.

⁴¹¹ Id., table 51.

⁴¹² Id.

⁴¹³ Id.

⁴¹⁴ Austrian Respondents' Posthearing Br. at 16.

⁴¹⁵ Report I-84, table 41 and I-79, table 35.

⁴¹⁶ Id. at I-86.

Belgium⁴¹⁷

The subsidies determined by the Department of Commerce provided to Belgian producers in this case were primarily accounted for by the assumption of debt and did not include export subsidies.⁴¹⁸ In addition, Belgian productive capacity for cold-rolled steel products [***] over the period of investigation and is [***] in 1993.⁴¹⁹ Capacity utilization ratios [***] over the period and are projected to [***] in 1993.⁴²⁰

Market penetration of Belgian imports did not "rapidly increase" between 1990 and 1992. By quantity, it increased between 1990 and 1991 but fell back to its 1990 level of 0.4 percent in 1992; market penetration by value increased slightly to 0.5 percent between 1990 and 1991 and remained there in 1992.⁴²¹ No evidence suggests that this small level of imports is likely to increase to injurious levels in the immediate future.

We find no probability that imports of cold-rolled steel from Belgium will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based on our finding in the negligibility analysis above that the subject imports from Belgium have no adverse impact on the domestic industry, as well as for the reasons set forth in our general material injury analysis. No credible evidence has been presented which indicates that imports will have an adverse price effect in the immediate future.

Inventories of Belgian cold-rolled steel were [***] over the period of investigation; they are projected to [***] in 1993.⁴²² Inventories as a share of total shipments [***] and therefore do not pose a threat of material injury to the domestic cold-rolled industry.⁴²³

We have identified no other adverse trends that would suggest a threat of material injury by the subject imports from Belgium. As a share of production, exports to the United States [***] over the period of investigation, but this share is expected to [***] in 1993.⁴²⁴ Home market shipments as a share of total shipments [***] over the period of investigation.⁴²⁵

Finally, we do not find that imports from Belgium of cold-rolled steel products have or will have a negative effect on the development and production efforts of the domestic industry. Research and development expenditures for cold-rolled steel remained stable at a relatively low percentage of

⁴¹⁷ Commissioner Nuzum dissents from the majority's determination with respect to imports from Belgium and therefore does not join in this discussion. See her Additional and Dissenting Views.

⁴¹⁸ Id. at appendix E, E-13.

⁴¹⁹ Id. at I-99, table 54.

⁴²⁰ Id.

⁴²¹ Id. at I-247, table 105.

⁴²² Id. at I-99, table 54.

⁴²³ Id.

⁴²⁴ Id.

⁴²⁵ Id.

trade sales during the period of investigation.⁴²⁶ Moreover, we do not find that the small volume of imports from Belgium were a causal factor in the decline in capital expenditures over the period of investigation or are likely to contribute to further declines.⁴²⁷

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports.

Brazil⁴²⁸

The subsidies determined by the Commerce department provided to Brazilian producers in this case included very small percentages of export subsidies of between 0.11 and 0.19 percent.⁴²⁹ In addition, Brazilian productive capacity for cold-rolled steel products [***] over the period of investigation.⁴³⁰ Capacity utilization rates [***] over the period to a [***] in 1992; Brazilian capacity utilization rates are projected to [***].⁴³¹

Market penetration of Brazilian imports did not "rapidly increase" between 1990 and 1992. By quantity and by value, it remained constant at relatively low levels over the period.⁴³² No evidence suggests that this small level of imports is likely to increase to injurious levels in the immediate future.

We find no probability that imports of cold-rolled steel from Brazil will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based on our finding in the negligibility analysis above that the subject imports from Brazil have no adverse impact on the domestic industry, as well as for the reasons set forth in our general material injury analysis. No credible evidence has been presented which indicates that imports will have an adverse price effect in the immediate future.

Inventories of Brazilian cold-rolled steel [***] over the period of investigation but [***]; inventories are projected to [***] in 1993.⁴³³ These small volumes of inventories have not and will not pose a threat of material injury to the domestic cold-rolled industry.⁴³⁴

We have identified no other adverse trends that would suggest a threat of material injury by the subject imports from Brazil. As a share of production, exports to the United States [***] over

⁴²⁶ *Id.* at I-84, table 41 and I-79, table 35.

⁴²⁷ *Id.* at I-86.

⁴²⁸ Commissioner Nuzum dissents from the majority's determination with respect to imports from Brazil and therefore does not join in this discussion. See her Additional and Dissenting Views.

⁴²⁹ *Id.* at appendix E, E-14.

⁴³⁰ *Id.* at I-101, table 57.

⁴³¹ *Id.*

⁴³² *Id.* at I-147, table 105.

⁴³³ *Id.* at I-101, table 57.

⁴³⁴ *Id.*

the period of investigation.⁴³⁵ Home market shipments [***] and are projected to [***] in 1993.⁴³⁶ As a share of total shipments, home market demand [***] over the period of investigation, but the share of total shipments accounted for by exports to countries other than the United States [***] over the period and is projected to [***] in 1993.⁴³⁷ Brazil, therefore, shifted its focus away from both the United States and its home market in favor of third country export markets over the period.⁴³⁸ In addition, we do not find that imports from Brazil of cold-rolled steel products have or will have a negative effect on the development and production efforts of the domestic industry. Research and development expenditures for cold-rolled steel remained stable at a relatively low percentage of trade sales during the period of investigation.⁴³⁹ Moreover, we do not find that the small volume of imports from Brazil was a factor in the decline in capital expenditures over the period of investigation or are likely to contribute to further declines.⁴⁴⁰

Product shifting is not an issue given the negative determinations for Brazil in hot-rolled and corrosion-resistant products.⁴⁴¹ The affirmative determination in plate is not likely to shift production from separate plate mills to the production of cold-rolled products because there are mutually exclusive producers of plate and cold-rolled in Brazil.⁴⁴²

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports.

Canada⁴⁴³

Canadian productive capacity for cold-rolled steel products [***] over the period, but capacity is projected to [***] in 1993.⁴⁴⁴ Capacity utilization rates [***] over the period and are projected to [***] in 1993 to [***] as home market demand [***].⁴⁴⁵

⁴³⁵ Id.

⁴³⁶ Id. The data in the report and Brazilian respondents assertion that home demand is growing contradict petitioners' claim that home market demand in Brazil is depressed and falling. Posthearing Br. of Positrade Corporation and Mangels Sao Bernardo SA ("Brazilian Respondents") at 11; Petitioners' Prehearing Br. Vol. 7A at 86.

⁴³⁷ Report I-101, table 57.

⁴³⁸ Id.

⁴³⁹ Id. at I-84, table 41; I-79, table 35.

⁴⁴⁰ Id. at I-86.

⁴⁴¹ Commissioner Crawford does not join in this discussion to the extent it considers the impact of the Commission's final determinations in these investigations on the likelihood of product shifting.

⁴⁴² Report I-99.

⁴⁴³ Commissioner Rohr does not join in the following negative threat determination for Canada. See his Additional and Dissenting Views.

⁴⁴⁴ Id. at I-103, table 61.

⁴⁴⁵ Id.

Market penetration of Canadian imports did not "rapidly increase" between 1990 and 1992. By quantity and by value, it increased by 0.3 percent over the period but never exceeded 1.0 percent of the domestic cold-rolled market.⁴⁴⁶ We find no evidence that this level of imports is likely to increase to injurious levels in the immediate future. Moreover, Canadian home market shipments as well as exports to other non-U.S. markets have increased over the period of investigation and are expected to increase further in 1993.⁴⁴⁷

We find no probability that imports of cold-rolled steel from Canada will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based on our extensive discussion in the material injury analysis that the cumulated imports from *inter alia*, Canada have had no significant volume or price effects on the domestic industry. It is also based on the limited substitutability of the cold-rolled products discussed at length in the causation analysis. We note that subject imports from Canada oversold the domestic cold-rolled products in 33 out of 58 pricing comparisons. There were no confirmed lost sales from Canada.⁴⁴⁸ In short, no credible evidence has been presented which indicates that imports pose an imminent threat of an adverse price effect that they were not shown to have had during 1990-92.

Inventories of Canadian cold-rolled steel [***] over the period of investigation but are projected to [***] in 1993.⁴⁴⁹ These [***] volumes of inventories have not and will not pose a threat of material injury to the domestic cold-rolled industry.⁴⁵⁰

Home market shipments accounted for a [***] share of total shipments over the period of investigation; they are expected to [***] in 1993 to [***].⁴⁵¹ Exports to countries other than the United States as a share of total shipments [***] over the period.⁴⁵² In addition, on July 29, the Federal Canadian Government imposed duties on U.S. exports of cold-rolled steel products.⁴⁵³ The margins are significant for a number of U.S. producers, making it more difficult for U.S. producers to be competitive in Canada. This will make it more likely that Canadian domestic production will be consumed in Canada and not exported to the United States.

In light of the Commission's affirmative material injury determination with respect to corrosion-resistant steel from Canada, there is the theoretical possibility of product shifting from corrosion-resistant to cold-rolled products. However, we note that only two of the four producers of cold-rolled steel in Canada also produce corrosion-resistant products.⁴⁵⁴ Given the captive nature of the shipments of cold-rolled from these two producers of corrosion-resistant, it would be possible for

⁴⁴⁶ *Id.* at I-147, table 105.

⁴⁴⁷ *Id.* at I-103.

⁴⁴⁸ *Id.* at I-179, table 115.

⁴⁴⁹ *Id.* at I-163, table 61.

⁴⁵⁰ *Id.* The percentage of inventories to total shipments was small over the period of investigation.

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ Commissioner Nuzum did not consider this action by the Government of Canada in making her determination.

⁴⁵⁴ *Id.* at I-103.

these two producers to shift production by not transferring the cold-rolled products to their corrosion lines. However, these lines represent a substantial investment, with the new Z line of Stelco being the only line of its type operating in Canada. We find it unlikely that following such a substantial investment to create the Z line Stelco will severely limit its operations by selling the cold-rolled feedstock to the U.S. market. In sum, while we recognize that there is a limited potential for product shifting cold-rolled feedstock of corrosion-resistant products to the U.S. market, we find that this possibility does not pose a significant enough threat to support an affirmative threat determination.

In addition, we do not find that imports from Canada of cold-rolled steel products have or will have a negative effect on the development and production efforts of the domestic industry. Research and development expenditures for cold-rolled steel remained stable at a relatively low percentage of trade sales during the period of investigation.⁴⁵⁵ Moreover, we do not find that the small volume of imports from Canada was a factor in the decline in capital expenditures over the period or is likely to contribute to further declines.⁴⁵⁶

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports.

France⁴⁵⁷

The subsidies determined by the Department of Commerce provided to French producers in this case were relatively small and did not include export subsidies.⁴⁵⁸ In addition, French productive capacity for cold-rolled steel products [***] over the period of investigation but is projected to [***].⁴⁵⁹ Capacity utilization ratios [***] over the period of investigation and are projected to [***] in 1993.⁴⁶⁰

Market penetration of French imports did not "rapidly increase" between 1990 and 1992. By quantity, it increased between 1990 and 1991 but fell back to its 1990 level of 0.4 percent in 1992; market penetration by value also increased slightly between 1990 and 1991, only to fall back to its 1990 level (0.5 percent) in 1992.⁴⁶¹ No evidence suggests that this small level of imports is likely to increase to injurious levels in the immediate future.

We find no probability that imports of cold-rolled steel from France will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based on our finding in the negligibility analysis above that the subject imports from France have no discernible adverse impact on the domestic industry, as well as for the reasons set forth in our general material injury analysis. No credible evidence has been presented which indicates that imports will have an adverse price effect in the immediate future.

⁴⁵⁵ Id. at I-84, table 41; I-79, table 35.

⁴⁵⁶ Id. at I-86.

⁴⁵⁷ Commissioner Nuzum dissents from the majority's negative threat determination for France and therefore does not join in this discussion. See her Additional and Dissenting Views.

⁴⁵⁸ Id. at appendix E, E-4.

⁴⁵⁹ Id. at I-106; I-106, table 66.

⁴⁶⁰ Id. at I-106, table 66.

⁴⁶¹ Id. at I-147, table 105.

There were [***] of French cold-rolled steel reported over the period of investigation.⁴⁶² Inventories are projected to [***] for 1993 and therefore have not and will not pose a threat of material injury to the domestic cold-rolled industry.⁴⁶³

We have identified no other adverse trends that would suggest a threat of material injury by the subject imports from France. As a share of production, exports to the United States [***] over the period.⁴⁶⁴ Home market shipments as a share of total shipments [***] over the period of investigation, but exports to countries other than the United States as a share of total shipments [***].⁴⁶⁵ We do not find that imports from France of cold-rolled steel products have or will have a negative effect on the development and production efforts of the domestic industry. Research and development expenditures for cold-rolled steel remained stable at a relatively low percentage of trade sales during the period of investigation.⁴⁶⁶ Moreover, we do not find that the small volume of imports from France were a causal factor in the decline in capital expenditures over the period of investigation or are likely to contribute to further declines.⁴⁶⁷

In light of the Commission's affirmative material injury determination regarding corrosion-resistant products from France, there is the theoretical possibility of product shifting from corrosion-resistant to cold-rolled products. As we discussed regarding Canada, integrated steel producers such as Usinor Sacilor normally have a large incentive to make as much higher value-added products as possible to recoup the cost of investment in downstream production facilities.⁴⁶⁸ We do not find that this possibility poses a significant enough threat to support an affirmative threat determination.

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports.

Italy⁴⁶⁹

The subsidies determined by the Commerce department provided to Italian producers in this case did not include export subsidies.⁴⁷⁰ In addition, Italian productive capacity for cold-rolled steel products [***] over the period of investigation and is projected to [***] in 1993.⁴⁷¹ Capacity

⁴⁶² Id. at I-106, table 66.

⁴⁶³ Id.

⁴⁶⁴ Id.

⁴⁶⁵ Id.

⁴⁶⁶ Id. at I-84, table 41 and I-79, table 35.

⁴⁶⁷ Id. at I-86.

⁴⁶⁸ See Petitioners' Prehearing Br. Vol. 3 at 34.

⁴⁶⁹ Vice-Chairman Watson does not participate in this discussion. Commissioner Nuzum dissents from the majority's negative threat determination for Italy and therefore does not join in this discussion. See her Additional and Dissenting Views.

⁴⁷⁰ Report appendix E, E-4.

⁴⁷¹ Id. at I-114, table 73.

utilization [***] levels during the period.⁴⁷² Petitioners assert that Italy's capacity utilization rate is projected to [***] in 1993 resulting in [***].⁴⁷³ We reject the petitioners' assertion that such capacity utilization rates pose a threat of material injury to U.S. industry, since the operation of Italian facilities at [***] capacity utilization rates over an extended period has not led to an increase in exports to the U.S. market.

Market penetration of Italian imports did not "rapidly increase" between 1990 and 1992. By quantity, it increased to only 0.2 percent between 1990 and 1991, and remained unchanged in 1992; market penetration by value was constant, also at 0.2 percent, over the period.⁴⁷⁴ No evidence suggests that this small level of imports is likely to increase to injurious levels in the immediate future.

We find no probability that imports of cold-rolled steel from Italy will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based on our negligibility analysis above that the subject imports from Italy have no adverse impact on the domestic industry, as well as for the reasons set forth in our general material injury analysis. No credible evidence has been presented which indicates that imports will have an adverse price effect in the immediate future.

Inventories of Italian cold-rolled steel [***] over the period of investigation but are projected to [***] in 1993.⁴⁷⁵ These [***] levels of inventories have not and will not pose a threat of material injury to the domestic cold-rolled industry.⁴⁷⁶

We have identified no other adverse trends that would suggest a threat of material injury by the subject imports from Italy. As a share of production, Italian exports to the United States [***] over the period.⁴⁷⁷ Home market shipments as a share of total shipments [***] over the period of investigation.⁴⁷⁸ We do not find that imports from Italy of cold-rolled steel products have or will have a negative effect on the development and production efforts of the domestic industry. Research and development expenditures for cold-rolled steel remained stable at a relatively low percentage of trade sales during the period of investigation.⁴⁷⁹ Moreover, we do not find that the small volume of imports from Italy were a factor in the decline in capital expenditures over the period of investigation or are likely to contribute to further declines.⁴⁸⁰

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports.

⁴⁷² Id.

⁴⁷³ Petitioners' Prehearing Br. Vol. 7A at 120 and Posthearing Br. Vol. 4 ex. 16 at 6.

⁴⁷⁴ Report I-147, table 105.

⁴⁷⁵ Id.

⁴⁷⁶ Id.

⁴⁷⁷ Id.

⁴⁷⁸ Id.

⁴⁷⁹ Id. at I-84, table 41 and I-116, table 35.

⁴⁸⁰ Id. at I-84.

Japan

Japanese productive capacity for cold-rolled steel products declined steadily over the period of investigation.⁴⁸¹ Capacity utilization rates increased from 1990 to 1991 and declined from 1991 to 1992, but they remained at high levels over the period.⁴⁸² The capacity utilization rate is projected to increase in 1993 as home market demand and third country exports increase.⁴⁸³

Market penetration of Japanese imports did not "rapidly increase" between 1990 and 1992. By quantity and by value, market penetration declined over the period.⁴⁸⁴ No evidence suggests that this level of imports is likely to increase to injurious levels in the immediate future. Indeed, we note that many Japanese cold-rolled producers have invested heavily in joint ventures with U.S. producers for the production of inter alia, cold-rolled products. This suggests that these Japanese producers have a disincentive to compete in the same geographic or product areas with their particular joint venture.⁴⁸⁵

We find no probability that imports of cold-rolled steel from Japan will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based on our finding as discussed above in the causation analysis that the cumulated imports which included Japan have no present effect on prices. As we noted in the material injury analysis of those cumulated imports, Japanese cold-rolled products were at the high end of the cold-rolled steel market in terms of price and quality. This was reflected in much more overselling than underselling by Japanese cold-rolled products.⁴⁸⁶ These pricing data are consistent with the assertion by Japanese respondents that they are withdrawing from the commercial grade U.S. market and competing only with specialty products that command a price premium.⁴⁸⁷ Moreover, despite the fact that imports from Japan were greater in volume than any other country, there were no confirmed lost sales or revenue losses to the domestic industry.

Inventories of Japanese cold-rolled steel declined substantially over the period of investigation and are projected to decline further in 1993.⁴⁸⁸ With exports to the United States declining, we find that Japanese inventories do not support a finding of threat of material injury.⁴⁸⁹

⁴⁸¹ Id. at I-118, table 75. Data in the Report do not support petitioners' assertions that Japanese productive capacity [***] over the period and that Japan has [***]. Petitioners' Posthearing Br., Vol. 4 ex. 16 at 9.

⁴⁸² Report I-118, table 75.

⁴⁸³ Id.

⁴⁸⁴ Id. at I-147, table 105.

⁴⁸⁵ Commissioner Rohr does not view this factor as significant to his negative threat determination.

⁴⁸⁶ Id. at I-172-75, table 110-113.

⁴⁸⁷ Prehearing Joint Cold-rolled Br. of Japanese Respondents at 82.

⁴⁸⁸ Report I-118, table 75.

⁴⁸⁹ Id.

As a share of production, Japanese exports to the United States decreased over the period of investigation, and this share is expected to decline significantly in 1993.⁴⁹⁰ Home market shipments accounted for a high share of total shipments over the period; this share is expected to increase in 1993.⁴⁹¹ Exports to countries other than the United States as a share of total shipments increased steadily over the period and are projected to increase further in 1993.⁴⁹²

In addition, we do not find that imports from Japan of cold-rolled steel products have or will have a negative effect on the development and production efforts of the domestic industry. As noted above, investments by Japanese producers participating with domestic producers in U.S. joint ventures have been instrumental in development and production efforts for the cold-rolled industry involving hundreds of millions of dollars of investment in capital equipment over the past decade. We have been presented with no credible evidence that this trend will not continue. Moreover, we do not find that the small volume of imports from Japan were a factor in the decline in capital expenditures over the period of investigation or are likely to contribute to further declines.⁴⁹³

In light of the Commission's affirmative material injury determination regarding imports of Japanese corrosion-resistant products, there is the theoretical possibility of product shifting from corrosion-resistant to cold-rolled products. All six integrated Japanese producers of corrosion-resistant products also produce cold-rolled products.⁴⁹⁴ As we noted with respect to France and Canada, however, the facilities for producing corrosion-resistant products normally involve a separate coating line. These integrated producers have a large incentive to make as much higher value-added products as possible to recoup the cost of investment in downstream production facilities.⁴⁹⁵ While we recognize that there is the possibility that some of the captive cold-rolled products used in corrosion-resistant steel could be diverted for sale as cold-rolled products, we do not believe that this factor, standing alone, is sufficient to support an affirmative threat determination. In addition, shipments of cold-rolled products from Japan have declined throughout the period of investigation due, in part, to their high cost and specialized nature. In light of these facts, we do not find that the possibility of product shifting provides sufficient evidence for an affirmative threat finding.

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports from Japan.

Spain⁴⁹⁶

The subsidies determined by the Commerce department provided to Spanish producers in this case did not include export subsidies.⁴⁹⁷ In addition, Spanish productive capacity for cold-rolled steel products [***] between 1990 and 1991 and [***] between 1991 and 1992; capacity is [***] in

⁴⁹⁰ Id.

⁴⁹¹ Id.

⁴⁹² Id.

⁴⁹³ Id. at I-86.

⁴⁹⁴ Id. at I-116, I-117.

⁴⁹⁵ See Petitioners' Prehearing Br. Vol. 3 at 34.

⁴⁹⁶ Commissioner Nuzum dissents from the majority's negative threat determination for Spain and therefore does not join in this discussion. See her Additional and Dissenting Views.

⁴⁹⁷ Id. at appendix E, E-16.

1993.⁴⁹⁸ Capacity utilization rates [***] over the period, but the capacity utilization rate is expected to [***] in 1993.⁴⁹⁹

Market penetration of Spanish imports did not "rapidly increase" between 1990 and 1992. By quantity and by value, it increased from 0.1 percent in 1990 to only 0.2 percent in 1992.⁵⁰⁰ No evidence suggests that this small level of imports is likely to increase to injurious levels in the immediate future.

We find no probability that imports of cold-rolled steel from Spain will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based on our finding in the negligibility analysis above that the subject imports from Spain have no adverse impact on the domestic industry, as well as for the reasons set forth in our general material injury analysis. There were no confirmed lost sales or revenue to the domestic industry from imports of cold-rolled from Spain.⁵⁰¹ No credible evidence has been presented which indicates that imports will have an adverse price effect in the immediate future.

Inventories of Spanish cold-rolled steel [***] the period of investigation but are projected to [***] in 1993.⁵⁰² These [***] volumes of inventories have not and will not pose a threat of material injury to the domestic cold-rolled industry.⁵⁰³

We have identified no other adverse trends that would suggest a threat of material injury by the subject imports from Spain. As a share of Spanish production, exports to the United States [***] over the period of investigation, but this share is projected to [***] in 1993.⁵⁰⁴ Spanish respondents attribute the overall [***] in exports to the United States to Spanish producers' efforts to reduce capacity and excess workers while, at the same time, emphasizing sales to its home market and the European Community.⁵⁰⁵ Home market shipments as a share of total shipments [***] over the period of investigation.⁵⁰⁶ We do not find that imports from Spain of cold-rolled steel products have or will have a negative effect on the development and production efforts of the domestic industry. Research and development expenditures for cold-rolled steel remained stable at a relatively low percentage of trade sales during the period of investigation.⁵⁰⁷ Moreover, we do not find that the small volume of

⁴⁹⁸ *Id.* at I-130, table 89. Data in the Report do not support petitioners' assertion that cold-rolling capacity utilization in Spain was at [***]. Petitioners' Prehearing Br., Vol. 7A, at 126.

⁴⁹⁹ Report I-130, table 89.

⁵⁰⁰ *Id.* at I-147, table 105.

⁵⁰¹ *Id.* at I-179, table 115.

⁵⁰² *Id.* at I-130, table 89.

⁵⁰³ *Id.*

⁵⁰⁴ *Id.*

⁵⁰⁵ Posthearing Br. of Government of Spain, Empresa Nacional Siderurgica, S.A., Altos Hornos de Vizcaya, S.A. and the Union de Empresas Siderurgicas ("Spanish Respondents") at 15-16.

⁵⁰⁶ Report I-130, table 89. Data in the Report also [***]. Petitioners' Prehearing Br., Vol. 7A, at 125.

⁵⁰⁷ Report I-84, table 41; I-79, table 35.

imports from Spain were a factor in the decline in capital expenditures over the period of investigation or are likely to contribute to further declines.⁵⁰⁸

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports.

⁵⁰⁸ Id. at I-125.

DISSENTING VIEWS OF VICE CHAIRMAN WATSON

A. The U.S. Cold-Rolled Products Industry is not Threatened with Material Injury by Reason of Imports from the Netherlands

I decline to cumulate the subject imports of cold-rolled sheet and strip from the Netherlands with other cold-rolled subject imports because I find a disparity in the patterns of volume increases and pricing between imports from the Netherlands and from those other countries.¹ Moreover, the conditions of trade between several of the subject countries and the United States are sufficiently unique to find that cumulation is inappropriate in this industry.

Capacity [***] during the period of investigation while production [***]. While production is projected to [***] in 1993, capacity is projected to [***] in 1993.² Capacity utilization, which has also [***] over the period of investigation, is [***] and is expected to [***] in 1993.

In terms of quantity and value, imports from the Netherlands gained a very small percentage of U.S. market share over the period of investigation and levels remained flat from 1991 to 1992.³ Moreover, the relative share of the subject imports from the Netherlands remained small. The record also contains evidence indicating that a significant proportion of Hoogoven's cold-rolled imports do not compete with domestic product.⁴ In sum, the record does not support a conclusion that there is a likelihood that market penetration will increase to injurious levels. Netherlands's shipments to the U.S. are, in fact, projected to [***] in 1993, while shipments to other countries are projected to [***] in 1993.⁵

Pricing comparisons of shipments of the subject imports from the Netherlands and comparable domestic product shipments indicate predominant underselling by the subject imports, however, due to the small volumes of the subject imports from the Netherlands there is little probability that the subject imports will have a suppressing or depressing effect on domestic prices.⁶

U.S. importers held only [***] inventories during the period of investigation. The quantity of inventories held by respondent Hoogovens during the period of investigation was [***].⁷ In conclusion, the Netherlands has had a consistent and small presence in the U.S. cold-rolled strip and sheet market and there is no evidence that its market position will change in the imminent future.

¹ The CIT has held that disparity in the patterns of volume increases and decreases and varied pricing patterns are a sufficient basis to decline to cumulate the subject imports from the various countries. Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1172 (CIT 1988).

² Report at I-125.

³ Supplementary Memorandum, INV-Q-095, June 17, 1993.

⁴ Report F-10.

⁵ Id.

⁶ Id. at I-168-175.

⁷ Id. at I-93, I-125.

B. The U.S. Cold-Rolled Products Industry is not Threatened with Material Injury by Reason of Imports from Korea

I decline to cumulate the subject imports of cold-rolled sheet and strip from Korea with other cold-rolled subject imports because I find a disparity in the patterns of volume increases and pricing between imports from Korea and from those other countries.⁸ Moreover, the conditions of trade between several of the subject countries and the United States are sufficiently unique to find that cumulation is inappropriate in this industry. Capacity and production [***] during the period of investigation and are projected to [***] in 1993.⁹ Capacity utilization, however, has [***] and is expected to [***] in 1993 to over [***]. In terms of quantity and value, imports from Korea have [***] of U.S. market share over the period of investigation.¹⁰ Moreover, the relative share of the subject imports from Korea has [***]. Exports to the United States are projected to [***] in 1993, while at the same time exports to other markets are projected to [***]. Shipments to the Korean home market are also expected to [***] in 1993, as a result of [***] in POSCO's corrosion-resistant products production and home market construction needs.¹¹

In light of the [***] capacity utilization and 1993 projections, the record does not support a conclusion that there is a likelihood that market penetration will increase to injurious levels. Pricing comparisons of shipments of the subject imports from Korea and comparable domestic product shipments indicate predominant overselling which supports the conclusion that there is little probability that the subject imports will have a suppressing or depressing effect on domestic prices.¹² Inventories held by U.S. importers [***] during the period of investigation and the quantity of inventories held by POSCO was [***].¹³ In conclusion, Korea has had a consistent and small presence in the U.S. cold-rolled strip and sheet market. Evidence supports the conclusion that its presence in the U.S. market position will decline in the imminent future.

⁸ The CIT has held that disparity in the patterns of volume increases and decreases and varied pricing patterns are a sufficient basis to decline to cumulate the subject imports from various countries. Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1172 (CIT 1988).

⁹ Report at I-121.

¹⁰ Supplementary Memorandum, INV-Q-095, June 17, 1993.

¹¹ Report I-121.

¹² Id. at I-168-175.

¹³ Id. at I-93, I-121.

**ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER DAVID B. ROHR
CONCERNING
COLD-ROLLED PRODUCTS**

**Negligibility of Imports from Brazil, Korea and the Netherlands
Threat of Material Injury from Imports from Canada, Korea, and the Netherlands**

I. General Observations

In my Additional and Dissenting Views Concerning the Hot-Rolled Products investigations, I summarized the factors I looked at in analyzing the price sensitivity of the various products and markets subject to these investigations. In these views, I apply these factors to the cold-rolled products subject to these investigations.

I note that these products are considerably more differentiated and specialized than the plate or hot-rolled products. This factor tends to lessen their price sensitivity. A large portion of this product is sold captively, but to a significantly lesser extent than the hot-rolled product. This factor also lessens their price sensitivity, but to a lesser extent than in the hot-rolled products. A significant amount of the open market sales are made through distributors, which somewhat increases price sensitivity. There are a fewer number of producers producing each of the differentiated products, which also reduces the price sensitivity.

On balance, I find this product, market, and industry to be not particularly price sensitive. It still displays some sensitivity to price but considerably less so than either plate or hot-rolled products.

II. Negligibility

A. Findings With Respect to Negligibility

In making my determinations on negligibility, I have been mindful of the fact that characteristics of each of the like products and the markets for those products affect the degree to which particular volumes (specifically, in petitioner's terms "small volumes") may have an effect on the domestic industry. These product and market characteristics, which have been more fully developed in the Commission's majority views, play an important role in my assessment of whether particular volumes of imports, each with their own individual set of characteristics of price and shipment patterns, are having an adverse effect on the industry and hence may or may not be negligible.

I have in general concurred with the majority of my colleagues as to which imports should be considered negligible. In the three cases discussed below, I also find that the imports should be considered negligible. I note that each of three is a "borderline" case. Each is close to the point where, in my view, they would have adverse effects and at which I would not have applied the negligibility exception. Nevertheless, because they were not yet at that point, I did find it necessary to apply the statutorily-mandated negligibility exception.

Brazil

Brazilian imports fluctuated slightly over the period of investigation. Beginning, in 1990, at a level of 143 thousand tons, the Brazilian imports declined slightly to 139 thousand tons in 1991 and rose marginally to 140 thousand tons in 1992.¹ Through these changes, they retained a constant 0.5

¹ Report at Table 95.

percent of the U.S. market.² These imports were scattered throughout the U.S. market and were present in all months.³ The Commission was able to confirm only 2 thousand tons of sales lost to these imports.⁴ In light of the conditions of the cold-rolled market I do not find these tonnages and market share to be having any adverse impact on the domestic industry and therefore find the Brazilian imports to be negligible.

Korea

Korean imports were 119 thousand tons in 1990, and accounted for 0.4 percent of the U.S. market. These imports decreased slightly, in 1991, to 111 thousand tons, before increasing, in 1992, to 173 thousand tons, accounting for 0.6 percent of the U.S. market.⁵ These imports were present throughout the period in 3 of 4 geographic regions, although concentrated in the West and the Gulf.⁶ They did, however, oversell the domestic products in more than half of the Commission's pricing comparisons.⁷ While 7 allegations involving 8 thousand tons of lost sales and 4 allegations involving 13 thousand tons of lost revenue were made, only 2 sales involving 3 thousand tons of lost revenue and 1 sale involving 300 tons of lost revenue were not specifically denied by purchasers.⁸ Although these imports are almost at a point that I would deem not negligible, they are not yet at that point. I therefore must conclude that they are negligible.

The Netherlands⁹

The imports from the Netherlands decreased from 156 thousand tons in 1990 to 153 thousand tons in 1991 before increasing to 172 thousand tons in 1992.¹⁰ The Dutch share of apparent domestic consumption of cold-rolled products increased from 0.5 percent in 1990 to 0.6 percent in 1992.¹¹ They are, therefore, at a level and display a pattern very similar to those from Korea. Sales were conducted through only 5 importers.¹² Cold-rolled products from the Netherlands were sold in all four regions of the United States during 1992 (but only to a minimal extent in the Gulf region and a relatively small extent in the West), and were sold in every month of the period of investigation.¹³

² Report at Table 105.

³ Report at Appendix M.

⁴ Report at Tables 115 and 116.

⁵ Report at Table 95.

⁶ Report at Appendix M.

⁷ Report at Tables 110-113.

⁸ Report at Tables 115 and 116.

⁹ I have noted the arguments made by both petitioners and Dutch respondent Hoogovens as detailed in the Commission's majority views.

¹⁰ Report at Table 95.

¹¹ *Id.* at table 105.

¹² Hoogovens' Prehearing Br. ex. 1.

¹³ Report tables L-1, M-3, M-5.

Like my colleagues in the majority, I do not find Hoogoven's arguments regarding the niche nature of its products compelling. I further note that the Commission's data show underselling in most cases by the Dutch imports.¹⁴ I also must note that only 2 allegations of lost sales totaling 1.4 thousand tons and 2 allegations of lost revenues involving 500 tons were made and that none of these allegations was confirmed.¹⁵

As in the case of the Korean imports, I find that imports from the Netherlands are very close to being not negligible. Nevertheless, I must find that they have not yet reached that degree, and, so, I must find that they are negligible for purposes of this investigation.

B. Causation Findings With Respect to the Negligible Countries.

Having found imports from Brazil, Korea, and the Netherlands to be negligible, I must separately determine if any of them are a cause of present injury. I note that while, under the bifurcated analysis that I employ, it is possible to conclude that a country which is adversely impacting the domestic industry is not yet a cause of injury to that industry, the converse cannot logically be true. In general, I believe the factors examined in the Commission majority's discussion of the lack of a causal nexus between cumulated imports and the condition of the cold rolled industry are applicable herein to a discussion of the individual impact of the imports for these three countries. I therefore find that in none of these three investigations are imports a cause of present injury to the domestic cold-rolled industry.

II. Threat of Material Injury

Canada

Canadian productive capacity for cold-rolled steel products percent over the period of investigation.¹⁶ Capacity utilization rates over the period and in 1992 were only percent.¹⁷ The unused capacity represents over tons of cold rolled product. While home market shipments by the Canadian imports are projected to by almost tons in 1993, I place little reliance on such projections. I note such home market shipments by some tons from 1990 to 1991 before some tons in 1992, indicating considerable volatility.

With respect to this excess or unused capacity, I find that it is likely to result in increasing imports to the United States. The United States is the export market for Canadian steel producers by Further, U.S. exports both as a percentage of Canadian exports and total Canadian production.

The volume of Canadian imports rose by some 74 percent over the period of investigation, while market share rose from 0.5 percent to 0.6 percent to 0.8 percent over that period.¹⁸ For purposes of this investigation, and in light of the conditions of this industry I find that the market penetration of Canadian imports did "rapidly increase" between 1990 and 1992 within the meaning of the statute. The rapidly increasing import volumes along with the increasing importance of the U.S. market for Canadian producers also support my finding that Canadian capacity will be directed increasingly at the U.S. market.

¹⁴ Report at Tables 110-113.

¹⁵ Report at Tables 115-116.

¹⁶ *Id.* at Table 61.

¹⁷ *Id.*

¹⁸ Report at Tables 95 and 105.

I also find that there is a probability that imports of cold-rolled steel from Canada will enter the United States in the imminent future at prices that will have a suppressing or depressing effect on U.S. prices. While I agree with the conclusion of the majority in the causation analysis above that the subject imports from Canada are not yet having a significant present effect on prices, I do not believe that the evidence supporting that conclusion is necessarily applicable to the future impact of such imports. The price comparisons are mixed. Overselling is in part related to the size of shipments. It appears that when larger quantities of Canadian imports are involved, there is a more frequent incidence of underselling.¹⁹

Inventories of Canadian cold-rolled steel over the POI.²⁰ In 1992, inventories represented percent of imports for that year and totaled percent of consumption. While, these inventories contribute to the threat posed by the Canadian imports.

I note that in my analysis I believe it is appropriate to consider other unfairly traded imports as another demonstrable adverse trend that would suggest a threat of material injury by the subject imports. In these investigations, I, along with my colleagues, have found that there is a threat of material injury by reason of imports from Germany, Korea, and the Netherlands. All of these countries have increasing imports and market penetration (although Canada's increase was larger). All had available capacity or were increasing capacity. In most, Korea excepted,²¹ the U.S. was an increasingly important market. In each case there mixed patterns of over and underselling but the possibility of price suppression when prices are examined on an individual product basis. In this context, I believe the threat posed by Canada must be considered as being reinforced and made more serious by the threat posed by these similarly trending imports.

In light of the Commission's affirmative material injury determination with respect to corrosion-resistant steel from Canada, there is also some possibility of product shifting from corrosion-resistant to cold-rolled products. However, I concur with my colleagues that I do not believe that this significantly adds to the threat posed by the Canadian imports.

On the basis of the forgoing I conclude that there is a threat of material injury to the domestic industry by reason of imports of cold-rolled products from Canada.²²

Korea

I find that imports from Korea pose a threat of material injury to the domestic cold-rolled industry. Korean productive capacity for cold-rolled steel products over the period of

¹⁹ Report at Appendix N.

²⁰ *Id.* at I-163, Table 61.

²¹ The U.S. was an important market for Korea, but its significance, as seen in the percentage of production and exports destined for the U.S., declined by a slight amount.

²² Pursuant to the requirements of section 735(b)(4)(B), I further determine that I would not have found injury but for the suspension of liquidation of imports. The trends discussed above with regard the imports from Canada are not so pronounced that had they continued throughout the period after the suspension of liquidation they would have been a cause of material injury at the time of my final determination.

investigation, and capacity is projected to in 1993.²³ Capacity utilization rates²⁴ The subsidies determined by the Commerce Department provided to Korean producers in this case did not include export subsidies.²⁵

With regard to whether this capacity will result in increased exports to the United States, I note that home market shipments accounted for a share of total shipments over the period.²⁶ Exports to countries other than the United States as a share of total shipments, between 1990 and 1991 before between 1991 and 1992.²⁷ These shipment patterns reveal a relative emphasis on the home market in Korea in favor of exports to all regions including the U.S. market.

Market penetration of imports from Korea by quantity and by value increased over the period to reach 0.6 percent market share in 1992.²⁸ As a share of both production and total shipments, exports to the United States remained overall as export volumes to the U.S. market with production and shipment²⁹

I find that imports of cold-rolled steel from Korea are likely to enter the United States in the imminent future at prices that will have a suppressing or depressing effect on U.S. prices. Average import prices for cold-rolled steel products from Korea decreased steadily over the POI.³⁰ In addition, pricing comparisons collected by the Commission show considerable underselling by Korean cold-rolled products.³¹

Inventories of Korean cold-rolled steel over the period, more than between 1990 and 1991 and in 1992.³² With exports to the United States and import prices, levels of inventories pose a threat of additional dumped exports on the U.S. market.³³

In addition, given the Commission's affirmative material injury determination of corrosion-resistant products from Korea, there is some possibility of a shift of cold-rolled feedstock from the production of corrosion to cold-rolled sales. The three Korean producers of cold-rolled products also produce corrosion-resistant products. A substantial portion of the Korean increase in corrosion-

²³ Report at Table 79. Posco indicated that two cold-rolling lines were completed in 1991 but only PSI reported that it plans to complete a continuous coating line by the end of November 1993 for cold-rolled and corrosion resistant products with an annual capacity of *Id.* at I-197.

²⁴ Report at Table 79.

²⁵ *Id.* at Appendix E, E-12.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Report at Table 105.

²⁹ *Id.*

³⁰ Report at Table 95.

³¹ Report at Tables 110-113.

³² Report at Table 79.

³³ *Id.*

resistant products between 1990 to 1992 was accounted for by increases in sales in the U.S. market.³⁴ In addition, Korean exports of corrosion-resistant steel to the United States are projected to decline in 1993.³⁵ While I recognize that these three Korean producers have an incentive to maintain production of their corrosion-resistant facilities in light of significant investments, the facts outlined above suggest that there is the possibility that at least some of the captive cold-rolled products used in corrosion-resistant steel will be diverted for sale as cold-rolled products. I note that I do not place great weight on this factor.

I note with respect to Korean imports that I have considered that the presence of other unfairly traded imports as to which I have made affirmative threat findings are present in the market. As I explained in my views above with respect to Canadian imports, I believe this reinforces the threat that I find is posed by the Korean imports.

Accordingly, I determine that there is a threat of material injury by reason of the LTFV imports of cold-rolled products from Korea.³⁶

The Netherlands

I find that imports from the Netherlands pose a threat of material injury to the domestic cold-rolled industry. Dutch productive capacity for cold-rolled steel products over the period of investigation.³⁷ Capacity utilization rates but remained at levels.³⁸

With regard to whether this capacity will result in increased exports to the United States, I note that home market shipments accounted for a share of total shipments over the period of investigation.³⁹ Exports to countries other than the United States as a share of total shipments over the period, indicating that export shares were⁴⁰ This trend is further supported by the fact that exports to the United States accounted for an percentage of both Dutch production and total exports over the period of investigation.

Market penetration of imports from the Netherlands by quantity increased over the period to reach 0.6 percent market share in 1992.⁴¹ As a share of both production and total shipments, exports to the United States over the period.⁴²

³⁴ Report I-122.

³⁵ *Id.*

³⁶ Pursuant to the requirements of section 735(b)(4)(B), I further determine that I would not have found injury but for the suspension of liquidation of imports. The trends discussed above with regard the imports from Korea are not so pronounced that had they continued throughout the period after the suspension of liquidation they would have been a cause of material injury at the time of my final determination.

³⁷ Report at Table 84.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Report at Table 105.

⁴² *Id.*

We find that imports of cold-rolled steel from the Netherlands are likely to enter the United States in the imminent future at prices that will have a suppressing or depressing effect on U.S. prices. Average import prices for cold-rolled steel products from the Netherlands decreased steadily over the period of investigation, remaining at values commensurate with average domestic prices throughout the period.⁴³ In addition, analysis of pricing data collected by the Commission shows underselling by Dutch cold-rolled products in 22 out of 27 quarterly pricing comparisons.⁴⁴

Inventories of Dutch cold-rolled steel over the period of investigation but they are projected to levels in 1993.⁴⁵ With exports to the United States increasing and Dutch import prices declining, we find that increasing levels of inventories pose a threat of material injury to the U.S. industry.

I note with respect to imports from the Netherlands that I have considered the presence of other unfairly traded imports as to which I have made affirmative threat findings are present in the market. As I explained in my views above with respect to Canadian imports, I believe this reinforces the threat I find is posed by the imports from the Netherlands.

I therefore find that there is threat of material injury by reason of imports of cold-rolled products from the Netherlands.⁴⁷

⁴³ Report at Tables 95 and 35.

⁴⁴ Report at Tables 110-113.

⁴⁵ Report at Table 84.

⁴⁶ Id.

⁴⁷ Pursuant to the requirements of section 735(b)(4)(B), I further determine that I would not have found injury but for the suspension of liquidation of imports. The trends discussed above with regard the imports from the Netherlands are not so pronounced that had they continued throughout the period after the suspension of liquidation they would have been a cause of material injury at the time of my final determination.

CORROSION-RESISTANT CARBON STEEL FLAT-ROLLED PRODUCTS¹

Based on the information obtained in these final investigations,² we determine that the industry in the United States producing corrosion-resistant steel, other than clad plate, is materially injured by reason of less than fair value (LTFV) and subsidized imports from Australia, Canada, France,³ Germany, Japan, and Korea.^{4 5} We also determine that an industry in the United States producing corrosion-resistant steel, other than clad plate, is not materially injured or threatened with material injury by reason of LTFV and subsidized imports from Brazil, Mexico,^{6 7} New Zealand, and Sweden.⁸ We determine that the domestic industry producing corrosion-resistant clad plate is not materially injured or threatened with material injury by reason of LTFV or subsidized imports from France and Japan.

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¹ All Commissioners have joined portions of these views as detailed below. Various Commissioners have also noted where they do not join certain sections, paragraphs, or statements within the views. Chairman Newquist joins only in the discussion of the corrosion-resistant like product, domestic industry, and condition of the domestic industry. Vice Chairman Watson joins the discussion of all portions of the views. Commissioner Rohr joins all portions of the views except the negligibility analysis for France and Mexico, and the threat of material injury analysis for Mexico. Commissioner Brunsdale joins only in the discussion of like product, domestic industry, related parties, and cumulation (except the negligibility analysis of France) and threat. Commissioner Nuzum joins all portions of these views except for the negligibility analysis for Brazil, Mexico, New Zealand, South Africa, and Sweden, and the threat analysis for Brazil, Mexico, New Zealand, and Sweden.

² The investigations covered by this opinion include 701-TA-347-353 and 731-TA-612-619.

³ Commissioner Rohr finds that the domestic industry is threatened with material injury by reason of imports from France. See his Additional and Dissenting Views.

⁴ Commissioner Brunsdale does not join in the Commission's affirmative determinations with respect to Australia, Canada, France, Germany, Japan, and Korea. She finds that an industry in the United States is not materially injured or threatened with material injury by reason of imports from these countries. (See her Additional and Dissenting Views, infra.)

⁵ Material retardation of a domestic industry by reason of the subject imports is not an issue in these investigations, and therefore will not be discussed further.

⁶ See Separate Views of Vice Chairman Watson on Mexico.

⁷ Commissioner Rohr finds the domestic injury is materially injured by reason of the imports from Mexico.

⁸ Commissioner Nuzum dissents from the majority's negative determinations with respect to Brazil, Mexico, New Zealand, and Sweden. See her Additional and Dissenting Views.

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I. LIKE PRODUCT

A. Statutory Criteria

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant domestic industry as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product"⁹ In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation"¹⁰

Our decision on the appropriate like product or products in an investigation is a factual determination, to which we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.¹¹ Generally, we disregard minor variations and look for clear dividing lines between like products.¹²

B. Corrosion-Resistant Like Product Issues

Commerce identified corrosion-resistant flat rolled carbon steel as a separate "class or kind" of merchandise subject to investigation and defined it as follows:

Certain Corrosion-Resistant Carbon Steel Flat Products: flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-, or iron-based alloys, whether or not corrugated or painted, varnished, or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness, or, if of a thickness of 4.75 millimeters or more, are of a width which exceeds 150 millimeters and measures at least twice the thickness. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel").

In the preliminary investigations, we found all types of corrosion-resistant steel to be one like product. However, respondents asserted in these final investigations that three corrosion-resistant products are sufficiently different to constitute separate like products. These are: (1) automotive

⁹ 19 U.S.C. § 1677(4)(A).

¹⁰ 19 U.S.C. § 1677(10).

¹¹ In defining the like product, we generally consider a number of factors including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and, where appropriate, (6) price. No single factor is dispositive, and we may consider other factors relevant to our like product determination in a particular investigation. See, e.g., Asociacion Colombiana de Exportadores de Flores v. United States, 12 CIT 634, 638, 693 F. Supp. 1165, 1169 n.5 (1988); Calabrian Corp. v. United States, 16 CIT ___, 794 F. Supp. 377, 382 n.4 (1992).

¹² S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

steel; (2) aluminum-zinc ("AlZn" or "Galvalume"); and (3) clad plate. Each of these arguments is addressed below.

1. **Automotive Steel**

Automotive steel is corrosion-resistant sheet and strip used for automotive applications, or which has passed U.S. purchasers' qualification tests for automotive applications, or is expected to pass such qualification tests.¹³ Automotive steel covers a broad range of galvanized and electrogalvanized corrosion resistant product.¹⁴ The only clear distinction between automotive steel and nonautomotive steel is in the end use. While automotive steel is often produced on new equipment to more rigid tolerances and may be wider than nonautomotive corrosion-resistant steel, overall, the production processes (e.g., the actual galvanizing or galvanized coating processes) do not differ. However, there are so-called automotive lines, such as Bethlehem's Burns Harbor line, which are targeted to supply a significant share of output to automotive customers, yet also supply nonautomotive customers. There is not a clear dividing line in the general metallurgical makeup of automotive steel.

Automotive steel essentially is a higher quality corrosive-resistant steel as reflected in the price premium it generally commands and its manufacture on newer production lines that are better equipped to produce product to rigid specifications. There are, however, other "precision nonautomotive steel" products, as acknowledged by respondents, that are high quality corrosion-resistant products which are sold in the nonautomotive sector.¹⁵ While automotive customers generally tend to have very rigorous qualification processes, we note that well over half of all purchasers providing questionnaire responses in these investigations reported that they or their customers also require suppliers to be certified or pre-qualified.¹⁶ Products shipped by domestic steel producers to the U.S. auto industry generally do not pass through service centers.¹⁷ This is also true, however, albeit to a lesser extent, for nonautomotive steel.¹⁸

In view of the above, we find that automotive steel is not clearly distinguishable from other corrosion-resistant products and is not a separate like product.

2. **Aluminum-Zinc Coated Sheet ("AlZn" or "Galvalume")**

AlZn, or galvalume, is a steel product with a coating of approximately 55 percent aluminum, 43.3 to 43.5 percent zinc, and 1.5 to 1.6 percent silicon.¹⁹ Respondents argue that this is a different product than other galvanized steel that typically has a coating of 99.7 percent zinc, 0.2 percent

¹³ This is the definition of automotive steel used in the Commission questionnaires.

¹⁴ Report at I-27.

¹⁵ E.g., Respondents' joint prehearing corrosion-resistant br. at 21-23.

¹⁶ Report at I-165.

¹⁷ Report at I-49.

¹⁸ See, e.g., Report at I-49, which states that 22 percent of hot-dipped galvanized and 11 percent of electrogalvanized steel goes to the construction industry.

¹⁹ Report at I-27.

aluminum and 0.1 percent lead. It is contended that the two products have different appearances and different American Society for Testing and Materials (ASTM) standards.²⁰

Petitioners assert that aluminum-zinc coated products differ from other corrosion resistant products covered by these investigations only in the ratio of aluminum to zinc. They assert that many end use applications for AlZn coated sheet are identical to end use applications for galvanized sheet.²¹ While acknowledging that customers do express preferences for certain AlZn coated sheets depending on market pricing, appearance in different applications, and durability, petitioners argue that AlZn and other galvanized products are close substitutes for both construction and automotive applications.²²

We find that AlZn is not a separate like product due to similar physical characteristics, overlapping end uses, similar channels of distribution, and similar production processes when compared to other corrosion-resistant products. While customers may perceive AlZn to be a more corrosive-resistant product in certain applications, such as roofing, galvanized sheet is also used for the roofing industry. Also, although an initial investment is required to enable a producer to manufacture AlZn on a galvanizing line, once operating, the production lines are interchangeable without significant additional cost beyond the initial investment.²³

Many domestic galvanizing facilities also produce aluminum-zinc coated sheet. We note that there are other aluminum-containing coatings, such as galfan, in the corrosion-resistant steel industry.

The fact that AlZn was previously subject to a patent and that the know-how associated with the production process is licensed technology is not sufficient to warrant finding AlZn-coated sheet a separate like product.²⁴ These types of process variables are important in carrying out an effective coating process, but they do not rise to the level of a different production process.

²⁰ Respondents argue that galfan, which has a coating of 95 percent zinc and 5 percent aluminum is very similar to galvanized. BHP prehearing corrosion-resistant br. at 4.

²¹ Petitioners' prehearing br. at volume 2, at 59-60.

²² *Id.* at 61.

²³ Petitioners' prehearing br., Vol. 2 at 65. Galvanized products and aluminum-zinc sheet are both manufactured by an identical continuous hot-dip process. It is relatively easy for a producer of corrosion-resistant products to alter the ratio of alloys present in its coating, once the initial investment to enable AlZn production is made. The hot-dip process involves immersing the cold-rolled steel sheet in a molten bath of the alloy forming the coating. To change the coating or the alloy ratio in the coating, a producer merely replaces the molten bath by changing the pots on the line, which can be done along with other necessary modifications in a relatively short period of time. Petitioners' prehearing br., Vol. 2 at 63, and Petitioners' posthearing br., Vol. 5, ex. 3 at 5. BHP posthearing brief at 17. Additionally, many producers use the same pots, coating weight edge control devices, cleaning lines and annealing techniques to produce both AlZn and high quality galvanized steel.

²⁴ See, *Avesta AB v. United States*, 13 CIT 894, 904-905, 724 F. Supp. 974, 982-83 (1989) (patented article not necessarily a separate like product), *aff'd*, 914 F.2d 233 (Fed. Cir. 1990), *cert. denied*, 111 S.Ct. 1308 (1991).

Although AlZn has improved corrosion-resistant properties compared to other corrosion-resistant products, the difference is one of degree along a continuum of corrosion-resistant products.²⁵ In sum, we do not find a clear dividing line between AlZn and other corrosion-resistant products.

3. Clad Plate²⁶

Clad plate consists of carbon steel plate that has been covered with a metallic coating (such as nickel, copper, stainless steel, or titanium) on one or both sides by a process that forms a physical bond between the cladding material and the carbon steel substrate.²⁷

We find that clad plate is a separate like product. Our determination is based on the fact that, unlike all of the other like products proposed by the various respondents, there is a clear dividing line between clad plate and other corrosion-resistant products.

Clad plate and corrosion-resistant sheet have fundamentally different physical characteristics. Unlike all other corrosion-resistant products, clad plate is not made from cold-rolled carbon steel. Clad plate is a "composite" steel plate product, 3/16 inch or more in thickness, that is composed of cladding material which is metallurgically bonded to a base carbon steel plate. The cladding material itself is a solid sheet or plate of alloy metal, such as nickel-based alloys, chromium, stainless steel, copper, or titanium. By contrast, corrosion-resistant sheet generally is cold-rolled sheet that is coated with zinc or an aluminum-containing zinc alloy, usually through a hot-dipped galvanizing, electrogalvanizing, or thermal coating process, rather than a metallurgical bonding process.²⁸ Corrosion-resistant sheet has significantly inferior corrosion resistant qualities to clad plate, and is inferior in strength and structural integrity. Sheet is far less effective in terms of thermal conductivity and thermal expansion; the sheet begins to deteriorate at temperatures and pressures that clad plate can easily endure.²⁹ There is very limited interchangeability between clad plate and other

²⁵ AlZn prices are generally higher than other corrosion-resistant material. BHP Prehearing Br. at 21. However, this price differential does not place AlZn outside the continuum of corrosion-resistant products. Indeed, there are other corrosion-resistant products which are equivalent or higher in price. See Report at Appendix N.

²⁶ Chairman Newquist does not find clad plate to be a separate like product from other corrosion-resistant carbon steel products. Applying the Commission's traditional six-factor like product analysis, Chairman Newquist finds that clad plate and other corrosion-resistant products share sufficiently similar physical characteristics and end-uses and have some degree of interchangeability. Chairman Newquist finds here, as the majority has with every other alleged "specialty" product, that clad plate is simply at the "high-end" of the continuum of corrosion-resistant carbon steel products.

Chairman Newquist is additionally concerned that finding clad plate to be a separate like product continues to move the Commission in the wrong analytical direction by whittling away at product categories, thereby distracting the Commission from the larger, more fundamental conditions of competition facing the steel industries.

²⁷ Report at I-27.

²⁸ Usinor's Prehearing Br. at 10. The manufacture of clad plate involves two steps needed to form a bimetallic, integrally bonded, composite product. First the cladding material is manufactured, which generally involves melting, casting, and hot-strip mill rolling the material into slab form. Second, the two slabs of cladding material are separated by a parting compound, placed between two slabs of carbon steel, and then hot-rolled under intense heat and pressure so that a metallurgical bond is formed at the interface between the cladding and the carbon steel. The "sandwich" is then split into two clad plates. In the bonding process, molecular interpenetration is achieved at every point of the joined surfaces of the metals to assure strength and uniformity in thickness.

²⁹ Usinor's prehearing br. at 10.

corrosion-resistant products.³⁰ Clad plate is used for heavy industrial applications such as smokestack scrubbers and pressure vessels for the petrochemical industry rather than consumer applications such as appliances and automobiles. Clad plate can withstand harsh exposures because the cladding material is not "sacrificial," which is characteristic of other corrosion-resistant product coatings.³¹ Moreover, clad plate lacks the appropriate physical dimensions to service the automobile, construction and appliance industries which are serviced by other corrosion-resistant sheet. Indeed, as acknowledged by petitioners, in the highly corrosive, high strength environments in which clad plate is used, it would not be interchangeable with other types of corrosion-resistant materials subject to investigation, but rather with the alloy from which the cladding material is made.³² Customers perceive clad plate and corrosion-resistant sheet as mutually exclusive products.³³

Clad plate is manufactured in the United States in separate facilities using special equipment and specially trained employees. The production facilities are not the same as those used in the production of other corrosion-resistant products. The materials and the production methods employed to produce clad plate are much more costly compared to corrosion-resistant sheet. This results in a product that is at least three, and as much as forty, times as expensive as corrosion-resistant sheet.³⁴

On the basis of clear distinctions in characteristics, uses, production techniques, production facilities, consumer perceptions, and price, we conclude that clad plate is a separate like product.

II. DOMESTIC INDUSTRY

Section 771(4)(A) of the Act defines the relevant domestic industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. . . ."³⁵ The Commission is required to assess the effects of subsidized or dumped imports in relation to U.S. production of the like product within that industry.³⁶

We adopt the analysis of related parties issues addressed at length in the Commission's Cold-rolled Steel Views. We find that there are two domestic industries corresponding to the single class or kind of corrosion-resistant steel products found by the Department of Commerce: (1) domestic producers of corrosion-resistant product other than clad plate; and (2) domestic producers of clad plate.

³⁰ The affidavit of Michael D. Markward, a specialty products manager of Lukens Steel Company, states that, in his experience, clad plate can serve as a substitute for corrosion-resistant flat-rolled products. He states that clad plate has been specified as an alternative to galvanized products for support arms on electrical transmission towers. He indicates that the material is available from Lukens, but that it is not manufactured on a regular basis. Petitioners' posthearing br., Vol. 5, Ex. 6.

³¹ Report at I-27.

³² Petitioners' prehearing brief, Vol. 2 at 94.

³³ E.g., Usinor's prehearing br. at 16, Petitioners' prehearing brief, Vol. 2 at 94.

³⁴ Usinor's prehearing br. at 21.

³⁵ 19 U.S.C. § 1677(4)(A).

³⁶ 19 U.S.C. § 1677(4)(D).

III. CONDITION OF THE DOMESTIC INDUSTRIES^{37 38}

A. Legal Standards

In assessing whether the domestic industry is materially injured by reason of subsidized and LTFV imports from the subject countries, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. 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 determinative, and the Commission considers all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."³⁹

B. Domestic Industry Producing Corrosion-Resistant Products

1. Conditions of Competition⁴⁰

Corrosion-resistant steel has many uses, primarily in the automotive and construction sectors.⁴¹ Unlike some other industries under investigation, company transfers account for an extremely small percentage of production in the corrosion-resistant steel industry.⁴²

The industry faced an overall increase in demand during the period of investigation for a variety of high precision corrosion-resistant products. This generally growing demand was especially influenced by the changing needs of the automotive industry, which utilizes a wide range of precision engineered corrosion-resistant sheet.⁴³ Demand from nonautomotive consuming industries, including the appliance industry, grew to a lesser extent. The corrosion-resistant steel industry has invested heavily in additional and upgraded facilities; it has brought on line, or shortly will, new capacity to serve this growing demand.⁴⁴

³⁷ For purposes of the remainder of this opinion, the term "corrosion-resistant products" excludes clad plate. Corrosion-resistant clad plate will hereinafter be referred to as clad plate. The corrosion-resistant industry data excluding clad plate are confidential. In the interest of disclosing as much factual record information as possible, we present data on corrosion-resistant steel including the small amount of clad plate. As data on clad plate are minuscule compared with data on all corrosion-resistant products, the trends for the corrosion-resistant data including clad plate and excluding clad plate are the same, and any differences in the actual market penetration, production, etc., are minimal.

³⁸ In light of the preceding footnote, Chairman Newquist reiterates his views expressed in footnote 26, supra.

³⁹ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁰ We also adopt the extensive discussion contained in the Commission's Hot-rolled Steel Views of the general conditions of competition in the steel industry.

⁴¹ Report at Table 9.

⁴² Report at Table 9.

⁴³ Report at I-52.

⁴⁴ E.g., Report at I-52.

The large majority of U.S. mills and producers of the subject imports produce corrosion-resistant products on the basis of orders received from service centers or end users, or according to the terms of negotiated purchase agreements.⁴⁵ Production of corrosion-resistant products is generally not undertaken on speculation by either U.S. or foreign mills.⁴⁶ Both domestic mills and importers reported that U.S. prices are determined principally by negotiation.⁴⁷

The majority of corrosion-resistant steel purchasers providing questionnaire responses reported that they or their customers require suppliers to become certified or pre-qualified to ensure that the corrosion-resistant steel purchased meets their internal quality and performance standards.⁴⁸ Auto manufacturers have the most stringent requirements among all categories of end users. Qualification and certification can take between six months and two years for auto manufacturers. However, other purchasers report that the qualification process takes only between one and three months.⁴⁹ Purchasers typically maintain a few approved suppliers and do not readily switch suppliers from order to order because of a lower quoted price or for any other single factor.⁵⁰ Approximately half of all purchasers reported that they had not switched suppliers during the past five years. Those who switched during that period typically changed from one or two suppliers to one or two other suppliers.⁵¹

2. Discussion of Condition of the Domestic Industry

The conditions of competition discussed above establish the context within which we examine the indicators of domestic industry performance. Apparent U.S. consumption of corrosion-resistant steel products experienced an overall increase during 1990-1992.⁵² Despite decreasing from 12.8 million tons in 1990 to 11.5 million tons in 1991, apparent U.S. consumption rebounded in 1992 to 13.5 million tons.⁵³ Similarly, domestic production declined from 11.3 million tons to 9.9 million tons from 1990 to 1991, and then increased in 1992 to 11.4 million tons.⁵⁴ However, U.S.

⁴⁵ Report at I-154.

⁴⁶ Report at I-154. In 1992, 22 percent of U.S. merchant shipments of corrosion-resistant products were sold to service centers, distributors, and processors, and 78 percent were shipped to end users. Similarly, in 1992, 30.4 percent of U.S. shipments of imports went to service centers, distributors, and processors, and 69.6 percent were shipped to end users. Report at I-48.

⁴⁷ Report at I-151.

⁴⁸ Report at I-165.

⁴⁹ Report at I-165. Many of the least exacting buyers reported that they have no formal qualification process except requiring mills to provide documentation certifying the corrosion-resistant products meet all required chemistry, gauge, width and coating requirements. Report at I-165.

⁵⁰ Report at I-165.

⁵¹ Report at I-165. See also Economics memorandum at 24.

⁵² Report at Table 10.

⁵³ Report at Table 10.

⁵⁴ Report at Table 15.

producers' share of domestic consumption fell throughout the period examined, declining from 85.6 percent in 1990 to 85.0 percent in 1991 and to 82.7 percent in 1992.⁵⁵

Domestic capacity increased throughout the period examined, rising from 13.8 million tons in 1990 to 14.3 million tons in 1991 and to 15.0 million tons in 1992.⁵⁶ From 1990 to 1991 capacity utilization dropped from 82.1 percent to 69.7 percent, and then increased in 1992 to 76.4 percent.⁵⁷ Domestic shipments, including company transfers, experienced a slight increase during the period examined.⁵⁸ This expansion was uneven as U.S. producers' shipments fell from 11 million tons in 1990 to 9.8 million tons in 1991, and then increased to 11.2 million tons in 1992.⁵⁹ The value of domestic shipments declined over the period examined, dropping from \$6.5 billion in 1990 to \$5.7 billion in 1991 and expanding to \$6.4 billion in 1992 but still below 1990 levels.⁶⁰ Inventory levels fluctuated throughout the period, declining from 1.40 million tons in 1990 to 1.38 million tons in 1991, and then increasing in 1992 to 1.41 million tons.⁶¹ As a ratio of total shipments, inventories declined slightly over the period examined, rising from 12.8 percent in 1990 to 14.2 percent in 1991, and dropping to 12.6 percent in 1992.⁶²

The number of production and related workers declined overall, falling from 10,129 to 9,680 from 1990 to 1991, and then increasing to 9,942 in 1992.⁶³ The number of hours worked declined from 20.4 million in 1990 to 19.0 million in 1991, and then increased to 20.1 million in 1992.⁶⁴ Hourly total compensation rose continuously during the period examined, climbing from \$25.16 in 1990 to \$27.17 in 1991 and then to \$28.08 in 1992.⁶⁵ Productivity, as measured by short tons produced per hour, decreased from 0.5 to 0.4 from 1990 to 1991, and then returned to 0.5 in 1992.⁶⁶

Net sales declined from \$6.5 billion in 1990 to \$5.6 billion in 1991 and then increased to \$6.3 billion in 1992, resulting in a slight overall decline.⁶⁷ The domestic industry realized a positive operating income of \$447 million in 1990, then incurred an operating loss of \$28 million in 1991.

⁵⁵ Report at Table 107.

⁵⁶ Report at Table 15.

⁵⁷ Report at Table 15.

⁵⁸ Report at Table 16.

⁵⁹ Report at Table 16.

⁶⁰ Report at Table 16.

⁶¹ Report at Table 17.

⁶² Report at Table 17.

⁶³ Report at Table 18.

⁶⁴ Report at Table 18.

⁶⁵ Report at Table 18.

⁶⁶ Report at Table 18.

⁶⁷ Report at Table 40.

In 1992, the industry realized a positive operating income of \$77 million.⁶⁸ Similarly, operating income as a percentage of net sales was 6.9 percent in 1990, (0.5) percent in 1991, and 1.2 percent in 1992.⁶⁹ Research and development expenditures declined during the period, from \$26.38 million in 1990 to \$22.16 million in 1991, and \$20.23 million in 1992.⁷⁰ Capital expenditures for the corrosion-resistant steel industry also experienced a decline, from \$557 million in 1990 to \$541 million in 1991, to \$246 million in 1992.^{71 72 73}

C. Domestic Industry Producing Clad Plate

The clad plate industry, compared to the other industries subject to investigation, is extremely small. The only domestic producer providing industry data has not given us permission to discuss industry trends. We note that, generally, most of the indicators for the domestic industry may have fluctuated somewhat during the period, but were favorable overall.

Domestic consumption, measured in terms of both quantity and value, [***] throughout the period examined. U.S. producers share of domestic consumption [***] from 1990 to 1991, before [***] in 1992 to levels [***] that of 1990. U.S. production followed similar trends. Production [***] between 1990 and 1991, and then [***] in 1992. Domestic capacity [***] throughout the period examined. With capacity remaining [***], capacity utilization rates [***] production trends. Domestic shipments [***], but [***] during the period examined. In terms of value, domestic shipments [***] throughout the period examined.⁷⁴

The number of production workers and the number of hours worked [***] the period examined. Total compensation in the industry [***] between 1990 and 1991, while experiencing a [***] in 1992. The result was [***] during the period examined. Hourly wages [***] throughout the period. Inventory levels [***] throughout the period examined. Inventories [***] from 1990 to 1991, and then [***] from 1991 and 1992, although to levels [***].⁷⁵

Net sales [***] from 1990 to 1991, and then [***] in 1992, to levels [***] 1990. Most of the financial indicators, including gross profit, operating income, and operating income as a ratio of sales [***] from 1990 to 1991, and then [***] from 1991 to 1992. In all indicators, 1992 levels [***] 1990 levels.^{76 77}

⁶⁸ Report at Table 40.

⁶⁹ Report at Table 40.

⁷⁰ Report at Table 41.

⁷¹ Report at Table 43. Upon expiration of the VRA program in March 1992, domestic producers were no longer required to reinvest their net cash flow in modernization programs. It is unclear the extent to which termination of the VRA program accounts for reductions in capital expenditures.

⁷² Based upon his analysis of the foregoing information, Chairman Newquist finds the domestic corrosion-resistant industry to be in a vulnerable condition.

⁷³ Commissioner Rohr determines that the domestic industry producing corrosion-resistant steel is materially injured.

⁷⁴ Report at Table C-8.

⁷⁵ Report at Table C-8.

⁷⁶ Report at Table C-8.

IV. CUMULATION

In determining whether there is material injury by reason of the LTFV and subsidized imports, we are required to assess cumulatively the volume and effect of imports from two or more countries subject to investigation if such imports "compete with each other and with like products of the domestic industry in the United States market," and are reasonably coincident with one another.⁷⁸ Even if that test is satisfied, cumulation is not required, however, when imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.⁷⁹

We adopt the discussion on competition and negligibility legal standards as well as the factors we considered in applying these legal standards contained in the Views of the Commission on Hot-rolled Steel.⁸⁰ Two basic cumulation issues are presented in these final investigations.⁸¹ First, a number of respondents argued that their imports did not compete with other subject imports, with domestic corrosion-resistant products, or both. Second, a number of respondents also argued that their imports were negligible.

A. Corrosion-Resistant Products

1. General Competition Issues

Few respondents in the corrosion-resistant steel investigations argued there was no competition between their products and imports from other countries. There were numerous arguments made, however, that there was no reasonable overlap of competition between the imports and the domestic product. We find a reasonable overlap of competition between imports of corrosion-resistant steel products and with the domestic product, and between imports from each of the different countries.⁸² The Commission collected extensive pricing data which indicate that all countries involved in the corrosion-resistant steel investigations sold at least some of the same

⁷⁷(...continued)

⁷⁷ Based on the condition of the domestic industry producing clad plate, Commissioner Rohr finds that the domestic industry producing clad plate is not currently experiencing material injury. He therefore finds it unnecessary to reach the issue of whether any injury is by reason of the subject imports.

⁷⁸ 19 U.S.C. § 1677(7)(C)(iv)(I); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990).

⁷⁹ 19 U.S.C. § 1677(7)(C)(v).

⁸⁰ Commissioner Nuzum has considered additional factors in her analysis of negligibility. See her Additional and Dissenting Views.

⁸¹ Respondents also argue that imports from South Africa are not "subject to investigation" under the cumulation provision of the Statute. This issue is also discussed below.

⁸² Commissioner Rohr notes that his analysis began with a consideration of negligibility and then he considered whether the countries that were not negligible competed. He did this to avoid the possibility that an overlap of competition might be used on particular imports that might be excluded on negligibility grounds. He joins in this discussion as it pertains to those countries he found not negligible, Australia, Canada, Germany, Japan, Korea, and Mexico. He takes no position as to its applicability in other countries which he found negligible, specifically, Brazil, France, New Zealand, and Sweden.

commodity products on which our pricing data were based.⁸³ All countries had sales of at least one of these niche products;⁸⁴ six countries sold at least three niche products; and seven countries had sales of niche product 47. Each of the ten countries sold at least some of the same commodity grade and/or niche products as all other countries. The record also shows that many of the corrosion-resistant niche products, including product 47, were produced by the domestic industry.⁸⁵ Thus, imports of commodity grade and/or niche products from each country were present simultaneously in the market with comparable domestic product.

Imports from all countries involved in the corrosion-resistant steel investigations were present in the U.S. market in most, if not all, months of the period of investigation.⁸⁶ Imports from most of the countries were sold in at least three of the four regions of the United States, with most countries' products being present in all four regions.⁸⁷ We find a reasonable overlap of competition between the imports from the various subject countries, as well as with the domestic product. Individual competition arguments made with respect to subject imports from specific countries will be addressed in turn.

2. Specific Country Arguments Concerning Competition

Canada

The Canadian respondents do not argue that the Commission should not cumulate imports from that country for purposes of present material injury. Instead, they assert that the Commission should not cumulate imports from that country for purposes of its threat analysis.⁸⁸

⁸³ Report at Appendix N. All countries sold at least some amount of product 13, Australia, Germany and Sweden sold product 14; Japan and France sold product 15; all countries except France, Germany, Sweden, Brazil and Australia sold product 16; Canada, France, Germany and Japan sold product 17; and Japan and Korea sold product 18.

⁸⁴ The pricing data in these investigations included questionnaire responses on various commercial grade products selected for pricing comparisons in the four major like products, as well as unit values for so-called niche products. Niche categories were developed in response to claims from various respondents in the preliminary investigations that they imported specialized products for which there was no significant domestic or other foreign production. Both petitioners and respondents had significant input on the products selected for both commercial grade and niche product pricing comparisons. As discussed further below, our data show that there are actually very few niche categories in which there is no significant domestic production or foreign production by more than one respondent.

⁸⁵ Report at Tables 100, F-4. For example, Australia, Sweden and Brazil each sold one niche product; Mexico sold three niche products; Germany sold four niche products; Canada sold five niche products; France sold six niche products; Korea sold eight niche products; and Japan sold thirteen niche products. Further, there was domestic production of most niche products. Table F-4.

⁸⁶ Report at Table L-1.

⁸⁷ Report at Table M-4. Mexican imports were only present in one region.

⁸⁸ See, Joint Prehearing Br. of Canadian Respondents regarding threat of material injury by corrosion-resistant imports at 2.

Petitioners contend that imports from Canada should be cumulated because they were sold in all regions of the United States, were simultaneously present with other imports, and compete with imports from other countries.⁸⁹

The Canadian products were imported into the United States during all 36 months of the period of investigation,⁹⁰ and were sold in all regions of the U.S.,⁹¹ by at least 56 importers or consignees.⁹² Canadian imports of niche products comprised a minority of total imports from that country.⁹³ All of the niche products imported from Canada were also manufactured by domestic producers, and were also imported from other countries. There were 25 instances of underselling and 16 instances of overselling by the Canadian corrosion-resistant product.⁹⁴ Seven purchasers considered the Canadian product to be comparable to the domestic product, and one considered it to be inferior to the domestic product.⁹⁵

In view of the foregoing, we find a reasonable overlap of competition between imports from Canada, the domestic product and imports from other countries.

France⁹⁶

The French respondents assert that their imports of specialty corrosion-resistant products do not compete with U.S. products.⁹⁷ They argue that a substantial portion of their imports of niche products almost always were higher priced than domestic products.⁹⁸ For example, they argue that one of their niche products is sold only to one purchaser, and that there are cost disadvantages associated with the domestic industry competing for that company's business.⁹⁹ The French respondents also claim that another specialty product (ultra-thin corrosion-resistant material) is a product which the domestic industry has traditionally not produced, and, in the few cases where domestic production has been available, it has been sub-standard. Additionally, they argue that there is no domestic production of one niche product.¹⁰⁰ The French respondents further argue that the fact that the French products were sold at higher prices than domestic products provides further evidence

⁸⁹ Petitioners' prehearing br., Vol. 4 at 103.

⁹⁰ Report at Table L-1.

⁹¹ We note that imports in Region III in 1991 and in Region IV throughout the investigative period were extremely small, i.e., a positive figure, but less than the digits displayed. Report at Table M-4.

⁹² Report at Table M-5.

⁹³ Report at Table 100.

⁹⁴ Report at Tables 110-113.

⁹⁵ Report at Table 109.

⁹⁶ Commissioner Rohr does not join in this discussion.

⁹⁷ Usinor's prehearing br. at 53.

⁹⁸ Id. at 56.

⁹⁹ Id. at 50.

¹⁰⁰ Id.

that domestic products and imports from France do not compete.¹⁰¹ Finally, they assert that the long lead times, high inventory costs, and the pattern of spot market sales handicaps their ability to improve its market share over time.¹⁰²

Petitioners contend that imports from France should be cumulated with imports from other countries. Specifically, petitioners assert that domestic producers produce the majority of the niche products imported from France.¹⁰³

There were six niche products imported from France during the period of investigation, accounting for a minority of imports during the period.¹⁰⁴ Of these products, U.S. producers shipped all but one, which accounted an extremely small percentage of French products imported during the period of investigation. Thus, the overwhelming majority of French niche products were also produced by the domestic industry. Seven purchasers considered the French product comparable in quality to the domestic product, while two purchasers considered it to be superior in quality to the domestic product.¹⁰⁵ With respect to the commodity products examined, there were ten instances of underselling and 12 instances of overselling.¹⁰⁶ French corrosion-resistant product was imported in all months during the period of investigation¹⁰⁷ through at least five importers or consignees.¹⁰⁸ In view of the foregoing, we find a reasonable overlap of competition between imports from France and the domestic product.

Germany

The German respondents argue that imports from Germany do not compete with the domestic product. They assert that corrosion-resistant steel imports from Germany have been confined to automotive steel, sold by one company, Thyssen, Inc., to automotive end users/manufacturers.¹⁰⁹ These respondents argue that their products are not substitutable with domestically produced steel. They further assert that all other German corrosion-resistant steel (i.e., nonautomotive) was imported in negligible quantities and in steadily declining volumes. They argue that their products were sold at significantly higher prices than domestic steel for all calendar quarters in which meaningful comparisons could be made, and that sales volumes were not related to price. Finally, they ask the Commission to consider the fact that German subsidy and dumping margins are significantly lower than those for imports from other countries.¹¹⁰

¹⁰¹ Id. at 53.

¹⁰² Id. at 57.

¹⁰³ Petitioners' prehearing br., Vol. 4 at 105.

¹⁰⁴ Report at Table 100.

¹⁰⁵ Report at Table 109.

¹⁰⁶ Report at Tables 110-113.

¹⁰⁷ Report at Table L-1.

¹⁰⁸ Report at Table M-5.

¹⁰⁹ German respondents' prehearing corrosion-resistant br. at 3.

¹¹⁰ Id. at 10.

Petitioners argue that imports from Germany should be cumulated because all of the niche products imported from Germany were produced by U.S. producers in significant amounts.¹¹¹

Sales of German corrosion-resistant products were made in all geographic regions of the United States, in all months of the period of investigation, through at least 14 importers or consignees.¹¹² There was domestic production and imports from all German niche products.¹¹³ With respect to the German commodity grade products, we note that there were 5 instances of underselling by the German products and 42 instances of overselling.¹¹⁴ However, purchaser questionnaire data indicated that five purchasers considered the German product comparable in quality to the domestic product, whereas only one purchaser considered it to be superior to the domestic product.¹¹⁵ Based on the foregoing, we find that there is a reasonable overlap in competition between the domestic and German products.

Japan

The Japanese respondents assert that imports from Japan do not compete with the domestic like product. They argue that, due to automotive purchasers' rigid qualification requirements, Japanese exports to the U.S. automotive sector, which account for a large percentage of imports of Japanese corrosion resistant steel, do not compete with the domestic industry. The Japanese respondents assert that suppliers who do not pass a particular qualification process are foreclosed from competing for that automaker's business, and that even if a mill is qualified to supply certain end use parts, it may not be qualified to supply parts for other end uses.¹¹⁶ Moreover, they argue that once domestic mills have become qualified to supply the U.S. automotive industry, the auto industry's Buy American policies require displacement of imports from Japan.¹¹⁷

In the nonautomotive segment of the market, the Japanese respondents argue that their shipments have not competed with U.S. and subject foreign products. They assert that, depending on the particular product at issue, Japanese imports may compete with imports from one or more countries, but because these products do not compete with U.S. products, there can be no "hammering" effect.¹¹⁸ Moreover, the Japanese respondents assert that, when the fact that Japanese mills sell at premium prices is taken into account, there are significant tonnages across a number of product specifications for which there is arguably no competition.¹¹⁹

Petitioners assert that, contrary to respondents' arguments, the domestic industry can and does supply substantial quantities of the same types of corrosion-resistant materials, of comparable quality, to the automotive industry. They contend that domestic manufacturers also shipped a

¹¹¹ Petitioners' prehearing br., Vol. 4 at 105.

¹¹² Report at Tables L-1, M-4, M-5.

¹¹³ Domestic shipments for product 43 began in 1992.

¹¹⁴ Report at Tables 110-113.

¹¹⁵ Report at Table 109.

¹¹⁶ Japanese respondents' prehearing corrosion-resistant br. at 13-14.

¹¹⁷ *Id.* at 16.

¹¹⁸ *Id.* at 19.

¹¹⁹ *Id.* at 20.

significant quantity of the same corrosion-resistant niche products for nonautomotive applications as those imported from Japan.

Japanese product was imported during every month of the period of investigation, in every region, through at least 35 importers or consignees. A significant portion of Japanese imports were of 13 niche products. Domestic producers produced and sold seven of these niche products. The niche products for which there was no domestic production comprised only a minor percentage of Japanese imports. Additionally, there were no imports from other countries of three of the niche products.¹²⁰ Again, these products constituted a minor portion of Japanese imports.¹²¹ We note that the average unit values for the Japanese niche products were generally higher than those of both the domestic product and other imports. However, there were instances in which either the domestic product or other imports had higher unit values for one or more years.¹²²

With respect to commodity products, we note that there were 60 instances of overselling and 23 instances of underselling. The weighted-average unit values of Japanese imports were sometimes higher and sometimes lower than those of other imports.¹²³ Twenty-three purchasers considered the Japanese product to be superior in quality to the domestic product, and eight purchasers considered the Japanese product to be comparable to the domestic product.¹²⁴

While there is evidence that imports from Japan are of higher quality, quality differences alone do not compel a finding of noncompetition. Moreover, even though domestic producers were not qualified to sell certain products to certain purchasers of Japanese imports, there was substantial overlap in other products sold. To the extent that both U.S. and Japanese producers supply particular specified products, of comparable quality, for the same end uses, in the same channels of distribution, "competition" exists. Indeed, only a minor proportion of Japanese imports consisted of products not produced and sold by the other foreign and/or domestic producers.

In view of the above, we find that there is a reasonable overlap of competition between the Japanese imports and the domestic products, as well as with other imports.

Korea

While not specifically arguing against cumulation, the Korean respondents assert that certain Korean niche imports do not compete with domestic galvanized products.¹²⁵ Additionally, they argue that a certain volume of Korean imports in 1992 consisted of ultra thin prepainted sheet, which

¹²⁰ Report at Tables 100, F-4.

¹²¹ Report at Table 100.

¹²² Report at Table F-4.

¹²³ See, e.g., Report at Table N-16, Korean product 16 generally was higher valued, whereas New Zealand product was lower valued. Report, Table N-17, German and Canadian product generally higher valued whereas the French product was lower valued. Report, Table 18-Korean product lower valued; Report, Table N-33, French product generally higher valued; Report, Table N-36, Korean product lower valued.

¹²⁴ Report at Table 109.

¹²⁵ We note that the Korean respondents argued that the Commission should not cumulate imports from Korea with imports of other countries for purposes of its threat analysis.

allegedly was not generally available from domestic producers.¹²⁶ Further, the Korean respondents claim that the extra thin corrosion-resistant market is a specialty market for Korean imports, because domestic thin gauges were not available in adequate supply, and customers could not substitute another gauge for the extra-thin gauge.¹²⁷ Finally, the Korean respondents argue that Korean products do not compete head-to-head with U.S.- produced prepainted coated sheet.

Petitioners argue that imports from Korea should be cumulated because the niche products imported from Korea compete directly with identical U.S. products and products from other subject countries.¹²⁸

During the period of investigation, Korean imports included eight niche products.¹²⁹ Of these products, U.S. producers shipped all except three.¹³⁰ These three products made up a small percentage of Korean imports during the period of investigation.¹³¹ There were 15 instances of underselling and 18 instances of overselling.¹³² Seven purchasers found the Korean product to be comparable in quality to the domestic product, and four found the product to be superior to the domestic product.¹³³ The Korean products were imported in every month¹³⁴ and in every region¹³⁵ during the period of investigation, by at least 29 importers or consignees.¹³⁶ With regard to the Korean respondents' allegations that the domestic producers do not generally paint their product, we note that even the Korean respondents acknowledge that at least one domestic producer has a painting facility, and that still other domestic producers arrange for outside contractors to paint their products.¹³⁷

Based on the foregoing, we find that there is a reasonable overlap of competition between the Korean and domestic product.

Mexico

The Mexican respondents assert that over 50 percent of all Mexican coated sheet exports to the United States over the period of investigation were imported under the American Goods Returned

¹²⁶ Korean respondents' prehearing corrosion-resistant br. at 1-5.

¹²⁷ *Id.* at 6-7.

¹²⁸ Petitioners' prehearing br., Vol. 4 at 110.

¹²⁹ Report at Table 100.

¹³⁰ Report at Table F-4.

¹³¹ Report at Table 100.

¹³² Report at Tables 110-113.

¹³³ Report at Table 109.

¹³⁴ Report at Table L-1.

¹³⁵ We note that imports in Region II were relatively insignificant. Report at Table M-4.

¹³⁶ Report at Tables M-5.

¹³⁷ Korean respondents' prehearing corrosion-resistant br. at 8.

("AGR") provision.¹³⁸ They argue that these imports do not compete with U.S. product. Because the hot-rolled and cold-rolled coils are actually made by U.S. petitioners, and sent to Mexico for coating, respondents assert that it would be inappropriate to include such products in the Commission's injury analysis.¹³⁹ Respondents assert that in certain instances the U.S. producers and distributors use the Mexican companies only for painting services. In this regard, respondents argue that the U.S. import statistics overstate imports from Mexico.¹⁴⁰

The Mexican respondents further argue that a significant portion of Mexican imports are thin-gauge galvanized sheet and prepainted galvanized sheet, products the petitioners do not typically produce. Additionally, the Mexican respondents assert that most of their imports are sold in the southeast and southwest regions, which are not typically supplied by the petitioners.¹⁴¹ Finally, respondents state that the lack of evidence of lost sales and price underselling supports the assertion that there is no overlapping competition between the Mexican products and U.S. products.

Petitioners argue that imports of corrosion-resistant steel from Mexico are largely commodity products that compete with the domestic product and with imports from other subject countries in the United States. Petitioners assert that they lost sales of corrosion-resistant flat products to Mexican producers.¹⁴² With respect to Mexican goods imported under the AGR program, petitioners argue that no imports from Mexico which are subject to investigation can be excluded from the Commission's injury analysis. Moreover, petitioners assert that respondents have attempted to confuse the record by exaggerating the extent of petitioners' involvement in the export of U.S. origin steel that is processed in Mexico and returned to the United States as corrosion-resistant product under the AGR program. Petitioners assert that only one petitioning firm knowingly imported corrosion-resistant steel from Mexico under the AGR program during the period of investigation, and then only to a very limited extent. Petitioners argue that respondents have overlooked the role of a steel service center which took part in the transactions.

Three niche products were imported from Mexico during the period of investigation, accounting for a minor portion of total imports from that country.¹⁴³ Of these three products, only one product was not domestically produced. Imports of that product accounted for a small percentage of Mexican imports. There was mixed evidence concerning the quality of Mexican goods with one purchaser considering the product to be inferior to the domestic product, while another considered it to be superior to the domestic product.¹⁴⁴ In view of the fact that the domestic industry sells the overwhelming majority of the types of products imported from Mexico, we find that there is a reasonable overlap of competition between the Mexican and domestic products.^{145 146}

¹³⁸ Mexican respondents' prehearing corrosion-resistant br. at 5.

¹³⁹ *Id.* at 9.

¹⁴⁰ *Id.* at 12.

¹⁴¹ *Id.* at 12.

¹⁴² Petitioners' posthearing br., Vol. 5 at 5-6.

¹⁴³ Report at Table 100.

¹⁴⁴ Report at Table 109.

¹⁴⁵ To the extent that the Mexican respondents argue that we should exclude imports of corrosion-resistant product from Mexico imported under the AGR program, we note that we have repeatedly held that we must accept Commerce's designation of the goods subject to its determination.

3. General Negligibility Issues

Respondents for Canada, Germany, Japan, and Korea did not assert that the negligible imports exception provision was applicable to imports from their respective countries. The respective volumes and shares of apparent domestic consumption for imports from each of these countries exceeds levels that we consider to be negligible in this particular market.¹⁴⁷ Sales of imports from these countries were not isolated or sporadic; each country's products were present in the market in all months in the period of investigation;¹⁴⁸ all except Canada (3 out of 4) were present in all four regions of the United States;¹⁴⁹ and all were sold through a large number of importers.¹⁵⁰ These facts support a conclusion that these imports are not negligible.

4. Specific Country Negligibility Arguments

Australia

The Australian respondents' arguments against cumulation are premised on their argument that AlZn is a separate like product. The Australian respondents argued, however, that even if AlZn is not found to be a separate like product, the Commission should find that Australian imports are negligible because the AlZn imports do not compete with domestic galvanized product or other products in the corrosion-resistant group.¹⁵¹ ¹⁵² Further, the Australian respondents assert that imports of Australian galvanized product should not be cumulated because such imports are negligible and have no discernible adverse impact on the domestic industry.

Petitioners contend that imports from Australia should be cumulated because only a fraction of Australian imports were of niche products. Petitioners assert that numerous domestic and foreign producers manufacture galvalume for the U.S. market. Further, petitioners assert that there was mixed overselling and underselling by the Australian product; it was sold in every month of the period of investigation, in three of four regions of the United States, and therefore was

¹⁴⁶ (...continued)

¹⁴⁶ Vice Chairman Watson finds a reasonable overlap of competition between the imports of corrosion-resistant product from Mexico which Commerce has identified in its affirmative determination and the domestic product. In making this finding on competition, he notes that the record indicates that there is a reasonable overlap of competition between non-AGR imports from Mexico and the domestic product. See his Separate Views on the negligibility of imports from Mexico.

¹⁴⁷ Report at Table 96.

¹⁴⁸ Report at Table L-1.

¹⁴⁹ Report at Table M-4.

¹⁵⁰ Report at Table M-5.

¹⁵¹ Broken Hill Proprietary Co. Ltd., BHP Trading Inc., ASC Pacific Inc. and Supracote Inc. ("the Australian respondents") prehearing br. at 36, n.55.

¹⁵² AlZn was not considered to be a niche product, but was investigated as a potential separate like product. An extensive discussion of the AlZn like product, and its interchangeability with and comparison to other domestic corrosion-resistant products can be found in the like product section of this opinion.

simultaneously present in the domestic market with corrosion-resistant products from other subject countries.¹⁵³

Australian imports' share of apparent U.S. consumption increased from 0.9 percent to 1.3 percent from 1990 to 1991, and increased to 1.4 percent in 1992.¹⁵⁴ The volume of imports from Australia also increased throughout the period of investigation.¹⁵⁵ Imports from Australia were not isolated or sporadic; they were imported in every month during the period of investigation¹⁵⁶ through at least 8 importers or consignees.¹⁵⁷ The majority of Australian imports were concentrated in two regions, while small amounts were also present in a third region.¹⁵⁸ Three purchasers considered the Australian product to be comparable in quality to the domestic product, and four found it to be superior.¹⁵⁹ Australian imports of niche products were confined to one product, which was produced by the domestic industry. Further, AlZn, or galvalume, is produced and sold domestically, and is also imported from other countries.¹⁶⁰ Based on the increasing volume and market share of Australian imports, we decline to find Australian imports negligible.

Brazil¹⁶¹

The Brazilian respondents argue that imports from Brazil are negligible and therefore should not be cumulated. The Brazilian respondents assert that the highest market share achieved by Brazilian imports during the investigative period was 0.2 percent. Moreover, respondents argue that imports declined by 38 percent in volume and 35 percent in value over the three year period. Further, the Brazilian respondents argue that sales transactions are isolated and sporadic, with all Brazilian sales being made on a "spot basis". The Brazilian respondents contend that only one of two lost sales allegations was confirmed, suggesting that Brazilian imports are so small that their effects cannot be identified. The Brazilian respondents also assert that the prehearing report fails to present evidence of price underselling by imports from Brazil. Finally, the Brazilian respondents argue that import prices from Brazil increased during the period of investigation, indicating that it was not the price leader.¹⁶²

Petitioners assert that imports of corrosion-resistant steel from Brazil enter all ports of the U.S. and are of commercial grades. Petitioners contend that imports from Brazil compete head-to-head with domestic production in commodity markets.

¹⁵³ Petitioners' prehearing br., Vol. 4 at 100.

¹⁵⁴ Report at Table 107.

¹⁵⁵ Report at Table 96.

¹⁵⁶ Report at Table L-1.

¹⁵⁷ Report at Table M-5.

¹⁵⁸ Report at Table M-4.

¹⁵⁹ Report at Table 109.

¹⁶⁰ Report at Appendix N.

¹⁶¹ Commissioner Nuzum dissents from the majority's determination with respect to Brazil and therefore does not join in this discussion. See her Additional and Dissenting Views.

¹⁶² Companhia Siderurgica Nacional's prehearing corrosion-resistant br. at 5-8.

The Brazilian imports percentage of domestic consumption decreased from 0.2 to 0.1 from 1990 to 1991; and remained at 0.1 from 1991 to 1992.¹⁶³ The volume of imports from Brazil decreased throughout the period.¹⁶⁴ Brazilian imports of corrosion-resistant product was not isolated and sporadic; it was imported in 8 months of 1990; 7 months in 1991 and 10 months of 1992¹⁶⁵ through at least 10 importers or consignees.¹⁶⁶ The single lost sale confirmed involved only [***] tons of product.¹⁶⁷ ¹⁶⁸ Based on the extremely low and declining volume of Brazilian imports, we find that these imports are negligible and had no discernible impact on the domestic industry.¹⁶⁹

France ¹⁷⁰ ¹⁷¹

The French respondents argue that imports of corrosion-resistant steel from France are negligible and have not had an adverse impact on the domestic industry. They assert that the imports were only sporadically present in the domestic market during the period of investigation, and were sold only on a spot basis. Further, they argue that the domestic market is not price sensitive.¹⁷² The French respondents contend that a substantial percentage of imports from that country are niche products that do not compete with the domestic products and should not be considered as part of the negligibility analysis.

The market share of imports from France rose from 0.5 to 0.6 percent from 1990 to 1991, and rose again to 0.7 percent in 1992.¹⁷³ The volume of imports from France also increased throughout the period.¹⁷⁴ Sales of corrosion-resistant imports from France were not isolated or sporadic; they were imported in all months during the period of investigation,¹⁷⁵ through at least 5

¹⁶³ Report at Table 107.

¹⁶⁴ Report at Table 96.

¹⁶⁵ Report at Table L-1.

¹⁶⁶ Report at Table M-5.

¹⁶⁷ Report at Tables 115-117.

¹⁶⁸ Commissioner Brunsdale and Commissioner Crawford do not rely on anecdotal evidence of lost sales and revenues showing that competition from the subject imports caused domestic producers to lose particular sales or forced them to reduce their prices on other sales in reaching her determinations.

¹⁶⁹ See each Commissioner's Additional and Dissenting Views concerning price sensitivity issues relevant to this negligibility analysis.

¹⁷⁰ Commissioner Rohr does not join in this discussion and finds imports from France to be negligible. See his Additional Views.

¹⁷¹ Commissioner Brunsdale does not join this discussion. See her Additional and Dissenting Views.

¹⁷² Usinor's prehearing br. at 44.

¹⁷³ Report at Table 107.

¹⁷⁴ Report at Table 96.

¹⁷⁵ Report at Table L-1.

importers or consignees.¹⁷⁶ With respect to French respondents' arguments concerning fungibility or attenuated competition, we do find French imports are generally substitutable with the domestic product. There were six niche products imported from France during the period of investigation, which accounted a minority of total French imports.¹⁷⁷ Of these products, U.S. producers shipped all but one product, which accounted for an extremely small percentage of French imports during the period of investigation. Thus, the overwhelming majority of French niche products also were produced by the domestic industry. Seven purchasers considered the French product comparable in quality to the domestic product, while two purchasers considered it to be superior to the domestic product.¹⁷⁸ With respect to the commodity products examined, we note that there were ten instances of underselling and 12 instances of overselling.¹⁷⁹ One lost sale allegation was confirmed.¹⁸⁰ Based on the increasing market penetration and increasing volume, and the apparent substitutability with the domestic product, we decline to find the imports from France negligible.

Mexico^{181 182 183}

The Mexican respondents argue that their imports are negligible and have no discernible impact on the domestic industry. Specifically, the Mexican respondents argue that Mexican exports of U.S.-made sheet should be excluded from Mexico's market share. Further, the Mexican respondents argue that imports from Mexico are not substitutable with the domestic product because of the consistently large price disparities between the Mexican and domestic product.

As a percentage of U.S. consumption, Mexican corrosion-resistant imports decreased from 0.9 percent to 0.7 percent from 1990 to 1991, and then increased slightly to 0.8 percent in 1992.¹⁸⁴ The volume of imports from Mexico declined from 1990 to 1991, and then increased in 1992.¹⁸⁵ Mexican imports consistently oversold the U.S. product. In light of the small volume and market share of imports from Mexico, we find Mexican imports to be negligible and having no discernible impact on the domestic industry.¹⁸⁶

¹⁷⁶ Report at Table M-5.

¹⁷⁷ Report at Table 100.

¹⁷⁸ Report at Table 109.

¹⁷⁹ Report at Tables 110-113.

¹⁸⁰ Report at Tables 115-117.

¹⁸¹ See Separate Views of Vice Chairman Watson finding imports from Mexico to be negligible.

¹⁸² Commissioner Rohr does not join in this discussion and finds that the imports from Mexico are not negligible. See his Additional and Dissenting Views.

¹⁸³ Commissioner Nuzum dissents from the majority's determination with respect to Mexico and therefore does not join in this discussion. See her Additional and Dissenting Views.

¹⁸⁴ Report at Table 107.

¹⁸⁵ Report at Table 96.

¹⁸⁶ See each Commissioner's Additional and Dissenting Views concerning price sensitivity issues relevant to this negligibility analysis.

New Zealand ¹⁸⁷

The New Zealand respondents argue that imports from that country are negligible, and therefore should not be cumulated.¹⁸⁸ Specifically, respondents argue that volume and market share are negligible; that sales are isolated and sporadic; and that the domestic market for corrosion-resistant steel is not price sensitive. Finally, the New Zealand respondents argue that competition between New Zealand and domestic production is attenuated. Specifically, respondents argue that New Zealand participates in the U.S. market by complementing U.S. production as a residual source of supply, and not as a direct price competitor. The New Zealand respondents argue that this is evidenced by the higher average unit values, the fact that New Zealand significantly "oversold" comparable U.S. products, and the fact that there were no lost sales or lost revenue allegations relating to New Zealand.¹⁸⁹

Petitioners assert that the bulk of imports from New Zealand compete head-to-head with domestic production in commodity markets primarily in the Western and Gulf regions of the United States. Petitioners assert that New Zealand mills have an agreement with the mills in Japan, restraining exports to the Japanese market.¹⁹⁰ Petitioners also assert that New Zealand should not be found negligible because of the New Zealand manufacturer's relationship to an Australian company. Specifically, petitioners assert that Broken Hill Proprietary Company, Ltd. ("BHP"), an Australian exporter of corrosion-resistant products, effectively owns 81 percent of BHP New Zealand Steel Limited, and that both the Australian and New Zealand company use the same related importer, BHP Trading, Inc., for sales to the U.S. Petitioners assert that cumulation of Australian with New Zealand imports is therefore appropriate, because cross-ownership interests could result in market allocations between Australia and New Zealand.¹⁹¹

The volume of imports from New Zealand as a percentage of U.S. consumption rose from 0.2 percent in 1990 to 0.3 percent in 1991, and then fell to 0.2 percent in 1992.¹⁹² The absolute volume of imports of corrosion-resistant product from New Zealand increased from 1990 to 1991, and decreased in 1992 to levels comparable to 1990.¹⁹³ Imports of corrosion-resistant product from New Zealand were not isolated and sporadic; they entered the U.S. in 12 months of 1990; 8 months of 1991; and 7 months in 1992 through one importer or consignee.¹⁹⁴ New Zealand imports were present in three of the four regions during the period of investigation.¹⁹⁵ There were two instances of

¹⁸⁷ Commissioner Nuzum dissents from the majority's determination with respect to New Zealand and therefore does not join in this discussion. See her Additional and Dissenting Views.

¹⁸⁸ BHP New Zealand Steel's posthearing corrosion-resistant br. at 1-2.

¹⁸⁹ New Zealand respondents' posthearing corrosion-resistant br. at 5-7.

¹⁹⁰ Petitioners' posthearing br., Vol. 5 at 9.

¹⁹¹ Petitioners' posthearing br., Vol. 5, Exhibit 31 at 2-3.

¹⁹² Report at Table 107.

¹⁹³ Report at 139.

¹⁹⁴ Report at Tables L-1, M-5.

¹⁹⁵ There were no imports from New Zealand in Region I throughout the period of investigation, and no imports in Region II during 1990. Report at Table M-4.

underselling and thirteen instances of overselling by the New Zealand product.¹⁹⁶ Three purchasers indicated that the New Zealand product was comparable to the domestic product. In view of the small and declining market share of the imports from New Zealand, and the other factors discussed above, we find that imports from New Zealand are negligible and have no discernible adverse impact on the domestic industry.¹⁹⁷

We have considered petitioners' arguments that the cross-ownership between the New Zealand and Australian corrosion-resistant exporters and importers precludes a finding of negligibility. We do not find any evidence, however, that shipments would be allocated by these companies, as alleged by petitioners. We find that the cross ownership alone is not sufficient to negate the application of the negligible imports exception.¹⁹⁸

South Africa¹⁹⁹

Petitioners argue that imports from South Africa should be cumulated because such imports compete with domestic and other imported like products in the U.S. market and are subject to investigation.²⁰⁰

We find imports from South Africa to be negligible. Imports from South Africa began only in 1992. By volume, imports accounted for 52,584 short tons of corrosion-resistant steel²⁰¹, which was only 0.4 percent of apparent U.S. consumption.²⁰² Based on the low volume of imports from South Africa, we find them to be negligible and have no discernible impact on the domestic industry. The Commission has no specific information concerning the grades of corrosion-resistant steel products which make up the South African imports. However, even if imports from South Africa are completely substitutable, we find that the low volume and market share of imports from South Africa during a very limited portion of the period examined are in and of themselves sufficient grounds on which to find them negligible.²⁰³

¹⁹⁶ Report at Tables 110-113.

¹⁹⁷ See each Commissioner's Additional and Dissenting Views concerning price sensitivity issues relevant to this negligibility analysis.

¹⁹⁸ See, Ball Bearings Mounted, Unmounted, and Parts Thereof from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey, and Yugoslavia, Invs. Nos. 701-TA-307 and 731-TA-498-511 (Preliminary), USITC Pub. 2374 (April 1991) at 28-29, aff'd, Torrington Co. v. United States, 16 CIT ___, 790 F. Supp. 1161, 1172 (1992) (upholding the Commission's decision to apply the negligible imports exception based on the conclusion that the nature of the multinational companies' import practices indicated that they did not import principally to benefit from unfair trade practices).

¹⁹⁹ Commissioner Nuzum does not join this discussion. See her Additional and Dissenting Views.

²⁰⁰ Petitioners' prehearing br., Vol. 4 at 117.

²⁰¹ Report at Table 96.

²⁰² Report at Table 107.

²⁰³ See each Commissioner's Additional and Dissenting Views concerning price sensitivity issues relevant to this negligibility analysis.

Sweden²⁰⁴

The Swedish respondents argue that imports from that country are negligible and should not be cumulated with imports from other countries because imports from that country are low, and are isolated and sporadic. Further, they argue that the development of specialized products has greatly reduced whatever price sensitivity once existed in the corrosion resistant market.²⁰⁵ Finally, the Swedish respondents claim that any import increase was due to the importation of galvalume, which was produced under a 1978 license agreement with Bethlehem Steel, that the terms of the license prohibited exports to the U.S. prior to January 1, 1991, and that its imports did not actually commence until late that year. They assert that this product accounted for a large part of the absolute increase in Swedish exports in 1992, when compared with 1991.

Petitioners state that imports from Sweden should not be found to be negligible because most imports from Sweden were in commodity grades, and that Sweden does not produce a single alleged "niche" product that is not produced by domestic suppliers. Further, petitioners contend that imports from Sweden enter all major ports, and numerous purchasers reported purchasing corrosion-resistant steel from Sweden as well as products from other foreign importers. Further, petitioners assert that they have lost sales to the Swedish imports.²⁰⁶

While the absolute volume of imports from Sweden increased somewhat during the period of investigation, as a percentage of U.S. consumption the Swedish market share rose only from 0.1 to 0.2 percent from 1990 to 1991, and remained constant from 1991 to 1992.²⁰⁷ Swedish corrosion-resistant imports were not isolated and sporadic; it was imported in 8 months of 1990; 12 months in 1991 and 12 months of 1992²⁰⁸ in all regions²⁰⁹ through at least 5 importers or consignees.²¹⁰ Two lost sales or revenues allegations were confirmed, involving only [***] tons of product.²¹¹ Based on the low import volumes and market share of the Swedish imports during the period of investigation, and the factors discussed above, we find that imports from Sweden are negligible, and have no discernible adverse impact on the domestic industry.²¹²

²⁰⁴ Commissioner Nuzum dissents from the majority's determination with respect to Sweden, and therefore does not join in this discussion. See her Additional and Dissenting Views.

²⁰⁵ Swedish respondents' prehearing br. at 5-6.

²⁰⁶ Petitioners' posthearing br., Vol. 5 at 7-8.

²⁰⁷ Report at Table 107.

²⁰⁸ Report at Table L-1.

²⁰⁹ Report at Table M-4. We note that there were no imports in region IV in 1990.

²¹⁰ Report at Table M-5.

²¹¹ Report at Tables 115-117.

²¹² See each Commissioner's Additional and Dissenting Views concerning price sensitivity issues relevant to this negligibility analysis.

B. Clad Plate²¹³

France²¹⁴

Clad plate was only imported in [***] during the period of investigation.²¹⁵ Imports of clad plate from France in [***] were only [***] percent of apparent domestic consumption of that product. Moreover, in terms of absolute tonnage, imports accounted for [***] of [***] tons of product. The Commission has no specific information concerning the grade of this [***] of clad plate, but we find that the low volume and market share of imports from France during a very limited portion of the period examined are in and of themselves sufficient grounds on which to find them negligible, and having no discernible adverse impact on the domestic industry producing clad plate.

V. MATERIAL INJURY BY REASON OF CUMULATED IMPORTS OF CORROSION-RESISTANT PRODUCT²¹⁶

In determining whether the domestic industry is materially injured by reason of the imports under investigation, the statute directs us to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation;
- (II) the effect of imports of that merchandise on prices in the United States for like products; and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States.²¹⁷

In making this determination, we consider "such other economic factors as are relevant to the determination"²¹⁸ However, we do not weigh causes.^{219 220}

²¹³ Commissioner Rohr does not join this section of the opinion in view of his conclusion that the industry is not currently experiencing material injury.

²¹⁴ Commissioner Nuzum dissents from the majority's determination with respect to France, and therefore does not join in this discussion. See her Additional and Dissenting Views.

²¹⁵ Questionnaire responses.

²¹⁶ This portion of the opinion is joined by Vice Chairman Watson, Commissioner Rohr, Commissioner Crawford, and Commissioner Nuzum, except where otherwise noted.

²¹⁷ 19 U.S.C. § 1677(7)(B)(i).

²¹⁸ 19 U.S.C. § 1677(7)(B)(ii).

²¹⁹ See, e.g., Citrosuco Paulista, S.A. v. United States, 12 CIT 1196, 1228, 704 F. Supp. 1075, 1101 (1988).

²²⁰ Vice Chairman Watson, Commissioner Rohr, Commissioner Crawford, and Commissioner Nuzum incorporated herein and set forth their various views regarding their material injury causation standards contained in separate footnotes in § V of the Commission's Hot-Rolled Views.

A. Cumulated Imports

1. Volume Effects

In determining whether there is material injury by reason of the LTFV and subsidized imports, the statute directs us to 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."²²¹

We find that the volume effect of LTFV and subsidized cumulated imports of corrosion-resistant products was significant. While the four Commissioners joining in this opinion considered different combinations of cumulated countries in their analyses, the volumes and market shares of the cumulated imports considered by each Commissioner as a percentage of apparent domestic consumption were significant and generally increased throughout the period examined.²²² The volume of cumulated imports used by each Commissioner rose overall during the period examined, declining from 1990 to 1991, but then increasing in 1992 to levels substantially above those of 1990.²²³ The increase in cumulated import volumes corresponded to a significant increase in market share for the subject imports from the cumulated countries.²²⁴ At the same time, U.S. producers' market share declined steadily, from 85.6 percent in 1990 to 85.0 percent in 1991, and to 82.7 percent in 1992.²²⁵

²²¹ 19 U.S.C. § 1677(7)(C)(i).

²²² The four Commissioners participating in this portion of the opinion cumulated different countries as follows: Vice Chairman Watson and Commissioner Crawford: Australia, Canada, France, Germany, Japan, and Korea. Commissioner Rohr: Australia, Canada, Germany, Japan, Korea, and Mexico. Commissioner Nuzum cumulated all countries (Australia, Brazil, Canada, France, Germany, Japan, Korea, Mexico, New Zealand, South Africa, and Sweden).

²²³ For Vice Chairman Watson and Commissioner Crawford: Cumulated volumes from Australia, Canada, France, Germany, Japan and Korea decreased from 1.485 million short tons in 1990 to 1.408 million short tons in 1991; and then increased to 1.937 million short tons in 1992. For Commissioner Rohr: Cumulated volumes from Australia, Canada, Germany, Japan, Korea and Mexico decreased from 1.535 million short tons in 1990 to 1.416 million short tons in 1991; and then increased to 1.951 million short tons in 1992. For Commissioner Nuzum: Cumulated imports from Australia, Brazil, Canada, France, Germany, Japan, Korea, Mexico, New Zealand, South Africa, and Sweden decreased from 1.651 million short tons in 1990 to 1.553 million short tons in 1991; and then increased to 2.166 million short tons in 1992. Report at Table 96.

²²⁴ For Vice Chairman Watson and Commissioner Crawford: Cumulated imports from Australia, Canada, France, Germany, Japan and Korea increased in market share from 11.7 percent in 1990 to 12.3 percent in 1991, and increased further to 14.4 percent in 1992. For Commissioner Rohr: Cumulated imports increased from 12.1 percent in 1990 to 12.4 percent in 1991, and increased again to 14.5 percent in 1992. For Commissioner Nuzum: Cumulated imports from Australia, Brazil, Canada, France, Germany, Japan, Korea, Mexico, New Zealand, South Africa and Sweden increased from 12.9 percent of domestic consumption in 1990 to 13.6 percent in 1991; and again increased to 16.1 percent in 1992. Report at Table 107.

²²⁵ Report at Table 107.

Given the increase in penetration of the U.S. market, and the overall increase in volume of the cumulated imports, we find the increases in volume and market share of the cumulated imports to be significant.²²⁶

2. Price Effects ²²⁷

In evaluating the effect of LTFV and subsidized imports on prices, we consider whether "there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States," and whether "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."²²⁸

In considering the effect that the imports had on the price of corrosion-resistant products, we note, at the outset, that we have found the industry relatively insensitive to price. That is, price changes are not likely to cause shifts in volume in the short term. This conclusion is confirmed by our analysis of the condition of the industry which indicates that the injury being experienced is largely volume related. As a result, we have placed greater weight on the volume effects than on price effects in the impact section which follows.

Our finding of the relative price insensitivity of the market does not mean that the prices of the dumped and subsidized imports are having no effect. The domestic industry appears to be in a position of "catch-up" with the imports in this market, as they try to expand their shipments to use the additional capacity which has come on line in recent years. Because of the relative insensitivity of the market to price, the industry is in the difficult position of trying to capture market share from the dumped and subsidized imports in a situation in which simply offering competitive prices is unlikely to have much effect. Deep discounting from the prices of the dumped and subsidized imports are the domestic industry's only recourse to capture the market share needed. As a result, we place less weight in these investigations on the presence of overselling by the subject imports. We note that the existence of overselling does not mean that the imports are not injurious, nor does it mean that the imports are not having a depressing or suppressing effect on prices. Our analysis of the price effects of dumped and subsidized imports in this industry is taken with this factor in mind.

²²⁶ Vice Chairman Watson and Commissioner Rohr note that the cumulated volume and market share of the subject corrosion-resistant imports is substantially greater than comparative volumes and market shares of the subject imports in the hot and cold-rolled markets. Particularly significant is the fact that the subject imports gained market share lost by the domestic industry during the period of investigation. Similar price effects would, therefore, have a greater impact in the corrosion-resistant market relative to the hot and cold-rolled markets.

²²⁷ Commissioner Crawford does not join in the discussion of price effects. She does not find that there has been significant underselling by the cumulated subject imports or that such imports caused significant price depression or suppression. Relying on basic economic principles, she finds that had the cumulated subject imports been fairly traded, the large amounts of excess capacity and the low rates of capacity utilization in the domestic industry, together with the limited substitutability between the cumulated subject imports and the domestic like product, would have mitigated any increase in domestic prices. Specifically, if subject imports were sold at higher prices, domestic producers would have increased production significantly. However, competition among domestic producers to increase production and reduce their unused capacity would likely have prevented domestic producers from sustaining any attempted price increase. Consequently, she determines that the domestic industry is materially injured by reason of the cumulated subject imports based on the significant volume effects alone.

²²⁸ 19 U.S.C. § 1677(C)(ii).

We find that the unfairly traded imports of corrosion-resistant products from the cumulated countries have had the effect of depressing or suppressing domestic prices to a significant degree.

Corrosion-resistant products are sold on the merchant market either to unrelated distributor/service centers or directly to end users.²²⁹ Purchasers reported that quality was the most critical factor in their purchasing decisions, followed by price.^{230 231} Thus, price is not an unimportant factor in making purchasing decisions in the corrosion-resistant market.

We note that there are differences in the pricing data examined by the individual Commissioners. These differences have been noted where relevant, but they were not significant to this analysis.

Average pricing for both the domestic and subject imported corrosion-resistant products showed steady or slightly downward trends between 1990 and 1992.²³² A mixed pattern of under- and overselling is observed, with a greater number of instances overall of overselling by the subject imports.^{233 234 235} However, particularly in the sales to distributors/service centers, there was generally a higher percentage of underselling. This is, in some respects, a sector of the market in which price effects are more readily discernible because automotive purchasers, who have the most stringent qualification processes, generally do not purchase in this sector of the market. We found the underselling present to be significant. Further, we find the existence of overselling, in and of itself, not determinative of whether the cumulated imports contributed to the decline or otherwise suppressed or depressed domestic prices.²³⁶

²²⁹ Report at I-48.

²³⁰ Report at I-160. In the category of "critical", the product quality was identified by 57 purchasers as critical; followed by 37 purchasers who considered both price and availability equally critical. *Id.*

²³¹ Commissioner Rohr notes that while he has considered the reported relative ranking of purchaser criteria, he has given that less weight than other factors.

²³² Report at I-171.

²³³ For Vice Chairman Watson: There were 37 instances of underselling and 132 instances of overselling observed sales to manufacturers/end users. In sales to distributors/service centers, there were 45 instances of underselling and 32 instances of overselling observed. Commissioner Rohr: There were 37 instances of underselling and 127 instances of overselling in sales to manufacturers/end users. In sales to distributors/service centers, there were 35 instances of underselling and 33 instances of overselling observed. Commissioner Nuzum: There were 38 instances of underselling and 137 instances of overselling in sales to manufacturers/end users. In sales to distributors/service centers, there were 50 instances of underselling and 51 instances of overselling observed. Report at Tables 110-113.

²³⁴ We note factors such as qualification may explain some of the overselling.

²³⁵ Vice Chairman Watson considered the weight of the pricing comparisons in his determinations for the corrosion-resistant industry. He notes that the pricing underselling/overselling comparisons for the corrosion-resistant industry appears to be skewed by data from two countries, Germany and Japan. Excluding the pricing data for these two countries, the overall underselling/overselling comparisons for the corrosion-resistant industry are mixed.

²³⁶ *E.g., Maine Potato Council v. United States*, 613 F. Supp. 1237, 1245 (1985).

We also sought to determine whether there is significant price suppression or depression caused by cumulated imports by examining the pricing trends of domestic products and of these imports. We closely examined the relative price movements of domestic products and of the cumulated imports in different quarterly periods involving the commercial grade products. We found discernible patterns of price movements throughout the period of investigation which show price suppression and/or price depression in a significant number of instances. Generally, most import prices fluctuated somewhat, but trended downward during the period of investigation. The domestic prices similarly tended to trend downward during the period examined. We found that the imported prices fell in a substantial number of instances, at a greater rate overall than the domestic product.²³⁷ We find the pattern of price suppression particularly significant in light of the significant and increasing volumes and corresponding market shares of cumulated subsidized and LTFV imports.

Finally, our finding of significant price suppressing effects is further supported by confirmed lost sales and lost revenues due to lower prices of imports from the subject countries.^{238 239}

3. Impact on the Affected Domestic Industry²⁴⁰

The significant and increasing volume and the price suppressing effects of cumulated imports have had an adverse impact on the domestic industry. As discussed above, demand has been generally increasing, particularly in the market for greater precision products. The domestic corrosion-resistant industry has responded to this demand by increasing its capacity to manufacture these products.²⁴¹ However, even as the domestic industry has positioned itself to respond to changing market demand, it has continued to lose market share to the subject imports, which are entering the market in increasing volumes. As a result, capital expenditures and research and development in this industry declined, particularly during the latter part of the period examined, thereby undermining the attempts of the industry to respond to the demands of the marketplace.²⁴² Further, although the industry's profitability recovered somewhat from its losses in 1991, the industry did not come close to the profitability levels realized in 1990.^{243 244}

²³⁷ Report at Appendix N.

²³⁸ Report at Table 117. For the countries cumulated by Vice Chairman Watson and Commissioner Rohr: Six allegations of lost sales were confirmed, totalling sales of \$28.45 million. For the countries cumulated by Commissioner Nuzum, 9 lost sales or revenues allegations were confirmed, totalling \$29.08 million. [***].

²³⁹ Vice Chairman Watson notes that although he has concluded that the record supports a finding that the corrosion-resistant subject imports have had significant price effects on the domestic industry, based on the impact of the volume of the subject imports alone he would have found the domestic industry to be injured by reason of the imports.

²⁴⁰ Commissioner Crawford does not join in this discussion as it relates to price effects.

²⁴¹ Report at I-52.

²⁴² Report at Tables 41, 43.

²⁴³ Report at Table 40.

²⁴⁴ Vice Chairman Watson notes that public data for 1993 indicates that the corrosion-resistant industry was not able to raise prices in 1990, while the hot-rolled, cold-rolled, and plate industries have done so. Steel Market Outlook, WEFA, 1993). This may have been due to increased production and supply of corrosion-resistant products by the domestic industry. Evidence on the

(continued...)

Respondents argued that there are no price effects in a large segment of the corrosion-resistant market because many of the imports are niche products, and the domestic and imported product do not compete in that sector.²⁴⁵ The evidence in the record does not support such a conclusion.²⁴⁶ We note that there was significant domestic production of most of the so-called "niche" products by the domestic industry.²⁴⁷ Respondents also argue in these investigations that the material injury experienced by the domestic industry is due to the economic downturn during the period examined, and not unfairly traded imports. Other alternative causes of injury have also been proposed by the respondents. We note that the declines in apparent U.S. consumption from 1990 to 1991 do suggest that the corrosion-resistant industry has been adversely affected by the economic downturn. Even when domestic consumption was decreasing, however, the dumped and subsidized imports continued to gain market share. Further, with respect to the role of the recession, the legislative history reminds us that a domestic industry may be more vulnerable to the effects of unfairly traded imports during an economic downturn.²⁴⁸

Respondents also argue that the domestic industry could not be adversely affected by subject imports because of the existence of the VRAs, which were alleged to have been negotiated at levels which are noninjurious. We note that although the countries subject to the VRAs did not reach the limits stipulated by the VRAs, the VRAs did not address pricing. As stated previously, there is nothing in the VRAs to indicate that the levels negotiated were prima facie noninjurious. Further, the argument overlooks the adverse price effects, discussed above, of the cumulated imports. Finally, we note that the effect of minimills and reconstituted mills is not a factor in this industry to the extent that it is in other industries because minimills generally do not produce corrosion-resistant products.²⁴⁹

Accordingly, we find that the significant volume and price suppressing or depressing effects of the cumulated imports had a sufficient impact on the domestic corrosion-resistant industry to warrant an affirmative determination.²⁵⁰

²⁴⁴ (...continued)

record indicates that the domestic industry has significantly increased its capacity to produce corrosion-resistant products. See transcript at 862.

²⁴⁵ About 50 percent of imports from the cumulated countries were identified as so-called "niche" products. Japanese niche products accounted for a larger share of total imports from Japan than did niche products imported from other subject countries.

²⁴⁶ Report at Table F-4.

²⁴⁷ Report at Table F-4.

²⁴⁸ H. Rep. No. 93-317, 96th Cong. 1st Sess. 47 (1979).

²⁴⁹ Nucor is in the start-up phase of corrosion-resistant steel production.

²⁵⁰ Commissioner Rohr finds material injury by reason of imports from Mexico. In his view the conclusions with regard to the cumulated imports also apply to imports from Mexico.

B. Non-cumulated Negligible Imports ²⁵¹

As discussed in the cumulation section of this opinion, subject imports from the noncumulated countries were insignificant in terms of absolute volume and as a share of domestic consumption. The record contains no persuasive evidence that imports from any of these countries independently had a significant suppressing or depressing effect on domestic prices.²⁵² In light of these conclusions and the reasons expressed in our determinations that imports from each of these countries had no discernible adverse impact²⁵³ on the domestic industry, we determine that the domestic industry producing corrosion-resistant steel is not materially injured by reason of subject imports from Brazil, Mexico, New Zealand, and Sweden.

VI. NO MATERIAL INJURY BY REASON OF IMPORTS OF CLAD PLATE FROM JAPAN AND FRANCE ^{254 255}

Japan

We find that LTFV and subsidized imports of corrosion-resistant clad plate from Japan were not significant and had no significant effect on the domestic industry throughout the period examined. The overall volume of subject imports from Japan [***] during the period examined. The volume of imports [***] from 1990 to 1991, and then [***] in 1992 to levels [***]. Similarly, as a percentage of domestic consumption, import share [***] from [***] percent in 1990 to [***] percent in 1991, and then [***] to [***] percent in 1992, a level [***] that of 1990. At the same time, the domestic producers' share of apparent domestic consumption [***] from [***] percent in 1990 to [***] percent in 1991, before [***] to [***] percent of domestic consumption in 1992.²⁵⁶

We also find no significant adverse price effects by the subject imports from Japan.²⁵⁷ We have no pricing data for purposes of making price comparisons. Domestic prices for clad plate [***] during the period examined as reflected in the unit value data. The unit value of the imported product [***] during the period examined. Thus, the fact that the values [***] provides some evidence that the imports had no price suppressive or depressive effect on domestic prices. An analysis of cost of goods sold as a ratio to net sales for the domestic industry indicates that, [***]

²⁵¹ Commissioner Nuzum dissents from the majority's determinations with respect to Brazil, Mexico, New Zealand, and Sweden and therefore does not join in this discussion. See her Additional and Dissenting Views.

²⁵² Commissioner Rohr notes that under the bifurcated analysis that he employs it is conceivable that imports which are having discernible adverse impacts may not yet be having impacts on the domestic industry which are a cause of injury, but that the converse does not seem logically possible. Having determined these imports negligible, he found they were not having any adverse impact on the domestic industry. Therefore, they cannot currently be a cause of injury.

²⁵³ See the discussion of each country in the Cumulation section of this Opinion, supra.

²⁵⁴ Commissioner Rohr does not join in this section of the opinion in view of his conclusion that the domestic clad plate industry is not currently experiencing material injury.

²⁵⁵ Commissioner Nuzum cumulated imports of clad plate from France and Japan. Therefore, although she also made a negative determination with respect to imports from France and Japan, her analysis differs slightly from that of the majority. See her Additional and Dissenting Views.

²⁵⁶ Report at Table C-8.

²⁵⁷ No questionnaire price comparison were collected for clad plate.

from 1990 to 1991, the ratio [***] in 1992, to [***].²⁵⁸ This further supports our finding of no price suppression or depression by reason of the imported product. Our findings are further confirmed by the absence of any evidence of lost sales or revenues to the subject imported product.

Accordingly, we do not find that the domestic industry producing clad plate is materially injured by reason of imports from Japan.²⁵⁹

France

We also determine that the domestic industry producing clad plate in the United States is not materially injured by reason of imports of clad plate from France. French imports were negligible in terms of absolute volume and as a share of domestic consumption, and were found to have no discernible adverse impact on the domestic industry producing clad plate. In light of these conclusions, and for the reasons set forth above in the discussion of no significant price effects resulting from imports from Japan, we find that the domestic industry producing clad plate is not materially injured by reason of imports of clad plate from France.

VII. THREAT OF MATERIAL INJURY

A. Legal Standards

19 U.S.C. § 771(7)(F) directs the Commission to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent,"²⁶⁰ and directs us to consider a number of criteria which are addressed below.²⁶¹ While an analysis of the statutory threat factors necessarily involves projection of future events, "[s]uch a determination may not be made on the basis of mere conjecture or supposition."²⁶² In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.²⁶³

²⁵⁸ Report at Table C-8.

²⁵⁹ To the extent any other countries within Commerce's affirmative findings on corrosion-resistant products are deemed to warrant determinations on clad plate product, any determinations with respect to those countries would be negative due to the lack of any imports of clad plate from those countries throughout our entire period examined.

²⁶⁰ 19 U.S.C. § 1677(7)(F)(ii).

²⁶¹ See 19 U.S.C. § 1677(7)(F)(iii).

²⁶² 19 U.S.C. § 1677(7)(F)(ii). See also S. rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); Metallverken Nederland B.V. v. United States, 14 CIT 481, 488-489, 744 F. Supp. 281, 287 (1990).

²⁶³ We adopt the discussion of Petitioners' general arguments for threat purposes set forth in the Commissions' Views in the Hot-rolled Steel investigations.

B. No Threat of Material Injury by Reason of Negligible Imports of Corrosion-Resistant Product from Brazil, Mexico,²⁶⁴ New Zealand and Sweden^{265 266}

Brazil

We find that the domestic industry producing corrosion-resistant steel is not threatened with material injury by reason of negligible imports from Brazil.

Brazilian capacity [***] throughout the period of investigation. Brazilian capacity utilization [***], but [***] during the period of investigation, and is expected to [***] in 1993.²⁶⁷ Exports to the United States were [***] and have [***] throughout the period of investigation.²⁶⁸ We have considered petitioners' argument that the start up of a new facility in late 1993 in Brazil by a company which is not currently exporting to the U.S. poses a threat to the domestic corrosion-resistant industry.²⁶⁹ We find nothing in the record, however, to support a finding that this new capacity, or existing unused capacity in Brazil will result in any significant increase in exports to the United States, which are currently at only negligible levels.²⁷⁰

There has not been a rapid increase in United States market penetration by imports from Brazil.²⁷¹ Brazilian market penetration was negligible during the period of investigation,²⁷² and there is no persuasive evidence that it will increase to an injurious level.²⁷³

There is no persuasive evidence that imports of corrosion-resistant steel from Brazil will enter the United States in the imminent future at prices that will have a suppressing or depressing effect on U.S. prices. As discussed in the cumulation section, we found no discernible adverse price impact on the domestic industry from the low volume of imports from Brazil, and there is no

²⁶⁴ Commissioner Rohr does not join this conclusion because he found imports from Mexico, as cumulated with other imports, were a cause of present injury.

²⁶⁵ Because imports from these countries were found to be negligible, we did not cumulate for threat purposes, as the statute provides that the exception for negligibility for material injury purposes is also applicable for threat of material injury. See 19 U.S.C. § 1677(7)(C)(v); 19 U.S.C. § 1677(7)(F)(iv). Moreover, we see no basis in the record to cumulate for threat purposes.

²⁶⁶ Commissioner Nuzum dissents from the majority's determinations with respect to imports from Brazil, Mexico, New Zealand, and Sweden, and therefore does not join in this discussion. See her Additional and Dissenting Views.

²⁶⁷ Report at Table 58.

²⁶⁸ Report at Table 58.

²⁶⁹ Petitioner's prehearing br., Vol. 7A at 126.

²⁷⁰ Report at Table 58.

²⁷¹ Report at Table 58.

²⁷² Report at Table 58.

²⁷³ Report at Table 107.

persuasive evidence to indicate that there will be any in the imminent future. The only price comparison for Brazilian imports indicated that they oversold the domestic product.^{274 275}

Although Brazilian inventories [***], they remained [***] as a ratio to total shipments. Moreover, they are projected to [***] in 1993.²⁷⁶ Thus, the record does not suggest any substantial future increase in inventories which would threaten the domestic industry.

Although capital expenditures and research and development expenditures experienced a decline during the POI,²⁷⁷ there is no evidence to suggest that the small volume of imports from Brazil has impeded research and development expenditures in the United States.

The Commerce Department determined that corrosion-resistant steel producers in Brazil were receiving subsidies of 30.39, of which .01 percent was an export subsidy.²⁷⁸ Given the low rate of the export subsidy, we do not consider this factor to be sufficient to warrant an affirmative threat determination.

No other demonstrable trends have been demonstrated indicating a probability that imports of corrosion-resistant product from Brazil are a real threat of material injury and that actual injury is imminent.

Mexico²⁷⁹

We find that the domestic industry producing corrosion-resistant product is not threatened with material injury by reason of negligible imports from Mexico.

Mexican capacity [***] throughout the period of investigation, while capacity utilization [***]. Exports to the United States [***] throughout the period, and are expected to [***] in 1993.²⁸⁰ Exports to other markets also [***], and are expected to [***] in 1993. There is no persuasive evidence in the record that this [***] capacity will result in increased exports to the U.S. market.²⁸¹

There has not been a rapid increase in United States market penetration by imports from Mexico.²⁸² U.S. market penetration by imports of corrosion-resistant product from Mexico was negligible.²⁸³ There is no persuasive evidence that there will be any rapid increase in United States

²⁷⁴ Report at Table 113.

²⁷⁵ Petitioner's prehearing br., Vol. 7A at 127.

²⁷⁶ Report at Table 58.

²⁷⁷ Report at Table 41.

²⁷⁸ Report at E-17.

²⁷⁹ Commissioner Rohr does not join this section of the opinion.

²⁸⁰ Report at Table 82.

²⁸¹ Report at Table 82.

²⁸² Report at Table 107.

²⁸³ Report at Table 107.

market penetration or that the negligible current market share of the Mexican imports will increase to an injurious level in the future.²⁸⁴

There is no persuasive evidence that imports of corrosion-resistant steel from Mexico will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. As discussed in the cumulation section, we found no discernible adverse impact on the domestic industry from imports from Mexico because of the negligible volume, and there is no persuasive evidence to indicate that there will be any in the future. Although Mexican inventories [***] overall, they remained [***] as a ratio to total shipments. Moreover, they are expected to [***] in 1993.²⁸⁵ Thus, the record does not suggest that inventory levels threaten the domestic industry.

Although capital expenditures and research and development expenditures experienced a decline during the POI,²⁸⁶ there is no evidence to suggest that the small volume of imports from Mexico has impeded research and development expenditures in the United States.

We note that the Department of Commerce found separate export subsidies for the Mexican companies. We do not find, however, these export subsidies in and of themselves sufficient to warrant an affirmative threat determination.

No other demonstrable trends have been demonstrated indicating a probability that imports of corrosion-resistant product from Mexico pose a real threat of material injury and that actual injury is imminent.

New Zealand

We find that the domestic industry producing corrosion-resistant product is not threatened with material injury by reason of subsidized imports from New Zealand. We note that the subsidy found by the Commerce department was not in the nature of an export subsidy.²⁸⁷ Production capacity in New Zealand [***] during the period of investigation. Capacity utilization [***], and was [***] percent in 1992.²⁸⁸ Capacity utilization is expected to [***] in 1993.²⁸⁹ Exports to the United States [***], [***] from 1990 to 1991, and then [***] in 1992 to levels [***] that of 1990.²⁹⁰ Exports to other markets [***] throughout the period of investigation. The volume of imports from New Zealand as a percentage of U.S. consumption rose from 0.2 percent in 1990 to 0.3 percent in 1991, and then declined to 0.2 percent in 1992. There is no indication that New Zealand imports will gain a greater share of the domestic market. Rather, we note that New Zealand's exports are projected to be [***] in 1993.²⁹¹

²⁸⁴ Report at Table 107.

²⁸⁵ Report at Table 82.

²⁸⁶ Report at Tables 41, 43.

²⁸⁷ Report at E-19.

²⁸⁸ Report at Table 85.

²⁸⁹ Report at Table 85.

²⁹⁰ Report at Table 85.

²⁹¹ Report at Table 85.

We find no probability that imports of corrosion-resistant steel from New Zealand will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. As discussed in the cumulation section, we found no discernible adverse impact because of the low volume, on the domestic industry from imports from New Zealand, and there is no persuasive evidence to indicate that there will be any in the future.

Inventories of New Zealand product [***] over the period of investigation, and are expected to [***] in the future.²⁹²

Although capital expenditures and research and development expenditures experienced a decline during the POI,²⁹³ there is no evidence to suggest that the small volume of imports from New Zealand has impeded research and development expenditures in the United States.

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports.

Sweden

We find that the domestic industry producing corrosion-resistant product is not threatened with material injury by reason of imports from Sweden. We note that the nature of the subsidy found by the Department of Commerce was not an export subsidy.²⁹⁴

Swedish capacity [***] during the period of investigation. However, capacity utilization [***] and was [***].²⁹⁵ Additionally, Swedish capacity utilization is expected to [***] in the future.²⁹⁶ Exports to the United States [***] during the period of investigation, and are expected to [***] in the future. Although they are expected to [***] in 1993, exports to other markets [***] throughout the period of investigation. We find no credible evidence that imports from Sweden are likely to increase and cause material injury to the domestic corrosion-resistant industry in the imminent future. While the absolute volume of imports from Sweden increased slightly during the period of investigation, Swedish market share rose only from 0.1 to 0.2 percent from 1990 to 1991, and remained constant from 1991 to 1992.²⁹⁷ There is no persuasive evidence in the record to suggest that the negligible level of imports from Sweden is likely to increase to injurious levels in the immediate future.

We find no probability that imports of corrosion-resistant steel from Sweden will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. As discussed in the cumulation section, we found no discernible adverse impact because of the low volume, on the domestic industry from imports from Sweden, and there is no persuasive evidence to indicate that there will be any in the future.

²⁹² Report at Table 85.

²⁹³ Report at Tables 41, 43.

²⁹⁴ Report at E-8, E-20.

²⁹⁵ Report at Table 91.

²⁹⁶ Report at Table 91.

²⁹⁷ Report at Table 107.

Although capital expenditures and research and development expenditures experienced a decline during the POI,²⁹⁸ there is no evidence to suggest that the small volume of imports from Sweden has impeded research and development expenditures in the United States.

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports.

C. No Threat of Material Injury By Reason of Subject Imports of Clad Plate from France and Japan^{299 300}

France

We find that the domestic industry producing clad plate is not threatened with material injury by reason of imports from France.³⁰¹ We note that the subsidy found by the Department of Commerce was not in the nature of an export subsidy.³⁰²

French capacity [***] throughout the period of investigation, while capacity utilization [***].³⁰³ Production, capacity, and capacity utilization are projected to [***] in 1993.³⁰⁴ There is no persuasive evidence in the record to support a finding that [***] French production capacity poses a threat of material injury to the domestic industry.

There has not been a rapid increase in United States market penetration by imports from France.³⁰⁵ French clad plate imports [***], and were imported in [***] in that year.³⁰⁶ Additionally, home market shipments [***].³⁰⁷ There is no persuasive evidence that there will be any rapid increase in United States market penetration or that the penetration will increase to an injurious level.

²⁹⁸ Report at Table 41.

²⁹⁹ Because imports from France were found to be negligible, we did not cumulate France and Japan for purposes of our threat analysis, as the statute provides that the exception for negligibility for material injury is also applicable to threat of material injury. 19 U.S.C. § 1677(7)(C)(v); 19 U.S.C. § 1677(7)(F)(iv). Further, we see no basis in the record to cumulate for purposes of our threat analysis.

³⁰⁰ Commissioner Nuzum cumulated imports of clad plate from France and Japan. Therefore, although she also made a negative threat determination with respect to imports from France and Japan, her analysis differs slightly from that of the majority. See her Additional and Dissenting Views.

³⁰¹ We note that the subsidy found by the Department of Commerce was not an export subsidy.

³⁰² Report at E-4, E-7.

³⁰³ Report at Table I-1.

³⁰⁴ Report at Table I-1.

³⁰⁵ Questionnaire responses and Report at Table I-1.

³⁰⁶ Questionnaire responses.

³⁰⁷ Report at Table I-1.

We do not find that imports of clad plate from France will enter the United States in the imminent future at prices that will have a suppressing or depressing effect on U.S. prices. We have found that imports of clad plate have not had a price suppressive or depressive impact on U.S. prices, and there is no persuasive evidence that French imports will have any adverse price effects in the imminent future.³⁰⁸ Inventories were [***] during the period of investigation. The record does not suggest any substantial future increase in inventories which would threaten the domestic industry.

There is no persuasive evidence in the record that imports from France have impeded research and development expenditures in the United States, or will have a negative effect on the development and production efforts of the domestic industry.

No other demonstrable trends or evidence exists in the record that would support a finding of threat of material injury by reason of the LTFV imports from France.

Japan

We find that the domestic industry producing clad plate product is not threatened with material injury by reason of imports from Japan.³⁰⁹

Japanese clad plate production and capacity [***] throughout the period of investigation.³¹⁰ Capacity utilization was [***], and continued to [***].³¹¹ Japanese market penetration [***] during the period of investigation.³¹² There is no persuasive evidence that market penetration will increase to an injurious level.

We do not find that imports of clad plate from Japan will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. We have found that imports of clad plate have not had a price suppressive or depressive impact on U.S. prices during the period of investigation, and there is no persuasive evidence that imports will have any adverse price effects in the immediate future. The available data indicate that Japanese inventories of clad plate were [***] throughout the period of investigation, and are not projected to [***] in the future.³¹³ There is no persuasive evidence that imports of Japanese clad plate have or will have a negative effect on the development and production efforts of the domestic industry.

No other demonstrable trends or evidence exists in the record that would support a finding of threat of material injury by reason of the LTFV imports.

³⁰⁸ Report at Table I-1.

³⁰⁹ Information on the Japanese clad plate industry was compiled from data submitted by Japanese producers of corrosion-resistant steel in response to questionnaires of the U.S. International Trade Commission during preliminary investigations, because that producer did not provide questionnaire responses in these final investigations. We have thus used the information from the preliminary investigations as the best information available.

³¹⁰ INV-Q-121 at Table B-1.

³¹¹ INV-Q-121 at Table B-1.

³¹² Report at Table C-8.

³¹³ INV-Q-121 at Table B-1.

XI. CRITICAL CIRCUMSTANCES

Commerce found that critical circumstances exist with respect to subject imports of corrosion-resistant Japanese steel from Kawasaki Steel Corporation ("KSC"). As discussed below, we make a negative critical circumstances determination with respect to these imports.

Pursuant to 19 U.S.C. § 1673d(b)(4)(A)(i), when Commerce makes an affirmative determination with respect to critical circumstances, the Commission must determine, "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."³¹⁴ In evaluating the effectiveness of retroactive application of the duties in preventing a recurrence of material injury, the statute directs the Commission to consider, among other factors it considers relevant:

(I) the condition of the domestic industry,³¹⁵

(II) whether massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping duties,

(III) whether foreign economic conditions led to the massive imports of the merchandise, and³¹⁶

(IV) whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this part.³¹⁷

An affirmative critical circumstances determination is a finding that, absent retroactive application of the antidumping order for a period of 90 days prior to the suspension of liquidation, the surge of imports that occurred after the case was filed (in this instance, June 29, 1992), but before Commerce issued notice of its preliminary determination (February 4, 1993), will prolong or cause a recurrence of material injury to the domestic industry.³¹⁸ The purpose of the provision is to

³¹⁴ 19 U.S.C. § 1673d(b)(4)(A)(i).

³¹⁵ In these investigations, we have considered the condition of the domestic industry, but have not found this particular factor to play a role in our decisions making negative critical circumstances findings.

³¹⁶ In these investigations, we found that there was not evidence in the record that any foreign economic conditions led to any massive imports.

³¹⁷ 19 U.S.C. § 1673d(b)(4)(A)(iii). If the Commission finds either no material injury or only a threat of material injury, it need not make a critical circumstances determination. See, e.g., Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 31 n.114. In determining whether retroactive imposition of antidumping duties is necessary to prevent recurrence of material injury, the Commission must evaluate whether "the effectiveness of the antidumping duty order would be materially impaired if retroactive duties were not imposed." 19 U.S.C. § 1673d(b)(4)(A)(ii).

³¹⁸ The adverse impact of such a surge can continue to affect the domestic industry during and after the 90-day period during which retroactive duties can be imposed. If, however, the surge itself dissipates before that 90-day period begins, retroactive imposition of duties cannot meaningfully "prevent recurrence of material injury" resulting from the surge since the duties cannot reach those
(continued...)

provide relief from effects of massive imports and to deter importers from attempting to circumvent the dumping laws by making massive shipments immediately after the filing of an antidumping petition.³¹⁹

In prior investigations concerning critical circumstances, the Commission has examined import prices, importers' inventories, the volume of the massive imports in relation to domestic demand and to historical import levels, the margin of underselling, and whether the retroactive imposition of duties would cover the months in which there was the greatest volume of imports.³²⁰ It is also appropriate to analyze any other factors which may affect the ability of the massive imports to postpone prompt and effective relief to the domestic industry.³²¹

In these investigations, any retroactive duties would only be imposed on imports entering the United States after November 6, 1992, ninety days prior to the notice of suspension of liquidation, published on February 4, 1993.

The Japanese respondents assert that [***].³²² KSC also asserts [***].³²³ [***].³²⁴ Petitioners present no specific arguments concerning critical circumstances and KSC.

Retroactive imposition and collection of duties in the 90-day period would capture [***] of the surge of imports found by Commerce.³²⁵ KSC's shipments [***] after the filing of the petition on June 30, 1993, before [***].³²⁶ KSC provided no explanation for either the [***]. KSC has not suggested that there were seasonal fluctuations in demand which would account for such an unusual pattern of imports. Instead, KSC argues that the [***] was a result of increased demand from domestic automotive producers.³²⁷ No explanation is provided why these domestic automotive suppliers suddenly ceased demanding corrosion-resistant product even though demand for automobiles has continued to expand during late 1992-1993.

³¹⁸ (...continued)

imports, and therefore, cannot affect the impact of those LTFV imports on the domestic industry. Magnesium from Canada, 701-TA-309, 7312-TA-528 (Final), USITC Pub. 2550 (Aug. 1992) at 21.

³¹⁹ See H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

³²⁰ See, e.g., Silicon Metal from Brazil, Inv. No. 731-TA-471 (Final), USITC Pub. 2404 (July 1991) at 17-19; Silicon Metal from the People's Republic of China, Inv. No. 731-TA-472 (Final), USITC Pub. 2385 (June 1991) at 31-32; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Inv. Nos. 303-TA-19-20, 731-TA-391-399 (Final), USITC Pub. 2185 (May 1989) at 77.

³²¹ Silicon Metal from Brazil, USITC Pub. 2404 at 18; Silicon Metal from the People's Republic of China, USITC Pub. 2385 at 31; Antifriction Bearings, USITC Pub. 2185 at 78.

³²² Japanese Respondents' posthearing Appendix XX at 2.

³²³ Id.

³²⁴ Japanese Respondents' prehearing br. Appendix XX.

³²⁵ Report at Table L-2.

³²⁶ Report at Table L-2.

³²⁷ Japanese Respondents' Prehearing Joint Appendix XX at 12.

In assessing whether the [***] in KSC imports will continue to have an impact on the domestic industry, the Commission has been unable to obtain evidence regarding the pricing of KSC's imports or their inventory level. The record indicates, however, that KSC's shipments were only a small portion of total shipments of corrosion-resistant steel from Japan, and a very small percentage of apparent domestic consumption of corrosion-resistant products in 1992.³²⁸ Indeed, these 1992 levels are far below levels that the Commission has found to be negligible.

Based on the foregoing, we find that retroactive imposition and collection of duties on imports from KSC entering during the 90-day period is not necessary to prevent the recurrence of the material injury caused by such LTFV imports. Accordingly, we find that the effectiveness of the antidumping order on imports of corrosion-resistant steel from KSC will not be materially impaired by declining to impose retroactive duties on such imports.

³²⁸ Japanese Respondents' posthearing Appendix XX at 2 n.4.

SEPARATE VIEWS OF VICE CHAIRMAN WATSON ON CORROSION-RESISTANT PRODUCTS FROM MEXICO

Based on my analysis of the evidence in the record, I conclude that the imports of corrosion-resistant products from Mexico are negligible and have no discernible adverse impact on the domestic industry.

In determining whether to apply the negligible imports exception to mandatory cumulation, the Commission must evaluate several specifically mentioned statutory factors as well as "all relevant economic factors".¹ In that regard, I have carefully considered the unique circumstances surrounding the importation of those corrosion-resistant products from Mexico that are American goods returned (AGR).² The record supports a conclusion that competition between the AGR imports from Mexico and the domestic products is attenuated.

Evidence in the record indicates that the U.S. industry participates in and profits from the AGR transactions. Domestic producers have entered into supply and distribution arrangements with IMSA.³ They also coordinate closely with Mexican producers on quality control and other issues.⁴ In many cases, AGR are shipped back to their original source and in other cases they are tagged by IMSA and sent directly to customers of the domestic supplier in the U.S.⁵ Rather than injuring domestic producers, many AGR transactions actually benefit them. In many cases, such transactions allow the domestic industry to complement their existing galvanized product lines with products that they otherwise do not produce.⁶

Respondents also contend that a substantial portion of the non-AGR are niche products that are not produced by the petitioners, such as thin-gauge galvanized sheet and prepainted galvanized sheet.⁷ Petitioners, however, have pointed out that only a very small percentage of Mexican imports fall into alternative or niche product categories.⁸

Although it is unlikely that all AGR transactions benefit the domestic industry, the evidence supports a conclusion that a significant number of AGR transactions clearly do benefit the domestic industry. As such, in evaluating the volume and market share of Mexican corrosion-resistant production, I have given substantially more weight to non-AGR data.⁹ I have also noted that Mexican imports consistently oversold the U.S. products,¹⁰ and that average unit values of the Mexican product were substantially higher than domestic unit values.¹¹ Finally, I have taken into consideration that the market for corrosion-resistant products is not particularly price sensitive. In

¹ 19 U.S.C. § 1677 (C)(v).

² [***].

³ Pre-Hearing Brief of IMSA at 6, Exhibit 2.

⁴ Id., at 6, Exhibit 4, 15-16.

⁵ Id., at 6, Exhibits 7-12.

⁶ [***].

⁷ Pre-Hearing Brief of IMSA at 9-12.

⁸ Respondents' Post-Hearing brief on Corrosion-Resistant Products at 6-7.

⁹ [***].

¹⁰ Report at N-49, N-64.

¹¹ INV-Q-095, June 17, 1993, at A-5 and B-5.

conclusion, I find that imports of corrosion-resistant steel products from Mexico are negligible and have no discernible adverse impact on the domestic industry.

**ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER DAVID B. ROHR
CONCERNING
CORROSION-RESISTANT PRODUCTS**

**Negligibility of Imports from France
Nonnegligibility and Cumulation of Imports from Mexico
Threat of Material Injury from Imports from France**

I. General Observations

In my Additional and Dissenting Views Concerning the Hot-Rolled Products investigations, I summarized the factors I looked at in analyzing the price sensitivity of the various products and markets subject to these investigations. In these views, I apply these factors to the corrosion-resistant products subject to these investigations.

I note that corrosion-resistant products are generally the most highly specialized and differentiated products of the four broad product categories that we are considering in these investigations. This significantly reduces the price sensitivity of this market. Very little of this product is, however, captively consumed, which points in the direction of greater price sensitivity. A significant portion is also sold through distributors, although a larger amount is sold directly to end users. I do not find this factor points clearly at greater or lesser price sensitivity. There tend to be relatively few producers of each of the various products which make up this product category which also points in the direction of lesser price sensitivity.

On balance, I conclude that corrosion-resistant products display a significantly lower price sensitivity than do any of the other products in these investigations. I view the highly specialized nature of the products and the relatively few producers of each of them to be particularly significant to my finding.

II. Cumulation and Negligibility

I am in general concurrence with my colleagues on the issue of cumulation and negligibility with respect to these investigations of the corrosion-resistant products industry. I dissent and add these views only with respect to their conclusion that imports from France are not negligible and that imports from Mexico are negligible. I find that imports from France are negligible but that imports from Mexico are not negligible.

As I have stated elsewhere in these opinions, I found it analytically "cleaner" to consider the issue of negligibility prior to considering the more general issues of competition for purposes of cumulation. It strikes me that drawing a conclusion about an overlap of competition prior to a consideration of negligibility could lead to the perverse result that such an overlap could be found to exist because of imports which are then not included in a cumulated analysis on the basis of negligibility. While this situation admittedly does not arise in these investigations, I can avoid even the possibility of it arising by considering negligibility first.

France

As the majority views of the Commission explain, the French respondents argue that imports of corrosion-resistant steel from France are negligible and have not had an adverse impact on the domestic industry. The French respondents assert that the imports were only sporadically present in the domestic market during the period of investigation, and were sold only on a spot basis. Further, the French respondents argue that the domestic market is not price sensitive.¹ The French respondents contend that a substantial percentage of imports from that country are "niche" products

¹ French prehearing brief at 44.

that do not compete with the domestic products and should not be considered as part of the negligibility analysis.

I find the French imports to be negligible. The market share of imports from France rose from 0.5 percent in 1990 to 0.7 percent in 1992.² The volume of imports from France also increased from 59 thousand tons to 95 thousand tons.³ Sales of corrosion-resistant imports from France were not isolated or sporadic; they were imported in all months during the period of investigation⁴ through at least 5 importers or consignees.⁵ With respect to French respondents arguments concerning fungibility or attenuated competition, we do find French imports are generally substitutable with the domestic product. There were six niche products imported from France during the period of investigation: Products 39, 40, 41, 45, 47 and 64, accounting for ... percent of French total imports in 1990; percent in 1991; and percent in 1992.⁶ Of these products, U.S. producers shipped all but product 45, which accounted for only between and percent of French imports during the period of investigation. Thus, the overwhelming majority of French niche products were also produced by the domestic industry. Seven purchasers considered the French product comparable to the domestic product, while two purchasers considered it to be superior to the domestic product.⁷ With respect to the commodity products examined, we note that there was mixed overselling and underselling observed, with ten instances of underselling and 12 instances of overselling.⁸ Only one lost sale allegation was confirmed.⁹

I consider the level of French imports to be at the borderline of negligibility. While they have been increasing, a factor I find particularly relevant in my threat analysis, that increase does not obviate the fact that they are currently at a very small level. That small level, in the context of this market does not appear to be having a discernible adverse impact. I therefore find these imports to be negligible.¹⁰

Mexico

I also must dissent from my colleagues' finding that Mexican imports were negligible. I note that these imports were, in every year in excess of those of France, which my colleagues found to be not negligible but which I found to be at the very border line of negligibility.

² Report, Table 107.

³ Report, Table 96.

⁴ Report, Table L-1.

⁵ Report, Table M-5.

⁶ Report, Table 100.

⁷ Report, Table 109.

⁸ Report, Tables 110-113.

⁹ Report, Tables 115-117.

¹⁰ As I have stated in the other Commission opinions in these investigations, a finding of negligibility implies the finding that the imports found to be negligible are having no discernible adverse impact. While it may be true, under the bifurcated analysis, that, in certain cases, imports having discernible adverse impacts are not yet a cause of injury, the converse cannot logically be true. I am therefore finding that imports from France are not a cause of present injury to the domestic industry.

As a percentage of U.S. consumption, Mexican corrosion-resistant imports decreased from 0.9 percent to 0.7 percent from 1990 to 1991, and then increased back to 0.8 percent in 1992.¹¹ The volume of imports from Mexico followed a similar trend, declining from 109 thousand tons in 1990 to 79 thousand tons in 1991 and increasing to 108 thousand tons in 1992.¹² Mexican imports did consistently oversell the U.S. product.¹³

The principal argument made by the Mexican respondent that imports at these levels should nevertheless be considered negligible is based on their contention that the vast majority of these imports are 'American goods returned.' That is, they are produced for U.S. purchasers from cold-rolled steel that was previously exported to Mexico from the United States. I note that I am concerned in these investigations with the effects of imports on the corrosion-resistant products industry. The benefit such imports may have on the cold-rolled products industry is thus not relevant to my decision. Similarly, while these imports may benefit the particular producers for whose account they are made, I am statutorily required to assess the impact of imports on the industry as a whole. These imports have no different effect on the industry as a whole than do any other imports.

Like the imports from France, I find that the imports from Mexico are close to the borderline of negligibility. I must conclude, however, in view of their volume, that they are not, in fact, negligible.

Having determined that Mexican imports are not negligible, I must determine whether there is a sufficient overlap of competition to warrant their cumulation with the other imports which I found to be nonnegligible.

In the majority opinion, my colleagues note the arguments which Mexican respondents and petitioners made with regard to an alleged lack of competition with the domestic industry. Like my colleagues, I reject respondents' argument that imports of corrosion-resistant product from Mexico which Commerce has identified as subject to its affirmative determination should not be considered in our assessment of competition. The Commission has repeatedly held that it must accept Commerce's designation of the goods subject to its determination.¹⁴ I also concur with my colleagues assessment of the arguments made with regard to Mexican niche products. On the same basis upon which they have determined there is a reasonable overlap of competition between the Mexican imports and the U.S. product and other imports I make the same finding.

II. Threat of Material Injury by Reason of Imports

France

Because my colleagues cumulated French imports with those of other countries and determined that such imports were a cause of present injury to the industry, they do not reach the question of whether such imports threaten the industry. Because I found French imports to be negligible and thus not a cause of present injury to the industry, I must now reach this issue. I determine that French imports do pose a real threat of imminent material injury to the domestic

¹¹ Report, Table 107.

¹² Report, Table 96.

¹³ In light of the price effects of the imports detailed above in my general observations about price sensitivity and below in the section of the Commission majority's opinion on price effects, I placed relatively little weight on these prices in reaching my decision on negligibility.

¹⁴ E.g., Algoma.

industry. I reach this conclusion for many of the same reasons that my colleagues decided to cumulate French imports for the purposes of their present injury finding.

I note that French capacity over the period of investigation, although I also recognize that the French industry was operating at of capacity.¹⁵ The French industry has the capacity to produce between and tons of additional corrosion-resistant products. I note that while the U.S. is a market for the French industry, its importance over the period of investigation as a percentage of shipments, production and total exports. Further, I note that the French home market is for these corrosion-resistant products and in fact over the period of investigation. This suggests that the French industry needs to find outlets for its production and that the U.S. is increasingly likely to be that outlet.

I note that French imports increased by 60 percent over the period of investigation.¹⁶ French market share also increased in each year of the investigation from 0.5 percent to 0.6 percent to 0.7 percent.¹⁷ In the context of this industry, I find such increase to be rapid.

I further note that such imports are likely to enter the United States at prices likely to have a price depressing or suppressing effect. I note that the price comparisons were mixed and that on a product basis in two out of four instances in which comparisons were possible, French imports either undersold or fell more rapidly than the domestic product.¹⁸

I do not find French inventories to be significant.¹⁹

With regard to other demonstrable adverse trends, I note that I have found there to be a substantial number of unfairly traded imports to be injuring the domestic industry. I find it significant that the impact of these imports is primarily due to their volume effect. I find that French imports are likely to rise to a level at which I would have cumulated them with the other imports as to which I have made affirmative findings. I therefore find that the French imports pose a real threat of imminent material injury to the domestic industry.²⁰

¹⁵ Report at I-174.

¹⁶ Report at Table 96.

¹⁷ Report at Table 107.

¹⁸ Report at Appendix N.

¹⁹ Report at Tables 48 and 67.

²⁰ Pursuant to the requirements of section 735(b)(4)(B), I further determine that I would not have found injury but for the suspension of liquidation of imports. The trends discussed above with regard the imports from France are not so pronounced that had they continued throughout the period after the suspension of liquidation they would have been a cause of material injury at the time of my final determination.

CUT-TO-LENGTH CARBON STEEL PLATE¹

Based on the information obtained in these final investigations, we determine² that an industry in the United States producing cut-to-length carbon steel plate is materially injured by reason of less than fair value (LTFV) imports of cut-to-length plate (plate) from Belgium, Brazil, Canada, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden and the United Kingdom, and subsidized imports from Belgium, Brazil, Germany, Mexico, Spain, Sweden, and the United Kingdom. We also find that an industry in the United States producing cut-to-length carbon steel plate is neither materially injured nor threatened with material injury by reason of LTFV and subsidized imports from France, Italy, and Korea.³

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¹ The investigations covered by this opinion include the following: 701-TA-319-328 (Final), and 731-TA-573-579, 581-587 (Final).

² Chairman Newquist joins only the discussion of like product, domestic industry, and condition of the domestic industry. Vice-Chairman Watson joins all portions of these views except that he recused himself from participation in the investigation involving Italy. Commissioner Rohr joins all portions of these views except for the discussion of critical circumstances for Spain. Commissioner Brunsdale joins these views through the discussion of cumulation except as it applies to Germany, Poland, Romania, and the United Kingdom, and she also joins the discussion of the threat of material injury; she finds that an industry in the United States is not materially injured or threatened with material injury by reason of LTFV and/or subsidized imports from Germany, Poland, Romania, or the United Kingdom. See her Additional and Dissenting Views, *infra*. Commissioner Crawford joins the discussion of these views except the negligibility and causation analysis with respect to Germany, Poland, Romania, and the United Kingdom. Commissioner Nuzum joins in all portions of these views except that she dissents from the majority's negative determination with respect to imports from France, and the negative determination of critical circumstances from Spain. See her Additional and Dissenting Views.

³ Material retardation of a domestic industry by reason of the subject imports is not an issue in these investigations, and therefore will not be discussed.

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I. LIKE PRODUCT

A. Statutory Criteria

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant domestic industry as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product"⁴ In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation"⁵

Our decision on the appropriate like product or products in an investigation is a factual determination, to which we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁶ Generally, we disregard minor variations and look for clear dividing lines between possible like products.⁷

B. Cut-To-Length Plate Like Product Issues

The Department of Commerce identified cut-to-length plate as a separate "class or kind" of merchandise subject to investigation and defined it as follows:

These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, painted nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, . . . Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling") -- for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is grade X-70 plate.⁸

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

⁶ In defining the like product, we generally consider a number of factors including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and, where appropriate, (6) price. No single factor is dispositive, and we may consider other factors relevant to our like product determination in a particular investigation. See, e.g., *Asociacion Colombiana de Exportadores de Flores v. United States*, 12 CIT 634, 638, 693 F. Supp. 1165, 1169 n.5 (1988); *Calabrian Corp. v. United States*, 16 CIT ___, 794 F. Supp. 377, 382 n.4 (1992).

⁷ S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979). We adopt the analysis of the Commission concerning like product issues in § I(B) of the Hot-Rolled Carbon Steel Flat Products Investigations ("Hot-rolled Views").

⁸ 58 Fed. Reg. 37062 (July 9, 1993).

In the preliminary investigations, we found a single like product consisting of cut-to-length carbon steel plate.⁹ We determined that plate in coils was appropriately treated as a hot-rolled product. We rejected Caterpillar's argument that universal mill plate was a separate like product.

In these final investigations, no party contested the preliminary finding that cut-to-length plate, including coil, was a like product. They do, however, present two like product issues concerning plate: (1) whether universal mill ("UM") plate is a separate like product; and (2) whether bevelled plate (plate with nonrectangular cross-section) is a separate like product.

1. Universal Mill Plate

We find that UM plate is not a separate like product, and is part of the like product of cut-to-length plate. All plate-mill plate produced in the United States is produced on sheared plate mills and trimmed by shearing or flame-cutting on all four edges. UM plate is produced by hot-rolling plate between horizontal and vertical finishing rolls which gives it two mill edges and two trimmed ends. Both sheared mill and UM plate have the same basic physical characteristics including chemistry and metallurgical composition, strength, flatness, gauge and width tolerances, and ability to be welded or formed.¹⁰

UM plate has been replaced by sheared-mill plate for most applications for which it was previously used, indicating interchangeability between the two types of plate. Both sheared-mill plate and UM plate are used for the same end products, are distributed through the same channels of distribution, and are perceived to be interchangeable by most end users.¹¹ While sheared-mill plate and UM plate are produced on different mills and prices for UM plate are somewhat higher, the physical characteristics of these types of plate and their similar end uses warrant the finding that they are part of the same like product.

2. Bevelled Plate

Brazilian and German respondents argue that bevelled plate is a separate like product because bevelling alters the shape and form of the plate and limits its use to pressure vessels.¹² In addition, they assert that their bevelled products have dimensional tolerances which are dramatically stricter than for rectangular plate because they are re-squared prior to bevelling.¹³

⁹ Certain Flat-rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, Invs. Nos. 701-TA-319-354 and Invs. Nos. 731-TA-573-620 (Preliminary), USITC Pub. 2549 (Aug. 1992) ("Preliminary determinations") at 17.

¹⁰ Report I-25; Petitioners' Posthearing Br. Vol. 2, Attachment C at 8.

¹¹ Report I-25; Petitioners' Posthearing Br. Vol. 2, Attachment C at 9-10; Hearing Tr. at 314.

¹² USIMINAS and Primary Steel Prehearing Br. at 10; Selected Plate Respondents' Joint Posthearing Br. ("Joint Plate Respondents' Br.") at 56.

¹³ *Id.* at 9.

We find that bevelled plate is not a separate like product.¹⁴ Bevelled plate is rectangular plate which has undergone a finishing or weld-preparatory step which bevels the edges.¹⁵ This bevelling process produces a hexagonal or trapezoidal cross section from both the lateral and longitudinal profiles.¹⁶ The basic physical characteristics of cut-to-length plate -- chemical composition, strength, flatness, and ability to be welded or formed -- remain the same after it undergoes the bevelling process.¹⁷

Bevelled plate imported into the United States from Brazil is used primarily in the production of various storage and pressurized tanks, including boilers, pressure vessels, liquid propane gas tanks, and railway tank cars.¹⁸ Imported bevelled plate can be and is substituted for nonbevelled plate¹⁹ and both bevelled and nonbevelled plate are used in shipbuilding, tank fabrication, overhead crane manufacture and bridge fabrication applications.²⁰

Bevelled and cut-to-length plate are sold for the same applications through the same channels of distribution to the same primary customers -- original equipment manufacturers, tank and process vessel fabricators, railroad car manufacturers, and service centers.²¹

The manufacturing process for bevelled and nonbevelled plate is the same except for the bevelling step, which is performed in separate facilities with specialized machine tool equipment (edge planers or flame cutters).²² The bevelling treatment, however, is one of a number of possible finishing or preparation processes -- including, shot-blasting, cleaning, and painting -- that can be applied to enhance plate's suitability for specified end use applications.²³ We find that this procedure

¹⁴ We note that the Brazilian respondents also urged use of the factors in the Commission's semifinished like product analysis to conclude that bevelled plate is a separate like product. Assuming that the semifinished analysis were appropriate, application of the semifinished factors does not suggest a separate like product. There is no necessity for further processing the vast majority of rectangular plate; the costs of bevelling are relatively minor; the essential characteristics of plate are established at the hot-rolled stage; and there is at least some degree of interchangeability between bevelled plate and non-bevelled plate for the production of ships, tanks, cranes, and bridge components. The fact that there is an independent market for bevelled plate is not sufficient, in our opinion, to justify a separate like product.

¹⁵ Report I-25.

¹⁶ USIMINAS and Primary Steel Prehearing Br. at 8.

¹⁷ Report I-25 n.17; Petitioners' Posthearing Br. Vol. 2, at 4.

¹⁸ USIMINAS and Primary Steel Prehearing Br. at 10.

¹⁹ Hearing Tr. at 320.

²⁰ Petitioners' Posthearing Br. Vol. 2, Attachment B at 2.

²¹ *Id.* Attachment C, at 5.

²² Report I-25; USIMINAS and Primary Steel Posthearing Br. at 6.

²³ Report I-25; Petitioners' Posthearing Br. Vol. 2, Attachment C at 2.

is a relatively minor processing step. The price for bevelled plate is not significantly higher than that of nonbevelled plate.²⁴

II. DOMESTIC INDUSTRY

Section 771(4)(A) of the Act defines the relevant domestic industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. . . ." ²⁵ The Commission is required to assess the effects of subsidized or dumped imports in relation to the United States production of the like product within that industry.²⁶

We adopt the analysis of related parties issues addressed at length in the Views of the Commission in the Cold-rolled Carbon Steel Flat Products Investigations. Accordingly, we find that there is one domestic industry consisting of all domestic producers of cut-to-length carbon steel plate.

III. CONDITION OF THE DOMESTIC INDUSTRY

A. Legal Standards

In assessing whether the domestic industry is materially injured by reason of subsidized and LTFV imports from the subject countries, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. 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 determinative, and the Commission considers all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."²⁷

B. Conditions of Competition²⁸

Plate products include both plate produced on a plate mill and cut-to-length plate produced on a hot-strip mill from coils which are uncoiled, leveled, and cut to length by the producer.²⁹ As discussed above in our like product analysis, all plate products -- unlike hot-rolled, cold-rolled, and corrosion-resistant products -- share dimensional characteristics that render them interchangeable for certain end uses.³⁰ Approximately 54 percent of domestic cut-to-length plate is sold directly to end users for use in construction, industries producing machinery, industrial equipment, tools, rail freight cars, and shipbuilding/marine equipment.³¹ In addition, approximately 44 percent of domestic plate

²⁴ Report I-25; USIMINAS and Primary Steel Posthearing Br. at 12; Petitioners' Posthearing Br. Vol. 2, Attachment B at 2.

²⁵ 19 U.S.C. § 1677(4)(A).

²⁶ 19 U.S.C. § 1677(4)(D).

²⁷ Id.

²⁸ We adopt the discussion of § III(B) of the Hot-rolled Views regarding General Conditions of Competition.

²⁹ Report at I-33.

³⁰ Id.

³¹ Id. I-71, table 14.

and 79 percent of imported plate is sold to service centers, which reportedly sold plate primarily to construction companies.³² Demand for plate generally declined throughout the period as a result of the recession and its effect on construction and manufacturing activity.³³

Virtually all plate products are made to specified standards prescribed by the American Society for Testing and Materials ("ASTM") specifying the ranges for chemistries, tolerances, tensile strengths, and other key characteristics of plate products.³⁴ The majority of plate is produced in three standardized commercial grade products. The imported plate niche products which the domestic industry did not produce during the investigation represented a very small portion of total plate imports.³⁵

Unlike many cold-rolled and corrosion-resistant products which are destined for the automotive and appliance market, the products that make up the majority of plate sales are shipped to steel service centers or to the construction market, neither of which requires extensive certification procedures prior to sale.³⁶ When plate products are sold, papers certifying the ASTM plate specifications follow the product to the end user or steel service distribution center.³⁷ Many steel service centers purchase plate from a number of different sources.³⁸

C. Discussion of Condition Factors

The volume of apparent U.S. consumption of steel plate products declined by 11.9 percent between 1990 and 1992, first decreasing by 15.5 percent from 5.6 million short tons in 1990 to 4.8 million short tons in 1991, and then increasing by 4.4 percent to 5.0 million short tons in 1992.³⁹ U.S. producers' market share of total apparent consumption by quantity increased from 84.9 percent in 1990 to 85.4 percent in 1991, before declining to 84.1 percent in 1992.⁴⁰ U.S. producers' production quantity declined from 4.92 million tons in 1990 to 4.22 million in 1991, increasing to 4.34 million in 1992. U.S. producers' market share by value increased from 85.9 percent in 1990 to 86.4 percent in 1991, before declining to 85.8 percent in 1992.⁴¹

The capacity of the domestic industry producing plate products decreased from 7.4 million tons in 1990 to 7.3 million tons in 1991, and further declined to 7.0 million tons in 1992.⁴² Capacity utilization fell from 66.3 percent in 1990 to 57.4 percent in 1991, then rose to 62.4 percent in

³² Id.

³³ Id. at I-162.

³⁴ Petitioners' Prehearing Br. Vol. 6A ex. 7.

³⁵ Report at C-3, table C-1; F-9, table F-1.

³⁶ Id. at I-35; table 9.

³⁷ Petitioners' Posthearing Br. Vol. 2 at 21.

³⁸ Id. at 5 n.8, 10.

³⁹ Id. at C-3, table C-1.

⁴⁰ Id.

⁴¹ Id.

⁴² Id. at I-51, table 15.

1992.⁴³ U.S. shipments by quantity declined by 12.9 percent over the period examined, from 4.78 million tons in 1991 to 4.06 million tons in 1991, to 4.18 million tons in 1992.⁴⁴ U.S. shipments by value declined 23.6 percent over the period examined, declining by 19.0 percent in 1991 and decreasing again by 5.7 percent in 1992.⁴⁵

Productivity was constant throughout the period at 0.6 tons per hour.⁴⁶ The average number of production and related workers declined over the period, falling between 1990 and 1992 from 3,743 to 3,515 as did the hours worked, from 7.8 million in 1990 to 7.3 million in 1992.⁴⁷ Wages paid to production and related workers declined slightly over the period, falling from just over \$139 million in 1990 to \$136 million in 1991 and rising to just under \$139 million in 1992.⁴⁸ Total compensation paid increased over the period examined, falling from \$195 million in 1990 to \$191 million in 1991, before rising to \$200 million in 1992.⁴⁹ The average hourly wage for production and related workers producing steel plate products rose steadily from \$17.91 in 1990 to \$18.52 in 1991, and again to \$18.96 in 1992.⁵⁰

Profitability in the cut-to-length plate industry, as measured by operating income, was \$211 million in 1990, declined sharply to \$29 million in 1991, and fell to a loss of \$84 million in 1992.⁵¹ Net sales declined by 24.3 percent from \$2.2 billion in 1990 to \$1.8 billion in 1991 and \$1.7 billion in 1992.⁵² Cost of goods sold as a percentage of sales increased by 13.9 percent over the period of investigation.⁵³ Gross profit declined from \$293 million in 1990 to \$107 million in 1991, and was at a loss of \$9 million in 1992.⁵⁴ Operating income as a percentage of net sales was 9.7 percent in 1990, fell to 1.6 percent in 1991, and turned negative at 5.1 percent in 1992.⁵⁵ Capital expenditures

⁴³ Id.

⁴⁴ Id. at I-54, table 16.

⁴⁵ Id.

⁴⁶ Id. at I-60, table 18.

⁴⁷ Id. at I-59, table 18.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id. table C-1.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

by producers decreased by 11.4 percent during the investigation.⁵⁶ Research and development expenses increased from \$4.7 million in 1990 to \$5.0 million in 1992.^{57 58 59}

IV. CUMULATION

In determining whether the domestic industry producing cut-to-length plate is materially injured by reason of the LTFV and subsidized imports, we are required to assess cumulatively the volume and effect of imports from two or more countries subject to investigation if such imports "compete with each other and with like products of the domestic industry in the United States market," and are reasonably coincident with one another.⁶⁰ Even if that test is satisfied, cumulation is not required when imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.⁶¹

We adopt the discussion of competition and negligibility legal standards, as well as the discussion of the factors considered by the Commission in applying these legal standards, contained in §IV(A) of the Commission's Hot-Rolled Views. A number of respondents argued that their imports did not compete either with other subject imports or with domestic plate. Many of the respondents also asserted that their imports were negligible in relation to U.S. production of plate. Both of these issues are addressed below.⁶²

A. General Competition Issues

Of the fourteen countries exporting subject cut-to-length plate to the United States, respondents from nine countries, Belgium, Canada, Finland, Italy, Korea, Mexico, Spain, Sweden, and the United Kingdom, did not argue against cumulation of imports from their countries based on the absence of competition either between their imports and imports from other countries, or between their imports and domestic cut-to-length plate products.

We find a reasonable overlap of competition between cut-to-length plate imports from each of the countries with the domestic products, and among the imports from each of the different countries.⁶³ With respect to competition, the Commission collected extensive data indicating that the

⁵⁶ Id.

⁵⁷ Id. at I-84, table 41.

⁵⁸ Based on his analysis of the foregoing information, Chairman Newquist finds the domestic cut-to-length plate industry to be in a vulnerable condition.

⁵⁹ Based on his analysis of the factors noted above, Commissioner Rohr concludes that the domestic cut-to-length plate industry is currently experiencing material injury.

⁶⁰ 19 U.S.C. § 1677(7)(C)(iv)(I); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990).

⁶¹ 19 U.S.C. § 1677(7)(C)(v).

⁶² Respondents also argue that imports from South Africa are not "subject to investigation" under the cumulation provision of the Statute. We disagree for the reasons set forth in §IV(A)(3) of the Commission's Hot-Rolled Views.

⁶³ Commissioner Rohr notes that he adopts this conclusion with respect to those countries which he found not negligible. He found it useful to analyze negligibility first because it avoids basing a
(continued...)

imports from all fourteen countries subject to these investigations included commercial grade cut-to-length plate products.⁶⁴ The Commission also collected data concerning types of plate which various parties argued constituted specialized or "niche" products. These data reveal that a number of countries as well as the domestic industry sold many of these niches.⁶⁵ Eight countries had sales of niche product 11,⁶⁶ seven countries sold product 3,⁶⁷ and six countries sold product 6.⁶⁸ In sum, analysis of these data indicates that: (1) each of the 14 countries sold at least some of the same commercial grade and/or niche products as all other countries; (2) imports of commercial grade and/or niche products from each country were present in the market with comparable domestic product; and (3) niche products where there was no comparable domestic production constituted a very small percentage of imports from any one country.

These imported and domestic plate products were sold through the same channels of distribution -- end users and steel service centers.⁶⁹ Imports from all countries involved in the plate investigations entered the U.S. market in most, if not all, months of the period of investigation.⁷⁰ Imports from all countries were sold in at least two of the four regions of the United States during the period of investigation, with the majority of imports from most countries sold in all four regions.⁷¹ In sum, we find that imports of cut-to-length plate products from all countries competed with each other and with the domestic like product and are reasonably coincident with each other.

⁶³(...continued)

finding of competition between imports on imports that may be excluded from the analysis for other reasons (i.e., negligibility). He, therefore, takes no position on the extent of competition between or among the imports from France, Italy, and Korea and the domestic product or other imports.

⁶⁴ Report at appendix N. Of the 14 countries in the cut-to-length plate category, all of the countries except France and Italy produced product 1; Brazil, Canada, Finland, Germany, and Korea sold product 2; Brazil, Finland, France, Germany, Italy, and the United Kingdom sold product 3; and all of the countries except Canada and Italy sold product 4. *Id.* Thus, Italy did not sell the same commercial products as Belgium, Canada, Korea, Mexico, Poland, Romania, or Spain. In addition, Canada and France did not sell the same commercial grade products, but did sell several of the same niche products. *Id.* table 97.

⁶⁵ *Id.* I-140, table 97; table F-1.

⁶⁶ Belgium, Brazil, Canada, Finland, France, Germany, Sweden, and the United Kingdom. I-140, table 97.

⁶⁷ Belgium, Brazil, France, Germany, Mexico, Romania, and Sweden. *Id.*

⁶⁸ Belgium, Canada, Finland, France, Germany, and Sweden. *Id.*

⁶⁹ *Id.* appendix N.

⁷⁰ *Id.* at L-3, table L-1. Of the 14 plate importing countries, the only countries present in the market in fewer than 32 out of the 36 months of investigation were: Italy (25), Poland (25), and Spain (27). *Id.*

⁷¹ *Id.* at M-4-5, table M-1. Mexico and Romania were present in 2 regions during the period of investigation. Canada, Finland, Italy, Korea, Poland, and Spain were present in 3 regions. The remaining imports were present in all four regions.

1. Specific Country Arguments Concerning Competition

Brazil

USIMINAS and Primary Steel (Brazilian respondents) argue that their imports should not be cumulated because bevelled plate imports from Brazil do not compete with domestic bevelled plate products.⁷² They assert that there is only one domestic producer of bevelled plate which makes high-priced, thick bevelled plate that does not compete with substantially cheaper, thinner-gauge imports from Brazil.⁷³ The Brazilian respondents make no argument that their products do not compete with other imports.

Petitioners contend that imports from Brazil should be cumulated. They assert that there is a reasonable overlap of competition because the domestic industry produces both the commercial grades sold by Brazil as well as bevelled plate.⁷⁴ Further, they contend that the cost of bevelling increases the price of the finished product by a relatively small amount.⁷⁵

Imports of Brazilian cut-to-length plate were shipped to all four regions of the United States and were sold during 35 of 36 months during the period of investigation to both end users and distributors/steel service centers.⁷⁶ The record indicates that only a small percentage of the imports from Brazil in 1992 were of the bevelled plate niche products 48 and 49 which the domestic industry did not produce.⁷⁷ A majority of the imports from Brazil were commercial grade nonbevelled plate products which competed with domestic product and other imports.⁷⁸ Five purchasers indicated that Brazilian plate was comparable in quality to domestic plate.⁷⁹ Based on the foregoing, we determine there is a reasonable overlap of competition between imports from Brazil, other subject imports, and the domestic product.

Germany

The German respondent, AG der Dillinger Huttenwerke (Dillinger), argues that German plate products should not be cumulated because they are almost exclusively specialized products which do not generally compete with domestic product.⁸⁰ Dillinger asserts that their products are specialized for three primary reasons: (1) they produce a width no domestic mill can make; (2) they achieve a

⁷² USIMINAS and Primary Steel Posthearing Br. at 6.

⁷³ *Id.* at 6.

⁷⁴ Petitioners' Prehearing Br. Vol. 6A, Attachment A. In addition, a domestic producer representative stated that U.S. Steel Garyworks can produce bevelled plate with "both a single and a double bevel." Tr. at 318. Another domestic producer representative also stated that "there are numerous outside processors and end users who can put bevels on plate" and "many of our customers have the equipment and expertise to do bevelling in house." *Id.* at 320.

⁷⁵ *Id.* Attachment B, at 2.

⁷⁶ *Id.* M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

⁷⁷ Report I-140, table 97; table F-1.

⁷⁸ *Id.* appendix N.

⁷⁹ *Id.* I-163, table 109.

⁸⁰ Joint Plate Respondents' Br. at 39.

precision of chemistry unmatched by domestic producers; and (3) they produce thicker, heavier plate grades which are rolled only on an episodic basis by one or two East Coast integrated mills.⁸¹ Dillinger also states that it has a small number of customers who place infrequent orders.⁸² For the remaining German commercial grade plate, the respondent argues that there is no competition because German plate prices oversold domestic plate prices throughout the period of investigation with the exception of 1990.⁸³

Petitioners claim that one domestic producer competes directly with German producers in sales of niche products 1 and 7 to manufacturers of pressure vessel components.⁸⁴ They also contend that the domestic product competes with imports of German product 3, and that they now manufacture and sell product 5.⁸⁵

Sales of German plate were made in all four regions of the United States during all 36 months of the period of investigation and through six importers.⁸⁶ German commercial grade products were sold simultaneously with similar domestic and imported products 1, 2, 3, and 4 in the Commission's pricing series.⁸⁷ Petitioners produced all but one of the niche products imported from Germany, product 5, which represented only a small percentage of total German imports in 1992.⁸⁸ Contrary to Dillinger's argument concerning the absence of competition based on alleged price premiums, we note that German plate both oversold and undersold domestic plate within relatively small margins.⁸⁹ In addition, five purchasers stated that German imports are comparable to the domestic product, while one purchaser stated that the chemistry of German plate is superior to the domestic product.⁹⁰ Based on the foregoing, we determine that there is a reasonable overlap of competition between imports from Germany, other subject imports, and the domestic product.

Poland

Stalexport and Huta Czestochowa (Polish respondents) argue that Polish plate should not be cumulated because their imports do not compete with either domestic plate products or other subject imports. They assert that Polish plate is not competitive with plate from other respondents or with domestically produced plate for four reasons: (1) it is sold in spot transactions which require complicated bargaining and prepayment; (2) it is produced in limited dimensions; (3) it is subject to delays in delivery; and (4) it suffers from poor quality due to an inability to guarantee tolerances

⁸¹ Id. at 39.

⁸² Id.

⁸³ Id. at 40.

⁸⁴ Petitioners' Posthearing Br. Vol. 2 at 29.

⁸⁵ Id.

⁸⁶ Report M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

⁸⁷ Id. appendix N.

⁸⁸ I-140, table 97.

⁸⁹ Report at tables 110-113.

⁹⁰ Id. I-163, table 109.

closer than ASTM standards and due to excessive rust problems.⁹¹ Polish mills allegedly are reluctant to export plate to the United States market because they must set aside separate rolling time to produce according to U.S. ASTM instead of German DIN standards.⁹² The petitioners argue that the imports from Poland have a discernible adverse impact on the domestic plate industry and should be cumulated.⁹³

In assessing the Polish respondents' competition arguments, we note that sales of Polish plate were made in three of the four regions of the United States and during 25 of 36 months during the period of investigation and were sold through six importers.⁹⁴ Polish commercial grade plate was present simultaneously in the market with similar domestic and imported products 1 and 4 in the Commission's pricing series.⁹⁵ None of the imports of Polish plate were in any alleged niche categories.

With respect to the alleged differences in quality between Polish and domestic plate, we note that no purchasers of the Polish product made any response to our inquiry on this issue.⁹⁶ The fact that the pricing data show mixed underselling and overselling by the Polish product suggests that consistent quality differences between the U.S. and Polish products are not clear enough to be reflected in a consistent pricing pattern.⁹⁷

Based on the foregoing, we find a reasonable overlap of competition between imports of Polish plate, domestic plate, and other subject imports.

Romania

The Romanian respondent, Metalexportimport S.A., argues that plate imports from Romania should not be cumulated with other imports of plate because they do not compete with domestic or imported products. They assert that Romanian plate does not compete because it is of inferior quality, is sold without after-sale service or technical assistance, has the longest average lead times for any product under investigation, and because of its limited geographic availability due to transportation costs.⁹⁸

⁹¹ Stalexport and Huta Czystochowa Prehearing Br. at 2-9; *Id.* appendix A.

⁹² *Id.* at 3.

⁹³ Petitioners' Posthearing Br. at 36.

⁹⁴ Report tables M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

⁹⁵ *Id.* appendix N.

⁹⁶ Report I-163, table 109.

⁹⁷ Report I-175, table 113. Commissioner Crawford does not place great weight on the underselling price comparisons in determining the impact of the subject imports on the domestic like product where these comparisons show persistent and consistent high margins of overselling or underselling. In these instances, the prices being compared might well reflect quality or other nonprice differences, making these comparisons less useful in assessing price effects.

⁹⁸ Metalexportimport S.A. Prehearing Br. at 3-5.

Sales of Romanian plate were made in two regions of the United States and during 32 months of the investigation.⁹⁹ They were sold through at least two importers in 1992.¹⁰⁰ Romanian sales of commercial grade products 1 and 4 were present simultaneously with similar domestic and imported products in the Commission's pricing series.¹⁰¹ In addition, the Polish respondents provide evidence that Romanian imports compete with imports from several other subject countries, including Brazil, Poland, and South Africa.¹⁰² We note that Romania only exported one niche product to the United States which was also made by the domestic producers.¹⁰³ Unit values of Romanian plate are very close to unit values from Canada, Korea, and Mexico, but are considerably greater than unit values from Poland.¹⁰⁴ Based on the foregoing, we find that there is a reasonable overlap of competition between plate from Romania, domestic plate, and other subject imports.

B. General Negligibility Issues¹⁰⁵

Three countries did not assert that their imports were negligible: Belgium, Brazil, and Canada. The import share of apparent domestic consumption¹⁰⁶ and volume¹⁰⁷ from each of these countries is at levels which we do not find negligible in this particular market.¹⁰⁸ None of the sales of imports from these countries was isolated or sporadic; all entered the market in all 36 months of the period of investigation except for Brazil which entered in 35 months;¹⁰⁹ they were present in all four regions of the United States, except for those from Canada which were present in three regions;¹¹⁰ and all were sold through a large number of importers in 1992.¹¹¹ We find that the

⁹⁹ Report tables M-4-5, table M-1; L-3, table L-1.

¹⁰⁰ Id. at M-9, table M-5.

¹⁰¹ Id. appendix N.

¹⁰² Stalexport and Huta Czystochowa Prehearing Br. at 44.

¹⁰³ Report table F-1.

¹⁰⁴ Id. I-133, table 93.

¹⁰⁵ Commissioner Nuzum notes that her analysis of negligibility includes other additional factors. See her Additional and Dissenting Views.

¹⁰⁶ Id. I-142, table 101. In 1992, the market shares for these countries were: 1.0 percent for Belgium, 0.9 percent for Brazil, and 3.7 percent for Canada. Id.

¹⁰⁷ Id. I-133, table 93. In 1992, Belgium had 48,951 tons, Brazil had 46,380 tons, and Canada had 184,227 tons. Id.

¹⁰⁸ See discussion of the factors which demonstrate that the plate market is price sensitive in the Material Injury discussion infra.

¹⁰⁹ Report L-3, table L-1.

¹¹⁰ Id. M-4-5, table M-1.

¹¹¹ Id. I-9, table M-5. In 1992, Belgian plate was sold through sixteen importers, Brazilian plate was sold through ten importers, and Canadian plate was sold through forty-six importers. Id.

market for cut-to-length plate products is price sensitive¹¹² ¹¹³ so that a smaller volume of imports can have a discernible adverse impact.¹¹⁴ These facts support our conclusion that these imports are not negligible.

1. Specific Country Arguments Concerning Negligibility

Finland

The Finnish respondent, Rautaruukki Oy, asserts that imports of Finnish plate are negligible based on a low and declining volume of these imports.¹¹⁵ Petitioners contend that imports from Finland have a discernible adverse impact on the domestic plate industry, and that the domestic industry produces each of Finland's alleged niche products.¹¹⁶

We find that imports from Finland are not negligible and should be cumulated. Finland's share of apparent domestic consumption decreased from 1.5 percent in 1990 to 1.2 percent in 1991 and declined further to 0.9 percent in 1992.¹¹⁷ Sales of Finnish plate were not isolated or sporadic; they were sold through a total of 12 importers in three out of four regions of the United States during 34 of 36 months of the investigation.¹¹⁸

The majority of imports from Finland were commercial grade plate; Finland sold all four commercial grade products in the Commission pricing series.¹¹⁹ The domestic industry also produced all of the Finnish niche products¹²⁰ which, at their highest level in 1992, represented less than a quarter of the imports from Finland.¹²¹ One purchaser stated that the flatness, cleanliness and surface of Finnish plate is superior to domestic products and two stated that Finnish products are

¹¹² Vice-Chairman Watson and Commissioner Crawford do not find the cut-to-length plate market to be price sensitive as defined in 19 U.S.C. § 1677(C)(v)(III). They note, however, that, of the four major steel markets examined in these investigations, the cut-to-length plate market is relatively more price sensitive to small quantities of subject imports than the other three markets. See Additional and Dissenting Views of Commissioner Carol T. Crawford contained herein in which Vice-Chairman Watson concurs.

¹¹³ See Commissioner Rohr's Additional and Dissenting Views concerning Hot-Rolled products for his view on price sensitivity of the plate market.

¹¹⁴ Commissioner Brunsdale does not join in this or other statements in this opinion regarding price sensitivity. See her Additional and Dissenting Views, infra.

¹¹⁵ Rautaruukki Oy Posthearing Br. at 15.

¹¹⁶ Petitioners' Posthearing Br. Vol. 2, at 36.

¹¹⁷ Report I-142, table 101.

¹¹⁸ Id. M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

¹¹⁹ Id. appendix N.

¹²⁰ Id. table F-1.

¹²¹ Id. I-140, table 97.

comparable to domestic products.¹²² Finnish plate imports for the most part undersold domestic product with a range of margins between 1.1 and 33.0 percent.¹²³

In light of the market share of Finnish imports, the evidence that imports of Finnish plate are substitutable with domestic product and the price sensitivity of the domestic cut-to-length plate market, we determine that imports from Finland are not negligible.

France¹²⁴

The French respondents, Usinor Sacilor, Sollac, GTS and Creusot-Loire ("French respondents"), assert that their low volume and market share, as well as sporadic imports and a domestic market which is not price sensitive, warrant a negligibility finding.¹²⁵ They also argue that a portion of the subject imports from France are specialty products that do not compete with domestic commercial products.¹²⁶ The French respondents contend that several other factors, including longer lead times, seasonal unavailability, and higher warehousing expenses limit competition between French commercial plate and domestic product.¹²⁷ In addition, the French respondents dispute petitioners' assertion that imports of French plate should be cumulated on the basis that Usinor Sacilor's subsidiary, GTS, has cross-ownership links with the German producer, Dillinger.¹²⁸

Petitioners dispute the French respondents' claims with respect to each of the specialty products.¹²⁹ In addition, petitioners argue that France and Germany should be cumulated because they are European Community (EC) countries and because of the relationship between Usinor Sacilor and the German respondent, Dillinger.¹³⁰ They assert that Usinor Sacilor's ownership of GTS and its 70 percent ownership of Dillinger's parent would allow it to minimize any remedial duties by deciding which subsidiary would ship plate to the United States.¹³¹

¹²² Id. I-163, table 109.

¹²³ Id. I-172-175, tables 110-113.

¹²⁴ Commissioner Nuzum dissents from the majority's determination with respect to imports from France, and, therefore, does not join in this discussion. See her Additional and Dissenting Views.

¹²⁵ Usinor Sacilor, Sollac, GTS and Creusot-Loire Posthearing Br. at 1-2.

¹²⁶ Id. at 9.

¹²⁷ Id. at 12-13.

¹²⁸ Id. at 17-18.

¹²⁹ Petitioners' Posthearing Br. Vol. 2 at 20.

¹³⁰ Id. at 42-46. They contend that Usinor Sacilor has 70 percent ownership of the German respondent Dillinger's parent company. Id. In addition, they assert that Dillinger, as a member of Usinor Sacilor's "Flat Products Division," participates in a common marketing strategy for plate products devised by Usinor Sacilor officials, that operations in the Usinor Sacilor group are tightly controlled from the center, and that Dillinger and Usinor Sacilor use the same U.S. importer and selling agent. Id.

¹³¹ Id. at 46.

We find that imports of cut-to-length plate from France are negligible. France's share of apparent domestic consumption increased slightly from 0.2 percent in 1990 to 0.3 percent in 1991, before declining to 0.1 percent in 1992.¹³² Imports from France were sold through four importers/consignees in the four regions of the United States during 36 months of the investigation.¹³³

French imports were moderately substitutable with the domestic plate product, although we note that there is some evidence that at least some of these imports were priced higher than domestic products which suggests some attenuated competition.¹³⁴ With respect to petitioners' assertions that French imports should be cumulated with Germany on the basis of cross-ownership, we find the record lacks evidence to support the contention that the multinational operations of the French and German respondents would divert shipments to minimize any potential duties.¹³⁵ In light of the extremely low and decreasing volume and market share of French imports, we find these imports are negligible and had no discernible adverse impact on the domestic industry.¹³⁶

Germany¹³⁷

The German respondent, Dillinger, argues that imports of German plate are negligible based on their small and declining volume.¹³⁸ They contend that Dillinger's sales of plate are sporadic because, unlike most sales in the United States, they are not made pursuant to long-term contracts.¹³⁹ They assert that the U.S. market is not price sensitive and German plate imports have not resulted in price depression or price suppression because German unit values are higher than those for the domestic products.¹⁴⁰

¹³² Report I-142, table 101.

¹³³ *Id.* M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

¹³⁴ Report, tables N-3, N-4, N-21, N-22. Commissioner Rohr does not find the degree of the price differences to be significant and did not rely on this factor in deciding these imports were negligible.

¹³⁵ See Ball Bearings, Mounted or Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey, and Yugoslavia, Invs. Nos. 701-TA-307 and 731-TA-498-511 (Preliminary), USITC Pub. 2374 (April 1991) at 28-29, *aff'd*, Torrington Co. v. United States, 16 CIT __, 790 F. Supp. 1161, 1172 (CIT 1992) (upholding the Commission's decision to apply the negligible imports exception based on the conclusion that the nature of the multinational companies' import practices indicated that they did not import principally to benefit from unfair trade practices).

¹³⁶ We reject petitioners' arguments that all EC countries should be cumulated regardless of the volume and nature of the subject imports from these countries for the reasons set forth in § V of the Commission's Hot-Rolled Views.

¹³⁷ Commissioner Brunsdale and Commissioner Crawford do not join in this discussion. See their Additional and Dissenting Views.

¹³⁸ Dillinger Prehearing Br. at 1-2.

¹³⁹ *Id.* at 9.

¹⁴⁰ *Id.* at 11.

Petitioners argue that German imports should be cumulated because these imports are not negligible and domestic producers make all of the alleged German niche products.¹⁴¹ In addition, they argue that such imports should be cumulated with all other EC countries and with France because of cross-ownership with the French producer, Usinor Sacilor.¹⁴² Petitioners also reject respondent's claims that its alleged niche products are truly specialty products.¹⁴³

Germany's share of apparent domestic consumption decreased steadily from 1.1 percent in 1990 to 0.8 percent in 1991 and then to 0.4 percent in 1992.¹⁴⁴ The volume of German imports decreased from 59,479 tons in 1990 to 38,482 tons in 1991 and then further to 20,665 tons valued at \$11 million in 1992.¹⁴⁵ Sales of German plate were not isolated or sporadic; they were conducted through six importers in all four regions of the United States during all 36 months of investigation.¹⁴⁶

There is some evidence that most plate imports from Germany are substitutable with the domestic product as evidenced by the fact that the majority of imports of German plate are commercial products,¹⁴⁷ and the existence of mixed underselling and overselling with relatively low margins.¹⁴⁸ Based on the foregoing, notwithstanding declining volumes and market shares and evidence of somewhat attenuated competition, we find that these German plate imports are not negligible in this price sensitive market.

Italy¹⁴⁹

The Italian respondents, ILVA S.p.A. and ILVA USA, Inc. ("Italian respondents"), assert that plate imports from Italy are negligible. They base their negligibility arguments on Italy's small and declining market share during the period of investigation, asserting that it fell to a low of 0.057 percent in 1992.¹⁵⁰ In addition, the Italian respondents argue that their sales were isolated and sporadic because they sold their plate to [***] customers.¹⁵¹ They assert that the average unit values of Italian plate during the period of investigation were consistently lower than domestic prices and, if the market were price sensitive, imports from Italy should be gaining rather than losing market share.¹⁵² Finally, the respondents argue that the vast majority of Ilva's plate was shipped pursuant to a short supply request granted by the Department of Commerce and that the domestic market must

¹⁴¹ Petitioners' Posthearing Br. Vol. 2 at 27.

¹⁴² Id.

¹⁴³ Id.

¹⁴⁴ Report I-142, table 101.

¹⁴⁵ Id. I-133, table 93.

¹⁴⁶ Id. M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

¹⁴⁷ Id. I-140, table 97.

¹⁴⁸ Id. I-172-175, tables 110-113.

¹⁴⁹ Vice-Chairman Watson did not participate in the decision regarding Italy.

¹⁵⁰ ILVA S.p.A. and ILVA USA, Inc. Posthearing Br. at 2.

¹⁵¹ Id. at 4.

¹⁵² Id. at 6.

have been price insensitive to these imported products because the product was not available domestically.¹⁵³

Petitioners assert that imports from Italy are not negligible and have a discernible adverse impact on the domestic plate industry.¹⁵⁴ They allege that domestic plate producers have been forced to reduce their prices to compete with lower priced Italian imports.¹⁵⁵

Italy's share of apparent domestic consumption increased from 0.2 percent in 1990 to 0.4 percent in 1991, before declining to 0.1 percent in 1992.¹⁵⁶ Imports of Italian plate increased slightly from 10,074 tons in 1990 to 17,076 tons in 1991, and then decreased to only 2,840 tons.¹⁵⁷ Imports from Italy entered three out of the four regions of the United States in 1990 and 1991, but only two regions in 1992; imports entered these regions in 1992 through only two importers. Imports were sold during 25 out of 36 months of the investigation.¹⁵⁸

Italian plate oversold domestic plate in two of two pricing comparisons for product 4.¹⁵⁹ Although Italian plate product 3 undersold domestic plate in six out of six pricing comparisons, we note that these sales involved very small quantities of Italian plate, which decreased in volume from one year to the next.¹⁶⁰ In addition, the margins of underselling generally declined over the period of investigation.¹⁶¹ Based on these observations and the extremely low and declining Italian market share and import volumes, we find that these imports are negligible and have no discernible adverse impact on the domestic cut-to-length plate industry.

Korea

The Korean respondents, Korea Iron and Steel Association, Pohang Iron and Steel Co., Ltd. (POSCO), and Dongkuk Steel Mill Co., Ltd. (Dongkuk) ("Korean respondents") assert that imports from Korea are negligible, have declined, and are isolated and sporadic as they are sold primarily along the West Coast to a small domestic customer base.¹⁶² Further, they argue that, within the West Coast market where nearly 90 percent of Korean plate is sold, one of the significant U.S. producers, Geneva Steel, allegedly has admitted that its products suffer from poor quality due to outdated production technologies.¹⁶³ The Korean respondents also assert that their imports have no impact on

¹⁵³ ILVA S.p.A. and ILVA USA, Inc. Prehearing Brief at 6.

¹⁵⁴ Petitioners' Posthearing Br. Vol. 2 at 36.

¹⁵⁵ *Id.* at 31.

¹⁵⁶ Report I-142, table 101.

¹⁵⁷ *Id.* I-133, table 93.

¹⁵⁸ *Id.* M-4-5, table M-1; L-3, table L-1; table M-5.

¹⁵⁹ *Id.* appendix N; table N-21.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Korean Prehearing Br. at 13.

¹⁶³ *Id.* at 41.

the domestic industry because imported Korean and domestic plate are not highly substitutable and Korean plate has consistently oversold the comparable U.S. product.¹⁶⁴

Petitioners argue that Korean plate competes with plate made by domestic producers located in the western United States.¹⁶⁵ They assert that Geneva Steel, which produces plate on a high quality, highly efficient plate mill, competes fully against all domestic and foreign plate mills which sell in the western and other regions and that it has competed regularly against Korean plate.¹⁶⁶ In arguing that Korean imports have had an adverse impact, petitioners cite instances in which Geneva has lowered its prices in response to low-priced Korean plate offerings.¹⁶⁷

The Korean share of apparent domestic consumption of plate for the period of investigation steadily decreased from 0.4 percent in 1990 to 0.3 percent in 1991, and further declined to 0.2 percent in 1992.¹⁶⁸ The volume of these imports fell from 21,361 tons in 1990 to 15,186 tons in 1991, and further decreased to 9,160 tons in 1992.¹⁶⁹ Imports of Korean plate were somewhat isolated, concentrated in two of the four regions of the United States, and were made through three importers/consignees in 1992.¹⁷⁰

Most Korean plate imports appear to be only moderately substitutable with commercial quality products.¹⁷¹ Contrary to most other imports of plate, Korean plate oversold domestic plate in 13 out of 15 pricing comparisons with margins of 2.9-39.4 percent, further supporting the conclusion of superior quality.¹⁷² There was only one confirmed lost sale due to Korean plate imports.¹⁷³

In view of the low and declining market share and import volumes and evidence of attenuated competition, we find that imports from Korea are negligible and have no discernible adverse impact on the domestic plate industry.

Mexico

The sole Mexican plate producer, Altos Hornos de Mexico ("Altos"), argues that imports from Mexico are negligible and should not be cumulated. Altos contends that the increase in imports from Mexico in 1992 was due to the dumping of U.S. plate in Mexico which forced Altos to export a larger share of its plate production to the United States.¹⁷⁴ It argues that the U.S producers had a

¹⁶⁴ Joint Plate Respondents' Br. at 45.

¹⁶⁵ Petitioners' Posthearing Br. Vol. 2, Attachment B at 4-5.

¹⁶⁶ Id.

¹⁶⁷ Id. at 5.

¹⁶⁸ Report I-142, table 101.

¹⁶⁹ Id. I-133, table 93.

¹⁷⁰ Id. M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

¹⁷¹ Id. appendix N.

¹⁷² Id. tables 112-113.

¹⁷³ Id. I-180, table 117.

¹⁷⁴ Mexican Posthearing Br. at 4.

substantial surplus in plate trade with Mexico in 1991 and 1992 and that, as a result, the effective level of imports from Mexico was negative.¹⁷⁵

Mexico's share of apparent domestic consumption of plate for the period of investigation decreased from 0.7 percent in 1990 to 0.4 percent in 1991, before increasing substantially to 1.2 percent in 1992.¹⁷⁶ Mexican imports decreased from 41,520 tons in 1990 to 19,343 tons in 1991, before rising to 59,993 tons valued at \$19 million in 1992.¹⁷⁷ Sales of Mexican plate were made in two of the four regions of the United States during 35 of 36 months of the investigation, and were made through five importers in 1992.¹⁷⁸

The record indicates that the domestic industry produced all of the alleged Mexican niche products.¹⁷⁹ Mexican and domestic producers sold commercial grade products 1 and 4.¹⁸⁰ Two purchasers stated that Mexican imports are comparable to domestic product.¹⁸¹ Mexican imports undersold the domestic product in all of the Commission's pricing comparisons by relatively small margins.¹⁸²

Based on the foregoing, and particularly the substantial increase in volume and market share for cut-to-length plate imports from Mexico in 1992, and view of the price sensitive nature of the market, we find that these imports are not negligible.

Poland¹⁸³

Stalexport and Huta Czysta (Polish respondents) argue that their imports are negligible because of a small and decreasing market share,¹⁸⁴ their isolated and sporadic nature as they are sold primarily to the Gulf Region,¹⁸⁵ and the absence of a discernible impact on domestic spot prices because of delayed and uncertain delivery.¹⁸⁶

¹⁷⁵ Id. at 6.

¹⁷⁶ Report I-142, table 101.

¹⁷⁷ Id. I-133, table 93.

¹⁷⁸ Id. M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

¹⁷⁹ Id. table F-1.

¹⁸⁰ Id. appendix N.

¹⁸¹ Id. I-163, table 109.

¹⁸² Id. I-172-175, tables 110-113.

¹⁸³ Commissioner Brunsdale and Commissioner Crawford do not join in this discussion. See their Additional and Dissenting Views.

¹⁸⁴ Polish Prehearing Br. at 14.

¹⁸⁵ Id. at 16.

¹⁸⁶ Id. at 16.

Poland's share of apparent domestic consumption of plate for the period of investigation increased from 0.5 percent in 1990 to 0.8 percent in 1991, before returning to 0.5 percent in 1992.¹⁸⁷ Polish imports increased from 25,546 tons in 1990 to 38,357 tons in 1991 and then decreased to 24,605 tons valued at \$7 million in 1992.¹⁸⁸ Sales of Polish plate were made in three of the four regions of the United States in 25 of 36 months and through six importers.¹⁸⁹

Polish commercial grade plate was present simultaneously in the market with similar domestic and imported products 1 and 4 in the Commission's pricing series and none of the imports of Polish plate were in any alleged niche categories.¹⁹⁰

In light of the volumes and market shares for imports of Polish plate, and the price sensitive nature of the plate market, we find that imports from Poland of cut-to-length plate are not negligible.

Romania¹⁹¹

Romanian respondent, Metalexportimport S.A., contends that Romanian imports are negligible because market shares are low and declining,¹⁹² imports are sold to very few customers in a geographically limited area of the United States,¹⁹³ and volumes declined in spite of lower prices for Romanian plate.¹⁹⁴

Romania's share of apparent domestic consumption of plate for the period of investigation increased from 0.6 percent in 1990 to 0.8 percent in 1991 and then declined to 0.4 percent in 1992.¹⁹⁵ Imports increased from 31,650 tons in 1990 to 36,428 tons in 1991 and then decreased to 18,078 tons valued at \$7 million in 1992.¹⁹⁶ Sales of imports from Romania were made in two regions of the United States during 32 of 36 months of the investigation and through two importers.¹⁹⁷

The record indicates that Romanian imports and domestic plate were both sold in commercial grade products 1 and 4 in the Commission's pricing series.¹⁹⁸ One purchaser stated that, because of

¹⁸⁷ Id. I-142, table 101.

¹⁸⁸ Id. I-133, table 93.

¹⁸⁹ Id. M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

¹⁹⁰ Id. appendix N.

¹⁹¹ Commissioner Brunsdale and Commissioner Crawford do not join in this discussion. See their Additional and Dissenting Views.

¹⁹² Metalexportimport S.A. Prehearing Br. at 7-8.

¹⁹³ Id. at 9.

¹⁹⁴ Id. at 11.

¹⁹⁵ Report I-142, table 101.

¹⁹⁶ Id. I-133, table 93.

¹⁹⁷ Id. M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

¹⁹⁸ Id. appendix N.

their shape and lamination, Romanian plate is inferior to domestic product. Romania had the longest lead times, 5 to 6 months, out of the subject countries.¹⁹⁹ In all cases except one, Romanian plate undersold domestic plate by margins ranging from 1.9 to 47.5 percent.²⁰⁰

We find that Romanian imports of plate are not negligible based on evidence of substitutability with the domestic products, underselling of domestic plate, and market shares and volumes which, although declining, in a price sensitive market have a discernible adverse impact on the domestic industry.

South Africa

Cut-to-length plate imports from South Africa entered the United States during the period of investigation beginning in March 1992.²⁰¹ The apparent share of domestic consumption for South African plate imports was 1.6 percent, the third highest of the subject countries.²⁰² Between March and December 1992, imports of plate from South Africa totalled 79,272 tons.²⁰³ Although imports of plate from South Africa in 1992 were made during only nine months, they were not isolated; they were sold in all four regions of the United States²⁰⁴ through seven importers of plate, all of whom were steel distribution centers.

We have no specific information concerning the grades of plate products which make up the South African imports, *i.e.*, whether they are commercial or specialized niche products. The low unit values for South Africa, the third lowest of the subject countries, suggest that these products are not specialized plate products that command a price premium.²⁰⁵

In light of the volume, the market share of apparent domestic consumption, and the price sensitive nature of the plate market, we find that these imports from South Africa are not negligible and have a discernible adverse impact on the domestic industry.

Spain

Empresa Nacional Siderurgica and Altos Hornos de Vizcaya, S.A. (Spanish respondents) assert that plate imports from Spain are negligible because these imports are small and declining.²⁰⁶ Petitioners contend that Spanish imports have a discernible adverse impact on the domestic plate industry and should be cumulated.²⁰⁷

¹⁹⁹ *Id.* I-154.

²⁰⁰ *Id.* I-172-175, tables 110-113.

²⁰¹ Report B-1.

²⁰² *Id.* I-142, table 101. Only Canada and Sweden had larger market shares in 1992. *Id.*

²⁰³ *Id.* I-133, table 93; supplementing Memorandum at table B-1. There were no imports from South Africa in October 1992. *Id.* B-1.

²⁰⁴ *Id.* B-1.

²⁰⁵ *Id.* I-133, table 93. In 1992 the unit value for South African plate imports is \$331, whereas the unit value for the domestic product is \$401 *Id.* C-3.

²⁰⁶ Empresa Nacional Siderurgica and Altos Hornos de Vizcaya, S.A. Posthearing Br. at 13.

²⁰⁷ Petitioners' Posthearing Br. Vol. 2 at 36.

Spain's share of apparent domestic consumption of plate for the period of investigation increased from 1.2 percent in 1990 to 1.5 percent in 1991, before declining to 1.1 percent in 1992.²⁰⁸ Imports of Spanish plate increased from 68,136 tons in 1990 to 69,560 tons in 1991, before decreasing in 1992 to 54,054 tons valued at \$18 million.²⁰⁹ Spanish plate imports entered three out of the four regions of the United States during 27 of 36 months of the investigation, and were sold through only one importer in 1992.²¹⁰

The record indicates that domestic and Spanish commercial grade plate products 1 and 4 were present simultaneously in the market.²¹¹ One purchaser stated that Spanish plate was comparable to domestic product.²¹² Spanish plate undersold the comparable domestic product in virtually all available pricing comparisons by margins between 7.7 and 43.1 percent.²¹³ There were also two confirmed lost sales due to Spanish imports.²¹⁴ Based on the relatively large volume and share of apparent consumption for Spain in a price sensitive market, and the evidence that imports from Spain are substitutable with the domestic product, we find that imports from Spain have an adverse impact on the domestic industry and are not negligible.

Sweden

Svenskt Stal AB ("SSAB"), the Swedish respondent, asserts that its imports are negligible based on its market share and a decline in its import volume during the period of investigation.²¹⁶ Petitioners contend that Swedish imports have a discernible adverse impact on the domestic plate industry and should be cumulated and that domestic producers manufacture all of Sweden's alleged niche products.²¹⁷

Sweden's share of apparent domestic consumption of plate for the period of investigation decreased from 1.6 percent in 1990 to 1.4 percent in 1991, before increasing to 1.8 percent in 1992.²¹⁸ Swedish imports of plate decreased from 91,269 tons in 1990 to 68,337 tons in 1991, increasing in 1992 to 89,741 tons valued at \$34 million.²¹⁹ Swedish imports were not isolated or

²⁰⁸ Report I-142, table 101.

²⁰⁹ *Id.* I-133, table 93.

²¹⁰ *Id.* M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

²¹¹ *Id.* appendix N.

²¹² *Id.* I-163, table 109.

²¹³ *Id.* I-172-175.

²¹⁴ *Id.* I-42, table 119.

²¹⁵ Commissioner Brunsdale and Commissioner Crawford do not find anecdotal evidence of any particular lost sales, submitted by petitioners, to constitute reliable evidence of such losses.

²¹⁶ Joint Plate Respondents' Br. at 49.

²¹⁷ Petitioners' Posthearing Br. Vol. 2 at 36.

²¹⁸ Report I-142, table 101.

²¹⁹ *Id.* I-133, table 93.

sporadic; they entered all four regions of the United States during 35 of 36 months of the investigation and were sold through fifteen importers.²²⁰

In assessing the degree of substitutability between imports from Sweden and domestic plate products, domestic and Swedish plate commercial grade products 1, 3, and 4 were present simultaneously in the market.²²¹ One purchaser stated that Swedish imported plate was comparable to domestic product.²²² Swedish niche products constituted a small percentage of total imports from Sweden at their peak in 1991, and the domestic producers made all of these niche products.²²³ Swedish imports undersold the comparable domestic product in most instances by margins ranging from 4.9-29.3 percent.^{224 225}

In light of the large and increasing volume and rising share of apparent consumption for Sweden in a price sensitive domestic plate market and the adverse impact from underselling, we find that imports of cut-to-length plate from Sweden are not negligible.

United Kingdom²²⁶

The United Kingdom respondent, British Steel, asserts that its imports are negligible because of small and steadily declining imports and market shares, and because some of the United Kingdom plate imports were of universal mill plate which they claim does not compete with the domestic product.²²⁷

The petitioners argue that a domestic product, sheared mill plate, is interchangeable with and, therefore, competes with universal mill plate in virtually all applications.²²⁸

The United Kingdom's share of apparent domestic consumption of plate for the period of investigation decreased steadily from 0.8 percent in 1990 to 0.7 percent in 1991 to 0.4 percent in 1992.²²⁹ The volume of United Kingdom imports decreased from 43,489 tons in 1990 to 34,869 tons

²²⁰ Id. M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

²²¹ Id. appendix N.

²²² Id. I-163, table 109.

²²³ Id. I-140, table 97, table F-1.

²²⁴ Id. I-172-175.

²²⁵ Commissioner Brunsdale and Commissioner Crawford do not place great weight on the underselling price comparisons in determining the impact of the subject imports on the domestic like product where these comparisons show persistent and consistent high margins of overselling or underselling. In these instances, the prices being compared might well reflect quality or other nonprice differences, making these comparisons less useful in assessing price effects.

²²⁶ Commissioner Brunsdale and Commissioner Crawford do not join in this discussion. See their Additional and Dissenting Views.

²²⁷ British Steel Prehearing Br. at 2-6.

²²⁸ Petitioners' Posthearing Br. Vol. 2, Attachment C at 8-10.

²²⁹ Report I-142, table 101.

in 1991 and again to 21,276 tons in 1992 valued at \$8 million.²³⁰ Imports from the United Kingdom were not isolated or sporadic; they entered all four regions of the United States during all 36 months of the investigation and were sold through three importers.²³¹

In assessing the degree of competition between imports from the United Kingdom and domestic product, domestic plate and imports from the United Kingdom of commercial grade products 1, 3, and 4 were simultaneously present in the market.²³² This evidence suggests that United Kingdom plate is substitutable with domestic plate. As we discussed in our like product analysis, UM plate is interchangeable with sheared-mill plate in almost all applications. In assessing whether the volume of imports had any adverse impact, we note that United Kingdom plate undersold domestic plate in 36 out of 40 pricing comparisons at margins between 1.3 and 26.5 percent.²³³

Although the volumes and market shares for these imports have declined, they are still at levels which have a discernible adverse impact in a price sensitive market. Based on the foregoing, we find that plate imports from the United Kingdom are not negligible.

V. MATERIAL INJURY BY REASON OF LTFV AND SUBSIDIZED IMPORTS

In determining whether the domestic industry is materially injured by reason of the imports under investigation, the statute directs us to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation;
- (II) the effect of imports of that merchandise on prices in the United States for like products; and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States.²³⁴

In making this determination, we consider "such other economic factors as are relevant to the determination" ²³⁵ However, we do not weigh causes. ^{236 237}

²³⁰ Id. I-133, table 93.

²³¹ Id. M-4-5, table M-1; L-3, table L-1; M-9, table M-5.

²³² Id. at appendix N.

²³³ Id. I-172-175, tables 110-113.

²³⁴ 19 U.S.C. § 1677(7)(B)(i).

²³⁵ 19 U.S.C. § 1677(7)(B)(ii).

²³⁶ See, e.g., Citrosuco Paulista, S.A. v. United States, 12 CIT 1196, 1228, 704 F. Supp. 1075, 1101 (1988).

²³⁷ Vice-Chairman Watson, Commissioner Rohr, Commissioner Crawford, and Commissioner Nuzum set forth their various views regarding their material injury causation standards in separate footnotes in § V of the Commission's Hot-rolled Views.

A. Material Injury by Reason of Cumulated LTFV and Subsidized Imports²³⁸

1. Volume effects

In determining whether there is material injury by reason of the LTFV and subsidized imports, the statute directs us to 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."²³⁹

We find that cumulated volumes of LTFV and subsidized imports of cut-to-length plate are significant in terms of both absolute volume and market share.²⁴⁰ The four Commissioners joining in this opinion use different combinations of cumulated countries in their analyses. Nevertheless, the volume of cumulated imports as a percentage of apparent domestic consumption used by each Commissioner was relatively high, reaching its peak in 1992.²⁴¹ The absolute volumes of cumulated imports used by each Commissioner decreased between 1990 and 1991, before increasing again in 1992.²⁴²

The domestic producers' share of apparent domestic consumption increased slightly between 1990 and 1991, from 84.9 to 85.4 percent, before decreasing in 1992 to 84.1 percent.²⁴³ While apparent domestic consumption of plate declined throughout the period examined, the cumulated imports increased their share of apparent domestic consumption during the same period.²⁴⁴ The

²³⁸ This portion of the opinion is joined by Vice-Chairman Watson, Commissioner Rohr, Commissioner Crawford, and Commissioner Nuzum, except where otherwise noted.

²³⁹ 19 U.S.C. § 1677 (7)(C)(i).

²⁴⁰ The four Commissioners participating in this portion of the opinion cumulated different countries as follows: Vice-Chairman Watson and Commissioner Rohr: Belgium, Brazil, Canada, Finland, Germany, Mexico, Poland, Romania, South Africa, Spain, Sweden, the United Kingdom; Commissioner Crawford: Belgium, Brazil, Canada, Finland, Mexico, South Africa, Spain, and Sweden; and Commissioner Nuzum: Belgium, Brazil, Canada, Finland, France, Germany, Mexico, Poland, Romania, South Africa, Spain, Sweden, and the United Kingdom. Thus, all four Commissioners cumulated imports from at least eight of the cumulated countries.

²⁴¹ Vice-Chairman Watson's and Commissioner Rohr's cumulated countries' quantities in 1992 totalled 14.0 percent of apparent domestic consumption; Commissioner Crawford's cumulated countries' quantities in 1992 totalled 12.2 percent of apparent domestic consumption; and Commissioner Nuzum's cumulated countries' quantities totalled 14.1 percent of apparent domestic consumption. *Id.* at I-142, table 101.

²⁴² Vice-Chairman Watson's and Commissioner Rohr's cumulated countries' volumes were 703,803 tons in 1990 decreasing to 593,095 tons in 1991, before rising to 694,117 tons in 1992; Commissioner Crawford's cumulated countries' volumes were 543,639 tons in 1990 declining to 444,959 tons in 1991, before rising to 609,493 tons in 1992; Commissioner Nuzum's cumulated countries' volumes were 714,938 tons in 1990, decreasing to 606,533 tons in 1991, before increasing to 700,769 tons in 1992. *Id.* I-133, table 93.

²⁴³ *Id.* I-142, table 101.

²⁴⁴ Vice-Chairman Watson's and Commissioner Rohr's cumulated countries' share of apparent consumption by quantity rose from 12.4 percent in 1990 and 1991 to 14.0 percent in 1992. Commissioner Crawford's cumulated countries' share of apparent consumption by quantity decreased
(continued...)

domestic industry's share of this decreasing apparent domestic consumption fell by 0.8 percent during the period examined.²⁴³

Given the increase in the cumulated imports' share of apparent U.S. consumption and the rise in cumulated import volumes from 1991 to 1992, and in view of the price and nonprice related factors discussed below,²⁴⁶ we find that the volumes and market shares of these imports were significant.

2. Price effects

In evaluating the effect of LTFV and subsidized imports on prices, the Commission considers whether "there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States," and "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."²⁴⁷

A number of factors are relevant to a determination of whether there has been significant price underselling or significant price suppression or depression by reason of the cumulated imports. These include the degree of substitutability between domestic and imported cut-to-length plate products.²⁴⁸ The more substitutable these products are, the more likely that potential purchasers will make their purchasing decisions based on price differences between imported and domestic plate.

The record indicates that domestic cut-to-length plate is substitutable with cumulated imports of plate and that the plate market is sensitive to price.²⁴⁹²⁵⁰ Plate is commonly produced to a few ASTM specifications. A36 is the most common grade in the industry, and A572 and A656 are also very common grades. These three grades account for a majority of U.S. producers' and cumulated importers' annual U.S. shipments.²⁵¹ Plate does not involve particularly unique production processes

²⁴⁴ (...continued)

from 9.5 percent in 1990 to 9.3 percent in 1991, before increasing to 12.2 percent in 1992. Commissioner Nuzum's cumulated countries' share of apparent consumption by quantity rose from 12.6 percent in 1990 to 12.7 percent in 1991 to 14.1 percent in 1992. *Id.* I-142, table 101.

²⁴⁵ Report at C-3, table C-1.

²⁴⁶ Commissioner Rohr concurs in his colleagues' conclusion that the volume effects of the unfairly traded imports were significant, but does not base his conclusion about the significance of volume on price considerations which are discussed separately below.

²⁴⁷ 19 U.S.C. § 1677(C)(ii).

²⁴⁸ Commissioner Nuzum notes that she includes substitutability within the many factors that contribute to her overall analysis; this single factor, however, is not necessarily more important than any other factor.

²⁴⁹ See Commissioner Rohr's Additional and Dissenting Views concerning Hot-Rolled products for his views on the price sensitivity of the plate market.

²⁵⁰ Vice-Chairman Watson and Commissioner Crawford do not find the cut-to-length plate market to be price sensitive as defined in the Statute. They note, however, that of the four steel markets examined, the cut-to-length plate market is relatively more sensitive to price than the other three markets. See Additional and Dissenting Views of Carol T. Crawford.

²⁵¹ INV-Q-118 (Supplemental Memorandum to Commissioner Rohr).

and most domestic and foreign plate mills can produce products that meet the most common ASTM specifications.²⁵² Nor does plate usually involve highly detailed customer specifications as plate products are generally used in the construction industry, and in the production of heavy machinery, industrial equipment, tools, rail freight cars, pressure containers, and storage tanks.^{253 254} These common grades of plate are generally sold on the merchant market to service centers or end users that do no further processing.²⁵⁵ Therefore, critical end-user specifications on gauges and width tolerances are not as common in the plate industry as they are in each of the other flat-rolled industries.²⁵⁶

The Commission's pricing data indicate that sales of both domestic plate and cumulated imports were documented in all four of the commercial grade pricing series and in 12 out of 15 niche products.²⁵⁷ Further evidence of the substitutability of domestic and cumulated imported plate is found in the responses of purchasers to questions concerning the relative quality of foreign and domestic plate. A total of twenty-six purchasers indicated that cumulated imports of cut-to-length plate are comparable to domestic plate in product quality.²⁵⁸ In contrast, only two reported that cumulated imports are inferior to domestic product, and a single purchaser indicated that they are superior to domestic plate.

The responses to the Commission's purchaser questionnaire indicate that the response "quality" was listed as a "critical" factor to purchasers of cut-to-length plate with "price" a close second, before any other nonprice factors.²⁵⁹ Purchasers ranked price and quality an equal number of times as either critical or very important in making purchase decisions for plate, followed most

²⁵² Hearing Tr. 238.

²⁵³ We disagree with the assertions of the selected Joint Plate Respondents contend that cumulated imports of plate are not substitutable with domestic plate. Joint Plate Respondents' Br. at 5-6. While plate has diverse end uses, both foreign and domestic plate is used for the same end uses. As one U.S. purchaser stated, "it's virtually impossible to tell the difference" between foreign and domestic plate given the fact that the "A36 specification is a rather liberal one. . . ." Hearing Tr. 238; Report I-298; see also § I discussion of bevelled plate and UM plate supra. While certain plate has specialized and diverse end uses in a variety of widths and thicknesses, the considerable majority of both domestic and cumulated imported plate is in the common ASTM grades, and thus is more highly substitutable.

²⁵⁴ Report at I-33.

²⁵⁵ Id. at I-48.

²⁵⁶ Hearing Tr. 195, 215.

²⁵⁷ Report appendix N.

²⁵⁸ Nineteen purchasers indicated that imported plate was comparable to domestic product for the countries cumulated by Vice-Chairman Watson and Commissioner Rohr. Fourteen purchasers indicated that imported plate was comparable to domestic product for the countries cumulated by Commissioner Crawford. Twenty-two purchasers indicated that imported plate was comparable to domestic product for the countries cumulated by Commissioner Nuzum. Id. I-163, table 109.

²⁵⁹ Commissioner Rohr and Nuzum note that while they considered the reported relative ranking of purchase criteria, they have given that less weight than other factors.

closely by availability, lead times, supplier qualifications and freight charges.²⁶⁰ No purchaser ranked price as either somewhat important or not important, whereas some purchasers ranked all eight other factors as somewhat important and six of the nonprice factors as not important.

Prices of domestically-produced and cumulated imported commercial grade plate products declined between January 1990 and December 1992.²⁶¹ Unit values of domestic and imported plate products in twelve niche products also declined during the period examined.²⁶² Combined unit values of domestic plate declined from \$458 a ton in 1990 to \$401 a ton in 1992.²⁶³ Combined unit values of cumulated imports of plate also declined during the period examined.²⁶⁴

We find that there has been significant price underselling by the cumulated imports.^{265 266} The pricing data of the four commercial grade plate products indicate that the subject imports cumulated by each Commissioner showed considerably more underselling than overselling.²⁶⁷ In

²⁶⁰ *Id.* I-161, figure 1. Selected respondents assert that the fact that factors other than price are important in purchasing decisions is consistent with a limited degree of price sensitivity. Joint Plate Respondents Br. at 4. We note, however, that purchasers identified price and quality as significant considerations with far greater frequency than any of the other factors with the exception of availability. Report I-161, figure 1. Price was ranked as critical by 20 purchasers and very important by 22 purchasers, quality was ranked as critical by 26 purchasers and very important by 16 purchasers, and availability was ranked as critical by 17 purchasers and very important by 21 purchasers. *Id.*

²⁶¹ *Id.* at I-171.

²⁶² Report F-10, table F-1. There were a few exceptions to this pattern: Product 2, U.S. prices increased in 1992; Product 13, German prices increased slightly between 1990 and 1991. There were three products where there was no domestic production not included with the 12 niche products referenced above; products 5, 48, and 49. *Id.*

²⁶³ Report C-3, table C-1.

²⁶⁴ *Id.* I-133, table 93.

²⁶⁵ The joint plate respondents argue that the pricing product selected in the plate investigations do not mirror the overall pricing product mix of the domestic industry, with the exception of the products which show Korean plate overselling domestic plate. Joint Plate Respondents' Br. at 11. We disagree. The products selected for inclusion in the plate analysis captured imports from all of the cumulated countries in almost all of the four products. See our analysis of cumulation issues at § IV(A) *supra*. In addition, the Commission collected unit value information for very specific niche products at the request of the respondents. We have used these unit values in assessing whether there has been significant underselling by the cumulated imports. We note that respondents were requested by the Commission to comment on the products selected for the pricing series; they made no objections at the time and did not object until after the results were tabulated.

²⁶⁶ Commissioner Crawford does not give great weight to the evidence of underselling contained in this record.

²⁶⁷ Vice-Chairman Watson's and Commissioner Rohr's cumulated imports had 226 instances of underselling compared to 144 instances of overselling; Commissioner Crawford's cumulated imports had 204 instances of underselling compared to 147 instances of overselling; Commissioner Nuzum's cumulated imports had 249 instances of underselling compared to 163 instances of overselling. EC-Q-084, tables 1 and 2, I-284 - I-285, tables 112-113.

addition, 1992 unit values of cumulated imports of specialized niche plate products were lower in most instances than comparable domestic niche plate products.²⁶⁸

We also have sought to determine whether there is significant price suppression or depression caused by the cumulated imports by examining the pricing trends of domestic products and of these imports. We closely examined the relative price movements of domestic products and of the cumulated imports in different quarterly periods for the pricing series involving the four commodity grade products. We found discernible patterns of price movements throughout the three year period of investigation. Most pricing comparisons between domestic plate products and the cumulated imports showed declines in prices for both cumulated imports and domestic plate. These data also reflected lower price levels for imports than for domestic product throughout the investigation.²⁶⁹ In far fewer instances, prices for imports rose above the levels of domestic prices, or otherwise indicated a trend contrary to domestic prices.²⁷⁰ Overall, we find these patterns provide evidence of significant price depression or suppression by the cumulated imports.²⁷¹

We also have found confirming evidence of adverse price effects in the fact that unit production costs for domestic plate producers have risen steadily while market prices for plate had been declining. This combination creates a "cost/price squeeze," that results in a significant loss of profitability for the domestic industry. The cost of goods sold as a percentage of sales steadily increased for domestic plate producers, from 86.6 percent in 1990 to 93.9 percent in 1991, to 100.5 percent in 1992.²⁷² Operating income as a percentage of net sales also declined from a positive 9.7 percent in 1990 to a negative 5.1 percent in 1992.²⁷³ These data indicate that domestic producers increasingly were unable to pass along the cost of goods sold in the prices they received during the period examined. We find that the pattern of underselling as well as the significant and increasing

²⁶⁸ Report F-10, table F-1. Thus, the domestic products had higher unit values than imported products in products 1, 3, 4 (except Germany), 6-8, 10 (except France), 11 (except France and Germany), 12, and 13 (except Mexico).

²⁶⁹ EC-Q-080, figure 1 (Canada and United Kingdom), figure 2 (Poland, United Kingdom, and Spain), figure 3 (Canada), figure 5 (Sweden), figure 6 (Germany, Brazil, Finland, and Sweden), figure 7 (Germany and United Kingdom), and figure 8 (Finland, United Kingdom, Spain and Sweden).

²⁷⁰ *Id.* figure 1 (Canada - 1992), figure 2 (Belgium, Germany - one quarter, and Finland), figure 4 (Canada), figure 5 (Germany - one year), figure 7 (Brazil), figure 8 (Brazil).

²⁷¹ Respondents argue that most foreign products must be priced between \$20 and \$40 per ton below comparable domestic products before domestic purchasers consider buying the imported product, and, thus, underselling within \$20 per ton of domestic prices does not establish a causal link between imports and injury. *Id.* at 13. We disagree. Even if we were to add the \$20 per ton to the prices of the cumulated imports for the four commercial grades in the pricing series, there would still be a large number of instances of underselling for the cumulated countries used by each of the Commissioners, particularly for products 3 and 4. Report, appendix N. In addition, the unit values of the cumulated imports would still be lower than the domestic products for roughly half of the niche products for which the Commission collected information if the \$20 per ton were added to the prices of niche products. Moreover, we stress that we have analyzed whether there is significant price suppression or depression by reason of the cumulated imports by examining the relative price movements of the cumulated and domestic products, not simply the fact that there may be more or less underselling by the cumulated subject imports.

²⁷² Report C-3, table C-1.

²⁷³ *Id.*

volumes of cumulated imports have contributed to the inability of U.S. producers to increase their prices in the face of cost increases.

The role that the cumulated imports played in price depression is supported by considerable evidence that these subsidized and LTFV cumulated imports were routinely offered at below domestic producer prices.²⁷⁴ The record supports petitioners' claims that the cumulated imports had a "ratchet effect" with domestic companies reducing their prices in response to cheaper foreign offerings, and the foreign producers ratcheting their prices down again.²⁷⁵ The substitutability of the domestic products with the cumulated plate imports and the significant volume of such imports made such a ratchet effect possible.

Further evidence of price suppression and depression by the cumulated imports is found in evidence of lost sales and lost revenues. The Commission was able to confirm a considerable number of domestic purchasers' allegations of lost sales and lost revenues to the subject imports cumulated by those individual Commissioners who use such evidence in their analysis.²⁷⁶

We recognize that the recession most likely contributed to the decline in domestic prices and we have considered this as a condition of competition in our analysis.²⁷⁷ We stress, however, that in making our material injury determination, we examine whether the cumulated imports have caused significant price depression or suppression. Although the parties agree that the effects of the recession began to terminate in late 1991 and early 1992,²⁷⁸ prices for plate continued to decline

²⁷⁴ Petitioners' Posthearing Br. Vol. 2, exhibits 1-A - 1-C, B-4; Petitioners' Prehearing Br. Vol. 6A, exhibits 2-6.

²⁷⁵ Id.

²⁷⁶ Vice-Chairman Watson and Commissioner Rohr: 63 lost sales of 53,482 tons worth \$9,870,730; Commissioner Nuzum: 70 lost sales of 104,889 tons worth \$9,969,020. In addition, it is likely that some portion of 14 lost sales due to European sources consisting of a total of 25,178 tons worth \$10,155,870 should be added to the totals for each Commissioner. Report I-42, table 119. Of the allegations concerning lost sales/revenues made by the petitioners, the Commission contacted purchasers involved in approximately 50 percent of the tonnage and 48 percent of the value alleged to have been lost.

²⁷⁷ Selected plate respondents assert that the plate industry experienced a severe decline in domestic demand for plate as a result of the economic recession which depressed demand from traditional plate-consuming industries such as construction and shipping. Joint Plate Respondents' Br. at 1. In addition to these factors, these respondents argue that the decline in domestic shipments and prices is due to chronic excess domestic capacity, and increased competition from restructured mills rather than imports. Id. at 14-15.

²⁷⁸ Petitioners' Prehearing Br. at 44; Joint Plate Respondents' Br. at 1.

throughout 1992.²⁷⁹ At the same time, lower priced cumulated imports of plate increased their share of apparent domestic consumption at the expense of domestic producers.²⁸⁰

Respondents' argument that so-called domestic reconstituted mills were the cause of domestic price depression and suppression²⁸¹ is also contradicted by the record. One such mill has submitted evidence of a large number of offers for cumulated imports of plate at below its prices.²⁸² The record of pricing trends and underselling by cumulated imports outlined above indicates that, to the extent that domestic producers lowered their prices, it was to be competitive with lower cumulated import prices.

3. Impact on the Affected Domestic Industry

In assessing the impact of subsidized and LTFV imports on the domestic industry, we consider, among other relevant factors, U.S. consumption, production, shipments, capacity utilization, employment, wages, financial performance, capital investment, and research and development expenses.²⁸³ In this case, due to the significant volume and price effects of the cumulated imports, we find the domestic industry producing cut-to-length plate is materially injured by reason of the cumulated subsidized or LTFV imports.

Key indicators of the domestic industry's financial and operating performance declined during the period examined; capacity utilization decreased by 3.9 percentage points,²⁸⁴ and profitability fell from an operating income of \$211 million to an operating loss of \$84 million, representing a 139.6 percent drop.²⁸⁵ U.S. consumption fell by 11.9 percent during the period of investigation.²⁸⁶ The domestic industry's share of this decreasing apparent domestic consumption fell by 0.8 percentage

²⁷⁹ The joint respondents assert that price levels for the first four months of 1993, after the Commission's Preliminary Determination, were at levels 5.3 to 2.6 percent below the levels of one year earlier and, if imports had been causing injury, higher price levels than in 1992 would have been expected due to the exclusion of most subject imports. Joint Plate Respondents' Br. at 17. We cannot determine, based simply on alleged price movements in the first four months of 1993, that there was not significant price suppression or depression by the subject imports during the period of investigation. Consistent with longstanding policy, the Commission has not collected data outside of the three year period of investigation which ended in the end of 1992 concerning U.S. consumption, shipments, value, capacity, prices, inventory levels at the end of fourth month, or other data which would indicate whether demand continued to decline and domestic capacity utilization decreased at the time that respondents alleged that prices declined. See generally, General Motors v. United States, Slip. Op. 93-128 (July 12, 1993 CIT) at 11-14.

²⁸⁰ Commissioner Rohr does not rely on conditions in 1993 in reaching his conclusion.

²⁸¹ Joint Plate Respondents' Br. at 1.

²⁸² Petitioners' Prehearing Br. Vol. 6A at 27-29.

²⁸³ See 19 U.S.C. § 1677(7)(C)(iii).

²⁸⁴ The joint plate respondents assert that significant downward price pressure is also being exerted by a chronic excess domestic capacity to produce plate. Joint Plate Respondents' Br. at 1. Domestic capacity utilization declined from 66.3 in 1990 to 57.4 in 1991, but then increased again to 62.4 percent in 1992. Report C-3, table C-1.

²⁸⁵ Report C-3, table C-1.

²⁸⁶ Id.

points during the period examined.²⁸⁷ In contrast, the cumulated imports increased their share of this declining domestic market over the period examined. We find that these imports, while significantly underselling the domestic product and significantly contributing to the depression of domestic prices, also captured an increased share of the market at the expense of the domestic producers of cut-to-length plate.

4. Conclusion

Based on the foregoing, we determine that the domestic industry producing cut-to-length plate is materially injured by reason of the cumulated imports.

B. Non-cumulated Negligible Imports²⁸⁸

As discussed above in the cumulation section of the opinion, imports from France, Italy, and Korea were insignificant in absolute volume and as a share of apparent domestic consumption. The record contains no persuasive evidence that imports from any of these countries independently had a significant suppressing or depressing effect on domestic prices.²⁸⁹ We conclude that the volume, value and market share of imports from each country were too small to have any significant adverse effect on domestic prices. In light of these conclusions and the reasons expressed in our determinations that each of imports from these countries had no discernible adverse impact²⁹⁰ on the domestic industry, we determine that the domestic industry producing cut-to-length plate is not materially injured by reason of subject imports from France, Italy, and Korea.

VI. DETERMINATIONS REGARDING THREAT OF MATERIAL INJURY

We determine that the domestic industry producing cut-to-length plate is not threatened with material injury by reason of subject imports from France, Italy, and Korea.²⁹¹

A. Legal Standards

19 U.S.C. section 771(7)(F) directs the Commission to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent,"²⁹² and directs us to consider a

²⁸⁷ Id.

²⁸⁸ Vice Chairman Watson found France and Korea to be negligible and does not join in the discussion of Italy; Commissioner Rohr found France, Italy, and Korea to be negligible; Commissioner Crawford found France, Germany, Italy, Korea, Poland, Romania, and the United Kingdom to be negligible. Commissioner Nuzum found Italy and Korea to be negligible and does not join in the discussion of France. See her Additional and Dissenting Views.

²⁸⁹ Commissioner Rohr notes that under the bifurcated analysis that he employs it is conceivable that imports which are having discernible adverse impacts may not yet be having impacts on the domestic industry which are a cause of injury, but that the converse does not seem logically possible. Having determined these imports negligible, he found they were not having any adverse impact on the domestic industry. Therefore, they cannot currently be a cause of injury.

²⁹⁰ See the discussion of each country in the Cumulation section of this Opinion, supra.

²⁹¹ We adopt the discussion of general threat issues contained in § VI(A) of the Commission's Hot-Rolled Views.

²⁹² 19 U.S.C. § 1677(7)(F)(ii).

number of criteria which are addressed below.²⁹³ While an analysis of the statutory threat factors necessarily involves projection of future events, "[s]uch a determination may not be made on the basis of mere conjecture or supposition."²⁹⁴ In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.

B. Cumulation for threat analysis²⁹⁵ ²⁹⁶

As a threshold matter, we must consider whether to cumulate imports from the subject countries for purposes of our threat analysis. The statute indicates that, in its threat analysis, "[t]o the extent practicable . . . the Commission may cumulatively assess the volume and price effect of imports from two or more countries. . . ."²⁹⁷ Hence, cumulation for threat analysis, in contrast to cumulation for present injury analysis, is discretionary.

We have determined to exercise our discretion not to cumulate any of the subject imports from France, Italy, or Korea for a number of reasons. First, there is a lack of uniformity of pricing trends among the three subject countries.²⁹⁸ Similarly, while volume and market penetration figures are similar, the trends for France, Italy, and Korea are decreasing to very low market shares levels of 0.2 percent or lower.²⁹⁹ These factors, which render meaningful cumulative analysis difficult in the context of threat, have been held to constitute a sufficient basis for the Commission to decline to cumulate for threat analysis.³⁰⁰

We find that the presence of circumstances that leads us to exclude certain countries from mandatory cumulation for present material injury analysis militates against discretionary cumulation

²⁹³ See 19 U.S.C. § 1677(7)(F)(iii).

²⁹⁴ 19 U.S.C. § 1677(7)(F)(ii). See also S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); Metallwerken Nederland B.V. v. United States, 14 CIT 481, 488, 744 F. Supp. 281, 287 (1990).

²⁹⁵ Commissioner Rohr notes that, while he generally does not formally cumulate imports for purposes of his threat determinations, he will, under appropriate circumstances, consider other unfairly traded imports as to which he has made affirmative findings as another demonstrable adverse trend affecting the industry. Because of the lack of uniformity in the import trends, he agrees with his colleagues that the presence of the other unfairly traded imports is not another adverse trend affecting this particular industry.

²⁹⁶ Commissioner Nuzum joins in this discussion only as it relates to Italy and Korea; she made an affirmative determination on imports from France on the basis of present injury. See her Additional and Dissenting Views.

²⁹⁷ 19 U.S.C. § 1677(7)(F)(iv) (emphasis added).

²⁹⁸ Report at I-172-75, tables 110-113. For example, imports of Korean plate oversold the domestic products, while imports from France had mixed overselling and underselling, and imports from Italy undersold the domestic product in six instances and undersold domestic plate in two instances.

²⁹⁹ Id. at I-142, table 101.

³⁰⁰ Asociacion Colombiana de Exportadores de Flores v. United States, 13 CIT 13 __, 704 F. Supp. 1068, 1072 (1988). In addition, as addressed in our Hot-Rolled Views, we reject petitioners' argument that the threat of market-shifting agreements between subject countries is high because of the alleged existence of cartels and non-tariff barriers. Petitioners' Prehearing Br. Vol. 7A at 32.

for threat analysis. Consequently, the extremely low market shares of the majority of the subject countries are a pertinent factor that we considered in exercising our discretion not to cumulate.³⁰¹

Accordingly, we make a separate threat determination for each subject country. In each instance, we consider all statutory considerations applicable to these investigations.³⁰² We consider no single factor to be dispositive.

C. No Threat of Material Injury

France³⁰³

The subsidies determined by Commerce provided to French producers in this case were relatively small and did not include export subsidies.³⁰⁴ In addition, French productive capacity for plate products [***] over the period of investigation.³⁰⁵ Capacity utilization [***] over the period.³⁰⁶

Market penetration of French imports did not "rapidly increase" between 1990 and 1992. By quantity, it declined over the period to only 0.1 percent in 1992.³⁰⁷ No evidence presented by petitioners suggests that this small level of imports is likely to increase to injurious levels in the immediate future.

We find no probability that imports of plate from France will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based upon our finding in the negligibility analysis above that the subject imports from France have no adverse impact on the domestic industry. In addition, there was mixed overselling and underselling by French plate. No credible evidence has been presented which indicates that imports will have an adverse price effect in the immediate future.

There were [***] inventories of French plate reported over the period of investigation.³⁰⁸ Inventories are projected to [***] for 1993 and, therefore, have not and will not pose a threat of material injury to the domestic plate industry.³⁰⁹

³⁰¹ Commissioner Rohr does not join in this conclusion.

³⁰² Because these investigations do not concern agricultural products, statutory factor (IX) is inapplicable. Statutory factor (I), concerning subsidies, is applicable to all countries except Canada, Finland, Poland, and Romania.

³⁰³ Commissioner Nuzum made an affirmative determination on imports from France on the basis of present injury and, therefore, does not join in this discussion. See her Additional and Dissenting Views.

³⁰⁴ Id. at appendix E, E-4.

³⁰⁵ Report I-105, table 64.

³⁰⁶ Id. at I-105, table 66.

³⁰⁷ Id. at I-142, table 101.

³⁰⁸ Id. at I-105, table 64.

³⁰⁹ Id.

We have identified no other adverse trends that would suggest a threat of material injury by reason of the subject imports from France. As a share of production, exports to the United States [***] during the period of investigation and are [***] in 1993.³¹⁰ Home market shipments as a share of total shipments [***] during the period of investigation, but exports to countries other than the United States as a share of total shipments [***].³¹¹ Thus, French producers [***].

We do not find that imports from France of plate products have or will have a negative effect on the development and production efforts of the domestic industry. Research and development expenditures for steel plate remained stable at a relatively low percentage of trade sales during the period of investigation.³¹² Moreover, we do not find that the small volume of imports from France were a causal factor in the slight decline in capital expenditures over the period of investigation or are likely to contribute to further declines.³¹³

Finally, in considering the issue of product shifting in light of our affirmative finding of material injury by reason of LTFV and subsidized imports of corrosion-resistant products from France set forth in our Corrosion-resistant Views, we find it highly unlikely that there will be product shifting of corrosion-resistant steel to plate.³¹⁴ Plate and corrosion-resistant products, unlike cold-rolled and corrosion-resistant products, have few similarities and are produced on separate mills.

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports.

Italy³¹⁵

The subsidies the Commerce Department determined were provided to Italian producers in this case did not include export subsidies.³¹⁶ Italian productive capacity for plate products [***] over the period of investigation and is [***] in 1993.³¹⁷ Capacity utilization [***] over the period.³¹⁸

Market penetration of imports from Italy did not "rapidly increase" between 1990 and 1992. By quantity and by value, market penetration declined from 0.2 percent to 0.1 percent in 1992.³¹⁹ No evidence presented by petitioners suggests that this small level of imports is likely to increase to injurious levels in the immediate future.

³¹⁰ Id.

³¹¹ Id.

³¹² Id. at I-84, table 41; I-67, table 21.

³¹³ Id. at I-86.

³¹⁴ Commissioner Crawford does not join in this discussion to the extent it considers the impact of the Commission's final determinations in these investigations on the likelihood of product shifting.

³¹⁵ Vice Chairman Watson did not participate in this determination.

³¹⁶ Id. at appendix E, E-6.

³¹⁷ Id. at I-114, table 72.

³¹⁸ Id.

³¹⁹ Id. at I-142, table 101.

We find no probability that imports of cut-to-length plate from Italy will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based upon our finding in the causation analysis above that the subject imports from Italy have no significant present effect on prices. No credible evidence has been presented which indicates that imports will have an adverse price effect in the immediate future.

Inventories of Italian plate [***] over the period and are [***] in 1993.³²⁰ These small levels of inventories have not and will not pose a threat of material injury to the domestic plate industry.

We have identified no other adverse trends that would suggest a threat of material injury by the subject imports from Italy. As a share of Italian plate production, exports to the United States [***] over the period.³²¹ Home market shipments as a share of total shipments [***] over the period of investigation while exports to countries other than the United States as a share of total shipments [***].³²² We do not find that imports from Italy of steel plate products have or will have a negative effect on the development and production efforts of the domestic industry. Research and development expenditures for steel plate remained stable during the period of investigation.³²³ Moreover, we do not find that the small volume of imports from Italy were a causal factor in the decline in capital expenditures over the period of investigation or are likely to contribute to further declines.³²⁴

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports.

Korea

We find no credible evidence that the domestic industry is threatened with material injury by reason of imports of plate from Korea. The subsidies determined by the Commerce Department to be provided to Korean producers in this case were relatively small and did not include export subsidies.³²⁵ Korean productive capacity for plate products [***] from 1990 to 1991, but [***] from 1991 to 1992, capacity is projected to [***] in 1993.³²⁶ Capacity utilization rates [***] over the period but [***].³²⁷

Market penetration by quantity and by value of Korean plate products in the U.S. market declined steadily over the period to only 0.2 percent in 1992.³²⁸ No evidence presented suggests that this small level of imports is likely to increase to injurious levels in the immediate future.

³²⁰ Id. table 46.

³²¹ Id. table 72.

³²² Id.

³²³ Id. at I-84, table 41; I-116, table 35.

³²⁴ Id. at I-86.

³²⁵ Id. at appendix E, E-7.

³²⁶ Id. at I-120, table 77.

³²⁷ Id.

³²⁸ Id. at I-142, table 101.

We find no probability that imports of plate products from Korea will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. This conclusion is based upon our finding in the causation analysis above that the subject imports from Korea have no significant present effect on prices and in our negligibility analysis that Korean imports had no adverse impact on the domestic industry. In addition, pricing comparisons collected by the Commission show considerable overselling by Korean plate products.³²⁹ No credible evidence has been presented to indicate that imports will have an adverse price effect in the immediate future.

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports. As a share of both production and total shipments, exports to the United States [***] over the period and are projected to [***] in 1993.³³⁰ Home market shipments [***] over the period and accounted for a [***] share of total shipments.³³¹ These shipment patterns reveal [***]. This pattern is projected to [***] in 1993.³³²

We do not find that imports from Korea of plate products have or will have a negative effect on the research and development efforts of the domestic industry. Research and development expenditures for steel plate remained stable at a relatively low percentage of trade sales during the period of investigation.³³³ Moreover, we do not find that the small volume of imports from Korea was a factor in the slight decline in capital expenditures by the domestic industry over the period of investigation.³³⁴

Finally, we find no likelihood that there will be product shifting from Korean production of corrosion-resistant products to plate in light of the Commission's affirmative determination regarding Korean corrosion-resistant steel. Plate and corrosion-resistant products have few similarities and are produced on separate mills.³³⁵

We find no other demonstrable trends or evidence in the record that would support a finding of threat of material injury by reason of the LTFV imports from Korea.

³²⁹ Id. at I-172-175, table 110-113.

³³⁰ Id. at table 77.

³³¹ Id.

³³² Id.

³³³ Id. at I-84, table 41; I-67, table 21.

³³⁴ Id. at I-86.

³³⁵ Commissioner Nuzum also finds no likelihood that there will be product shifting from Korean production of cold-rolled steel to plate in light of her affirmative determination regarding Korean cold-rolled steel. Plate and cold-rolled products, unlike cold-rolled and corrosion-resistant products, have few similarities and are produced on separate mills.

VII. CRITICAL CIRCUMSTANCES

Commerce found that critical circumstances exist with respect to subject imports of plate from Poland, Romania, and Spain where the Commission has made an affirmative determination. As discussed below, we make a negative determination regarding critical circumstances with respect to each of these countries.³³⁶

A. Legal Standards³³⁷

Pursuant to 19 U.S.C. § 1673d(b)(4)(A)(i), when Commerce makes an affirmative determination with respect to critical circumstances, the Commission must determine, "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."³³⁸ In evaluating the effectiveness of retroactive application of the duties in preventing a recurrence of material injury, the statute directs the Commission to consider, among other factors it considers relevant:

(I) the condition of the domestic industry,³³⁹

(II) whether massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping duties,

(III) whether foreign economic conditions led to the massive imports of the merchandise, and³⁴⁰

(IV) whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this part.³⁴¹

³³⁶ Commissioner Rohr and Commissioner Nuzum dissent with respect to critical circumstances for Spain. See their separate Additional and Dissenting Views.

³³⁷ We adopt the more detailed discussion of legal standards for critical circumstances set forth in the Commission's Corrosion-resistant Views.

³³⁸ 19 U.S.C. § 1673d(b)(4)(A)(i).

³³⁹ In these investigations, Vice-Chairman Watson, Commissioner Crawford, and Commissioner Nuzum have considered the condition of the domestic industry, but have not found this particular factor to play a determinative role in their decisions making negative critical circumstances findings.

³⁴⁰ In these investigations, we found no persuasive evidence that any foreign economic conditions led to massive imports.

³⁴¹ 19 U.S.C. § 1673d(b)(4)(A)(iii). If the Commission finds either no material injury or only a threat of material injury, it need not make a critical circumstances determination. See, e.g., Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520 & 521 (Final), USITC Pub. 2528 at 31 n. 114 (June 1992). In determining whether retroactive imposition of antidumping duties is necessary to prevent recurrence of material injury, the Commission must evaluate whether "the effectiveness of the antidumping duty order would be materially impaired if retroactive duties were not imposed." 19 U.S.C. § 1673d(b)(4)(A)(ii).

An affirmative critical circumstances determination is a finding that, absent retroactive application of the antidumping order for a period 90 days prior to the suspension of liquidation, the surge of imports that occurred after the case was filed (in this instance June 29, 1992), but before Commerce issued notice of its preliminary determination (February 4, 1993), will prolong or cause a recurrence of material injury to the domestic industry.³⁴²

B. Cut-to length plate critical circumstances issues

Poland

The Polish respondents argue that the surge in Polish imports resulted from a shipment of 5,000 tons in July 1992, a sale which was arranged long before the filing of these investigations.³⁴³ Respondents also assert that the total Polish shipments in 1992 were small, and there was no measurable increase in inventories because Polish plate is normally sold directly by the importer to the end users.³⁴⁴ Petitioners make no specific arguments about Polish plate, except to state that the Commission will be able to capture a significant portion of the surge in plate imports.³⁴⁵

Retroactive imposition and collection of duties in the 90-day period would cover less than half of the surge of imports found by Commerce.³⁴⁶ Imports of Polish plate totalled 23,000 tons following the filing of the petition, of which 7,722 entered the United States during the 90-day period.³⁴⁷ Overall, while there has been some increase, Poland's imports since the filing of the petition have been somewhat consistent with its pre-petition imports. Indeed, imports of Polish plate during the 90-day period were less than the 11,760 tons which entered in the same period in 1991-92, prior to the filing of the petition. In addition, the Polish respondents indicate that they arranged the sale of the plate sold during the 90-day period before the petition was filed. Thus, we find that the record does not support a finding that imports of plate from Poland were intended to avoid the potential imposition of antidumping duties.

In assessing whether the surge in imports from Poland will have a continuing impact on the domestic industry, we note that inventories of Polish plate were very small at the end of 1992.³⁴⁸ We find it not likely that they will continue to affect the market after the issuance of the order. Available pricing data indicates that some of the imports which were part of the surge in the 90-day

³⁴² The adverse impact of such a surge can continue to affect the domestic industry during and after the 90-day period during which retroactive duties can be imposed. If, however, the surge itself dissipates before that 90-day period begins, retroactive imposition of duties cannot meaningfully "prevent recurrence of material injury" resulting from the surge since the duties cannot reach those imports, and therefore, cannot affect the impact of those LTFV imports on the domestic industry. Magnesium from Canada, Invs. Nos. 701-TA-309, 731-TA-528 (Final), USITC Pub. 2550 (Aug. 1992) at 21.

³⁴³ Polish Respondents' Posthearing Br. at 10-12.

³⁴⁴ Id. at 11.

³⁴⁵ Petitioners' Posthearing Br. Vol. 1 at 53.

³⁴⁶ Report at L-4, table L-2.

³⁴⁷ Id.

³⁴⁸ Report I-91, table 45.

period undersold domestic plate by relatively modest margins.³⁴⁹ Based on the foregoing, we find that retroactive imposition and collection of duties on imports from Poland entering during the 90-day period are not necessary to prevent the recurrence of the material injury caused by such LTFV imports. Accordingly, we find that the effectiveness of the antidumping order on imports of plate from Poland will not be materially impaired by declining to impose retroactive duties on such imports.

Romania

Petitioners argue that imports from Romania during the 90-day retroactive period represent a 333 percent increase over the prior three months, noting that the import level of 6,473 for November 1992 is more than double any monthly import level for 1992.³⁵⁰ The Romanian respondent Metalexportimport S.A. argues that its November 1992 shipment is much smaller than large shipments in certain months in 1991 and 1990.³⁵¹ It also argues that U.S. inventories of Romanian plate are [***].³⁵²

Retroactive imposition and collection of duties in the 90-day period would cover approximately three-quarters of the surge of imports found by Commerce.³⁵³ Imports of Romanian plate totalled 9,146 tons following the filing of the petition, of which 7,724 entered the United States during the 90-day period.³⁵⁴ These imports were at a higher level than the 5,124 tons which entered during the same period in 1991-92.

The Romanian respondent has not provided a specific explanation for the large shipment of 6,473 tons in November 1992. While the November 1992 shipment is somewhat higher than other historical shipments, we do not find that they are so much greater as to suggest that Romanian respondents sought to avoid the potential imposition of antidumping duties.

In assessing whether the surge in imports from Romania will have a continuing impact on the domestic industry, we note that inventories of Romanian plate were not significant at the end of 1992.³⁵⁵ Available pricing data indicate that the majority of Romanian plate which entered the United States during October and December 1992 undersold domestic plate.³⁵⁶ However, the volume of Romanian plate entering during the 90-day period was a very small percentage of apparent domestic consumption of plate.

Based on the foregoing, we find that retroactive imposition and collection of duties on imports from Romania entering during the 90-day period are not necessary to prevent the recurrence of the material injury caused by such LTFV imports. Accordingly, we find that the effectiveness of

³⁴⁹ *Id.* at N-20.

³⁵⁰ Petitioners' Posthearing Br. Vol. 1 at 54.

³⁵¹ Prehearing Brief of Metalexportimport S.A. at 19.

³⁵² *Id.* at 21.

³⁵³ Report L-4, table L-2.

³⁵⁴ *Id.*

³⁵⁵ *Id.* at I-91, table 45.

³⁵⁶ *Id.* at N-7, table N-19.

the antidumping order on imports of plate from Romania will not be materially impaired by declining to impose retroactive duties on such imports.

Spain³⁵⁷

Petitioners argue that Spanish import figures "bespeak an intent to avoid antidumping duty liability" given the very large surge in imports during November 1992 followed by a subsequent drop in following months.³⁵⁸ Spanish respondents argue that Spanish imports during the 90-day period constituted only 0.46 percent of total apparent domestic consumption in 1992.³⁵⁹ These respondents also state that there are no inventories of Spanish plate in the United States, and imports of plate from Spain are consistent with large, erratic shipments based on economical ship charters which have been used by these respondents throughout the period of investigation.³⁶⁰

Retroactive imposition and collection of duties for the 90-day period would cover approximately two-thirds of the Spanish plate shipments since the filing of the petition. The large 22,654 ton shipments in November 1992 are unprecedented in size for Spanish plate, and are more than double the size of any previous shipment by the Spanish respondents.³⁶¹

In analyzing whether the Spanish import surge "can be accounted for by efforts to avoid the potential imposition of antidumping duties," we note that, consistent with the arguments of the Spanish respondents, Spanish plate appears to be shipped in "boatloads." This fact is reflected by sporadic large monthly imports such as the 22,654 tons in November 1992 which were preceded by very few shipments of plate in September or October 1992, and followed by none in December 1992 and January 1993.³⁶² While there have never been shipments as large as the shipments in November, 1992, given the history of making isolated, large shipments, we are not persuaded that the intent of the Spanish respondents was to avoid the imposition of antidumping duties.

In assessing whether there are continuing effects from the surge, we note that year-end inventories in the United States of Spanish plate declined in 1992 from 1991 to levels that are not significant.³⁶³ In examining pricing of Spanish plate between October and December 1992, a small percentage of the Spanish plate surge was reflected in the Commission's pricing analysis which indicates underselling by relatively high margins in October-December 1992.³⁶⁴ Based on the insignificant 1992 year-end inventories and lack of evidence that the plate from Spain is likely to have an impact for some period after February 4, 1993, we find that retroactive imposition and collection of duties on imports from Spain entering during the 90-day period are not necessary to prevent the recurrence of the material injury caused by such LTFV imports. Accordingly, we find

³⁵⁷ Commissioner Rohr and Commissioner Nuzum do not join in this section. See their separate Additional and Dissenting Views.

³⁵⁸ Petitioners' Posthearing Br. Vol. 1 at 54.

³⁵⁹ Spanish respondents' Posthearing Br. at 15.

³⁶⁰ Id. at 16.

³⁶¹ Report at L-4, table L-2.

³⁶² Id.

³⁶³ Id. at I-91, table 45.

³⁶⁴ Report N-8, table N-19, table N-22.

that the effectiveness of the antidumping order on imports of plate from Spain will not be materially impaired by declining to impose retroactive duties on such imports.

**ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER DAVID B. ROHR
CONCERNING
CUT-TO-LENGTH PLATE PRODUCTS**

Critical Circumstances With Regard to Imports from Spain

I. General Observations

In my Additional and Dissenting Views Concerning the Hot-Rolled Products investigations, I summarized the factors I looked at in analyzing the price sensitivity of the various products and markets subject to these investigations. In these views, I apply these factors to the plate products subject to these investigations.

With regard to plate, I note the following. First, plate is the least differentiated and specialized of the four product categories. It is the most commodity-like. As the majority notes, a very large percentage of this product category is sold in a few, long established, well known grades in which are produced by most domestic and foreign producers. A very significant portion of the product is sold through the distributor market. A relatively small percentage of the product is captively consumed.

All of these factors point to a high degree of price sensitivity for plate. Relative to the other products, it has the highest degree of price sensitivity. I have analyzed all issues, including the issue of critical circumstances discussed below with this factor in mind.

II. Critical Circumstances

The Department of Commerce made critical circumstances findings with respect to subject imports of plate from several of the countries subject to these investigations. In three investigations, those involving Poland, Romania, and Spain, I made affirmative determinations that imports were a cause of material injury. I am therefore required by statute to decide, in these three cases, "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."¹ I join with my colleagues in making negative determinations on this issue with respect to imports from Poland and Romania. I find that I must disagree with my colleagues with respect to imports of plate from Spain. As discussed below, I make an affirmative determination regarding critical circumstances with respect to these imports.

A. Legal Standards²

When Commerce makes an affirmative determination with respect to critical circumstances, I must determine, "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."³ In evaluating the effectiveness of retroactive application of the duties in preventing a recurrence of material injury, the statute directs me to consider, among other factors:

¹ 19 U.S.C. § 1673d(b)(4)(A)(i).

² I adopt the more detailed discussion of legal standards for critical circumstances set forth in the Majority views in the Corrosion-resistant Opinion.

³ 19 U.S.C. § 1673d(b)(4)(A)(i).

(I) the condition of the domestic industry,⁴

(II) whether massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping duties,

(III) whether foreign economic conditions led to the massive imports of the merchandise, and⁵

(IV) whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this part.⁶

An affirmative critical circumstances determination is a finding that, absent retroactive application of the antidumping order for a period 90 days prior to the suspension of liquidation, the surge of imports that occurred after the case was filed, but before Commerce issued notice of its preliminary determination (February 4, 1993), will prolong or cause a recurrence of material injury to the domestic industry.⁷ The relevant 90-day period of time for my inquiry is thus November and December of 1992 and January of 1993.

Spain

As my colleagues have pointed out, retroactive imposition and collection of duties for the 90-day period would cover approximately two-thirds of the Spanish plate shipments since the filing of the petition. The large 22,654 ton shipment in November 1992 was unprecedented in size for Spanish plate, and are more than double the size of any previous shipment by the Spanish respondents.⁸ This November shipment constituted almost 42 percent of 1992 Spanish imports. While Spanish respondents argue that the reason for this is that Spanish plate is shipped in "sporadic"

⁴ In these investigations, we have considered the condition of the domestic industry, but have not found this particular factor to play a role in our decisions making negative critical circumstances findings.

⁵ In these investigations, we found that there was not evidence in the record that any foreign economic conditions led to any massive imports.

⁶ 19 U.S.C. § 1673d(b)(4)(A)(iii). If the Commission finds either no material injury or only a threat of material injury, it need not make a critical circumstances determination. See, e.g., Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. Nos. 731-TA-520 & 521 (Final), USITC Pub. 2528 at 31 n. 114 (June 1992). In determining whether retroactive imposition of antidumping duties is necessary to prevent recurrence of material injury, the Commission must evaluate whether "the effectiveness of the antidumping duty order would be materially impaired if retroactive duties were not imposed." 19 U.S.C. § 1673d(b)(4)(A)(ii).

⁷ The adverse impact of such a surge can continue to affect the domestic industry during and after the 90-day period during which retroactive duties can be imposed. If, however, the surge itself dissipates before that 90-day period begins, retroactive imposition of duties cannot meaningfully "prevent recurrence of material injury" resulting from the surge since the duties cannot reach those imports, and therefore, cannot affect the impact of those LTFV imports on the domestic industry. Magnesium from Canada, Invs. Nos. 701-TA-309, 731-TA-528 (Final), USITC Pub. 2550 at 21 (August 1992).

⁸ Report at L-5, table L-2.

boatloads, I find such an explanation unconvincing.⁹ There is no evidence on the record that there have ever been shipments as large as the shipment in November, 1992. Thus, in view of the timing and large relative size of this shipment, I am convinced that it was made in an attempt to enter the United States before duties would otherwise be applicable.

In assessing whether there are continuing effects from the surge, I recognize that year end inventories in the United States of Spanish plate declined in 1992.¹⁰ In examining pricing of Spanish plate between November 1992 and January 1993, the Commission's pricing analysis which reflected underselling by relatively high margins.¹¹

Spanish plate imports during 1992 constituted over 1 percent of apparent domestic consumption.¹² The Spanish imports in November of 1992 represented 1.83 percent of fourth quarter consumption and represented by themselves almost 0.5 percent of annual consumption, a volume which is not negligible in the context of this industry.

Based on these factors, I find that retroactive imposition and collection of duties on imports from Spain entering during the 90-day period is necessary to prevent the recurrence of the material injury caused by such LTFV imports. Accordingly, I find that the effectiveness of the antidumping order on imports of plate from Spain would be materially impaired by declining to impose retroactive duties on such imports. I therefore made an affirmative finding with respect to such imports.

⁹ Id.

¹⁰ Id. at I-91, table 45.

¹¹ Report N-8 and N-22. The Commission's data apply specifically to the fourth quarter of 1992, October to December. While my critical circumstances determination must be made with respect to November 1992 to January 1993, I find this fourth quarter 1992 data the most probative on the record.

¹² Id. at I-143, table 102.

ADDITIONAL AND DISSENTING VIEWS OF CHAIRMAN NEWQUIST

Although I concur with many of the conclusions in the majority opinion, the analytical framework for my determinations in these investigations is quite different from my colleagues' approaches. Accordingly, I find it prudent to set forth this framework in some detail in these views. I join in the majority opinion's discussion of like products,¹ domestic industries, and related parties. In general, I concur with the majority's view of the condition of each of the domestic industries, but I begin my additional views with further observations relating to these industries. I then set forth my cumulation and causation analyses.

I. CONDITION OF THE DOMESTIC INDUSTRIES

These separate views are in large measure necessitated by my finding that each of the four domestic industries is threatened with real and imminent injury. By varying degrees, my analysis of the condition of each industry is a very close call -- between vulnerability and present material injury. Looking at only non-financial performance indicators, I see industries which, for the most part, appear to be operating at non-injurious levels. However, this relative health, is not reflected in these industries' income statements. To the contrary, three of the four industries reported aggregated operating losses totalling approximately 1.6 billion dollars in 1992. Thus, while I concur in the discussion in the majority opinion of the condition of these industries, I provide here some additional explanation regarding my determination that each of these industries is vulnerable to the continued presence of unfair imports.

I note, as I did at the public vote in these investigations, that my base inclination is that there could be, perhaps, only one like product: all flat-rolled carbon steel products and, concomitantly, that the domestic industry consists of all producers of flat-rolled carbon steel. Although the statute and Commission precedent inhibit, if not prohibit such a finding, I believe the multiple like product analysis results in an insular and literal evaluation which loses sight of the true interrelated nature of flat-rolled steel industries and, more importantly, of the interrelated business environment in which these industries operate. This is particularly true for the hot- and cold-rolled producers. Simply stated, I believe that the relationships among these industries directly influence the manner in which business and investment decisions are made in each. That is, these decisions are not made in a vacuum without considering the broader impact. Accordingly, the "bottom line" in each industry is affected not only by operational decisions made in the others but by conditions of competition as well.

Thus, I considered each industry's performance indicators, particularly the financials, in light of the industries' interdependence. My view of the effect of these relationships can best be explained by example. If a non-integrated producer of hot-rolled product were to make a capital investment which increased productivity and reduced the cost of production, economic reality dictates that the producer will maintain a sales price as high as market conditions will allow, rather than attempt to increase market share through price reductions. This is true because in capital intensive commodity industries, such as those here, profits generated by such increases in market share are likely to be short-lived as other producer's prices decline in response and market shares readjust. In an integrated environment, however, this economic truism is thrown awry. Assuming the same capital investment in the integrated producer's hot-rolled facility, the cost declines will manifest themselves in price declines because the integrated producer is itself the consumer of the hot-rolled product. Thus, it actually may make good business sense for an integrated producer to operate its hot-rolling mill at a loss, or at least at a level which does not adequately recoup the capital investment, for the sake of profits or other competitive strategies in its cold-rolling or corrosion-resistant operations.

¹ As I indicated in a footnote in the majority corrosion-resistant opinion, I disagree with the majority's finding that clad plate is a separate like product.

It is against this backdrop that I have considered the condition of the four industries. The financial indicators for the domestic hot-rolled industry are worse than any of the others I have found. However, these indicators mask the very economic reality I have described above: namely, that an integrated producer's hot-rolled losses benefit the producer's cold-rolled and corrosion-resistant operations.

Thus, while I find that all four industries are vulnerable to the adverse effects of unfair imports, my view of vulnerability for each industry reflects its dependence on the others.

II. CUMULATION

In making my cumulation determinations I considered: (i) whether there is competition between the subject imports themselves and the domestic like products; and (ii) whether the subject imports from each country are "negligible." The latter factor is more important in my analytical framework for determining whether subject imports are appropriate to cumulate. I discuss both factors for the imports from each country below.

The cumulation provision provides, in pertinent part, that for purposes of a threat of material injury analysis

the Commission may cumulatively assess the volume and price effects of imports from two or more countries if such imports -- compete with each other, and with the like products of the domestic industry, in the United States market.²

I view this language to require scrutiny of primarily geographic and temporal competition between the subject imports and the domestic like products; assessing competition on the basis of the substitutability of these products is a lesser consideration.³ Nowhere does the cumulation provision state that competition is a function of interchangeability based upon the imported and domestic products' characteristics and uses. Such competition is appropriately addressed in the like product

² 19 U.S.C. § 1677(7)(F)(iv)(I)(emphasis added).

³ My interpretation of this language also reflects my interpretation of the Commission's traditional four factor "competition for cumulation" test. This four factor test has generally been articulated as follows:

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

See, e.g., Certain Cast Iron Pipe Fittings from Brazil, Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

analysis.⁴ In my view, once a like product determination is made, that determination establishes some inherent level of fungibility within that like product. Only in exceptional circumstances could I anticipate finding products to be "like," and then turn around and find that, for purposes of cumulation, they do not "compete" because they are not sufficiently fungible and thus there is "no reasonable overlap." In my view, the record in these investigations does not support the exclusion of any of the subject imports from cumulation on the basis of no reasonable overlap of competition. I note, however, that because many respondents have made this precise argument, *i.e.*, that there is no reasonable overlap of competition between their imports, other subject imports, and the domestic like product, I address each respondent's argument in my country-specific discussions of competition.

In my analytical framework, fungibility, is more relevant to the assessment of whether imports are negligible; in that analysis, the fungibility within any like product can be relevant in determining what level of imports may or may not have a discernible adverse effect on the industry producing the like product. In this regard, I note that there is no magical bellwether to determine negligibility. My determinations of negligibility vary among the four industries. At the lower-end like products, *i.e.*, hot-rolled and plate, where fungibility is greatest, I find that, all other things being equal, even a very small amount of unfair imports, relative to total consumption, has a discernible adverse impact on the domestic industries. As fungibility declines, *i.e.*, cold-rolled and corrosion-resistant products, a larger amount of imports, relative to consumption, are necessary to have such a discernible adverse effect. Although I view fungibility as a negligibility factor, as noted above, most respondents have made fungibility arguments in the context of competition. Thus, to the extent I address these arguments in the competition discussion, I do not repeat the analysis in the negligibility section. I note, however, that for purposes of negligibility, in no instance did I find such arguments persuasive or dispositive; my negligibility determinations are made on other factors, as discussed within each determination.

Finally, in addition to fungibility and import volume, my negligibility analysis also takes into account the relative vulnerability of the four industries; that is, that the hot- and cold-rolled industries are in a more vulnerable condition than the plate and corrosion-resistant industries and, therefore, for those industries a lesser amount of imports has a discernible adverse impact.

I also note that I placed somewhat greater weight on the 1992 data in making these negligibility determinations. Imports in 1990 and 1991 were subject to Voluntary Restraint Agreements ("VRAs"); in contrast, only during the first quarter of 1992 were these quantity quotas in effect. I additionally note that preliminary duties in the countervailing duty investigations were not imposed until December 1992 and, in the antidumping investigations, February 1993. Thus the 1992 data reflect eight full months of unconstrained import transactions, and offers, in my view, the best available and most persuasive information on the direction and adverse effect of the unfair imports in the marketplace.

As a final matter, I address the question of whether imports from South Africa may be cumulated. The joint plate respondents assert that these imports may not be cumulated and offer two arguments in support of their position: (i) South African imports are still subject to a preliminary investigation by the Department of Commerce; and (ii) the Commission may not cumulate imports subject to a section 303 investigation.⁵ The Court of International Trade has affirmed previous Commission determinations cumulating imports subject to a final Commission investigation with

⁴ See 19 U.S.C. § 1677(10).

⁵ Section 303, 19 U.S.C. § 1303, provides that countries that have not signed the GATT Subsidies Code are generally not entitled to an "injury test" by the Commission in countervailing duty investigations.

imports subject to a preliminary investigation before the Department of Commerce.⁶ Although the Commission previously held that it may "cross-cumulate" imports from the same country subject to both a preliminary section 303 countervailing duty investigation by the Department of Commerce and a final antidumping investigation by the Commission,⁷ this precedent does not directly address the situation here as South African imports are not subject to any injury determination by the Commission. However, I am satisfied that imports from South Africa are "subject to investigation" as contemplated by the cumulation provisions in the statute. Accordingly, I find that imports from South Africa which are presently subject to a preliminary section 303 investigation should be considered for cumulation with imports subject to these investigations.⁸

Based upon this analytical framework, my cumulation determinations are detailed below.

A. Hot-Rolled

For hot-rolled products, I have cumulated imports from the following countries: Brazil, Canada, France, Germany, Japan, Korea, and the Netherlands. In 1992, imports from these countries totalled over 3 million short tons and accounted for 6.0% of domestic consumption.⁹ The cumulative value of these imports exceeded one billion dollars. I find imports of hot-rolled product from Belgium and South Africa to be individually negligible and without discernible adverse impact, thus not appropriate for cumulation. Together, imports from these two countries accounted for approximately 0.1% of domestic consumption in 1992.¹⁰ I detail below my analysis for each subject country producing hot-rolled steel.

My analysis of imported hot-rolled steel products recognizes the fundamental role of hot-rolled sheet in the steel industries: namely, that it is the feedstock for other steel products covered by these investigations and, as such, is more fungible than higher value-added products. Consequently, relatively low levels of import volume and market share can have a discernible adverse effect on the performance of the hot-rolled industry.

I find that there is a reasonable overlap of competition between the subject hot-rolled imports themselves and the domestic product. All of these imports were present in the market simultaneously with the domestic product, most being imported into each of the four regions throughout the period of investigation. The record provides no evidence that any of the subject imports move in channels

⁶ United Engineering & Forging v. United States, 779 F. Supp. 1375 (Ct. Int'l Trade 1991).

⁷ Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, Kenya, Mexico, the Netherlands, and Peru, Invs. Nos. 303-TA-17-18, 701-TA-275-278, and 731-TA-327-334 (Final), USITC Pub. 1956 (July 1986).

⁸ Although the Commission has only volume and value data for the four like products imported from South Africa, as I indicated above and is detailed below, I have found that there is a reasonable overlap of competition between all imports and the domestic like product in each of the four categories. In addition, as discussed at the outset of this section, negligibility is of greater significance in my cumulation determinations than is competition. Accordingly, if the Commission had been presented more complete information concerning whether imports from South Africa competed with other subject imports and the domestic product, absent the most compelling of circumstances, I would determine that such competition existed. Thus, I address below only whether imports from South Africa are negligible.

⁹ Report at Table 94; Table 103.

¹⁰ Report at Table 103.

of distribution that differ significantly from other imports or the domestic product. I detail below my analysis for each subject country producing hot-rolled steel.

1. Belgium

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Belgian imports, other subject imports, and the domestic like product. I note that Belgian respondents did not make assertions to the contrary. Belgian imports were sold through five importers¹¹ in all four geographic regions in 32 of the 36 months of the investigation.¹²

b. Negligibility

I find imports from Belgium to be negligible and without discernible adverse impact on the domestic industry. The Belgian share of domestic consumption never exceeded 0.2% during the period of investigation. In 1992, imports declined to 2,262 short tons valued at less than \$1 million, and accounted for essentially 0.0% of domestic consumption.¹³

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Belgium.

2. Brazil

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Brazilian imports, other subject imports, and the domestic like product. I note that Brazilian respondents did not make any assertions to the contrary. Brazilian imports were sold through 17 importers in all four regions during all months of the investigation.¹⁴

b. Negligibility

Contrary to Brazilian respondents' assertion, I find that imports from Brazil are not negligible.¹⁵ Brazilian imports increased irregularly during the period of the investigation, from 136,500 short tons in 1990 to 155,700 short tons in 1992.¹⁶ The 1992 imports were valued at \$46.7 million and accounted for 0.8% of domestic consumption.¹⁷ These imports also demonstrated a

¹¹ Data concerning the number of importers through which a subject country's product was sold are for 1992 only; in addition, the number of importers of any subject country's product may actually be larger than reported in these data.

¹² Report at Appendix M, Tables M-2, M-5; Appendix L, Table L-1.

¹³ Report at Table 94; Table 103.

¹⁴ Report at Appendix M, Tables M-2, M-5; Appendix L, Table L-1.

¹⁵ Brazilian respondents' prehearing brief at 5.

¹⁶ Report at Table 94.

¹⁷ Report at Table 94; Table 103.

pattern of mixed under and overselling, indicating some level of discernible adverse impact on the domestic industry.¹⁸

Based on the foregoing, I determine that it is appropriate to cumulate imports from Brazil.

3. Canada

a. Reasonable overlap of competition

Contrary to the Canadian respondents' assertion, I find that there is a reasonable overlap of competition between Canadian imports, other subject imports, and the domestic like product. The Canadian respondents argue that there has developed a single, unified North American steel market comprised of the United States and Canada and that the existence of this market makes cumulation improper.¹⁹ While the Canadian respondents' position is interesting, for the purposes of the Commission's determination, products produced in Canada must be treated as subject imports.²⁰ Canadian imports were sold through 77 importers in two of the four regions²¹ in all months of the investigation.²²

b. Negligibility

I find that imports from Canada are not negligible. Canadian products held one of the largest market shares of any of the hot-rolled imports.²³ Imports from Canada increased throughout the period of the investigation.²⁴ In 1992, these imports totalled 975,700 short tons valued at \$319.4 million, and accounted for 1.9% of domestic consumption.²⁵ The imports also demonstrated mixed under and overselling, indicating some degree of discernible adverse impact on the domestic industry.

Based upon the foregoing, I determine that it is appropriate to cumulate imports from Canada.

¹⁸ Report at Tables 110-113.

¹⁹ Canadian respondents' prehearing brief at 2.

²⁰ I also find unpersuasive the Canadian respondents' argument that their imports should be viewed differently because they are transported by truck and train rather than by ship. This is merely an issue of how the imports arrive at the U.S. market. Once here, Canadian imports move in the same channels of distribution as other imports and the domestic product and, like other imports and the domestic product, are sold to both end users and steel service centers.

To the extent that the Canadian respondents' intend for these arguments to apply to their imports of the other three products, I find these arguments equally unpersuasive.

²¹ These imports were in fact sold in all four regions; however, less than 1% of the value of these imports were sold in two of the regions. Report at Appendix M, Table M-2.

²² Report at Appendix M, Tables M-2, M-5; Appendix L, Table L-1.

²³ Report at Table 103.

²⁴ Report at Table 94.

²⁵ Report at Table 94; Table 103.

4. France

a. Reasonable overlap of competition

Contrary to the French respondents' assertion, I find that there is a reasonable overlap of competition between French imports, other subject imports, and the domestic like product. The French respondents argue that their imports are specialty products that do not compete with the domestic like product.²⁶ The record shows that products imported from France are produced by the domestic industry as well as imported from other subject countries.²⁷ Additionally, a substantial portion of French imports consists of commodity grade products.²⁸ Moreover, French products were sold through three importers in all four regions during the entire period of the investigation.²⁹

b. Negligibility

Contrary to the French respondents' assertion, I find that imports from France are not negligible.³⁰ Although French imports declined irregularly during the period of investigation, from 454,000 short tons in 1990 to 399,000 short tons in 1992, the 1992 imports were valued at \$139.4 million and accounted for 0.8% of domestic consumption.³¹ In addition, evidence of mixed under and overselling indicates some level of discernible adverse impact on the domestic industry.³²

Based upon the foregoing, I determine that it is appropriate to cumulate imports from France.

5. Germany

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between German imports, other subject imports, and the domestic like product. I note that German respondents did not make any assertions to the contrary. German products were sold through 15 importers in three of the four regions³³ during every month of the investigation.³⁴

²⁶ French respondents' posthearing brief at 9.

²⁷ Report at Table 98; Appendix F, Table F-2; Appendix N.

²⁸ Id.

²⁹ Report at Appendix M, Tables M-2, M-5; Appendix L, Table L-1.

³⁰ French respondents' prehearing brief at 22-23.

³¹ Report at Table 94; Table 103. The French respondents also argue that their sales occurred only on the spot market. I do not find that this, of itself, demonstrates that the sales were isolated or sporadic, particularly in view of the fact that these imports were present in all four regions in every month of the investigation. Report at Appendix M, Table M-2; Appendix L, Table L-2.

³² Report at Tables 110-113.

³³ German imports were in fact sold in all four regions; however, sales in one region were substantially more limited than in the other three. Report at Appendix M, Table M-2.

³⁴ Report at Appendix M, Tables M-2, M-5; Appendix L, Table L-1.

b. Negligibility

Contrary to German respondents' arguments, I find that imports from Germany are not negligible.³⁵ Though German imports declined during the period of investigation, from 304,000 short tons to 197,300 short tons in 1992, the 1992 imports were valued at \$71.2 million and accounted for 0.4% of domestic consumption.³⁶ Evidence of mixed under and overselling indicates that these imports had some discernible adverse impact on the domestic industry.³⁷

Based on the foregoing, I determine that it is appropriate to cumulate imports from Germany.

6. Japan

a. Reasonable overlap of competition

Contrary to the Japanese respondents' assertion, I find that there is a reasonable overlap of competition between Japanese imports, other subject imports, and the domestic like product. The Japanese respondents argue that their imports are specialized, high quality products that do not compete with the domestic product or other subject imports.³⁸ However, the record shows that the products imported from Japan are produced both domestically and in other subject countries.³⁹ Additionally, a substantial portion of Japanese imports are of commodity grade products.⁴⁰ Further, imports from Japan were sold through 16 importers in all four regions during every month of the investigation.⁴¹

b. Negligibility

Contrary to the Japanese respondents' argument, I find that Japanese imports are not negligible.⁴² Although imports from Japan declined during the period of the investigation, from 197,000 short tons in 1990 to 135,800 in 1992, the 1992 imports were valued at \$62.3 million and accounted for 0.3% of domestic consumption.⁴³

Based on the foregoing, I determine that it is appropriate to cumulate imports from Japan.

³⁵ Fried Krupp's prehearing brief at 11.

³⁶ Report at Table 94; Table 103.

³⁷ Report at Tables 110-113.

³⁸ Joint Japanese respondents' prehearing brief at 30-35.

³⁹ Report at Table 98; Appendix F, Table F-2; Appendix N.

⁴⁰ Id.

⁴¹ Report at Appendix M, Tables M-2, M-5; Appendix L, Table L-1.

⁴² Joint Japanese respondents' prehearing brief at 7-10.

⁴³ Report at Table 94; Table 103.

7. Korea

a. Reasonable overlap of competition

Contrary to the Korean respondents' assertion, I find that there is a reasonable overlap of competition between Korean imports, other subject imports, and the domestic like product. Korean respondents argue that their imports do not compete with other subject imports or the domestic like product because the majority of their imports constitute captive supply to USS-POSCO (UPI).⁴⁴ I find that the statute provides no more basis for excluding captive imports than it does for excluding captive domestic consumption. Therefore, in my view, the statute and Commission precedent and statutory requirements prevent excluding Korean imports to UPI.

I also considered whether the nature of competition between Korean imports, other subject imports, and the domestic product, warrants cumulation for purposes of a threat analysis. In my view it does. First, UPI is not an integrated steel mill. It is a producer of cold-rolled and corrosion-resistant steel products that purchases, as inputs, hot-rolled products from other mills. There is, therefore, competition, whether direct or indirect, between UPI purchases and other market transactions. That there is a relationship between POSCO's sales to UPI and open market transactions is evidenced by the formula used to determine the price UPI pays for its hot-band, which is dependent in part on the price of Korean imports on the open market.⁴⁵ Plain common sense suggests that if there were no competitive impact, the parties would not have included such a provision in their agreement.

Further evidence that Korean imports are not "unique" is demonstrated by the fact that at least two other mills have supplied UPI's hot-band during the period of investigation.⁴⁶ While the joint venture by which UPI was formed may alter the nature of competition between POSCO and USS, it does not eliminate the market impact of Korean imports.

In addition, I note that even if UPI imports were to be excluded, more than an insignificant volume of Korean imports were sold to purchasers other than UPI.⁴⁷ Korean imports were present in the market simultaneously with other imports and the domestic product. Though Korean imports were sold principally in one region through 13 importers in all months of the investigation, substantial quantities of most other subject countries' products and the domestic product were sold in that region as well.⁴⁸

b. Negligibility

I find that Korean imports are clearly not negligible. Korean imports were larger than any other subject country for two of the three years of the investigation.⁴⁹ Korean imports increased in volume and market share throughout the period of investigation, from 619,100 short tons in 1990 to

⁴⁴ UPI's prehearing brief at 9-12, 31-35, 40; POSCO's prehearing brief at 5-6.

⁴⁵ See Hearing Transcript at p. 201.

⁴⁶ Hearing transcript at 163.

⁴⁷ UPI's prehearing brief at 40.

⁴⁸ Report at Appendix M, Tables M-2, M-5; Appendix L, Table L-1.

⁴⁹ Report at Table 103.

880,300 short tons in 1992.⁵⁰ The 1992 imports were valued at \$291.2 million and accounted for 1.7% of domestic consumption.⁵¹

Based on the foregoing, I determine that is appropriate to cumulate Korean imports.

8. The Netherlands

a. Reasonable overlap of competition

Contrary to the Dutch respondents' arguments, I find that there is a reasonable overlap of competition between imports from the Netherlands, other subject imports, and the domestic product. The Dutch respondents argue that a majority of their imports are specialized products that do not compete with the domestic like product.⁵² The record, however, demonstrates that the domestic industry and other subject countries produce the products imported from the Netherlands.⁵³ Additionally, a substantial portion of Dutch imports are of commodity grade products.⁵⁴ Dutch imports were sold through one importer in all four regions during each month of the investigation.⁵⁵

b. Negligibility

I find that Dutch imports are not negligible. Imports from the Netherlands increased throughout the period of the investigation, from 213,900 short tons in 1990 to 288,200 short tons in 1992.⁵⁶ The 1992 imports were valued at \$90.3 million and accounted for 0.6% of domestic consumption.⁵⁷

Based on the foregoing, I determine that it is appropriate to cumulate imports from the Netherlands.

9. South Africa⁵⁸

a. Negligibility

I find that imports from South Africa are negligible and without discernible adverse impact on the domestic industry. Imports from South Africa were not present in the market in 1990 or

⁵⁰ Report at Table 94.

⁵¹ Report at Table 94; Table 103.

⁵² Dutch respondents' prehearing brief at 8-9.

⁵³ Report at Table 98; Appendix F, Table F-2; Appendix N.

⁵⁴ Id.

⁵⁵ Report at Appendix M, Tables M-2, M-5; Appendix L, Table L-1.

⁵⁶ Report at Table 94.

⁵⁷ Report at Table 94; Table 103.

⁵⁸ As noted above, I discuss only whether imports from South Africa are negligible.

1991. The 1992 imports, 33,900 short tons, were valued at just \$10 million dollars and accounted for only 0.1% of domestic consumption.⁵⁹

Based on the foregoing, I determine that it is not appropriate to cumulate imports from South Africa.

B. Cold-Rolled

For cold-rolled products, I have cumulated imports from the following countries: Belgium, Brazil, Canada, France, Germany, Japan, Korea, and the Netherlands. In 1992, imports from these countries totalled nearly two million tons and accounted for almost 6% of domestic consumption.⁶⁰ The cumulative value of these imports was approximately \$830 million. I find imports from Argentina, Austria, Italy, Spain, and South Africa to be individually negligible and without discernible adverse impact on the domestic industry, thus these imports are not appropriate for cumulation. Together, imports from these countries accounted for 0.7% of domestic consumption in 1992.⁶¹

As stated above, my analysis of cold-rolled products considers that while they are somewhat more differentiated than hot-rolled products, they too are a feedstock for other steel products and are more fungible than higher value-added products, such as corrosion-resistant steel. Thus, even relatively small quantities of imports can have a discernible adverse effect of the domestic industry.

I find that there is a reasonable overlap of competition between the imports of all subject countries and the domestic like product. All of these imports were present in the market simultaneously with the domestic product, most being imported into every region of the country throughout the period of investigation. The record provides no evidence that any of the subject imports move in channels of distribution that differ substantially from other imports or the domestic product. I detail below my analysis for each subject country producing cold-rolled steel.

1. Argentina

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Argentinean imports, other subject imports, and the domestic like product. I note that Argentinean respondents make no assertions to the contrary. Imports from Argentina were sold through one importer in all four regions in more than half of the months of the investigation.⁶²

b. Negligibility

I find that Argentinean imports are negligible and without discernible adverse impact on the domestic industry. The Argentinean share of domestic consumption never exceeded 0.3% during the

⁵⁹ Report at Table 94; Table 103.

⁶⁰ Report at Table 95; Table 105.

⁶¹ Report at Table 105.

⁶² Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

period of investigation.⁶³ In 1992, imports from Argentina declined to less than 34,000 short tons valued at \$14.4 million, and accounted for only 0.1% of domestic consumption.⁶⁴

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Argentina.

2. Austria

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Austrian imports, other subject imports, and the domestic like product. I note that Austrian respondents make no assertions to the contrary. Imports from Austria were sold through four importers in two of the four regions⁶⁵ in all 36 months of the investigation.⁶⁶

b. Negligibility

I find that imports from Austria are negligible and without discernible adverse impact on the domestic industry. Austrian imports declined throughout the period of investigation, and never exceeded 0.3% of domestic consumption.⁶⁷ In 1992, imports from Austria declined to just 2,300 short tons valued at \$2.1 million, and accounted for essentially 0.0% of domestic consumption.⁶⁸

Based on the foregoing, I find that it is not appropriate to cumulate imports from Austria.

3. Belgium

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Belgian imports, other subject imports, and the domestic like product. I note that Belgian respondents make no assertions to the contrary. Imports from Belgium were sold through six importers in three of the four regions⁶⁹ in all months of the investigation.⁷⁰

⁶³ Report at Table 105.

⁶⁴ Report at Table 95; Table 105.

⁶⁵ Austrian imports were sold in all four regions in 1990 and three of the four regions in 1991. Report at Appendix M, Table M-3.

⁶⁶ Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

⁶⁷ Report at Table 105.

⁶⁸ Report at Table 95; Table 105.

⁶⁹ Belgian imports were in fact sold in all four regions; however, sales in one region were substantially less than in the other three. Report at Appendix M, Table M-3.

⁷⁰ Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

b. Negligibility

I find that Belgian imports are not negligible. Belgian imports maintained a relatively stable market share of 0.4% while increasing steadily in volume and value throughout the period of investigation.⁷¹ In 1992, imports from Belgium reached 126,800 short tons valued at \$54.6 million.⁷² Evidence of mixed under and overselling indicates some discernible adverse impact on the domestic industry.⁷³

Based on the foregoing, I determine that it is appropriate to cumulate imports from Belgium.

4. Brazil

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Brazilian imports, other subject imports, and the domestic like product. I note that Brazilian respondents make no assertions to the contrary. Imports from Brazil were sold through 30 importers in all four regions in every month of the investigation.⁷⁴

b. Negligibility

I find that imports from Brazil are not negligible. Brazilian imports maintained a stable market share of 0.5% throughout the period of investigation.⁷⁵ In 1992, nearly 140,000 short tons, valued at almost \$60.0 million, were imported from Brazil.⁷⁶ Evidence of extensive underselling is an indication of some discernible adverse impact on the domestic industry.⁷⁷

Based on the foregoing, I determine that it is appropriate to cumulate imports from Brazil.

5. Canada

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Canadian imports, other subject imports, and the domestic like product. I note that Canadian respondents make no argument

⁷¹ Report at Table 105.

⁷² Report at Table 95; 105.

⁷³ Report at Tables 110-113.

⁷⁴ Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

⁷⁵ Report at Table 105.

⁷⁶ Report at Table 95; Table 105.

⁷⁷ Report at Tables 110-113.

to the contrary.⁷⁸ Imports from Canada were sold through 51 importers in two of the four regions⁷⁹ in all 36 months of the investigation.⁸⁰

b. Negligibility

I find that Canadian imports are not negligible. Canadian imports increased throughout the period of investigation, from 138,000 short tons in 1990 to 239,000 short tons in 1992.⁸¹ The 1992 imports were valued at over \$110.0 million and accounted for 1.7% of domestic consumption.⁸² In addition, evidence of mixed under and overselling is an indication of some degree of discernible adverse impact on the domestic industry.⁸³

Based on the foregoing, I determine that it is appropriate to cumulate imports from Canada.

6. France

a. Reasonable overlap of competition

Contrary to French respondents' assertion, I find that there is a reasonable overlap of competition between French imports, other subject imports, and the domestic like product. The French respondents assert that their imports are specialized products that do not compete with the domestic like product.⁸⁴ The record indicates that a majority of French imports consisted of commercial grade products which were also produced by both domestic and other subject producers.⁸⁵ In addition, those French products that are of a more specialized nature were also produced in significant quantities by other countries and the domestic industry.⁸⁶ Imports from France were sold through eight importers in all four regions during every month of the investigation.⁸⁷

b. Negligibility

I find that imports from France are not negligible. French imports maintained a relatively stable market share of 0.4% during the period of investigation.⁸⁸ In 1992, 125,300 short tons,

⁷⁸ See discussion at II, A, 3, a, supra.

⁷⁹ In 1990 and 1992, Canadian imports were sold in three of the four regions; however, sales in the third region were substantially less than in the other two. Report at Appendix M, Table M-3.

⁸⁰ Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

⁸¹ Report at Table 95.

⁸² Report at Table 95; Table 105.

⁸³ Report at Tables 110-113.

⁸⁴ Usinor Sacilor's prehearing brief at 1-14.

⁸⁵ Report at Table 99; Appendix F, Table F-3; Appendix N.

⁸⁶ Id.

⁸⁷ Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

⁸⁸ Report at Table 105.

valued at more than \$60 million, were imported from France.⁸⁹ Further, the record shows mixed under and overselling which indicates some degree of discernible adverse impact on the domestic industry.⁹⁰

Based on the foregoing, I determine that it is appropriate to cumulate imports from France.

7. Germany

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between German imports, other subject imports, and the domestic like product. I note that German respondents make no assertions to the contrary. Imports from Germany were sold through 35 importers in all four regions during each month of the investigation.⁹¹

b. Negligibility

I find that imports from Germany are not negligible. German imports maintained the second largest market share throughout the period of investigation.⁹² The 1992 imports, 335,500 short tons, were valued at \$166.3 million and accounted for 1.2% of domestic consumption.⁹³ The record also demonstrates mixed under and overselling, indicating some level of discernible adverse impact on the domestic industry.⁹⁴

8. Italy

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Italian imports, other subject imports, and the domestic like product. I note that Italian respondents make no assertions to the contrary. Imports from Italy were sold through three importers in all four regions during 35 of the 36 months of the investigation.⁹⁵

b. Negligibility

I find Italian imports to be negligible and without discernible adverse impact on the domestic industry. The Italian share of domestic consumption never exceeded 0.2% during the period of

⁸⁹ Report at Table 95; Table 105.

⁹⁰ Report at Tables 110-113.

⁹¹ Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

⁹² Report at Table 105.

⁹³ Report at Table 95; Table 105.

⁹⁴ Report at tables 110-113.

⁹⁵ Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

investigation.⁹⁶ In 1992, Italian imports totalled less than 48,000 short tons and were valued at \$19.5 million.⁹⁷

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Italy.

9. Japan

a. Reasonable overlap of competition

Contrary to Japanese respondents' assertion, I find that there is a reasonable overlap of competition between Japanese imports, other subject imports, and the domestic like product. The Japanese respondents do not dispute that their imports compete with the domestic product; rather, they argue only that their imports are specialized products that do not compete with other subject imports.⁹⁸ The record shows that a significant portion of these imports consisted of commercial grade products also produced by other subject producers.⁹⁹ In addition, most Japanese products of a more specialized nature were produced in significant quantities by other countries and the domestic industry.¹⁰⁰ Imports from Japan were sold through 26 importers in all four regions in all months of the investigation.¹⁰¹

b. Negligibility

I find that Japanese imports are not negligible. Japanese imports had the highest market share of any of the subject countries throughout the period of investigation.¹⁰² The 1992 imports, 378,500 short tons, were valued at over \$232.9 million and accounted for 1.3% of domestic consumption.¹⁰³ Though Japanese respondents argue that their imports oversold the domestic product, the record shows some underselling, and much of the overselling was at low margins.¹⁰⁴

Based on the foregoing, I determine that it is appropriate to cumulate imports from Japan.

10. Korea

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Korean imports, other subject imports, and the domestic like product. I note that Korean respondents make no assertions to the

⁹⁶ Report at Table 105.

⁹⁷ Report at Table 95; Table 105.

⁹⁸ Japanese respondents' prehearing brief at 16-38, exhibit 4.

⁹⁹ Report at Table 99; Appendix M.

¹⁰⁰ Report at tables 99; Appendix F, Table F-3; and Appendix N.

¹⁰¹ Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

¹⁰² Report at Table 95; Table 105.

¹⁰³ Report at Table 95; Table 105.

¹⁰⁴ Report at Tables 110-113.

contrary. Imports from Korea were sold through 19 importers in three of the four regions¹⁰⁵ in all 36 months of the investigation.¹⁰⁶

b. Negligibility

I find that imports from Korea are not negligible. Korean imports increased by over 50% between 1991-92, from 111,100 short tons in 1991 to 172,600 short tons in 1992.¹⁰⁷ The 1992 imports were valued at \$72.6 million and accounted for 0.6% of domestic consumption.¹⁰⁸ In addition, the record demonstrates mixed under and overselling, indicating some degree of discernible adverse impact on the domestic industry.¹⁰⁹

Based on the foregoing I determine that it is appropriate to cumulate imports from Korea.

11. The Netherlands

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Dutch imports, other subject imports, and the domestic like product. I note that the Dutch respondent makes no assertion to the contrary. Imports from the Netherlands were sold through five importers in all four regions¹¹⁰ in all months of the investigation.¹¹¹

b. Negligibility

I find that imports from the Netherlands are not negligible. Dutch imports never fell below 0.5% of domestic consumption during the period of investigation.¹¹² Imports from the Netherlands increased irregularly throughout the period, from 156,200 short tons in 1990 to 172,400 short tons in 1992.¹¹³ The 1992 imports were valued at \$71.9 million and accounted for 0.6% of domestic consumption.¹¹⁴ In addition, evidence of mixed under and overselling indicates some level of discernible adverse impact on the domestic industry.¹¹⁵

¹⁰⁵ In 1992, Korean imports were sold in all four regions; however, sales in one region were significantly less than in the other three. Report at Appendix M, Table M-3.

¹⁰⁶ Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

¹⁰⁷ Report at Table 95.

¹⁰⁸ Report at Table 95; Table 105.

¹⁰⁹ Report at Tables 110-113.

¹¹⁰ Dutch sales in one of the four regions were relatively insignificant compared to sales in the other three. Report at Appendix M, Table M-3.

¹¹¹ Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

¹¹² Report at Table 105.

¹¹³ Report at Table 95.

¹¹⁴ Report at Table 95; Table 105.

¹¹⁵ Report at Tables 110-113.

Based on the foregoing, I determine that it is appropriate to cumulate imports from the Netherlands.

12. Spain

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Spanish imports, other subject imports, and the domestic like product. I note that Spanish respondents make no assertions to the contrary. Imports from Spain were sold through three importers in three of the four regions in 34 of the 36 months of the investigation.¹¹⁶

b. Negligibility

I find that imports from Spain are negligible and without discernible adverse impact on the domestic industry. The Spanish share of the domestic market never exceeded 0.2% during the period of investigation. In 1992, Spanish imports were less than 45,000 short tons and were valued at \$19.5 million.¹¹⁷

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Spain.

13. South Africa¹¹⁸

a. Negligibility

I find that imports from South Africa are negligible and without discernible adverse impact on the domestic industry. South African imports were not present in the market in 1990 or 1991. The 1992 imports, 44,400 short tons, were valued at \$17.8 million dollars and accounted for only 0.1% of domestic consumption.¹¹⁹

Based on the foregoing, I determine that it is not appropriate to cumulate imports from South Africa.

C. Cut-to-Length Plate

For cut-to-length plate, I cumulated imports from the following subject countries: Belgium, Brazil, Canada, Finland, Mexico, Spain, and Sweden. In addition, I cumulated allegedly unfair imports from South Africa with imports from those countries listed above.¹²⁰ In 1992, more than 712,000 short tons of plate were imported from these eight countries, accounting for 12.2% of domestic consumption.¹²¹ The cumulative value of these was more than one-quarter of a billion

¹¹⁶ Report at Appendix M, Tables M-3, M-5; Appendix L, Table L-1.

¹¹⁷ Report at Table 95; Table 105.

¹¹⁸ As stated above, I discuss only whether imports from South Africa are negligible.

¹¹⁹ Report at Table 94; Table 103.

¹²⁰ My analysis of the appropriateness of cumulating imports from South Africa is set forth at the beginning of the cumulation discussion.

¹²¹ Report at Table 93; Table 101.

dollars.¹²² I did not cumulate imports of plate from France, Germany, Italy, Korea, Poland, Romania, and the United Kingdom, which together accounted for only 2.1% of domestic consumption in 1992.¹²³ I find that these subject imports are individually negligible and without discernible adverse impact on the domestic industry, thus these imports are not appropriate for cumulation.

As noted above, my cumulation analysis includes the assessment of geographic and temporal competition, the negligibility of imports in light of the fungibility of the product, and the relative vulnerability of the domestic industry. In assessing geographic and temporal competition, I have also considered whether the subject imports and domestic like product move in similar channels of distribution; I find that all of these imports do. I detail below my analysis for each subject country producing cut-to-length plate.

1. Belgium

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Belgian imports, other subject imports, and the domestic like product. I note that the Belgian respondents did not make any assertions to the contrary. Plate from Belgium was sold through 16 importers in all four geographic regions during all 36 months of the investigation.¹²⁴

b. Negligibility

I find that imports of plate from Belgium are not negligible. Although imports from Belgium declined during the period of the investigation, from 114,000 short tons in 1990 to 48,000 short tons in 1992, these 1992 imports were valued at almost \$19 million and accounted for 1.0% of domestic consumption.¹²⁵ These imports also demonstrated mixed under and overselling, indicating at least some discernible adverse impact on the domestic industry.¹²⁶

Based upon the foregoing, I determine it is appropriate to cumulate imports from Belgium.

2. Brazil

a. Reasonable overlap of competition

Contrary to the Brazilian respondents' assertion, I find a reasonable overlap of competition between Brazilian imports, other subject imports, and the domestic like product. The Brazilian respondents argued that their thin-gauge bevelled plate products are substantially cheaper than other subject imports or the domestic product and that there is little domestic production of bevelled plate.¹²⁷ Accordingly, they argued, their imports do not compete with domestic plate. The record demonstrates that far less than half of the Brazilian imports were of the bevelled product; most

¹²² Report at Table 93.

¹²³ Report at Table 101.

¹²⁴ Report at Appendix L, Table L-1; Appendix M, Tables M-1, M-5.

¹²⁵ Report at Table 93; Table 101.

¹²⁶ Report at 282-285, Tables 110-113.

¹²⁷ Brazilian respondents' posthearing brief at 6.

imports from Brazil were of commodity grade non-bevelled plate that competed with both the domestic product and other subject imports.¹²⁸ Moreover, Brazilian plate was sold through 10 importers in all four regions during 35 of the 36 months under investigation.¹²⁹

b. Negligibility

I find that imports of plate from Brazil are not negligible. Imports of plate from Brazil increased between 1990-91, from 52,000 short tons to 67,000 short tons, and declined to 46,000 short tons in 1992.¹³⁰ The 1992 imports were valued at approximately \$16.3 million and accounted for 0.9% of domestic consumption of plate.¹³¹ These imports also demonstrated mixed under and overselling, indicating at least some discernible adverse impact on the domestic industry.¹³²

Based upon the foregoing, I determine that it is appropriate to cumulate imports from Brazil.

3. Canada

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Canadian imports, other subject imports, and the domestic like product. I note that the Canadian respondents did not make any assertions to the contrary.¹³³ Imports from Canada were sold through 46 importers in three of the four geographic regions during all 36 months of the investigation.¹³⁴

b. Negligibility

I find that imports of plate from Canada are not negligible. Imports of plate from Canada doubled between 1990-92, from 92,000 to 184,000 short tons.¹³⁵ The 1992 imports were valued at approximately \$62.6 million and accounted for 3.7% of domestic consumption.¹³⁶ These imports also demonstrated mixed under and overselling, indicating at least some discernible adverse impact on the domestic industry.¹³⁷

Based upon the foregoing, I determine it is appropriate to cumulate imports from Canada.

¹²⁸ Report at Table 97; Appendix F, Table F-1; Appendix N.

¹²⁹ Report at Appendix L, Table L-1; Appendix M, Tables M-1, M-5.

¹³⁰ Report at Table 93.

¹³¹ Report at Table 93; Table 101.

¹³² Report at 172-175, Tables 110-113.

¹³³ See discussion at II, A, 3, a, supra.

¹³⁴ Report at Appendix L, Table L-1; Appendix M, Tables M-1, M-5.

¹³⁵ Report at Table 93.

¹³⁶ Report at Table 93; Table 101.

¹³⁷ Report at 172-175, Tables 110-113.

4. Finland

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Finnish imports, other subject imports, and the domestic like product. I note that the Finnish respondents did not make any assertions to the contrary. Imports from Finland were sold through 12 importers in three of the four regions in virtually every month of the investigation.¹³⁸

b. Negligibility

Contrary to the Finnish respondents' assertion, I find that imports of plate from Finland are not negligible.¹³⁹ Although imports from Finland declined during the period of the investigation, from 83,000 short tons to 46,800 short tons, these 1992 imports were valued at more than \$18 million and accounted for 1.0% of domestic consumption.¹⁴⁰ Imports from Finland in 1992 were almost double those of any of the countries not cumulated based on negligibility.¹⁴¹ The quantity and value of Finnish imports in 1992 was roughly equal to the quantity and value of four of the other countries I have cumulated (Belgium, Brazil, Mexico, Spain).¹⁴² Plate from Finland also frequently undersold the domestic product, further indicating some level of discernible adverse effect on the domestic industry.¹⁴³

Based upon the foregoing, I determine it is appropriate to cumulate imports from Finland.

5. France

a. Reasonable overlap of competition

Contrary to the French respondents' assertion, I find that there is a reasonable overlap of competition between French imports, other subject imports, and the domestic like product. The French respondents argued that a portion of their imports were specialty products that do not compete with domestic products.¹⁴⁴ The record demonstrates that a substantial amount of imports from France were commodity grade products which were simultaneously present in the U.S. market with similar domestic product and other subject imports.¹⁴⁵ In addition, imports from France were sold through four distributors in all four regions during every month of the investigation.¹⁴⁶

¹³⁸ Appendix M, Tables M-1, M-5; Appendix L, Table L-1.

¹³⁹ Finnish respondents' posthearing brief at 15.

¹⁴⁰ Report at Table 93; Table 101.

¹⁴¹ Report at 142, Tables 101.

¹⁴² Report at Table 93.

¹⁴³ Report at Tables 110-113.

¹⁴⁴ French respondents' posthearing brief at 9.

¹⁴⁵ Report at Appendix N. In addition, petitioners provided evidence that they produce all of France's alleged specialty products. Report at Appendix N; Appendix F, Table F-1.

¹⁴⁶ Appendix M, Tables M-1, M-5; Appendix L, Table L-1.

b. Negligibility

I find imports from France to be negligible and without discernible adverse impact on the domestic industry. Imports from France declined from 11,000 short tons in 1990 to 6,000 short tons in 1992.¹⁴⁷ The 1992 imports were valued at only \$3.3 million and accounted for merely 0.1% of domestic consumption.¹⁴⁸

Based on the foregoing, I determine that it is not appropriate to cumulate imports from France.

6. Germany

a. Reasonable overlap of competition

Contrary to the German respondents' allegations, I find that there is a reasonable overlap of competition between German imports, other subject imports, and the domestic like product. The German respondents offered three different arguments to support their assertion that virtually all of the German products were specialized products: (i) German plate is of a width that no domestic producer can manufacture; (ii) German plate is of a precise chemistry unmatched by domestic producers; and (iii) German plate is rolled to be of a weight heavier than that typically produced by domestic producers.¹⁴⁹ The record demonstrates that while much imported German plate may in fact be specialized, it is not without domestic competition. Petitioners produce all but one of the products manufactured by the German respondents.¹⁵⁰ Moreover, imports from Germany were sold through six distributors in all four regions during every month of the investigation.¹⁵¹

b. Negligibility

I find imports from Germany to be negligible and without discernible adverse impact on the domestic industry. Imports from Germany declined from 59,000 short tons in 1990 to 20,000 short tons in 1992.¹⁵² The 1992 imports were valued at \$11.1 million and accounted for only 0.4% of domestic consumption -- less than half of any of the countries I cumulated in these investigations regarding plate.¹⁵³

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Germany.

¹⁴⁷ Report at Table 93.

¹⁴⁸ Report at Table 93; Table 101.

¹⁴⁹ Plate respondents' joint posthearing brief at 39.

¹⁵⁰ Report at Appendix N; Table 97; Appendix F, Table F-1.

¹⁵¹ Appendix M, Tables M-1, M-5; Appendix L, Table L-1.

¹⁵² Report at Table 93.

¹⁵³ Report at Table 93; Table 101.

7. Italy

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Italian imports, other subject imports, and the domestic like product. I note that the Italian respondents did not make any assertions to the contrary. Imports from Italy were sold through two distributors in three of the four regions¹⁵⁴ during 25 of the 36 months of the investigation.¹⁵⁵

b. Negligibility

I find imports from Italy to be negligible and without discernible adverse impact on the domestic industry. Imports from Italy declined from 10,000 short tons in 1990 to merely 2,000 short tons in 1992.¹⁵⁶ The 1992 imports were valued at only \$1.1 million and accounted for just 0.1% of domestic consumption.¹⁵⁷

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Italy.

8. Korea

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Korean imports, other subject imports, and the domestic like product. I note that the Korean respondents did not make specific assertions to the contrary. Imports from Korea were sold through three distributors in two of the four regions¹⁵⁸ during 35 of the 36 months of the investigation.¹⁵⁹

b. Negligibility

I find imports from Korea to be negligible and without discernible adverse impact on the domestic industry. Imports from Korea declined from 21,000 short tons in 1990 to 9,000 short tons in 1992.¹⁶⁰ The 1992 imports were valued at only \$3 million and accounted for just 0.2% of domestic consumption.¹⁶¹

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Korea.

¹⁵⁴ In 1992, Italian imports were sold in two of the four regions. Report at Appendix M, Table M-1.

¹⁵⁵ Appendix M, Tables M-1, M-5; Appendix L, Table L-1.

¹⁵⁶ Report at Table 93.

¹⁵⁷ Report at Table 93; Table 101.

¹⁵⁸ In 1992, Korean imports were sold in three of the four regions. Report at Appendix M, Table M-1.

¹⁵⁹ Appendix M, Tables M-1, M-5; Appendix L, Table L-1.

¹⁶⁰ Report at Table 93.

¹⁶¹ Report at Table 93; Table 101.

9. Mexico

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Mexican imports, other subject imports, and the domestic like product. I note that the Mexican respondents did not make any assertions to the contrary. Imports from Mexico were sold through five importers in two of the four regions in 35 of the 36 months of the investigation.¹⁶²

b. Negligibility

Contrary to the Mexican respondent's assertion, I find that imports from Mexico are not negligible.¹⁶³ Imports from Mexico declined between 1990-91, from 41,000 short tons to 19,000 short tons, then more than tripled to 60,000 short tons in 1992.¹⁶⁴ The 1992 imports were valued at more than \$19 million and accounted for 1.2% of domestic consumption, three times the Mexican share in 1991.¹⁶⁵ The volume of Mexican imports in 1992 was larger than every other country under investigation except Canada, Sweden and South Africa.¹⁶⁶ In addition, Mexican imports demonstrated infrequent underselling and no overselling, indicating at least some discernible adverse impact on the domestic industry.¹⁶⁷

Based on the foregoing, I determine that it is appropriate to cumulate imports from Mexico.

10. Poland

a. Reasonable overlap of competition

Contrary to the Polish respondents' assertion, I find that there is a reasonable overlap of competition between Polish imports, other subject imports, and the domestic like product. The Polish respondents offered four arguments in support of their position that their products do not compete with either domestic plate or other subject imports: (i) Polish plate is sold in spot transactions characterized by complex negotiations and prepayment; (ii) it is produced in limited dimensions; (iii) it is often subject to delays in delivery; and (iv) it is of an inferior quality.¹⁶⁸ The record shows that plate products from Poland were simultaneously present in the marketplace with similar domestic products and other subject imports.¹⁶⁹ Further, imports from Poland were sold through six importers in three of the four regions in 25 of the 36 months of the investigation.¹⁷⁰

¹⁶² Appendix M, Tables M-1, M-5; Appendix L, Table L-1.

¹⁶³ Mexican respondents' posthearing brief at 4.

¹⁶⁴ Report at Table 93.

¹⁶⁵ Report at Table 93; Table 101.

¹⁶⁶ Report at Table 93.

¹⁶⁷ Report at Tables 110-113.

¹⁶⁸ Polish respondents' prehearing brief at 2-9, Appendix A.

¹⁶⁹ Report at Appendix N; Tables 110-113.

¹⁷⁰ Appendix M, Tables M-1, M-5; Appendix L, Table L-1.

b. Negligibility

I find imports from Poland to be negligible and without discernible adverse impact on the domestic industry. Imports from Poland increased between 1990-91, from 25,000 short tons to 38,000 short tons, then returned in 1992 to 1990 levels.¹⁷¹ The 1992 imports were valued at \$7.4 million and accounted for 0.5% of domestic consumption.¹⁷²

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Poland.

11. Romania

a. Reasonable overlap of competition

Contrary to the Romanian respondents' assertion, I find that there is a reasonable overlap of competition between Romanian imports, other subject imports, and the domestic like product. The Romanian respondents make four arguments in support of their contention that their products do not compete with the domestic product or other subject imports: (i) Romanian plate is of inferior quality; (ii) Romanian producers do not provide after-sale service or assistance; (iii) Romanian plate has the longest average lead times of any plate subject to investigation; and (iv) it is available only in limited geographic areas.¹⁷³ The record demonstrates that Romanian plate products were present in the market at the same time as similar domestic products and other subject imports; in addition, the only specialty plate product from Romania is also produced by domestic producers.¹⁷⁴ Imports from Romania were sold through two importers in two of the four regions in 32 of the 36 months of the investigation.¹⁷⁵

b. Negligibility

I find imports from Romania to be negligible and without discernible adverse impact on the domestic industry. Imports from Romania increased between 1990-91, from 31,000 short tons to 36,000 short tons, then declined to 18,000 short tons in 1992.¹⁷⁶ The 1992 imports were valued at \$6.6 million and accounted for 0.4% of domestic consumption.¹⁷⁷

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Romania.

¹⁷¹ Report at Table 93.

¹⁷² Report at Table 93; Table 101.

¹⁷³ Romanian respondents' prehearing brief at 3-5.

¹⁷⁴ Report at Appendix N; Appendix F, Table F-1.

¹⁷⁵ Appendix M, Tables M-1, M-5; Appendix L, Table L-1.

¹⁷⁶ Report at Table 93.

¹⁷⁷ Report at Table 93; Table 101.

12. South Africa¹⁷⁸

a. Negligibility

I find that imports from South Africa are not negligible. With no imports in 1990 or 1991, South Africa shipped more than 80,000 short tons of plate into the United States market in 1992.¹⁷⁹ These imports were valued at \$26 million and accounted for 1.6% of consumption, more than any other subject country except Sweden and Canada.¹⁸⁰

Based on the foregoing, I determine that it is appropriate to cumulate imports from South Africa.

13. Spain

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Spanish imports, other subject imports, and the domestic like product. I note that the Spanish respondents did not make any assertions to the contrary. Imports from Spain were sold through one importer in three of the four regions in 27 of the 36 months of the investigation.¹⁸¹

b. Negligibility

Contrary to the Spanish respondents' arguments, I find that imports from Spain are not negligible.¹⁸² Although imports from Spain declined irregularly during the period of the investigation, from 68,000 short tons in 1990 to 54,000 short tons in 1992, the 1992 imports were valued at more than \$18 million and accounted for 1.1% of domestic consumption -- roughly the same figures as for Belgium, Brazil, Finland and Mexico.¹⁸³ In addition, imports from Spain also frequently undersold the domestic product, indicating some degree of discernible adverse impact on the domestic industry.¹⁸⁴

Based on the foregoing, I determine that it is appropriate to cumulate imports from Spain.

14. Sweden

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Swedish imports, other subject imports, and the domestic like product. I note that the Swedish respondents did not make

¹⁷⁸ As noted above, I discuss only whether imports from South Africa are negligible.

¹⁷⁹ Report at Table 93.

¹⁸⁰ Report at Table 93; Table 101.

¹⁸¹ Appendix M, Tables M-1, M-5; Appendix L, Table L-1.

¹⁸² Spanish respondents' posthearing brief at 13.

¹⁸³ Report at Table 93; Table 101.

¹⁸⁴ Report at Tables 110-113.

any assertions to the contrary. Imports from Sweden were sold through 15 importers in three of the four regions¹⁸⁵ in 35 of the 36 months of the investigation.¹⁸⁶

b. Negligibility

Contrary to the Swedish respondent's arguments, I find that imports from Sweden are not negligible.¹⁸⁷ Imports from Sweden declined from 91,000 short tons in 1990 to 68,000 short tons in 1991, and then increased to 89,000 short tons in 1992.¹⁸⁸ The 1992 imports were valued at nearly \$34 million and accounted for 1.8% of domestic consumption, second only to imports from Canada.¹⁸⁹ These imports also demonstrated mixed under and overselling, indicating at least some level of discernible adverse impact on the domestic industry.¹⁹⁰

Based on the foregoing, I determine that it is appropriate to cumulate imports from Sweden.

15. United Kingdom

a. Reasonable overlap of competition

Contrary to the United Kingdom respondents' assertion, I find that there is a reasonable overlap of competition between the United Kingdom's imports, other subject imports, and the domestic like product. The respondents from the United Kingdom argued that a portion of their imports were of universal mill plate, a product not produced by the domestic industry.¹⁹¹ The record demonstrates that plate products imported from the United Kingdom were simultaneously in the marketplace with both domestic plate and other subject imports.¹⁹² In addition, evidence on record indicates that domestic producers manufactured all alleged specialty products other than universal mill plate, which account for a relatively small percentage of imports from the United Kingdom.¹⁹³ Moreover, imports from the United Kingdom were sold through three importers in all four regions in all 36 months of the investigation.¹⁹⁴

b. Negligibility

I find imports from the United Kingdom to be negligible and without discernible adverse impact on the domestic industry. Imports from the United Kingdom declined by more than 50%

¹⁸⁵ Imports from Sweden were in fact sold in all four regions; however, sales in one region were minimal. Report at Appendix M, Table M-1.

¹⁸⁶ Appendix M, Tables M-1, M-5; Appendix L, Table L-1.

¹⁸⁷ Plate respondents' joint posthearing brief at 49.

¹⁸⁸ Report at Table 93.

¹⁸⁹ Report at Table 93; Table 101.

¹⁹⁰ Report at Tables 110-113.

¹⁹¹ United Kingdom respondents' prehearing brief at 6, Attachment 1 at para. 4.

¹⁹² Report at Appendix N.

¹⁹³ Report at Table 109; Table 97; Appendix F, Table F-1.

¹⁹⁴ Appendix M, Tables M-1, M-5; Appendix L, Table L-1.

during the period of the investigation, from 43,000 short tons in 1990 to 21,000 short tons in 1992.¹⁹⁵ The 1992 imports were valued at \$7.6 million and accounted for 0.4% of domestic consumption.¹⁹⁶

Based on the foregoing, I determine that it is not appropriate to cumulate imports from the United Kingdom.

D. Corrosion-Resistant

For corrosion-resistant products, I have cumulated imports from Australia, Canada, Germany, Japan, and Korea. In 1992, more than 1.84 million short tons of corrosion-resistant steel products were imported from these five countries, accounting for 13.7% of domestic consumption.¹⁹⁷ The cumulative value of these imports was approximately \$1.15 billion.¹⁹⁸ I did not cumulate imports from Brazil, France, Mexico, New Zealand, Sweden, and South Africa. Together, imports from these six countries accounted for less than 2.5% of domestic consumption.¹⁹⁹ I find imports from these six countries to be individually negligible and without discernible adverse impact on the domestic industry, thus these imports are not appropriate for cumulation.

As noted above, my cumulation analysis includes the assessment of geographic and temporal competition, the negligibility of imports in light of the fungibility of the product, and the relative vulnerability of the domestic industry. In assessing geographic and temporal competition, I have also considered whether the subject imports and domestic like product move in similar channels of distribution and determine that there is sufficient overlap between these products in this industry. Of the four like products, I find that corrosion-resistant products are the least fungible. I also find that the domestic corrosion-resistant industry is less vulnerable than the other three. I have considered these factors in making my cumulation determinations and find that, relative to the other three industries, a larger amount of corrosion-resistant imports from any one country is necessary to have a discernible adverse impact on the domestic industry. These determinations are detailed below.

1. Australia

a. Reasonable overlap of competition

Contrary to the Australian respondents' assertion, I find that there is a reasonable overlap of competition between Australian imports, other subject imports, and the domestic like product.²⁰⁰ The record indicates that only one specialty product, aside from zincalume, was imported from Australia,

¹⁹⁵ Report at Table 93.

¹⁹⁶ Report at Table 93; Table 101.

¹⁹⁷ Report at Table 96; Table 107.

¹⁹⁸ Report at Table 96.

¹⁹⁹ Report at Table 107.

²⁰⁰ The crux of their competition argument is that one of the products imported from Australia, zincalume (AlZn), should be found to be a separate like product. Australian respondents' prehearing brief at 36, n.55. As discussed in great detail above, my analytical framework for cumulation places little weight on "characteristics and uses" competition; such competition is appropriate for a like product analysis. Accordingly, as I concur in the majority opinion that zincalume is not a separate like product, I reject the Australian respondents' competition argument.

and this product was also produced by the domestic industry.²⁰¹ Moreover, imports from Australia were sold through eight importers in three of the four regions²⁰² in all 36 months of the investigation.²⁰³

b. Negligibility

Contrary to the Australian respondents' assertion, I find that imports from Australia are not negligible.²⁰⁴ Imports from Australia increased throughout the period of the investigation, from 121,000 short tons in 1990 to 183,000 short tons in 1992.²⁰⁵ The 1992 imports were valued at nearly \$113 million and accounted for 1.4% of domestic consumption.²⁰⁶

Based on the foregoing, I determine that it is appropriate to cumulate imports from Australia.

2. Brazil

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Brazilian imports, other subject imports, and the domestic like product. I note that the Brazilian respondents did not make any assertions to the contrary. Imports from Brazil were sold through 10 importers in three of the four regions²⁰⁷ in 25 of the 36 months of the investigation.²⁰⁸

b. Negligibility

I find imports from Brazil to be negligible and without discernible adverse impact on the domestic industry. Imports from Brazil declined throughout the period of the investigation, from 21,900 short tons in 1990 to 15,500 short tons in 1992.²⁰⁹ The 1992 imports were valued at less than \$8 million and accounted for just 0.1% of domestic consumption.²¹⁰

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Brazil.

²⁰¹ Report at Appendix N.

²⁰² Imports from Australia were in fact sold in three of the four regions; however, sales in one region, while not insignificant, were substantially more limited than in the other two. Report at Appendix M, Table M-4.

²⁰³ Report at Appendix L, Table L-1; Appendix M, Tables M-4, M-5.

²⁰⁴ Australian respondents' prehearing brief at 36, n.55.

²⁰⁵ Report at Table 96.

²⁰⁶ Report at Table 96; Table 107.

²⁰⁷ Imports from Brazil were sold in all four regions in 1990. Report at Appendix M, Table M-4.

²⁰⁸ Report at Appendix L, Table L-1; Appendix M, Tables M-4, M-5.

²⁰⁹ Report at Table 96.

²¹⁰ Report at Table 96; Table 107.

3. Canada

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Canadian imports, other subject imports, and the domestic like product. I note that the Canadian respondents did not make any assertions to the contrary.²¹¹ Imports from Canada were sold through 56 importers in two of the four regions²¹² in all 36 months of the investigation.²¹³

b. Negligibility

I find that imports from Canada are not negligible. Imports from Canada increased more than 150% during the period, from 180,000 short tons in 1990 to 451,000 short tons in 1992.²¹⁴ The 1992 imports were valued at almost \$235 million and accounted for 3.4% of domestic consumption.²¹⁵ These imports also demonstrated more underselling than overselling, indicating some level of discernible adverse impact on the domestic industry.²¹⁶

Based on the foregoing, I determine that it is appropriate to cumulate imports from Canada.

4. France

a. Reasonable overlap of competition

Contrary to the French respondents' assertion, I find that there is a reasonable overlap of competition between French imports, other subject imports, and the domestic like product. The French respondents argue that a substantial percentage of their imports are of specialty products that do not compete with domestic corrosion-resistant products.²¹⁷ The record indicates that the domestic industry produced all but one of the six specialty products imported from France, and this one product accounted for a relatively insignificant share of imports.²¹⁸ In addition, imports from France were sold through five importers in all four regions in every month of the investigation.²¹⁹

b. Negligibility

I find imports from France to be negligible and without discernible adverse impact on the domestic industry. Although imports from France increased throughout the period of the

²¹¹ See discussion at II, A, 3, a, supra.

²¹² Imports from Canada were in fact sold in all four regions during the period; however, sales in two of the regions were minimal. Report at Appendix M, Table M-4.

²¹³ Report at Appendix L, Table L-1; Appendix M, Tables M-4, M-5.

²¹⁴ Report at Table 96.

²¹⁵ Report at Table 96; Table 107.

²¹⁶ Report at Tables 110-113.

²¹⁷ French respondents' prehearing brief at 53.

²¹⁸ Report at Table 100; Tables 110-113; Appendix F, Table F-4.

²¹⁹ Report at Appendix L, Table L-1; Appendix M, Tables M-4, M-5.

investigation, from 59,000 short tons in 1990 to 94,000 short tons in 1992,²²⁰ the 1992 imports were valued at less than \$53.3 million and accounted for 0.7% of domestic consumption.²²¹ While the quantity and value of these imports are clearly more substantial than those, for example, from Brazil, I note that the French market share is still only half of any of the countries I determined to cumulate.

Accordingly, based on the foregoing, I determine that it is not appropriate to cumulate imports from France.

5. Germany

a. Reasonable overlap of competition

Contrary to the German respondents' assertion, I find that there is a reasonable overlap of competition between German imports, other subject imports, and the domestic like product. German respondents argue that their imports are primarily of automotive steel which does not compete with the domestic product.²²² The record demonstrates each of the four specialty products imported from Germany were also produced by domestic producers.²²³ Moreover, imports from Germany were sold through 14 importers in all four regions²²⁴ in every month of the investigation.²²⁵

b. Negligibility

I find that imports from Germany are not negligible. Imports from Germany increased irregularly during the period, from 161,000 short tons in 1990 to 189,000 short tons in 1992.²²⁶ The 1992 imports were valued at more than \$119 million and accounted for 1.4% of domestic consumption.²²⁷

Based on the foregoing, I determine that it is appropriate to cumulate imports from Germany.

6. Japan

a. Reasonable overlap of competition

Contrary to the Japanese respondents' assertion, I find that there is a reasonable overlap of competition between Japanese imports, other subject imports, and the domestic like product. Japanese respondents made two arguments in support of their position that their products do not compete, primarily with the domestic product: (i) until only recently, domestic producers were

²²⁰ Report at Table 96.

²²¹ Report at Table 96; Table 107.

²²² German respondents' prehearing brief at 3.

²²³ Report at Table 100; Appendix F, Table F-4.

²²⁴ Sales of German imports in one region were substantially less than in the other three. Report at Appendix M, Table M-4.

²²⁵ Report at Appendix L, Table L-1; Appendix M, Tables M-4, M-5.

²²⁶ Report at Table 96.

²²⁷ Report at Table 96; Table 107.

unable to qualify to supply the automotive industry; however, once qualified, "Buy American" policies require the displacement of Japanese imports; and (ii) in the non-automotive sector, there is no comparable domestic product for a significant portion of Japanese imports.²²⁸ Although the record indicates that six of the 13 specialty products imported from Japan were not produced by domestic producers, those six products accounted for less than 20% of Japanese imports in 1992.²²⁹ Moreover, imports from Japan were sold through 35 importers in all four regions in every month of the investigation.²³⁰

b. Negligibility

I find that imports from Japan are clearly not negligible. Although imports from Japan decreased irregularly during the period, from 838,000 short tons in 1990 to 824,000 short tons in 1992, the 1992 imports were valued at more than \$562 million and accounted for 6.1% of domestic consumption.²³¹

Based on the foregoing, I determine that it is appropriate to cumulate imports from Japan.

7. Korea

a. Reasonable overlap of competition

Contrary to the Korean respondents' assertion, I find that there is a reasonable overlap of competition between Korean imports, other subject imports, and the domestic like product. Although the Korean respondents do not specifically contest cumulation, they argue that a substantial portion of their imports are specialty products that do not compete with the domestic product.²³² The record indicates that three of the seven specialty products imported from Korea were not produced by domestic producers, and that these three products accounted for less than 20% of Korean imports in 1992.²³³ Further, imports from Korea were sold through 29 importers in three of the four regions²³⁴ in every month of the investigation.²³⁵

²²⁸ Japanese respondents' prehearing brief at 13-14, 16, 19.

²²⁹ Report at Table 100; Appendix F, Table F-4. The exact percentage of total Japanese imports accounted for by these specialty products is confidential.

²³⁰ Report at Appendix L, Table L-1; Appendix M, Tables M-4, M-5.

²³¹ Report at Table 96; Table 107.

²³² Korean respondents' prehearing brief at 1-7.

²³³ Report at Table 100; Appendix F, Table F-4. The exact percentage of total Korean imports accounted for by these specialty products is confidential.

²³⁴ In fact, there were sales of Korean product in the fourth region, but at levels substantially less than in the other three. Report at Appendix M, Table M-4.

²³⁵ Report at Appendix L, Table L-1; Appendix M, Tables M-4, M-5.

b. Negligibility

I find that imports from Korea are not negligible. Although imports from Korea held constant between 1990-91 at 124,000 short tons, they then increased to 193,000 short tons in 1992.²³⁶ The 1992 imports were valued at nearly \$120 million and accounted for 1.4% of domestic consumption.²³⁷ These imports also demonstrated mixed under and overselling, indicating at least some discernible adverse impact on the domestic industry.²³⁸

Based on the foregoing, I determine that it is appropriate to cumulate imports from Korea.

8. Mexico

a. Reasonable overlap of competition

Contrary to the Mexican respondents' assertion, I find that there is a reasonable overlap of competition between Mexican imports, other subject imports, and the domestic like product. The Mexican respondents argue that a significant portion of their imports are of thin-gauge galvanized sheet and prepainted galvanized sheet, products not typically produced by the petitioners.²³⁹ The Mexican respondents also argue that approximately 50% of their imports are of domestic hot- and cold-rolled sheet which is galvanized in Mexico and returned to the United States pursuant to the American Goods Returned program.²⁴⁰ The record indicates that only one of the three specialty products imported from Mexico were not produced by domestic producers, and that this one product accounted for less than 20% of Mexican imports in 1992.²⁴¹ Imports from Mexico were sold through 11 importers in one of the four regions²⁴² in every month of the investigation.²⁴³ Although Mexican

²³⁶ Report at Table 96.

²³⁷ Report at Table 96; Table 107.

²³⁸ Report at 172-175, Tables 110-113.

²³⁹ Mexican respondents' prehearing brief at 9-11.

²⁴⁰ *Id.* at 5. The American Goods Returned program concerns rates of customs duties imposed on goods which are manufactured in the United States, exported from the United States for further processing, then imported back into the United States for further processing by the exporting manufacturer. See Harmonized Tariff Schedule of the United States ("HTSUS") at 9802.00.40, *et seq.* (formerly Tariff Schedule of the United States, 19 U.S.C. § 1202, Part 1, Schedule 8 at item 806.30).

As the program appears to contemplate importation into the United States for yet additional processing, rather than for sale in its imported state, I have some doubt that the operation of this program is of any legal relevance to this specific investigation. More important than the program itself, however, is the Mexican respondents' general argument that their imports are of substantial U.S. content. I have considered this argument in my analysis.

²⁴¹ Report at Table 100; Appendix F, Table F-4. The exact percentage of total Mexican imports accounted for by these specialty products is confidential.

²⁴² In 1992, there were relatively insignificant sales of the Mexican product in a second region. Report at Appendix M, Table M-4.

²⁴³ Report at Appendix L, Table L-1; Appendix M, Tables M-4, M-5.

imports were geographically limited, I note that both the domestic product and other subject imports were simultaneously present in the one region.²⁴⁴

b. Negligibility

I find that imports from Mexico are negligible and without discernible adverse impact on the domestic industry. Imports from Mexico declined irregularly during the period of investigation, from 109,000 short tons in 1990 to 108,000 short tons in 1992.²⁴⁵ The 1992 imports were valued at nearly \$68.3 million and accounted for 0.8% of domestic consumption.²⁴⁶ The Mexican share of domestic consumption is only slightly more than half that for any of the individual countries I have cumulated.²⁴⁷

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Mexico.

9. New Zealand

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between corrosion-resistant steel from New Zealand, other subject imports, and the domestic like product. I note that the New Zealand respondents did not directly allege otherwise.²⁴⁸ Imports from New Zealand were sold through one importer in two of the four regions²⁴⁹ in 27 of the 36 months of the investigation.²⁵⁰

b. Negligibility

I find that imports from New Zealand are negligible and without discernible adverse impact on the domestic industry. Imports from New Zealand increased from 24,000 short tons in 1990 to 30,000 short tons in 1991, then returned in 1992 to the 1990 level.²⁵¹ The 1992 imports were valued at \$14.3 million and accounted for only 0.2% of domestic consumption.²⁵²

Based on the foregoing, I determine that it is not appropriate to cumulate imports from New Zealand.

²⁴⁴ Report at Appendix M, Table M-4.

²⁴⁵ Report at Table 96.

²⁴⁶ Report at Table 96; Table 107.

²⁴⁷ Report at Table 107.

²⁴⁸ The respondents merely asserted that competition was diminished as imports from New Zealand complemented domestic production as a residual source of supply.

²⁴⁹ In 1991, imports from New Zealand were sold in three of the regions. Report at Appendix M, Table M-4.

²⁵⁰ Report at Appendix L, Table L-1; Appendix M, Tables M-4, M-5.

²⁵¹ Report at Table 96.

²⁵² Report at Table 96; Table 107.

10. South Africa²⁵³

a. Negligibility

I find that imports from South Africa are negligible and without discernible adverse impact on the domestic industry. South African imports were not imported in either 1990 or 1991.²⁵⁴ Imports in 1992, 52,500 short tons, were valued at \$24.7 million and accounted for only 0.4% of consumption.²⁵⁵

Based on the foregoing, I determine that it is not appropriate to cumulate imports from South Africa.

11. Sweden

a. Reasonable overlap of competition

I find that there is a reasonable overlap of competition between Swedish imports, other subject imports, and the domestic like product. I note that the Swedish respondents did not make any assertions to the contrary. Imports from Sweden were sold through five importers in all four regions²⁵⁶ in 32 of the 36 months of the investigation.²⁵⁷

b. Negligibility

I find that imports from Sweden are negligible and without discernible adverse impact on the domestic industry. Although imports from Sweden increased throughout the period of the investigation, from 11,000 short tons in 1990 to 28,000 short tons in 1992, the 1992 imports valued \$15.5 million and accounted for just 0.2% of domestic consumption.²⁵⁸

Based on the foregoing, I determine that it is not appropriate to cumulate imports from Sweden.

III. THREAT OF MATERIAL INJURY BY REASON OF UNFAIR IMPORTS

Having determined that none of the four domestic industries is currently suffering material injury, I find, for the reasons discussed below, that each industry is threatened with material injury by reason of the unfair imports I have cumulated.

Before setting forth this causation analysis, I note, as I did at the Commission's public vote in these investigations, that this is the third time that industries producing such a broad range of steel products have petitioned the Commission for relief from the adverse effects of unfair imports. I find this fact quite instructive. First, it tells me that something is obviously wrong and continues to be

²⁵³ As noted above, I discuss only whether imports from South Africa are negligible.

²⁵⁴ Report at Table 96.

²⁵⁵ Report at Table 96; Table 107.

²⁵⁶ In 1990, imports from Sweden were sold in three of the regions. Report at Appendix M, Table M-4.

²⁵⁷ Report at Appendix L, Table L-1; Appendix M, Tables M-4, M-5.

²⁵⁸ Report at Table 96; Table 107.

wrong. Second, it tells me that, for the Commission, this is not a case of first impression. We have institutional knowledge about the industries (both globally and domestically) and the issues²⁵⁹; there are no unique or complex factors to contemplate. These are the most basic of capital intensive heavy industries producing the most basic of capital intensive products -- products for which world overcapacity is readily documented and acknowledged. The trade dimensions of these investigations notwithstanding, I think it quite unnecessary to apply anything other than a traditional analytical framework. I apply such a traditional analysis here.²⁶⁰

The most recent investigations, in 1984, led to the negotiation of VRAs covering most, if not all, of the products subject to the instant investigations. During the period of the VRAs, the domestic industries took aggressive and significant steps to rationalize capacity and production, increase efficiency and productivity, and streamline operations -- in short, to become more competitive. Notwithstanding these steps, the domestic industries find it increasingly difficult, and oftentimes impossible, to access capital, either through equity or debt. The industries' access, or more appropriately, lack of access, to capital markets plays a significant role in my analysis of the impact of unfair imports on these industries.

The obvious question is, "why is it so difficult for these industries to penetrate the capital markets?" The answer, at least in part, is quite simple: the capital markets, aside from certain data submitted in these investigations, have access to much the same information as this Commission, and consider the domestic industries to be extremely vulnerable --

- o vulnerable to the continued instability and overcapacity of the world steel market which encourages both established suppliers, such as the European producers, and emerging suppliers, such as South Africa, to turn to the United States as the dumping ground for their excess production; and
- o vulnerable to foreign producers whose steel manufacturing operations are subsidized, in many cases massively, by their governments.

In view of these vulnerabilities, the capital markets perceive these four industries to be in a troublesome condition. As demonstrated below, this perception can have extreme consequences for the domestic industries.

In their questionnaire responses, virtually every petitioning company explained in great detail that the increasing presence of unfair imports in the United States market has dramatically restricted the domestic producers' access to capital.²⁶¹ And the petitioners' questionnaire responses echoed a general theme: access to capital is a function of the capital market's perception of the adverse effects of unfair imports in the marketplace. For example, one petitioner explained that

[f]avorable market developments relating to the compelling nature of these very trade cases have provided a recent 'window of opportunity'

²⁵⁹ In fact, the Commission routinely publishes quarterly and annual reports on the steel industry and these reports are reviewed and approved by each Commissioner.

²⁶⁰ I note, however, that each Commissioner may have a different traditional analytical framework.

²⁶¹ See Report at Appendix G. I think it important to note that the Commission's questionnaires have the force and effect of sworn testimony and questionnaire respondents may be criminally liable for providing perjurious information. 18 U.S.C. § 1005.

during which [the company] has been able to improve its financial situation.²⁶²

The petitioner then described some relative easing of the restrictions after the Commission's preliminary determinations in these investigations which permitted it to access credit and repay old borrowings. The petitioner concluded that

[w]ithout these trade cases there is serious reason to question whether [the company] would have been able to successfully carry out any of the above transactions. Similarly, the ultimate success of these cases will have a great bearing on how long [the company's] temporarily improved fortunes are likely to continue.²⁶³

Explained another,

The corporation is more and more dependent upon borrowed funds to remain competitive and as long as unfairly traded imports continue, the corporation's prospects for producing reasonable profits that would attract investors and lenders will be restricted.²⁶⁴

The brief "window of opportunity" notwithstanding, virtually every petitioning company indicated that it has been forced to delay, reduce, or completely forego some modernization program or other capital expenditure -- programs and expenditures designed to enhance their respective abilities to compete with fairly traded imports and preserve American jobs.

At the hearing, the chief executive officers of two of the petitioners, and the president of a third, all testifying under oath, made very clear that the domestic industry is threatened with imminent injury -- lack of capital -- and that this injury is a result of the capital market's perception of the effect of unfair imports.²⁶⁵ According to one,

The idea I think has been for this industry that on a cost and quality standpoint we need to be world-class competitive. And I think we have invested and we have taken the necessary downsizing to do this and I think we are there today.

I think the problem is that as the capital markets look at this industry[,] we have not shown the ability[,] even after doing this and being recognized by most of the steel analysts throughout the world that we have attained this position[,] we are still unable to generate any profitability.

And it is this need to do this and to be able to demonstrate that . . . we can now make some money from this business.

²⁶² Report at Appendix G, G-3.

²⁶³ Id.

²⁶⁴ Id.

²⁶⁵ Hearing transcript at 176-185.

And until we do that, and certainly unfairly traded imports have been the biggest impediment to having that happen, until we do that I think the capital markets are going to look at us as a very speculative investment.

Id. at 180-81.

Another echoed similar concerns.

Our ability to invest, our ability to modernize, is absolutely essential to the future of our company. We have invested and we have modernized with the hope and reliance that we were going to be able to trade in this market -- in this market -- on a fairly traded [for] value basis.

We are not able to do that, so it [has] impaired and does impair our future ability to access capital . . .

I think that debt rating, the ratings given to us by the various financial ratings institutions, says a great deal about what the markets think about our respective companies. I think the rates that we must pay for future modernization and for borrowing, is reaching very, very high levels.

So we are at a very important juncture in our future as a company. We need to access capital markets even more . . .

Id. at 178.

The third was even more succinct.

Last year[,] we literally could not get capital. There were a number of major offerings; they were held in abeyance; until your rulings, okay?

If you look at the financing that have gone on . . . because people recognized, and particularly Wall Street -- they are the smartest people about where to put money.

And they would not invest in these bond offerings and ours was put on the back burner until these rulings were made.

* * *

Price earnings ratios in the steel industry in America today bump along at the bottom of any industry. They are abysmal. If we wanted to raise as much money as we spend a year on the capital markets we would sell a third of the company every year to do the modernization we are currently doing.

So you have to look at the access to capital over the last decade or two as well as the ability to raise capital in future and it is going to be a very very tough thing. And we are all going to need capital in the future.

Id. at 183-84.

Petitioners, however, are not alone in their assessment of the debilitating consequences of the unfair imports on the domestic industries' ability to access capital. Steel analysts from three of the leading investment banking firms in the United States, and a managing director from a fourth, provided sworn affidavits attesting to the fact that, without the imposition of antidumping and countervailing duties, access to capital will be even more restricted, and the limited available capital even more costly.²⁶⁶

And, it would seem that the industry leaders and lenders quite correctly assessed the capital market's perception. Within hours of the announcement of the Commission's determinations in these investigations on July 27, 1993, steel stocks plummeted: National Steel, down 27% to \$14.875;²⁶⁷ Bethlehem, down 20.7% to \$14.875; LTV down 13.7% to \$12.625; USX down 12.6% to \$32.00; Inland, down 11% to \$26.375.²⁶⁸ Even Nucor, the leading domestic minimill, suffered a decline in stock prices.²⁶⁹ Collectively, steel companies' stock value declined approximately \$1.1 billion in the week following the Commission's vote.

While access to capital is not an explicit statutory threat factor, I find that this adverse effect is entirely consistent with the type of imminent injury anticipated by the threat rationale, particularly as it relates to the actual and potential negative effects on the industry's development and production efforts.

My determinations, however, are not exclusively premised upon the industries' difficulty in obtaining capital. Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."²⁷⁰ I have

²⁶⁶ Petitioners' posthearing brief at Appendix I, Exhibits A-D.

²⁶⁷ Business Week, "A Blow to Big Steel's Recovery," (August 9, 1993) at 36.

²⁶⁸ Cleveland Plain Dealer, "Panel overturns steel penalties: No injury or threat found in 42 of 74 cases," (July 28, 1993) at 1G.

²⁶⁹ Id.

²⁷⁰ The Commission must consider ten factors in the threat analysis. They are:

(I) if a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(continued...)

carefully scrutinized each relevant statutory factor and discuss each in turn below.

Before discussing in more detail my complete causal analysis, I want to point out that my analysis is particularly mindful of the 1992 data, which provides an eight month window in which to observe the adverse effects of the unfair imports, unconstrained by the VRAs. The discernible trends during this period are of distinct significance in assessing the real threat of imminent injury posed by the cumulated imports. My analysis of the threat of material injury to each of the four industries follows.

A. Hot-Rolled

As discussed above, for purposes of my threat analysis with respect to hot-rolled steel producers, I have cumulated imports from Brazil, Canada, France, Germany, Japan, Korea, and The Netherlands. Producers in four of these countries were found by the Department of Commerce to be subsidized by their respective governments.²⁷¹ Although Commerce found only a small portion of these subsidies to be export related, the aggregate impact of these subsidies is not, by any means, inconsequential. Equity infusions, debt assistance, and preferential loan treatment served to provide the subject producers with an enduring competitive advantage over the U.S. industry. In particular, these subsidies provide producers with capital they apparently could not otherwise obtain -- precisely the problem faced by domestic producers. By enabling such producers unworthy of equity to modernize and advance the state of their operations, the unfair advantage bestowed will continue long past the time the funds were actually spent and will enable these producers to continue their presence in the U.S. market and compete on an unfair basis.

²⁷⁰(...continued)

(VII) any other demonstrable adverse trends that indicate probability that importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both raw agricultural product (within the meaning of paragraph (4)(E)(iv) and any product processed from such raw agricultural product, the likelihood there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.

19 U.S.C. § 1677(7)(F)(i).

In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. See 19 U.S.C. section 1677(7)(F)(iii).

²⁷¹ Report at Appendix E.

Productive capacity of the cumulated countries increased during the period of investigation, from 110.4 million short tons in 1990 to 113.9 million short tons in 1992.²⁷² Existing unused capacity among these countries is in excess of 10 million short tons.²⁷³ This represents approximately 20% of 1992 U.S. consumption.²⁷⁴

Imports from the cumulated countries increased irregularly during the period of investigation, from 2.5 million short tons in 1990 to 3.0 million short tons in 1992.²⁷⁵ Between 1991 and 1992, imports increased 30% by quantity and gained 15% in share of domestic consumption, from 5.2% to 6.0%.²⁷⁶ In contrast, domestic hot-rolled production declined throughout the period of investigation, from 49.8 million short tons in 1990 to 47.9 million short tons in 1992.²⁷⁷ Domestic share of consumption also declined slightly.²⁷⁸

While it appears that the cumulated imports have had only minimal price suppressing or depressing effect, between 1990-92, the imports' average non-weighted unit value declined nearly four times more than domestic unit values: 11.0% for the imports²⁷⁹; 2.6% for the domestic product.²⁸⁰ The larger decrease in the unit value of the cumulated imports during 1992, at the same time that they increased their market share, indicates that domestic prices must decline even further to compete with the unfair imports. Consequently, it becomes virtually impossible for the industry to price its product at a level sufficient to generate additional internal working capital.

In addition to the substantial underutilized capacity already discussed, the subject cumulated countries also have enormous production which can be shifted from other export markets to the United States. Of these countries' production in 1992, 12.5%, or about 12 million short tons, was exported to non-U.S. markets.²⁸¹ This represents 25% of 1992 U.S. consumption, and almost four times the total hot-rolled imports in 1992.²⁸²

The most severe threat posed by the imports is to the domestic industry's existing development and production efforts. As I have noted throughout these views, the domestic industry's ability to access the capital markets has been, and continues to be, severely impeded by the presence of unfairly traded imports. It would be expected that the industry's efforts to rationalize operations, produce competitive quality products, and increase efficiency -- all capital intensive ventures -- would be reflected in increases in capital expenditures. The record, however, presents a different picture.

²⁷² Report at Table 56; Table 60; Table 65; Table 69; Table 74; Table 78; Table 83.

²⁷³ Id.

²⁷⁴ Report at Table 56; Table 60; Table 65; Table 69; Table 74; Table 78; Table 83; Table 103.

²⁷⁵ Report at Table 94.

²⁷⁶ Report at Table 94; Table 103.

²⁷⁷ Report at Table 15.

²⁷⁸ Report at Table 103.

²⁷⁹ Report at Table 94.

²⁸⁰ Report at Table 16.

²⁸¹ Report at Table 56; Table 60; Table 65; Table 69; Table 74; Table 78; Table 83.

²⁸² Report at Table 94.

Capital expenditures for machinery, equipment and fixtures declined precipitously during the period of investigation, from \$279.3 million in 1990 to \$227.3 million in 1991, and then to just \$135.6 million in 1992.²⁸³ The substantial decline between 1991-92 is particularly significant. It reflects the capital markets' perception that the expiration of the VRAs would adversely affect the domestic industry, thus the markets further restricted capital access. Continued inability to raise capital due to this perception regarding unfair import competition will prevent the industry from making investments necessary to advance current production capabilities and thus lead to imminent injury.

These data must also be viewed within the context of the fundamental role played by the hot-rolled steel industry. Investment in this industry is essential not only for its own survival, but for the survival of the related industries producing the higher value-added products such as cold-rolled and corrosion-resistant steel. Without a thoroughly modernized and productive hot-rolled steel industry, none of the subsequent industries relying on feedstock of hot-rolled steel can be expected to survive. The fact that investment in this industry is declining, a trend exacerbated by the presence of unfair imports, bodes imminent ill for the entire steel industry.

The situation is compounded by the relative condition of the domestic mills compared to those of the subject countries. U.S. coke batteries and blast furnaces are among the oldest in the world, built during and before World War II, while those of the subject countries are much newer.²⁸⁴ Thus, not only do the subject countries have greater access to capital through their governments' subsidy practices, but U.S. producers are confronted with imminent and massive capital expenditures -- expenditures the subject producers will not face for many years, if ever.

Based on the foregoing, particularly the cumulated imports' increase in production and market share, their rapidly declining unit values, the large volume of divertible exports and underutilized capacity, and the imports' deleterious effect on the domestic industry's ability to raise capital, I find that the domestic industry producing hot-rolled products is threatened with imminent injury by reason of the cumulated unfair imports from Brazil, Canada, France, Germany, Japan, Korea, and the Netherlands.

B. Cold-Rolled

As discussed above, for purposes of my threat analysis with respect to cold-rolled steel products, I have cumulated imports from Belgium, Brazil, Canada, France, Germany, Japan, Korea, and the Netherlands. Producers in five of these countries were found by the Department of Commerce to have been subsidized by their respective governments. Although only a small portion of these subsidies were export related, as discussed above, the aggregate impact of these subsidies is still significant. Equity infusions (Belgium, Brazil, France, Korea), loans (Belgium, France, Korea), and assumption of debt (Belgium) by their respective governments gives these subject producers a competitive advantage over the U.S. industry.²⁸⁵ In particular, these subsidies provide producers with capital they apparently could not otherwise obtain -- precisely the problem faced by domestic producers. By enabling such producers unworthy of equity to modernize and advance the state of their operations, the unfair advantage bestowed will continue long past the time the funds were actually spent and will enable these producers to continue their presence in the U.S. market and compete on an unfair basis.

Although there has been little change in the cumulated countries' productive capacity during the period of investigation, these countries have a substantial amount of unused capacity. In 1992,

²⁸³ Report at Table 43.

²⁸⁴ Hearing transcript at 184.

²⁸⁵ Report at Appendix E.

there was approximately 16% underutilization, or 10.5 million short tons.²⁸⁶ This is more than five times larger than all subject imports in 1992 and represents over 37% of total domestic consumption.²⁸⁷

Imports from the cumulated countries increased irregularly by 8.8% during the period, from 1.55 million short tons in 1990 to 1.69 million short tons in 1992.²⁸⁸ The cumulated imports' share of domestic consumption also increased during the period, from 5.3% in 1990 to 5.8% in 1992, an increase of nearly 10%.²⁸⁹ In contrast to the subject imports, domestic cold-rolled production declined by approximately 2.5% during the period.²⁹⁰

While it appears that the cumulated imports have had only minimal price suppressing or depressing effects, between 1990-92, the imports' average non-weighted unit value declined three times more than the domestic unit values: 7.3% for the imports;²⁹¹ 2.4% for the domestic product.²⁹² The larger decrease in the unit value of the cumulated imports during 1992 at the same time that the imports increased market share, indicates that domestic prices must decline even further to remain competitive with the cumulated imports. Domestic producers, therefore, will be precluded from pricing their product at levels which will generate additional internal working capital.

In addition to the substantial underutilized capacity already discussed, the cumulated countries also have significant production which can be shifted from other markets to the United States. Of these countries' production in 1992, over 21%, or about 11.8 million short tons, was shipped to non-U.S. markets.²⁹³ This represents 38% of domestic consumption in 1992 and approximately six times the amount of total subject imports.²⁹⁴

The most severe threat posed by the imports is to the domestic industry's existing development and production efforts. As previously stated, the domestic industry's ability to access the capital markets has been, and continues to be, severely impeded by the presence of unfairly traded imports. It would be expected that the industry's efforts to rationalize operations, produce competitive quality products, and increase efficiency -- all capital intensive ventures -- would be reflected in increases in capital expenditures. The record, however, presents a different picture. Capital expenditures for machinery, equipment and fixtures declined markedly during the period of investigation, from \$335.2 million in 1990 to \$184.6 million in 1992.²⁹⁵ The substantial decline in capital expenditures is particularly significant. It reflects the capital markets' perception that the

²⁸⁶ Report at Table 54; Table 57; Table 61; Table 66; Table 70; Table 75; Table 79; Table 84.

²⁸⁷ Report at Table 54; Table 57; Table 61; Table 66; Table 70; Table 75; Table 79; Table 84; Table 95; Table 105.

²⁸⁸ Report at Table 95.

²⁸⁹ Report at Table 105.

²⁹⁰ Report at Table 15.

²⁹¹ Report at Table 95.

²⁹² Report at Table 16.

²⁹³ Report at Table 54; Table 57; Table 61; Table 66; Table 70; Table 75; Table 79; Table 84.

²⁹⁴ Report at Table 95.

²⁹⁵ Report at Table 43.

expiration of the VRAs would adversely affect the domestic industry, thus the markets further restricted capital access. Continued inability to raise capital due to this perception regarding unfair import competition will prevent the industry from making investments necessary to advance current production capabilities and thus lead to imminent injury.

Based on the foregoing, particularly the cumulated imports' increase in market share, the large volume of divertible exports and underutilized capacity, and the imports' adverse effect on the domestic industry's ability to raise capital, I find that the domestic industry producing cold-rolled products is threatened with imminent injury by reason of the cumulated unfair imports from Belgium, Brazil, Canada, France, Germany, Japan, Korea, and the Netherlands.

C. Cut-to-Length Plate

As discussed above, for purposes of my threat analysis with respect to cut-to-length plate, I have cumulated imports from Belgium, Brazil, Canada, Finland, Mexico, Spain, Sweden and South Africa.²⁹⁶ Producers in five of these countries were found by the Department of Commerce to have been subsidized by their respective governments. Although Commerce found only a small portion of these subsidies to be export related, the aggregate impact of these subsidies is not, by any means, inconsequential. Whether in the form of assumption of debt (Belgium, Mexico), equity infusions (Belgium, Brazil, Mexico, Sweden), or loans (Belgium, Mexico, Spain, Sweden), these subsidies provide the subject producers a competitive advantage over the domestic industry. In particular, these subsidies provide producers with capital they apparently could not otherwise obtain -- precisely the problem faced by domestic producers. By enabling such producers unworthy of equity to modernize and advance the state of their operations, the unfair advantage bestowed will continue long past the time the funds were actually spent and will enable these producers to continue their presence in the U.S. market and compete on an unfair basis.

Although there has been a slight decrease in the cumulated countries' aggregate productive capacity, from 6.23 million short tons in 1990 to 6.16 million in 1992, there is fairly substantial capacity underutilization in these countries: approximately 15% in 1992.²⁹⁷ Viewed in more concrete terms, these countries collectively are able to produce an additional 922,500 short tons of plate -- 210,000 tons more than was imported into the United States from all subject countries in 1992.²⁹⁸ Projected 1993 data do not demonstrate any significant increase in these cumulated capacity utilization rates.²⁹⁹

Imports from the cumulated countries, including South Africa, increased irregularly during the period of the investigation, from 544,000 short tons in 1990 to 609,000 short tons in 1992, more than a 10% increase.³⁰⁰ The value of these 1992 imports was approximately \$212 million.³⁰¹ In

²⁹⁶ The Commission has only import volume and value for South Africa. Accordingly, for purposes of this threat analysis, the aggregate data understates the threat posed by the cumulated imports. In this regard, I note that should imports from South Africa be found to be fair, my threat analysis would not be affected; I would still reach an affirmative determination regarding imports from the remaining cumulated countries.

²⁹⁷ Report at Table 52; Table 55; Table 59; Table 63; Table 81; Table 88; Table 90.

²⁹⁸ Report at Table 52; Table 55; Table 59; Table 63; Table 81; Table 88; Table 90; Table 93.

²⁹⁹ Id.

³⁰⁰ Report at Table 93.

³⁰¹ Report at Table 101.

contrast, domestic plate production declined more than 11.6% during the period, from 4.91 million short tons in 1990 to 4.34 million short tons in 1992.³⁰² The cumulated countries' share of domestic consumption declined slightly between 1990-91, from 9.5% to 9.3%, increasing nearly 24% in 1992 to 12.2%.³⁰³ Concurrent with the cumulated countries' increase in market share, the domestic industry's share of consumption fell from slightly.³⁰⁴

The record indicates that the cumulated plate imports have had and, absent imposition of duties, likely will continue to have some depressing or suppressing effect on domestic plate prices. Of 269 available price comparisons, the cumulated imports undersold the domestic product in 160 instances.³⁰⁵ Unit values of shipments of domestic plate declined 12.5% during the period of the investigation, from \$458 per ton in 1990 to \$401 in 1992.³⁰⁶ The average non-weighted unit value of the cumulated imports declined by an even greater margin, 17.5%, falling from \$425 per ton in 1990 to \$350 in 1992.³⁰⁷ The larger decrease in the unit value of the cumulated imports during 1992, at the same time that the imports increased market share, indicates that domestic prices must decline even further to remain competitive with the cumulated imports. Significantly, this price effect will prohibit the domestic industry from pricing its product at a level adequate to produce additional internal capital.

Even without underutilized capacity, the cumulated countries have enormous production which can be shifted to the United States from other export markets. In 1992, the cumulated countries produced approximately 5.24 million short tons of subject plate.³⁰⁸ More than 49% of this production, 2.59 million short tons, was exported to countries other than the United States. This 2.72 million short tons represents more than half of total domestic plate consumption in 1992 and more than three and one-half times total plate imports, from both subject and non-subject countries.³⁰⁹

The cumulated unfair imports pose an even more severe threat to the domestic industry's existing development and production efforts. As I have noted throughout these views, the domestic industry's ability to access the capital markets has been, and continues to be, severely impeded by the presence of the unfair imports in the marketplace. It would be expected that the industry's efforts to rationalize operations, produce competitive quality products, and increase efficiency -- all capital intensive ventures -- would be reflected in increases in capital expenditures. The record, however, presents a different picture. Capital expenditures for machinery, equipment and fixtures increased from \$32.1 million in 1990 to \$61.5 million in 1991, and then declined more than 57% to \$26.1 million in 1992.³¹⁰ The substantial decline between 1991-92 is particularly significant. It reflects the capital markets' perception that the expiration of the VRAs would adversely affect the

³⁰² Report at Table 15.

³⁰³ Report at Table 101.

³⁰⁴ Report at Table 101.

³⁰⁵ Report at Tables 110-113.

³⁰⁶ Report at Table 16.

³⁰⁷ Report at Table 93.

³⁰⁸ Report at Table 52; Table 55; Table 59; Table 63; Table 81; Table 88; Table 90.

³⁰⁹ Report at Table 10; Table 52; Table 55; Table 59; Table 63; Table 81; Table 88; Table 90; Table 93.

³¹⁰ Report at Table 43.

domestic industry, thus the markets further restricted capital access. Continued inability to raise capital due to this perception regarding unfair import competition will prevent the industry from making investments necessary to advance current production capabilities and thus lead to imminent injury.

Based on the foregoing, particularly the cumulated imports' increase in market share, their rapidly declining unit values, the large quantities of product available to be diverted from other export markets, and the domestic industry's lack of access to capital due to the presence of the unfair imports in the market, I find that the domestic industry producing cut-to-length plate is threatened with imminent injury by reason of the cumulated unfair imports from Belgium, Brazil, Canada, Finland, Mexico, Spain, Sweden and South Africa.

D. Corrosion-Resistant

As discussed above, for purposes of my threat analysis with respect to corrosion-resistant products, I have cumulated imports from Australia, Canada, Germany, Japan and Korea. Producers in Germany and Korea were found by the Department of Commerce to have been subsidized by their respective governments. Although the subsidy margins for both countries were relatively low, I nonetheless find that these subsidies do contribute to the real threat of imminent injury posed by the cumulative imports in much the same manner as I have discussed for the other products.

The cumulated countries' productive capacity increased throughout the period of the investigation, from 20.00 million short tons in 1990 to 23.20 million in 1992.³¹¹ Although production increased as well, it increased at a slower rate; consequently, weighted capacity utilization declined from 91.3% in 1990 to 85.6% in 1992.³¹² Thus, in 1992, the cumulated unused capacity was 3.34 million short tons -- 1 million short tons more than all corrosion-resistant imports from both subject and non-subject countries in 1992.³¹³ Projected 1993 data do not demonstrate any significant increase in these cumulated capacity utilization rates.³¹⁴

Cumulated imports declined from 1.42 million short tons in 1990 to 1.34 million short tons in 1991, then increased nearly 38% to 1.84 million short tons in 1992.³¹⁵ The 1992 imports were valued at more than \$1.15 billion dollars.³¹⁶ In contrast, domestic production increased only by 1.4% between 1990-92.³¹⁷ As a result, the cumulated imports' share of domestic consumption increased from 11.2% in 1990 to 13.7% in 1992, an increase of more than 22%.³¹⁸ During this same period, the domestic industry's share of consumption declined from 85.6% to 82.7%.³¹⁹

³¹¹ Report at Table 50; Table 62; Table 71; Table 76; Table 80.

³¹² Id.

³¹³ Report at Table 50; Table 62; Table 71; Table 76; Table 80; Table 96.

³¹⁴ Report at Table 50; Table 62; Table 71; Table 76; Table 80.

³¹⁵ Report at Table 96.

³¹⁶ Report at Table 107.

³¹⁷ Report at Table 15.

³¹⁸ Report at Table 107.

³¹⁹ Id.

While it appears that the cumulated imports have had only minimal price suppressing or depressing effect, between 1990-92 the imports' average non-weighted unit value declined more than twice that of the domestic unit values: 9.2% for the imports; 4.1% for the domestic product.³²⁰ In addition, although the cumulated imports more frequently oversold the domestic product, most of the instances of underselling were in 1991 and 1992.³²¹ The larger decrease in the unit value of the cumulated imports at the same time that the imports' increased market share, as well as the imports' increasing trends in underselling, indicates that domestic prices must decline even further to remain competitive with the cumulated imports. These suppressing and depressing price effects will prohibit the domestic industry from pricing its product at a level adequate to produce additional internal capital.

Importers' inventories of the cumulated imports increased more than 70% during the period of the investigation, from 112,649 short tons in 1990 to 193,298 short tons in 1992.³²² The product held in inventory represented more than 10% of shipments of the cumulated imports.³²³

In addition to capacity underutilization, the cumulated countries have enormous production which can be shifted to the United States from other export markets. In 1992, these countries exported more than 4.16 million short tons of corrosion-resistant products to non-U.S. markets.³²⁴ These non-U.S. exports represent more than 25% of all domestic consumption of corrosion-resistant products in 1992, and approximately 1.25 million short tons more than was imported from both subject and non-subject countries.³²⁵

Arguably more than any of the other industries, the development and production efforts of the domestic corrosion-resistant industry are severely threatened by the cumulated imports. It is in this industry, the high-end of the flat-rolled steel continuum, in which unit values are the highest and future product growth and development most promising. And, indeed, access to capital most crucial to sustaining this position in the market. Yet, the record evidence shows a domestic industry unable to attract this capital. Capital expenditures by the domestic industry on machinery, equipment and fixtures declined more than 50% during the period, from \$497.4 million in 1990 to \$494.2 million in 1991, and then to \$240.7 million in 1992.³²⁶ Expenditures on land, building and leasehold improvements declined even more dramatically, more than 90%, from \$59.4 million in 1990 to \$46.3 million in 1991, and then to a mere \$5.2 million in 1992.³²⁷ Most significantly, research and development expenditures, the key to product growth and development, declined nearly 25%, from \$26.3 million in 1990 to \$20.2 million in 1992.³²⁸ The substantial declines in these expenditures, particularly in between 1991 and 1992, is significant. It reflects the capital markets' perception that the expiration of the VRAs would adversely affect the domestic industry, thus the markets further

³²⁰ Report at Table 96; Table 16.

³²¹ Report at Appendix N.

³²² Report at Table 48.

³²³ Report at Table 107.

³²⁴ Report at Table 50; Table 62; Table 71; Table 76; Table 80.

³²⁵ Report at Table 10; Table 96.

³²⁶ Report at Table 43.

³²⁷ Id.

³²⁸ Report at Table 41.

restricted capital access. Continued inability to raise capital due to this perception regarding unfair import competition will prevent the industry from making investments necessary to advance current production capabilities and thus lead to imminent injury.

Based on the foregoing, particularly the cumulated imports' increase in market share, underutilized capacity, declining unit values, the large quantities of product available to be diverted from other export markets, increasing importers' inventories, and the domestic industry's lack of access to capital due to the presence of the unfair imports in the market, I find that the domestic industry producing corrosion-resistant steel products is threatened with imminent injury by reason of the cumulated unfair imports from Australia, Canada, Germany, Japan and Korea.

IV. APPLICATION OF SECTIONS 1671d(b)(4)(B) and 1673d(b)(4)(B)

As I have made final affirmative threat of material injury determinations, the statute requires that I make an additional finding indicating whether I would have found present material injury "but for" the suspension of liquidation of the subject imports pursuant to the various preliminary affirmative determinations.³²⁹ In the countervailing duty investigations, suspension of liquidation occurred on December 7, 1992; in the antidumping investigations, suspension of liquidation occurred on February 4, 1993. I find that none of the four industries would have been materially injured by the cumulated imports absent the suspensions of liquidation.

V. CRITICAL CIRCUMSTANCES

As I have made final affirmative threat of material injury determinations rather than affirmative material injury determinations, I do not make critical circumstances findings.³³⁰

³²⁹ 19 U.S.C. § 1671d(b)(4)(B) and 1673d(b)(4)(B).

³³⁰ 19 U.S.C. § 1673d(b)(4)(A).

**ADDITIONAL AND DISSENTING VIEWS OF
COMMISSIONER ANNE E. BRUNSDALE**

**Certain Flat-rolled Carbon Steel Products from Argentina,
Australia, Austria, Belgium, Brazil, Canada, Finland, France,
Germany, Italy, Japan, Korea, Mexico, the Netherlands, New
Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom**

**Invs. Nos. 701-TA-319-332, 334, 336-342, 344, 347-353 (Final) and
Invs. Nos. 731-TA-573-579, 581-592, 594-597, 599-609,
and 612-619 (Final)**

In these final investigations, I find that a domestic industry is materially injured by reason of imports of cut-to-length plate from Belgium, Brazil, Canada, Finland, Mexico, Spain, and Sweden that the Department of Commerce has determined are being sold at less than fair value (LTFV) and by reason of imports from Belgium, Brazil, Mexico, Spain, and Sweden that are benefiting from government subsidies.^{1,2} I find that no domestic industry is materially injured or threatened with material injury by reason of imports of cut-to-length plate from France, Germany, Italy, Korea, Poland, Romania, or the United Kingdom.³

I find that no domestic industry is materially injured or threatened with material injury by reason of imports of hot-rolled carbon steel products from Belgium, Brazil, Canada, France, Germany, Japan, Korea, or the Netherlands.⁴ Similarly, I find that no domestic industry is materially injured or threatened with material injury by reason of imports of cold-rolled carbon steel products from Argentina, Austria, Belgium, Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, or Spain.⁵ I find that no domestic industry is materially injured or threatened with material injury by reason of imports of corrosion resistant steel products, other than clad plate, from Australia, Brazil, Canada, France, Germany, Japan, Korea, Mexico, New Zealand, or Sweden.⁶

¹ Report at I-14 - I-16, Table 7.

² I do not find that retroactive imposition of duties on cut-to-length plate from Spain, for which Commerce made an affirmative critical circumstances determination, is necessary to a "prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time." (19 U.S.C. 1673d(b)(4)(A)(i))

³ Commerce has determined that imports from all of these countries are being sold at LTFV and that imports from France, Germany, Italy, Korea, and the United Kingdom are being subsidized. (*Id.*)

⁴ Commerce has determined that imports from all of these countries are being sold at LTFV and that imports from Belgium, Brazil, France, Germany, and Korea are being subsidized. (*Id.*)

⁵ Commerce has determined that imports from all of these countries are being sold at LTFV and that imports from Austria, Belgium, Brazil, France, Germany, Italy, Korea, and Spain are being subsidized. (*Id.*)

⁶ Commerce has determined that imports from all of these countries, other than New Zealand and Sweden, are being sold at LTFV and also that imports from Brazil, France, Germany, Korea, Mexico, New Zealand, Sweden are being subsidized. (*Id.*)

Finally, I find that no domestic industry is materially injured or threatened with material injury by reason of imports of clad plate from France or Japan.⁷

Like Product

Like most of my colleagues, I find that there are five like products in these investigations: hot-rolled carbon steel products, cold-rolled carbon steel products, corrosion-resistant carbon steel products other than clad plate, clad plate, and cut-to-length plate. I concur with the like-product discussion in the Commission opinion. Here I will only highlight the portions of that analysis that I find particularly relevant.

As I have noted in previous cases, in analyzing questions of like product, I seek to determine whether the various products under consideration are substitutable for each other. This substitutability can occur at the consumption level -- that is, consumers change their purchasing patterns and choose one product rather than the other because the first product has become relatively less expensive. It can also occur at the production level -- that is, producers alter the mix of products they produce in response to changes in the products' prices. If there is significant substitutability on the part of either consumers or producers, I generally find that the two products are part of the same like-product category.⁸

In almost all of the like-product issues raised in these investigations, the record amply demonstrates that producers of one product can quite easily begin producing the other product. For example, production of cold-rolled motor lamination steel simply involves the addition of a little silicon to the melt.⁹ Similarly, the production of ultra-bright steel differs from that of other cold-rolled steels only in the use of polishing rolls in the final tempering step, while the production of floor plate differs from that of other hot-rolled products in that when floor plate is being produced one or more rolls with a pattern cut in them are used in the final hot-rolling step.¹⁰

In those few cases where producers cannot easily make the various products on the same equipment and with the same workers, customers are often able to substitute one product for the other. Thus, in the case of universal-mill plate, virtually all purchasers have switched to sheared-mill plate.¹¹

⁷ Commerce has determined that imports from both of these countries are being sold at LTFV and that imports from France are being subsidized. (*Id.*) To the extent that it is deemed necessary to determine whether a domestic industry is being injured or threatened with material injury by reason of imports of clad plate from other countries subject to investigation, I find in the negative for those countries as well. There is no evidence in the record of any imports of clad plate from countries other than France and Japan, and therefore, there is no reason to believe such imports are injuring a domestic industry or pose a threat thereof.

⁸ See, for example, Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, Invs. Nos. 731-TA-458 and 459 (Final), USITC Pub. 2383, at 32-43 (May 1991) (Dissenting Views of Acting Chairman Anne E. Brunsdale).

⁹ Report at I-23.

¹⁰ *Id.* at I-22.

¹¹ Hearing transcript at 314 (Testimony of John J. Mangan, Esq., Skaddan, Arps, Slate, Meagher & Flom, Counsel for Petitioners).

Domestic Industries and Related Parties

I find that the domestic industries in these investigations are the U.S. producers of the five like products and further find that circumstances are not appropriate for the exclusion of any related parties. These issues are discussed in the Commission opinion, and I need add nothing to that discussion here. Similarly, the Commission's opinion adequately explains why we are required to examine the effect of the dumped or subsidized imports in the context of the entire domestic industry, including any production that is captively consumed.

Conditions of Competition in the Steel Industry

Several circumstances, in addition to the subject imports, have affected the performance of the U.S. steel industry in recent years. Among these are modernization efforts undertaken by the industry, the entry of new minimills, such as Nucor, and the general weakness in the U.S. economy. However, the Commission must determine whether the unfair imports, and not any of these other events, are causing material injury to the various steel industries. While it is important that I understand how such events effect the steel industry, in the end I must separate these effects from those of the unfair imports, and base my determination on the latter.

Modernization of the Domestic Industry. Between 1980 and 1992, the U.S. steel industry invested over \$35 billion in modernizing its plant and equipment,¹² closing more than 450 steel-making facilities in the United States in the process.¹³ As a result, the industry's real production costs declined by 28 percent and labor productivity increased by 60 percent, during the 1980s. Technological advances and changes in cost structures meant that by 1991 a ton of steel that would have cost \$669 to produce using the technology and cost structure of a decade earlier could be produced for \$480.¹⁴

The modernization of the domestic industry has been accompanied by a substantial increase in joint ventures between U.S. and foreign steel companies or the outright ownership of U.S. steel facilities by foreign firms. The best-known of the joint ventures may well be the UPI plant, a 50-50 joint venture between USX and POSCO, a Korean steel producer. However, there are many other such joint ventures or foreign ownership arrangements and more are planned in the near future.¹⁵

Minimills. Another aspect of the modernization of the U.S. steel industry has been the growth of the so-called minimills, the best-known of which is Nucor with facilities in Indiana and Alabama. Whereas minimills originally produced only bars, rods, and other "long products", they have recently begun to move into the production of hot- and cold-rolled sheet and larger structural products.¹⁶ Furthermore, minimills generally have significantly lower costs than their domestic competitors who operate integrated mills.¹⁷

¹² Petitioners' Pre-Hearing Brief at Volume 5, p. 3.

¹³ *Id.* at Volume 5, p. 16.

¹⁴ *Id.* at Volume 5, p. 4. Figures reported in the brief have been adjusted from 1990 to 1991 constant dollars.

¹⁵ See Report at I-46, Table 13.

¹⁶ *Id.* at I-44.

¹⁷ Pre-Hearing Economic Submission of Trade Resources Company in the Hot-Rolled Investigations at 71.

Various respondents argued that Nucor is a price leader in steel markets and that it is Nucor and the other minimills that are responsible for any injury suffered by the domestic industry, not the subject imports.¹⁸ I do not doubt that competition from low-cost minimills has adversely affected the integrated steel producers. A high-cost firm will always do better if there is no competition from lower-cost firms. However, as noted above, whether Nucor and the other minimills have reduced the profitability of other domestic steel producers is not germane to the question before us. We must determine whether imports are materially injuring the domestic steel industries, given everything else that has occurred in the industry.¹⁹

The Effect of a Weak Economy. Flat-rolled carbon steel products are used primarily in the production of capital equipment and consumer durable goods, as well as in construction. Demand for the products of these sectors tends to be highly affected by the overall condition of the economy. Thus, it is to be anticipated that the steel industry would have been adversely affected by the weak economic conditions of the late 1980s and early 1990s. On the other hand, the growth of U.S. automobile production, in particular the increase in Japanese transplant production and the overall increase in sales in 1992, would tend to increase steel demand.²⁰

International Steel Cartel. An additional issue that has been raised in these investigations is the possible existence of one or more international steel cartels that allegedly regulate steel trade in Europe and Japan.²¹ According to petitioners, such cartels have existed for many years and have resulted in agreements by European and Japanese steel producers to limit competition in each other's markets.

In addition to noting that the existence of such agreements has not been proven, I have two observations about these alleged cartels. First, I fail to see how the presence or absence of such cartels is of any direct relevance to the Commission's job of determining whether one or more domestic industries is materially injured by unfair imports. Such cartels are allegedly maintaining prices above competitive levels in respondent producers' home markets and encouraging the dumping of excess steel in the United States, whose producers are not part of the alleged agreements. If this were true, it would be reflected in Commerce's dumping margins. However, the Commission accepts these margins as given and does not look behind them. Beyond affecting the difference between the prices charged in a company's home market and in the United States, it is not clear to me what impact the existence of such cartels would have.

¹⁸ See, e.g., *id.* and Corrosion-Resistant Respondents' Brief at Exhibit B-23.

¹⁹ I note that economic experts working for respondents in the corrosion-resistant investigations have offered a statistical analysis that professes to demonstrate that imports had no effect on the prices received by domestic producers of sheet steel and of galvanized sheet and strip. (*Id.*) This analysis has been criticized by petitioners' experts because it does not contain any variables related to the subject imports. (Petitioners' Post-Hearing Brief at Volume 6, Attachment B-10.) I find this criticism persuasive. The fact that one can explain prices without reference to the price of imported steel does not demonstrate that the price of imported steel had no effect. Moreover, when respondents' economists include any variables related to imports, it is the market share of the imports. However, import market share will be affected by the price charged by domestic producers and the economists' specification therefore suffers from a technical econometric problem known as simultaneous equations bias. (For a discussion of simultaneous equations bias, see, e.g., Peter Kennedy, *A Guide to Econometrics*, Chapter 9.)

²⁰ Report at I-161 - I-162.

²¹ See, e.g., Hearing Transcript at 103-106 (Testimony of Alan W. Wolff, Esq., Dewey Ballantine, Counsel for Petitioners)

Second, I fail to understand how such cartels could be successful without including U.S. producers. If a cartel were raising steel prices above competitive levels, this would provide great opportunities for U.S. steel producers to sell their steel in the home markets of the participating suppliers -- unless, of course, foreign governments participated in these agreements and restricted imports of foreign steel in order to support the agreements. However, petitioners do not allege government support of these agreements. As they stated, "It's a private arrangement."²²

Cumulation and Negligibility

Under our statute, I am required to consider cumulatively the impact of unfair imports from various countries under investigation unless I find either (1) that such imports do not "compete with each other and with like products of the domestic industry in the United States market"²³ or (2) that such imports are "negligible and have no discernable adverse impact on the domestic industry."²⁴ Both of these exceptions to the general rule on cumulation are discussed in the Commission opinion, and I join in the conclusions reached there.

Specifically, I find there is not a reasonable overlap of competition between imports of hot-rolled steel from Korea and imports from other countries subject to investigation, and therefore I do not cumulate Korean imports of hot-rolled steel with those from other countries. The overwhelming majority of Korean hot-rolled steel coming into the United States is supplied exclusively to UPI, a joint venture between USX and the Korean-producer POSCO. As noted in the Commission opinion, the imports that are supplied to UPI are in certain niche categories in which there were no other imports from subject countries.²⁵

In addition, the record establishes that all producers of cold-rolled sheet obtain their hot-rolled steel from an affiliated producer.²⁶ A cold-rolled sheet producer relying on a non-affiliated supplier of hot-rolled would be at risk that in periods of peak demand it would be unable to obtain the hot-rolled steel as it needed and therefore would be unable to satisfy its customers needs.²⁷ Since a firm earns its greatest profits when supply is tight and prices high, this is an extreme risk and one to which no firm in the industry exposes itself.

Since UPI is affiliated only with USX and POSCO and not with any other importer, the economics of the situation effectively require UPI to acquire its hot-rolled steel from one or the other of these firms. It is not economic to purchase this steel from other import sources. And therefore there is no competition between POSCO and other importers for these sales.²⁸

²² Hearing Transcript at 104 (Testimony of Mr. Wolff).

²³ 19 U.S.C. 1677(C)(iv)(I).

²⁴ 19 U.S.C. 1677(C)(v).

²⁵ Report at I-140, Table 98, and F-10, Table F-2.

²⁶ Even petitioners agree with this position. See Petitioners' Pre-Hearing Brief at Volume 3, pp. 31-34.

²⁷ See Hearing Transcript at 659 (Testimony of Dr. Robert Crandall, Brookings Institution).

²⁸ I agree with the analysis in the Commission opinion establishing that hot-rolled imports from Korea that are not supplied to UPI are so small that they do not establish a reasonable overlap of competition, even though those imports may compete.

Where the discussion in the Commission opinion concludes that imports from a particular country are negligible, I agree that those imports are indeed "negligible and have no discernable adverse impact on the domestic industry." In addition, I find the following imports to be negligible: imports of hot-rolled steel from the Netherlands; imports of cold-rolled steel from Brazil, Canada, Germany, Korea, and the Netherlands; imports of corrosion-resistant steel other than clad plate from France; and imports of cut-to-length plate from Germany, Poland, Romania, and the United Kingdom.

Economic Arguments on Negligibility. Petitioners expended considerable effort attempting to convince the Commission that imports from all countries in these investigations should be cumulated because none of the subject imports had "no discernable adverse impact" regardless of how small they were in relation to the U.S. market. A major part of this effort involved presentations by two distinguished economists -- Dr. Sanford Grossman and Dr. Kenneth Arrow.

Professor Grossman's analysis. According to Dr. Grossman, even the smallest shipment of imported steel can have a significant effect because of the information it conveys about the intent of the foreign supplier. U.S. producers and buyers may take such a low price as a signal that the foreign producer intends to expand its role in the U.S. market by expanding production or by diverting shipments from other markets. Because of the threat of such an expansion in imports, Grossman posits that U.S. steel producers will be forced to lower their prices to meet the price of the imports.²⁹

I see several problems that make this model inapplicable to the issue of negligibility, at least in the steel industry. First, and most important, Grossman fails to consider why a foreign supplier would have the large amounts of unused capacity necessary to expand their production to become a major player in the United States or why it would be willing to divert large quantities from other markets to the United States. In fact, the presence of large quantities of excess capacity signals that the price of steel is so low that the capacity cannot be used profitably, and the willingness to put that capacity into production for sales in the United States signals that the price is higher in the United States. Similarly, a foreign producer would divert large quantities to the United States only if the price here is higher than what can be received in the rest of the world. The foreign steel producer, like a U.S. producer, will sell in the market where the price is the highest since this results in the highest profits.³⁰

If one foreign supplier's small shipments "inform" the domestic industry that it is willing to activate unused capacity or divert large quantities to the United States because the price is higher here, then any number of other foreign suppliers will also be anxious to expand production or to divert shipments to this market since they will also be able to get higher prices for their steel here. However, if a large number of foreign suppliers find it profitable to divert supply to the United States, the information conveyed by any single supplier's sales offer is not unique. If, for some reason, a particular small supplier were not selling in the United States, other foreign sources would still sell and at low prices, and their lower-price offers would provide the information about the state of the world steel market. Since the information about the willingness of foreign suppliers to sell in the United States at lower prices will be present whether or not any particular small supplier sells in the U.S. market, no individual small supplier will provide unique information, and its sales may be "negligible and have no discernible adverse impact" on the market in the United States.

A second problem with the Grossman model is that it assumes that U.S. steel producers have the flexibility to profitably cut their prices in response to a lower price from a foreign competitor.

²⁹ See generally, Petitioners' Pre-Hearing Brief at Volume 4, Exhibit 3, and Hearing Transcript at 366 *et seq.*

³⁰ Of course, account must be taken of costs, such as transportation costs and tariffs, that may differ from market to market.

However, as petitioners recognize, the steel industry, both in the United States and internationally, is competitive.³¹ In a competitive industry, individual firms do not have the flexibility to select the price they would like to charge. Rather, the forces of competition compel them to sell at the competitive price. As petitioners acknowledge, "In a workably competitive industry, a supply curve describes the production and pricing behavior of all suppliers, who are price takers."³² Thus, U.S. steel producers lack the flexibility to set prices that is posited in the Grossman model.

Finally, the Grossman model would be most applicable in the very short run where a new foreign supplier enters the market and where there is no previous history of its strategy in this market.³³ However, countries that the Commission is considering declaring negligible generally were in the U.S. market throughout the three-year period of investigation. And they did not turn into big players during that extended period of time. It is unclear to me why a U.S. steel producer should conclude that a supplier who had a very small share of the U.S. market for a considerable period of time is suddenly going to change its strategy and attempt to become a major player in this market.

Professor Arrow's analysis. In his submission, Professor Kenneth Arrow considers two ways in which the availability of imports can constrain the prices charged by domestic producers. However, in neither case does he demonstrate that the presence or absence of a single small supplier has any effect on the current state of the U.S. steel market. And this is the issue that I must consider in deciding whether imports from a country are negligible.

Dr. Arrow first posits a situation in which duties are imposed on imports from some foreign countries, but not from others. In such a situation, and assuming a high degree of substitutability between the various imports,³⁴ he notes that a small supplier who does not have to pay the duties could see an increase in its sales. Indeed, that supplier could become a large supplier. While Professor Arrow's analysis is correct, I do not see how it is relevant to the analysis of negligibility. The question in negligibility is whether the imports from a single country supplying a small share of the U.S. market are currently having an adverse impact, not whether that country could conceivably have such an impact in the future under different market conditions.

The second question Dr. Arrow addresses is whether small players can constrain the ability of domestic producers to increase their prices. Here, I think Dr. Arrow, like Dr. Grossman, fails to distinguish between the role of a single small supplier and that of all import sources taken as a whole. There can be no doubt that imports as a whole can affect the ability of domestic producers to raise prices.³⁵ However, the relevant question is what would happen if one of the many importers was no longer selling at an unfair price. And, as is always true in competitive markets, given the large number of competitive suppliers the presence or absence of one small supplier can easily have no discernible effect.

³¹ See Petitioners' Pre-Hearing Brief at Volume 8A, page B-2, n.2, and Table B-1.

³² Petitioners' Post-Hearing Brief at Volume 6, p. B9-2.

³³ Petitioners' economists appear to agree with this characterization. See *Id.* at Volume 6, page B13-1.

³⁴ The assumption of a high degree of substitutability among imports as well as between imports and domestic steel is not supported by the facts. See the discussion of substitutability below.

³⁵ Such a price increase could be the result of changing demand or supply conditions, such as an increase in demand, or the result of collusive effort by the domestic producers to charge non-competitive prices. Given the competitive nature of the domestic steel industry, the latter strategy, if attempted, is unlikely to be successful even if there were no imports.

Standards for Determining Negligibility. In determining whether imports from a particular country are eligible for the negligibility exception to the rule on cumulation, the statute directs that

the Commission shall evaluate all relevant economic factors regarding the imports, including, but not limited to, whether

- (I) the volume and market share of the imports are negligible,
- (II) sales transactions involving the imports are isolated and sporadic, and
- (III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.³⁶

Negligible market shares. In several cases in the past, I have found imports to be negligible if, throughout the period of investigation, their share of the U.S. market remained below 1 or 1.5 percent. Thus, in Steel Wire Rope from Argentina, Chile, India, Israel, Mexico, the People's Republic of China, Taiwan, and Thailand, I found imports from six of the eight subject countries to be negligible because their market shares "did not exceed 1.5 percent at any point during the period of investigation."³⁷ Similarly, in Coated Groundwood Paper from Belgium, Finland, France, Germany, and the United Kingdom, I noted that

Imports from three of the five countries involved in these investigations ... never came close to accounting for even 1 percent each of U.S. apparent consumption during the period of investigation, let alone 1.5 percent. This suggests that cumulation would probably be inappropriate even if the imports from the various countries and the domestic like product were fully fungible....³⁸

My practice in this area has been upheld by the Court of International Trade and the Court of Appeals in the Torrington case.

The Court finds it was reasonable for the Acting Chairman to conclude the small volume of imports from Argentina, Austria, Brazil, Hungary, Hong Kong, Korea, Mexico, Poland, Spain, Turkey and Yugoslavia [which individually never supplied more than 1 percent of the U.S. market during the period of investigation] were negligible.³⁹

Price sensitivity. In determining whether "the domestic market for the like product is price sensitive ... so that a small quantity of imports can result in price suppression or depression," I have employed the same tools of economics that I employ in analyzing the question of material injury. Such an analysis allows me to judge whether domestic prices would have risen to any perceptible

³⁶ 19 U.S.C. 1677(C)(v).

³⁷ Steel Wire Rope from Argentina, Chile, India, Israel, Mexico, the People's Republic of China, Taiwan, and Thailand, Invs. Nos. 701-TA-305 and 306 (Preliminary) and 731-TA-476-482 (Preliminary), USITC Pub. 2343, at 38 (December 1990) (Views of Chairman Anne E. Brunsdale).

³⁸ Coated Groundwood Paper from Belgium, Finland, France, Germany, and the United Kingdom, Invs. Nos. 731-TA-487 - 490 and 494 (Final), USITC Pub. 2467, at 28-29 (December 1991) (Concurring Views of Acting Chairman Anne E. Brunsdale).

³⁹ Torrington Co. v. United States, Court, 790 F.Supp. (CIT 1992), affirmed __ F.2d ____ (1993).

degree if imports from a particular country had not been sold in the United States at an unfairly low price.

How a small quantity of unfair imports affects the price received by domestic producers will depend on a variety of factors. For example, the more substitutable the imports for the domestic product, the more likely that the unfair imports will have had a discernible effect on domestic prices. Similarly, the smaller the change in demand for the product that results from a change in price -- i.e., the more inelastic the demand -- the greater the likelihood of price depression or suppression. Another factor that will affect the likelihood of significant price effects is the price responsiveness of domestic supply. If domestic suppliers will expand their output by a large amount in response to any change in price, it is not likely that the presence or absence of a small quantity of competing imports will have any effect on domestic price. Finally, the likelihood of price effects will depend on the amount by which the price of imports is unfairly low. The greater the gap between the observed price of the imports and a fair price, the more likely the imports are having an effect on the price of the domestic product.

Negligible Imports in these Investigations. Based on the considerations discussed above, I find that all of the imports found to be negligible in the Commission opinion are indeed negligible. In none of those cases was the volume or market share of the imports anything other than negligible. In addition, the markets are not so price sensitive that these small quantities of imports could result in price suppression or depression. The discussion in the Commission opinion covers the relevant factors for these cases, so I need not deal with those cases here.

However, there are additional cases in which I find imports to be negligible, and I discuss those cases below.⁴⁰

Hot-rolled products. I disagree with the Commission determination on negligibility of imports of hot-rolled steel products in only one instance: I find imports from the Netherlands to be negligible. The market share of imports from the Netherlands increased at a very slow rate during the period of investigation, equalling 0.4 percent in 1990 and rising to 0.6 percent in 1992.⁴¹ Two witnesses at the Commission's hearing testified that only hot-rolled steel from the Dutch producer Hoogovens can satisfy their needs.⁴² While there are limits on the price responsiveness of domestic production of hot-rolled steel products, these limits are not so great that the small volume of imports from the Netherlands could cause price suppression or depression.⁴³ With market shares no greater

⁴⁰ The issues of substitutability and the price responsiveness of domestic producers' supply of the products is discussed in my consideration of material injury below. The price responsiveness of aggregate demand is discussed in the Economics Memorandum, and I agree with the conclusion there that aggregate demand is somewhat inelastic in all four of the industries. In the discussion of the individual cases of negligibility I only discuss deviations from the general case that are significant for my determination in that case.

I note that the record contains little evidence that imports from particular countries are indeed sporadic or isolated. However, the Court has held that imports may be found to be negligible even in the absence of evidence of sporadic sales. See *Torrington*.

⁴¹ Report at I-144, Table 103.

⁴² Hearing Transcript at 588-591 (Testimony of Seth Thomas, Director of Technical Services, Thomas Steel Strip Corporation) and 591-593 (Testimony of Anthony J. Rose, President, A.J. Rose Manufacturing Company).

⁴³ See Economics Memorandum at 12.

than 0.6 percent, it would be difficult for me to find imports to be non-negligible under any circumstances, let alone with testimony that the products are not fungible.⁴⁴

Cold-rolled products. In addition to the imports from Argentina, Austria, Belgium, France, Italy, and Sweden, which were found to be negligible by the Commission majority, I find imports from Brazil, Canada, Germany, Korea, and the Netherlands to be negligible as well. Only two of these cases -- Canada and Germany -- warrant individual discussion. In the other three cases, market shares never exceeded 0.6 percent.⁴⁵ There is limited substitutability between subject imports from each of these countries and the domestic like product,⁴⁶ and the limits on the price responsiveness of domestic cold-rolled production are slight enough that this quantity of imports cannot cause price depression or suppression.

Canada was a close call. While Canadian market share never exceeded 0.8 percent on a quantity basis, it rose throughout the period of investigation and achieved this level in 1992.⁴⁷ Canadian imports appear to be only moderately substitutable with domestic cold-rolled products.⁴⁸ Canadian dumping margins were 36.19 percent and Canada has not subsidized its cold-rolled steel producers.⁴⁹ While the price responsiveness of domestic production of cold-rolled products is somewhat limited,⁵⁰ on balance I find that Canadian imports are negligible.

Germany was also a close call. Its market share was consistently about 1 percent, reaching 1.2 percent on a quantity basis in 1992.⁵¹ However, substitutability between German and domestic

⁴⁴ Based on their market shares, French imports of hot-rolled steel would also appear to be good candidates for negligibility. On a quantity basis, they accounted for 0.8 percent of U.S. apparent consumption of these products in 1992, and their highest share during the period of investigation was 0.9 percent. (Report at I-144, Table 103)

I find, however, that French imports are not negligible because they may have resulted in discernible price suppression or depression. There is evidence that French imports may be of higher quality than domestic steel, which of course reduces the effect of these imports on the domestic industry. (Economics Memorandum at 41) But, the dumping and subsidy margins of 83.87 percent and 15.12 percent respectively are among the highest for any producer of hot-rolled steel which increases the likelihood of price effects. Further, the ability of the domestic industry producing hot-rolled steel to expand sales in response to an increase in price is somewhat limited, which also increases the likelihood that any dumped or subsidized imports are affecting the price received by domestic producers. (See *Id.* at 12.) Given these considerations, I decline to find French imports of hot-rolled steel negligible.

⁴⁵ Report at I-147, Table 105.

⁴⁶ See my discussion of substitutability beginning at 321, *infra*.

⁴⁷ Report at I-147, Table 105.

⁴⁸ Canadian cold-rolled products are more substitutable for domestic cold-products than are other subject imports. (Economics Memorandum at 17, Table 1). However, I find the average substitutability of subject imports for the domestic product to be considerably more limited what is implied by the values in the Economics Memorandum. (See my discussion of substitutability beginning at 321, *infra*.)

⁴⁹ Report at I-14, Table 7.

⁵⁰ See Economics Memorandum at 17, Table 1.

⁵¹ Report at I-147, Table 105.

cold-rolled products appears to be more limited than is that between other foreign cold-rolled steels and domestic products. A number of purchasers indicated that German steel was of higher quality than domestic steel and the German producers supplied several niche products that were not supplied by domestic producers.⁵² The German dumping and subsidy margins were relatively small -- 19.52 percent and 0.84 percent respectively.⁵³ While there are limits on the ability of domestic producers to expand production in response to higher prices,⁵⁴ I do not find these limits so restrictive that there was a danger of the German imports causing price suppression or depression. Therefore, on balance, I find imports from Germany to be negligible.

Corrosion-resistant products other than clad plate. In addition to the countries found negligible in the Commission opinion, I find imports of corrosion-resistant products, other than clad plate, from France to be negligible. Imports from France increased slowly throughout the period of investigation, rising from 0.5 percent of the volume of U.S. consumption in 1990 to 0.7 percent in 1992.⁵⁵ Consistent with my determinations in other cases, I find that such imports are too small a factor in the U.S. market to be other than negligible.

Cut-to-length plate. The Commission as a whole found imports of cut-to-length plate from France and Italy to be negligible. In addition, I find imports from Germany, Poland, Romania, and the United Kingdom to be negligible.

Of these countries, only imports from Germany accounted for more than 1 percent of the quantity of U.S. apparent consumption at any time during the period of investigation. Germany's share was 1.1 percent in 1990, then declined steadily and accounted for only 0.4 percent of U.S. apparent consumption of cut-to-length plate in 1992.⁵⁶ Imports from Germany included imports of 11 niche products. While there was significant domestic production of most of these products, there was no domestic production of [***] product that accounted for a significant amount of German imports.⁵⁷ Given these considerations, I find imports from Germany to be negligible.

In the cases of Poland, Romania, and the United Kingdom, imports never achieved a market penetration above 0.8 percent, on a quantity basis. Furthermore, in each of these cases the market share in the final year of the period of investigation was lower than in at least one of the earlier years. None of these countries had a quantity market share greater than 0.5 percent in 1992.⁵⁸ In no case do I find the market to be so price sensitive that the small level of imports from these countries could result in price depression or suppression. In such circumstances, I would find it difficult to determine that such imports were anything other than negligible.

⁵² Economics Memorandum at 44.

⁵³ Report at I-15, Table 7.

⁵⁴ See Economics Memorandum at 17, Table 1.

⁵⁵ Report at I-149, Table 107. Data related to corrosion-resistant products excluding clad plate are confidential. Therefore, data reported in this section are for corrosion-resistant products including clad plate. Any differences caused by the inclusion of clad plate are minimal.

⁵⁶ Report at I-142, Table 101.

⁵⁷ Economics Memorandum at 43.

⁵⁸ Report at I-142, Table 101.

Material Injury by Reason of Dumped and Subsidized Imports: Approach and General Considerations

I now turn to the determination of whether one or more domestic industries producing flat-rolled steel products is materially injured by reason of dumped and subsidized imports. However, before doing so, I, first, review my general approach to material injury analysis, which relies on the tools of law and economics; second, consider petitioners' argument that my normal approach needs to be modified because of the nature of the government subsidies involved in these investigations; and, third, discuss my evaluation of the record as it relates to the substitutability between domestic steel and subject imports -- a key area of dispute in these investigations and a key factor in my determinations.

General Approach. In determining whether an industry is materially injured by reason of dumped and subsidized imports, I consider, as the statute directs, the volume of subject imports, the effects of these imports on the price of the like product, and the effects on the domestic industry producing the like product.⁵⁹ As is obvious from these statutory factors, and as I have stated so often in the past,⁶⁰ a coherent and transparent analysis of the kind demanded by the statute requires an assessment of the domestic market and an understanding of the role of the subject imports within that market. Economics, which is the study of markets and how they change, is an ideal source of the tools necessary for making that assessment.

My economic analysis involves little more than organizing and evaluating the evidence in the record in a manner that permits me to assess the impact of the dumped imports in a rigorous fashion. These tools are not surrogates for the statutory factors. They simply permit me to analyze in a direct and open way the volume effect, the price effect, and the overall impact of the dumped imports on the domestic industry as the law specifically and unambiguously requires.

I must determine how the sale of subject imports at unfairly low prices affects the volume of sales of the domestic like product and how much the price of the like product is reduced -- suppressed or depressed, in the words of the statute.⁶¹ Once I know how the unfair imports affect prices and quantities, I can determine the effect of the imports on other factors that are listed in the statute, such as profits, cash flow, employment, growth, and investment.⁶²

There are a number of pieces of information that are necessary before I can determine how imports affect the domestic industry's prices and sales volumes.

(1) Market shares and margins. First, I must know how much of the market is supplied by the subject imports and how much the imports' price would have to rise in order to be at a fair level. The larger the market share of the subject imports, the more likely that those imports are causing

⁵⁹ 19 U.S.C. 1677(7)(B).

⁶⁰ See, e.g., Certain Helical Spring Lockwashers from Taiwan, Inv. No. 731-TA-625 (Final), USITC Pub. 2651, at 24-25 (June 1993) (Additional Views of Commissioner Anne E. Brunsdale); Coated Groundwood Paper from Belgium, Finland, France, Germany, and the United Kingdom, Invs. Nos. 731-TA-487 through 490 and 494 (Final), USITC Pub. 2467, at 31-32 (Concurring Views of Acting Chairman Anne E. Brunsdale); Certain Residential Door Locks and Parts Thereof From Taiwan, Inv. No. 731-TA-433 (Final), USITC Pub. 2253, at 33-36 (January 1990) (Additional Views of Chairman Anne E. Brunsdale); and Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Invs. Nos. 731-TA-367-370 (Final), USITC Pub. 2046, at 23-32 (December 1987) (Additional Views of Vice Chairman Anne E. Brunsdale).

⁶¹ 19 U.S.C. 1677(C)(ii)(II).

⁶² 19 U.S.C. 1677(C)(iii).

material injury to the domestic industry. Similarly, the greater the difference between the price at which the imports are being sold and the fair price, the more likely that the imports are causing injury. The greater the difference, the greater the number of purchasers who will shift from the domestic like product to the dumped imports in order to obtain the benefits of a reduced price.⁶³

Consideration of the market share of the subject imports and how much below a fair level their prices are is not alone sufficient to determine, as I must, the effect of the unfair imports on the competing domestic industry. In order to evaluate the effects on the volume of sales and on the prices at which these sales are made, I must know how purchasers and suppliers respond to changes in the prices of the imported product and the domestic like product. The key attribute of dumped imports is their unfairly low price, and it is through this low price that the effects on the domestic industry are felt and must be evaluated.

(2) Substitutability. A key factor in determining how an unfairly low price for imports affects the demand for the domestic like product is the substitutability between the imports and the domestic like product -- that is, the extent to which a reduction in the price of the unfairly traded import will lead U.S. buyers to purchase the unfair imports rather than the domestic like product.⁶⁴ If purchasers believe the domestic and imported products are close substitutes, the dumped imports are more likely to cause material injury because a small decrease in the price of the imported product may lead a large fraction of purchasers to switch from the domestic product to the unfairly traded import. If, on the other hand, substitutability is low, fewer purchasers will make the switch to the imported product, making material injury less likely.

(3) Price responsiveness of aggregate demand. The injury that dumped imports cause a domestic industry will also depend on the extent to which the demand for that product responds to a change in price. If demand is highly responsive, the lower dumped price will generate a large increase in total sales of the product. In such a case, a relatively large portion of the increased sales of the dumped imports will be sales that would not have been made had the price been higher, and a relatively small portion will be sales lost by domestic producers. By contrast, if quantity does not increase significantly with the decrease in price, most of the increased sales of the unfair imports will come from the domestic producers or from other sources of imports. Thus, the greater the price responsiveness of total demand, the smaller the likelihood that the domestic industry will be materially injured.⁶⁵

(4) Price responsiveness of domestic supply. Finally, whether the effect of unfair imports is primarily a reduction in the volume of the domestic industry's sales or whether the imports suppress or depress the price of the competing domestic products to any significant degree depends on the

⁶³ Information on the share of the market supplied by the unfair imports is readily available in our reports. I use the dumping margins as determined by the Department of Commerce as a measure of the difference between the current price of the imports and the price if they were fairly traded.

In many cases, subsidy margins also indicate the difference between the current price of imports and a fair price. However, as is discussed below beginning at 320 the type of subsidies involved in these cases means that this analysis often does not capture the effect of the subsidies.

⁶⁴ The degree of substitutability between products of different producers can be quantified using a concept that economists call the elasticity of substitution, which is defined as the percentage change in the relative quantities demanded of two goods resulting from a 1 percent change in their relative prices. A high elasticity of substitution indicates that products are good substitutes, while a low elasticity indicates they are not.

⁶⁵ The economic concept used to measure how total purchase quantities change in response to a change in price is the elasticity of aggregate demand, which is defined as the percentage change in the quantity of a product sold resulting from a 1 percent change in the average price of the product. The higher this elasticity the more responsive demand is to a change in price.

responsiveness of domestic supply to a change in price.⁶⁶ If a slight decrease in price causes domestic firms to cut their production by a relatively large amount, any effect of unfair imports is likely to be found primarily in decreased quantities sold by the domestic firms, rather than in depressed or suppressed prices for the product. On the other hand, if a price change results in a small change in production, the same unfair imports may have a smaller quantity effect along with greater price depression or suppression.

(5) Effect on domestic producers. Once I know the various parameters discussed above, I can determine how the unfair imports are affecting the price and volume of sales of the domestic like product. By determining the effects on prices and quantities, I can determine the effects on the other statutory considerations as well. For example, if the unfair imports are having a large effect on the volume of the domestic industry's sales, there may well be a substantial effect on the level of employment in that industry. On the other hand, if there is only a small effect on output, it is unlikely that there would be a significant effect on employment.

Similarly, whether or not there has been a significant effect on capacity utilization will depend on the effect on sales volume. If sales volume is substantially reduced, the industry will produce less and therefore use a smaller share of its capacity. If sales volume is not materially affected, there will be little effect on capacity utilization.

(6) Profitability. Petitioners in these investigations called the Commission's attention to the effect that the unfair imports are allegedly having on the profitability of the domestic steel producers. I have been particularly mindful of this concern in reaching my determinations in these cases.

Like the other factors described above, the effect of unfair imports on profitability follows from their effect on prices and quantities, particularly on prices. If dumping or subsidies are causing significant price depression or suppression, this will have substantial effect on the profits of the domestic industry. A company's profits are the difference between the prices it receives for its products -- its revenues -- and the costs of producing those products. Since a decline in price will reduce revenues but will not lead to a similar reduction in the cost of producing goods, it will affect the profitability of the firm.

Given the relationship between price suppression or depression and industry profitability, I have paid particular attention to the likely price effects of the unfair imports in reaching my determinations in these investigations.

The Effect of Subsidies. Petitioners argued that the framework described above, while appropriate for analyzing dumping and many of the subsidy cases that come before the Commission, is not suitable for these current subsidy investigations.⁶⁷ This framework, according to petitioners, is appropriate to cases of production or export subsidies, where the subsidy lowers the firm's cost of producing an additional unit of a product. However, the subsidies in these investigations are overwhelmingly capital subsidies. That is, they are equity or debt capital provided by foreign governments to fund new investments or to keep a firm from going into bankruptcy.

According to petitioners, the question in the current subsidy investigations is not how much higher the price of foreign steel would have been in the absence of the subsidies. Rather, the question is whether, in the absence of the subsidies, the subsidized foreign firms would have been able to produce steel that would be competitive in the U.S. market. Petitioners argued that without the subsidies, the foreign firms could not have raised the funds to undertake the improvements

⁶⁶ The responsiveness of supply to a change in price can be expressed quantitatively in the elasticity of domestic supply, which is the percentage change in the quantity of domestic production resulting from a 1 percent change in the domestic goods's price.

⁶⁷ See Petitioners' Pre-Hearing Brief at Volume 8A, Appendixes I, J, and K.

necessary to produce the high-quality steel demanded in the United States today. Thus, they argued, the appropriate analytic approach to use in determining the effect of subsidized imports is to assume that the subsidized imports are present in the U.S. market only because of the subsidies -- that is, there would be no such imports but for the subsidies.⁶⁸

I agree that the impact of capital subsidies (which are virtually the only form of subsidy in these investigations) is different from the impact of the production or export subsidies analyzed in our traditional models. I further agree that the relevant question in considering capital subsidies to steel firms is the ability of the subsidized firm to produce steel that could be sold in the U.S. market in the absence of the subsidies. However, I do not believe that the record supports petitioners' conclusion that each of the subsidized firms would have been unable to sell any steel in the United States without the subsidies it received.

Petitioners have presented reasonably convincing evidence that many of the firms that benefited from subsidies were not profitable and therefore would not have been able to go to private capital markets to raise the new capital needed for modernization.⁶⁹ However, the fact that a firm is not creditworthy does not establish that the firm could not be reorganized, perhaps through a bankruptcy proceeding, in such a way that it would be profitable and able to raise additional capital. In a bankruptcy proceeding, the firm's debts would be reduced or eliminated, and the value of its plant and equipment reduced to its current market value. Revenues that were not sufficient to show a profit with the firm's original capital structure may be sufficient to show profits for a reorganized firm with smaller debts and reduced book value of plant and equipment. Such a reorganized firm may very well be able to raise money for modernization in private capital markets.⁷⁰

Of course, the larger the subsidies received, the less likely it is that the firm could be profitable and raise modernization capital after a reorganization. Thus, in evaluating the effects of the subsidies I have considered that cases with higher subsidy margins are more likely to represent countries that would not have been supplying steel in the U.S. market in the absence of subsidies.

Evidence on Substitutability. I now address the issue of substitutability between domestic steel and subject imports. As noted above, the degree of substitutability can be an important determinant of whether unfair imports of a given level are causing material injury to the domestic industry.

The importance of this issue is reflected in the attention devoted to it by the parties and in the degree to which the parties disagreed. Petitioners presented witnesses and statistical evidence allegedly demonstrating that there is a high degree of substitutability.⁷¹ On the other hand, respondents presented witnesses who testified that they could only obtain steel with the qualities they

⁶⁸ Petitioners do make one exception to this general rule. In the case of the German steel producer Thyssen, they conclude that the subsidies were small enough that the firm would have been competitive even without them. Hearing Transcript at 480 (Testimony of Katherine Schipper, Professor of Accounting, Graduate School of Business, University of Chicago.)

⁶⁹ See Petitioners' Pre-Hearing Brief at Volume 8A, Appendix N.

⁷⁰ Indeed, petitioners' economic witnesses at the hearing admitted that they could not be certain that none of the subsidized firms would be competitive in the absence of the subsidies. (See Hearing Transcript at 485 (Testimony of Drew Wechsler, Law and Economics Consulting Group) and 486 (Testimony of Roger Hickey, Law and Economics Consulting Group).)

⁷¹ See, *Id.* at 215-233 (Testimony of Robert Heltzel, President, Founder, and Principal Owner of Kenilworth Steel, Robert Kotrba, Vice President of Alpha Steel Corporation, Steve Holtschlag, President of Consolidated Systems, Inc., Robert Proch, Vice President and General Manager, New Process Steel Corporation, and Jim Daniell, President, American Strip Steel.) and Petitioners' Pre-Hearing Brief at Volume 8A, Economic Appendix F.

needed from foreign sources. According to these suppliers, the domestic industry is just unable to meet their needs and therefore substitutability was very low.⁷²

In seeking to reconcile such divergent pictures of substitutability in the same five industries, I noticed a significant difference between the two groups of witnesses. All, or almost all, of the witnesses who appeared on behalf of petitioners were from steel service centers, and such service centers generally sell the more standardized products for which I would expect there to be considerable substitutability. On the other hand, while respondents also presented a few witnesses from service centers, the majority of their witnesses on this issue represented firms who actually used steel in their production processes -- for example, producers of appliance parts, automobiles and auto parts, battery cans, automotive fasteners, and office furniture. These are the cases in which I would anticipate greater product differentiation and therefore less substitutability. Thus, the hearing testimony does not really resolve the question of substitutability. It shows that substitutability is high in some uses and low in others, but does not show what the level of substitutability is overall.

Other qualitative evidence in the record sheds some additional light on this issue, though again it does not resolve it completely. The Commission asked steel purchasers to identify factors that they considered critical, very important, somewhat important, or not important in making purchasing decisions.⁷³ Examination of these data show that several factors that would tend to indicate a lower level of substitutability -- such as the importance of successfully completing a purchasers' qualifications process, contracts, and long-standing customer relations -- were less important for purchasers of cut-to-length plate than for purchasers of the other three products. While this suggests more substitutability in plate than the other products, it does not provide evidence on the relative substitutability of the other products.⁷⁴

Other evidence in the record supports the view that substitutability is greater in plate than in the other like products. First, a larger percentage of plate is sold through service centers,⁷⁵ which tend to sell more standardized products for which substitution is relatively high, than is true of the other products. Second, inter-company transfers accounted for almost two-thirds of hot-rolled and

⁷² See, *Id.* at 588 - 600, 750-768, and 882-896 (Testimony of Seth Thomas, Director of Technical Services, Thomas Steel Strip Corporation; Anthony J. Rose, President, A.J. Rose Manufacturing Company; David Soble, President, Interstate Steel Company; Linda Withrow, Executive Assistant to the President, California Industrial Products; Steven Abouaf, Executive Vice President and Chief Operating Officer, Oregon Metal Slitters; Jim Lozell, President, Edgewood Tool and Manufacturing and National Chairman, Precision Metal Forming Association; Robert Pierson, President, American Steel and Aluminum; Ralph Iorio, President, ITT Higby Bailock, and General Manager, Plural Handling Systems Division, ITT Automotive; Leo Hawk, Chairman, Superior Metal Products; Craig Dulworth, Material Manager, Harvard Industries; John Fortunato, Purchasing Manager, Hayworth Inc.; Martha Trammel, Assistant General Counsel, Nissan Motor Manufacturing Corporation, USA; Rod Stepp, President of M&M Manufacturing Company; Vince Van Der Walle, Materials Manager, Olsen Metal Products Company; and Jim Ritchie, President Bedex Manufacturing)

⁷³ See Report at I-157 - I-160, Figures 1 - 4.

⁷⁴ I note that there are no significant differences across the various like product groupings in the percentages of purchasers who ranked quality as critical or very important and similarly, that in virtually no cases was quality identified as being unimportant. I do not find this surprising. Even with the most mundane, substitutable product, purchasers will find basic quality to be important. In order to learn something about substitutability, it is necessary to look at specific factors that may be important, rather than a general attribute like quality.

⁷⁵ *Id.* at I-35, Table 9.

for more than half of cold-rolled shipments.⁷⁶ Because producers of cold-rolled and corrosion-resistant products always make the hot- or cold-rolled steel they need themselves, there is no substitutability on these sales. Third, automobile manufacturers accounted for almost 40 percent of shipments of corrosion-resistant steels.⁷⁷ Automobile companies, who buy primarily cold-rolled and corrosion-resistant steels, have the most stringent and expensive qualifications procedures for steel suppliers,⁷⁸ and this will tend to reduce substitutability in those categories.

Finally, based on its detailed analysis of the evidence in the record, the Office of Economics has advised the Commission that it views the substitutability between domestic steel and subject imports to be lower in the cold-rolled and corrosion-resistant categories, than in hot-rolled and plate categories.⁷⁹

While the evidence reviewed thus far suggests that substitutability is higher in the cut-to-length plate category than in the other categories, and may be lower in cold-rolled and corrosion-resistant, it does not tell us whether substitutability is high in all of these categories, or low in all the categories, or whether it is high in plate and low in some of the others. I believe that the best record evidence for attempting to resolve this issue is the various statistical estimates provided by petitioners, and by respondents in the corrosion-resistant investigations. As petitioners' economists were careful to point out, these statistical estimates capture the effects of all of the non-price factors that have been discussed above and should show how actual purchasers of steel respond to changes in prices.

While petitioners' preferred econometric estimates suggest a very high degree of substitutability between domestic steel and subject imports, they also provide estimates that paint a very different picture. The estimates showing a very high degree of substitutability are based on data drawn from the purchasers' questionnaires in these investigations. Petitioners' experts claim that these estimates are preferable because they are based on data for specific products and on the actual purchasing decisions of individual purchasers. They assert that other available estimates are biased toward finding low values because they rely on more aggregated data.⁸⁰

However, I find that there are several problems with the petitioners' analysis using these data. First, the data from the purchasers' questionnaires cannot be considered representative of the range of products in the four like-product categories,⁸¹ because the Commission collected pricing data on only a small minority of all sales during the period of investigation.⁸² Furthermore, in order to facilitate comparisons between domestic and imported prices, the Commission always attempts to collect data on products where the differences between imported and domestic products are as small as possible. Thus, these estimates, at best, show the substitutability of those products considered most similar, not values representative of the range of products in the category as a whole.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id. at I-165.

⁷⁹ Economics Memorandum at 17, Table 1.

⁸⁰ Petitioners' Pre-Hearing Brief at Volume 8A, Economic Appendix F, p. F-45 - F-46.

⁸¹ No party provided empirical estimates for clad plate, the fifth like-product in these investigations.

⁸² Economics Memorandum at A-2.

Second, while petitioners criticize other estimates for not analyzing the purchasing decisions of individual buyers involving individual products, their estimates do not look at the decisions of individual buyers either. Their estimates are based on the aggregation of the purchaser questionnaire data so that the individual observations represent the purchase decisions made by all purchasers and their decisions involving all of the products within one of the four major like product groupings for which the Commission's questionnaires sought data.⁸³ Moreover, they have aggregated imports from all of the countries subject to investigation.⁸⁴ In essence, their estimates are based on the same type of aggregated data that is used in the estimates that they criticize. If there is a problem with the use of aggregated data -- and I am not convinced there is⁸⁵ -- that problem is present in all of the estimates. The only difference is that their data cover only a small subset of the products covered by each of the like products, and therefore are less representative of actual substitutability within the category as a whole. Furthermore, their estimates are based on a very small number of observations -- 12.⁸⁶ As a result of these various criticisms, I do not find these estimates to be persuasive.

Petitioners also provide estimates of substitutability based on publicly available quarterly and monthly data.⁸⁷ The data on which these estimates are based appear to be generally representative of the products included in the various like product categories and provide more observations than do the purchasers' questionnaire data. I find the estimates based on these data more credible than those based on the purchasers' data.

Furthermore, I find that the estimates based on the quarterly data are generally more credible than those based on the monthly data. There are two principal reasons for this. First, while reasonably complete documentation of data sources, etc., are provided for the quarterly data,⁸⁸ no such documentation was provided for the monthly estimates. I have difficulty placing much emphasis on analysis based on unidentified data. Second, the estimates based on the quarterly data

⁸³ Respondents' economic experts in the corrosion-resistant investigations have shown that this approach results in a serious over-estimate of substitutability, at least in the case of corrosion-resistant. They note that petitioners' economists have included purchases by firms that bought only domestic steel or only imported steel throughout the period of investigation. For these purchasers, one can easily see that there was no substitution. However, when respondents' experts re-estimated petitioners' equations using only the experience of those purchasers who actually purchased both domestic and imported steel, they found the degree of substitutability was much lower than when all purchases were included. (See Corrosion-Resistant Respondents' Post-Hearing Brief at Exhibit 15, pp. 12-13, 14, and Table 1.)

⁸⁴ Petitioners' Post-Hearing Brief at Volume 6, pp. E-6 - E-7.

⁸⁵ I am unpersuaded by petitioners' argument that the use of aggregated data creates biases that necessarily result in an underestimation of the degree of substitutability. Respondents' experts in the corrosion-resistant cases have offered an example in which the converse is true: aggregation leads to an overestimate of the degree of substitutability. (See Corrosion-Resistant Respondents' Post-Hearing Brief at Exhibit 15, pp. 22-23.)

⁸⁶ Economics Memorandum at A-2.

⁸⁷ These estimates are reported in Petitioners' Pre-Hearing Brief at Volume 8A, p. F-63, Table F.13.

⁸⁸ See *Id.* at Volume 8A, Section F.7.

show that substitutability is higher in cut-to-length plate than in hot-rolled and cold-rolled products.⁸⁹ This is the pattern suggested by the qualitative evidence discussed above. On the other hand, the monthly data show that the substitutability between domestic and imported hot- and cold-rolled products is substantially greater than that for plate.⁹⁰

I therefore find that petitioners' estimates based on publicly available quarterly data provide the best indication on the record concerning the level of substitutability between subject imports and the corresponding domestic like products in hot- and cold-rolled products and in cut-to-length plate. For reasons discussed in note 89, I find corrosion-resistant respondents' estimates, also based on publicly available quarterly data, are the most reliable in the case of corrosion-resistant products.

The noteworthy thing about the estimates based on publicly available quarterly data is that they uniformly indicate a low degree of substitutability.⁹¹ On the basis of all the available evidence, I therefore conclude that there is only very limited substitutability between domestic steel and the subject imports in these investigations.

Material Injury by Reason of Cumulated Imports: Specifics of the Five Cases

I now turn to the specifics of determining whether subject imports that have been subsidized and/or sold at LTFV are materially injuring the domestic industries that I have identified in these cases. I focus here only on the cumulated imports from countries that I have not determined to be negligible, since in finding imports from a particular country negligible, I have found that they have "no discernable adverse impact on the domestic industry." Clearly, if imports are not having a discernable adverse impact, they are not causing material injury, and therefore, need not be considered further here.

Hot-Rolled Steel Products. In determining that an industry in the United States is not materially injured by reason of subject imports of hot-rolled steel products, I have cumulated the effect of LTFV imports from Canada with the effect of LTFV and subsidized imports from France. In addition, I have separately evaluated the effect of LTFV and subsidized imports from Korea, since I determined that those imports do not compete with imports from other countries and therefore should not be cumulated with other imports.⁹²

(1) The volume of the imports. Imports of hot-rolled steel products from Canada and France accounted for 2.1 percent of the quantity of U.S. apparent consumption in 1990, declined to 1.9 percent in 1991, and then rose to 2.7 percent in 1992. On a value basis, the market shares were 2.6

⁸⁹ I do not rely on petitioners' estimates for corrosion-resistant steel based on the quarterly data. Respondents' experts in the corrosion-resistant investigations pointed out that petitioners used an inconsistent data series in their quarterly estimates for corrosion-resistant products. (See Corrosion-Resistant Respondents' Post-Hearing Brief at Exhibit 15, pp. 20-21.) This may seriously bias the estimated results. I therefore rely on respondents own estimates of substitutability in corrosion-resistant products, which uses a consistent data series and which is broadly consistent with the other estimated substitution elasticities. (See *id.* at Exhibit 15, Table 2)

⁹⁰ Based on the t-ratios reported with the monthly estimates, it appears that these differences are statistically significant.

⁹¹ In terms of the elasticity of substitution, they all lie between 1 and 2.

⁹² Even if I had cumulated the hot-rolled imports from all subject countries, I would have found in the negative. The market share of subject imports, the limited substitutability between these imports and the domestic like product, and the at least moderate price responsiveness of domestic supply assure that any injury does not rise to the level of material.

percent in 1990, 2.4 percent in 1991, and 3.1 percent in 1992.⁹³ Imports from Korea accounted for 1.2 percent, 1.6 percent, and 1.7 percent of the quantity of U.S. consumption and 1.5 percent, 1.9 percent, and 2.0 percent of the value of consumption during the three years of the period of investigation.⁹⁴

(2) Impact on domestic prices and quantities. It is unlikely that imports accounting for such small shares of U.S. consumption could cause material injury to a domestic industry even if they were fully fungible with the domestic like product. Such a small quantity of imports would generally have an effect far below what I would consider to be material even if they are present in the U.S. market only because they are sold at LTFV and/or have benefitted from subsidies. In this case, the record strongly suggests that imports and domestic products are not anywhere near fully fungible.

Though the quantity of imports is small, material injury could result if the imports had a large enough effect on the prices domestic producers receive for their products. The extent of the price effects will depend on how the quantity supplied by domestic producers changes in response to changes in their price. The record suggests that domestic production of hot-rolled products would expand at least moderately in response to an increase in price.⁹⁵ Given the small market share of the subject imports, this clearly provides sufficient ability to expand domestic production so that neither the cumulated imports from Canada and France nor the imports from Korea are significantly depressing or suppressing the prices the domestic producers receive for these products.

(3) Effect on the domestic industry. As noted above, the effect of the dumping and subsidies on the other statutorily identified aspects of the domestic industry's performance follows from the effect on the domestic industry's sales volume and on the price received for those sales. Since neither the cumulated hot-rolled imports from Canada and France, nor the hot-rolled imports from Korea, are having a significant effect on the price or volume of sales of the domestic industry, I find that they are similarly not having a significant effect on the other statutory factors.

I therefore find that no domestic industry is materially injured by reason of imports of hot-rolled steel products from Canada and France or by reason of imports of these products from Korea.⁹⁶

⁹³ Report at I-144, Table 103.

⁹⁴ Id.

⁹⁵ The Office of Economics places the elasticity of domestic supply of hot-rolled products in the range of 3 to 4, a somewhat lower value than they assigned to the other products involved in these investigations. (Economics Memorandum at 21) No party has challenged this estimate and I find it to be reasonable.

⁹⁶ I have of course evaluated the effect of the cumulated imports and of those from Korea in the context of the condition of the domestic industry. Information on the condition of the industry is provided in the Commission opinion and I accept it as an accurate statement of the condition of the industry.

Cold-Rolled Steel Products. In evaluating the effects of non-negligible imports of cold-rolled steel products, I need consider only imports of such products from Japan that Commerce found to be sold at LTFV.⁹⁷ I have found the imports from all other subject countries to be negligible.⁹⁸

(1) The volume of the imports. Imports of cold-rolled steel products from Japan accounted for 1.5 percent of the quantity of U.S. cold-rolled steel consumption in 1990 and 1991 and declined to 1.3 percent in 1992. On a value basis, these imports accounted for 2.2 percent of consumption in 1990 and 1991 and 2.1 percent in 1992.⁹⁹

(2) Impact on domestic prices and quantities. As in the hot-rolled case, it is unlikely that imports accounting for such a small share of U.S. consumption could have a material effect on the volume of sales made by a domestic industry even if they were fully fungible with the domestic like product, which they are not. Their effect would generally be far below what I would consider to be material even if the imports are only present in the U.S. market because they are sold at LTFV.

As in hot-rolled, I must also consider the effect on price. This will depend on the price responsiveness of domestic supply, which appears to be in the moderate range, perhaps being slightly higher than in hot-rolled products.¹⁰⁰ Given the price responsiveness of domestic production in this industry, I find that the market penetration achieved by the imports from Japan is not causing price depression or suppression.

(3) Effect on the domestic industry. Once again the effect of the dumping and subsidies on the other statutorily identified aspects of the domestic industry's performance follows from the effect on the domestic industry's sales volume and on the price received for those sales. Since the imports from Japan are not having a significant effect on the price or volume of sales of the domestic industry, I find that they are similarly not having a significant effect on the other statutory factors.

I therefore find that no domestic industry is materially injured by reason of imports of cold-rolled steel products from Japan.¹⁰¹

Corrosion-Resistant Products Other than Clad Plate.¹⁰² I found imports of corrosion-resistant products, other than clad plate, from Brazil, France, Mexico, New Zealand, South Africa, and Sweden to be negligible and to have no discernible impact on the domestic industry producing these

⁹⁷ Japan has not subsidized its steel industry.

⁹⁸ Even if I had cumulated the cold-rolled imports from all subject countries, I would have found in the negative. The market share of subject imports, the limited substitutability between these imports and the domestic like product, and the price responsiveness of domestic supply assure that any injury does not rise to the level of material.

⁹⁹ Report at I-147, Table 105.

¹⁰⁰ Based on their analysis of the record, the Office of Economics placed the elasticity of domestic supply of cold-rolled products between 3 and 5. (Economics Memorandum at 17). No party has contested this evaluation, and I find it to be reasonable.

¹⁰¹ I have of course evaluated the effect of the imports from Japan in the context of the condition of the domestic industry. Information on the condition of the industry is provided in the Commission opinion and I accept it as an accurate statement of the condition of the industry.

¹⁰² Data related to corrosion-resistant products excluding clad plate are confidential. Therefore, data reported in this section are for corrosion-resistant products including clad plate. Any differences caused by the inclusion of clad plate are minimal.

products. Therefore, my evaluation of cumulated imports involves imports from the other subject countries -- Australia, Canada, Germany, Japan, and Korea. Imports from all of these countries were found to be sold at LTFV, with Commerce's final margins ranging from 4.88 percent in the case of Germany to 40.19 percent for Japan.¹⁰³ The weighted-average dumping margin was 29.13 percent.¹⁰⁴ In addition, imports from Germany and Korea were found to have benefited from small subsidies -- a margin of 0.59 percent in the case of Germany and 2.34 percent for Korea.¹⁰⁵

(1) The volume of the imports. On a quantity basis, the market share of the imports from the five countries increased during the period of investigation from 11.2 percent in 1990 to 11.7 percent in 1991 and then to 13.7 percent in 1992. On a value basis, market shares were 12.6 percent in 1990 and 1991 and 14.6 percent in 1992.¹⁰⁶

(2) Impact on domestic prices and quantities. Imports accounting for such a large share of U.S. consumption definitely have the potential to cause material injury. Whether material injury in fact results will depend on the response of purchasers of corrosion-resistant steel products to changes in prices -- in particular, on the degree of substitutability between subject imports from these countries and the competing domestic like product. I have discussed above my finding that the degree of substitutability between domestic and subject imported steel is quite low for all of the like products involved in these investigations.¹⁰⁷ Among the factors that limits the substitutability in the case of corrosion-resistant products is the large percentage of shipments that go to automobile producers.¹⁰⁸ Automobile producers have particularly exacting requirements for the steel they use and require extensive qualifications testing before purchasing from a new supplier. These qualifications processes can take from six months to two years and can cost up to \$150,000.¹⁰⁹ I therefore find that the substitutability between subject imports and the competing domestic product is quite low.¹¹⁰ This reduces the likelihood that the imports are causing material injury.

The impact of the dumped or subsidized imports will also depend on the size of the dumping and subsidy margins as well as on the price responsiveness of demand for these products. The dumping margins for corrosion-resistant products are, on average, lower than those for the other products involved in these investigations and the subsidy margins for the two countries that were found to have subsidized their producers are really quite small. This further reduces the likelihood that these imports, in spite of their relatively large market share, are causing material injury.

¹⁰³ Report at I-14 - I-16, Table 7.

¹⁰⁴ This average uses 1992 values as weights.

¹⁰⁵ Id.

¹⁰⁶ Id. at I-147, Table 105.

¹⁰⁷ See discussion beginning at 321 supra.

¹⁰⁸ Report at I-35, Table 9.

¹⁰⁹ Id. at I-165.

¹¹⁰ Specifically, I find the average value of the elasticity of substitution between subject imports and domestic corrosion-resistant steel to be no greater than 1.5.

Of course, imports from particular countries may be more or less substitutable than this average. The variations in the substitutability of imports from different countries for the domestic product is evaluated in the economics memorandum. (See Economics Memorandum at 17 and 23-57.)

As noted previously, the price responsiveness of demand for a product can also affect the degree of injury that results from dumped or subsidized imports. The demand for corrosion-resistant steel products is not very responsive to changes in prices. These products are used primarily in the automotive, construction, and electrical appliance industries,¹¹¹ and make up only a small percentage of the total cost of the products in which they are used. For example, all flat-rolled steel products -- including hot- and cold-rolled steel in addition to corrosion-resistant -- account for only about 2 or 3 percent of the total cost of producing the typical automobile.¹¹² Furthermore, while there are some potential substitutes for corrosion-resistant steels in construction and appliance uses, no substitutes were identified for automotive uses, which account for the largest share of consumption.¹¹³ Both the small share of total value accounted for by these products and the limited number of substitutes suggests that the demand for corrosion-resistant steel products would not be very responsive to changes in price.¹¹⁴

Finally, whether the dumping and subsidies have any effect on the prices received by the domestic industry or merely affect the quantity of sales depends on the price responsiveness of domestic production. As it did for hot- and cold-rolled products, the Office of Economics placed the price responsiveness of domestic corrosion-resistant production in the moderate range.¹¹⁵ While the level of capacity utilization in corrosion-resistant was comparable to that in cold-rolled, the presence of somewhat higher inventories and somewhat greater export shipments may make supply slightly more price responsive in this industry than in the other two.

Based on the considerations discussed above, I find that the quantity and price effects of cumulated subject imports of corrosion-resistant steel other than clad plate do not rise to the level of material injury. The limited substitutability, the relatively small price effects, and the ability of the industry to expand sales in response to a small price increase are sufficient to offset the effect of a somewhat larger market share and the relatively low price responsiveness of demand.

(3) Effect on the domestic industry. As in the other cases, the effect of the dumping and subsidies on the other statutory aspects of the domestic industry's performance follows from the effect on the domestic industry's sales volume and on the price received in those sales. Since the cumulated imports of corrosion-resistant products from Australia, Canada, Germany, Japan, and Korea are not having a significant effect on the price or volume of sales of the domestic industry, I find that they are not having a significant effect on the other statutory factors.

I therefore determine that the imports from these countries are not causing material injury to a domestic industry in the United States.¹¹⁶

¹¹¹ Economics Memorandum at 80.

¹¹² *Id.* at 75.

¹¹³ *Id.* at 80-81 and Report at I-35, Table 9.

¹¹⁴ Specifically, the Office of Economics places the elasticity of demand for these products in the range of 0.5 to 0.8. (Economics Memorandum at 80) I find these values to be reasonable.

¹¹⁵ Specifically, the elasticity of domestic supply was placed in the range of 4 to 6. The slightly higher range here is justified by the presence of somewhat higher inventories and somewhat greater export shipments that could be diverted back to the U.S. market in response to an increase in the price in this country. (*Id.* at 22-23)

¹¹⁶ I have of course evaluated the effect of the imports from these countries in the context of the condition of the domestic industry. Information on the condition of the industry is provided in the Commission opinion and I accept it as an accurate statement of the industry's condition.

Clad Plate. I here consider only imports of clad plate from Japan. The only other subject country exporting clad plate to the United States was France, and I found the imports from France to be negligible.¹¹⁷

(1) The volume of the imports. Imports of clad plate from Japan accounted for a reasonably small percentage of U.S. domestic consumption, particularly at the end of the period of investigation -- [***].¹¹⁸

(2) Effect on the domestic industry. While relatively little attention was paid to clad plate during these investigations and therefore there is relatively little record evidence concerning this product, the record does indicate that the unit value of domestic clad plate is very different from the unit value of that imported from Japan.¹¹⁹ This strongly suggests that there is little, if any, substitutability between the two products.

The record also indicates that domestic producers could have expanded their production to a considerable degree in response to any increase in price.¹²⁰ Thus, there is no evidence to suggest significant price depression or suppression.

Given the small market share of subject imports, the at best limited degree of substitutability between domestic clad plate and the subject imports, and the availability of substantial excess capacity in the domestic industry, I find that imports of clad plate from Japan are not causing material injury to a domestic industry.

Cut-to-Length Plate. Having determined that cut-to-length plate imports from France, Germany, Italy, Korea, Poland, Romania, and the United Kingdom are negligible, I now address the cumulated effect of such imports from the remaining countries subject to investigation -- Belgium, Brazil, Canada, Finland, Mexico, Spain, and Sweden. I also cumulate imports from South Africa. Though its imports were not part of the Commission's investigation because South Africa is not a signatory to the GATT subsidies code, they are subject to a concurrent Commerce Department investigation and must therefore be cumulated.

(1) The volume of the imports. Cumulated imports of cut-to-length plate from the eight countries identified above accounted for 9.5 percent of the quantity of U.S. consumption of these products in 1990, 9.3 percent in 1991, and 12.2 percent in 1992. On a value basis, the imports accounted for 8.9 percent, 8.7 percent, and 10.8 percent of U.S. consumption in the three years respectively.¹²¹

(2) Impact on domestic prices and quantities. While the cumulated imports of subject cut-to-length plate products have a slightly smaller market share than did the cumulated corrosion-resistant products, the imports may still be causing material injury. The likelihood of such injury is enhanced by the size of the dumping and subsidy margins involving plate imports. Seven of the eight

¹¹⁷ To the extent that I am required to make a determination regarding imports from countries other than France and Japan, I find in the negative. There is no evidence of any imports from any other countries, and therefore such imports would certainly be negligible.

¹¹⁸ Importers' Questionnaires.

¹¹⁹ The imports from Japan had a unit value of [***] in 1992, while the domestic product had a unit value of [***]. (Importers' Questionnaires)

¹²⁰ Domestic capacity utilization in clad plate production was only [***] percent in 1992. (Report at C-7, Table C-8)

¹²¹ Id. at I-142, Table 101.

countries -- the exception is South Africa -- have been found to have sold their products at LTFV prices. Commerce's dumping margins for these countries ranged from 6.75 percent for Belgium to 105.61 percent for Spain.¹²² The weighted average margin was 50.52 percent.¹²³ Five of the eight countries have been found to have subsidized their domestic producers, with subsidy margins ranging from 4.27 percent for Sweden to 36.86 percent for Spain.¹²⁴ Thus, on average, both the dumping and subsidy margins are greater and more extensive than in the corrosion-resistant products investigations.

The likelihood of material injury is also increased somewhat because domestic and imported plate products are more substitutable than are the imports and domestic products involved in the other investigations. While the record evidence demonstrates that substitutability is quite limited for all of the products, it is clearly the highest in plate products. Steel service centers, which tend to carry more of the standardized and more substitutable products, account for a larger percentage of shipments of plate products than of the other like products in these investigations.¹²⁵ Furthermore, such non-price factors as qualifications requirements, long-term contracts, and long-term customer relationships appear to be less important in the plate industry.¹²⁶

Domestic producers of cut-to-length plate should be able to expand their production somewhat more in response to a price increase than can producers of the other products. Capacity utilization was lower for plate than for the other categories -- only 62.4 percent in 1992.¹²⁷ Thus, the dumping and subsidies will have more effect on the quantity of sales by the domestic industry than on the price at which those sales are made.¹²⁸

However, in spite of the greater supply responsiveness, given the share of the U.S. market captured by the cumulated imports, the size of the dumping and subsidy margins, and the relatively higher substitutability between domestic and imported plate products, I find that the cumulated imports have significantly reduced the quantity and prices of domestic cut-to-length plate products.¹²⁹ I therefore find that the subject imports have materially injured the domestic industry.

(3) Effect on the domestic industry. Since the cumulated imports have had a significant effect on the quantity of the domestic industry's sales and on the prices they receive, it is likely that there is a substantial effect on other attributes of the domestic industry's performance. The decline

¹²² Id. at I-14 - I-16, Table 7.

¹²³ This average uses 1992 values as weights.

¹²⁴ Id. at I-14 - I-16, Table 7. Commerce has not yet determined subsidy margins for South Africa. However, petitioners allege that the margins will be in the range of 10 to 15 percent for South African producers. (Id. at I-13, n.9)

¹²⁵ Id. at I-35, Table 9.

¹²⁶ Id. at I-157 - I-160, Figures 1 to 4.

¹²⁷ Economics Memorandum at 20.

¹²⁸ The Office of Economics placed the elasticity of domestic supply between 6 and 7 for the plate industry. (Id.)

¹²⁹ The Office of Economics found the price responsiveness of the aggregate demand for cut-to-length plate, like that for the other steel industries, was somewhat inelastic. Specifically, they put the elasticity of aggregate demand between -0.5 and -0.7. (Id. at 74) I find these values to be reasonable.

in the volume of the industry's sales suggests that employment and capacity utilization are lower than they would be if all imports were unsubsidized and were sold at fair prices. These factors are further evidence of material injury to this industry.

As discussed above, I have been particularly mindful of the effect price declines can have on industry profitability. In the cut-to-length plate investigations, I find that the price declines cause significant reductions in industry profitability. This additionally supports my finding of material injury.

Finally, I note that the level of injury that I would find to be material can differ from industry to industry depending on the relative well-being of that industry. In these investigations, I find that the cut-to-length plate industry is doing less well than the corrosion-resistant products industry, the other industry for which material injury was at all a close call. Capacity utilization in the plate industry was consistently lower than that in any of the other three industries. While the rate of capacity utilization declined more in corrosion-resistant than in plate, it did so because of capacity increases that outran the growth in demand, not -- as happened in the plate industry -- because of declines in production that were greater than the 6 percent decline in capacity.¹³⁰

Employment also declined more in plate than in corrosion-resistant -- by 6.1 percent in the case of plate and only 1.8 percent in corrosion-resistant products.¹³¹

Finally, the financial performance of the plate industry was much worse than that for the corrosion-resistant products industry. Plate producers had operating losses amounting to 5.1 percent of sales in 1992, while corrosion-resistant producers had operating income of 1.2 percent of sales. Whereas almost one-half of reporting plate producers -- 4 out of 9 -- had operating losses in 1992, less than one-third of corrosion resistant producers -- 5 of 18 -- reported such losses. Finally, the operating income-to-sales ratio for plate producers fell by 14.8 percentage points between 1990 and 1992, more than for any of the other products and almost three times the 5.7 percent decline for corrosion-resistant products.¹³²

No Threat of Material Injury

In those cases in which I have found no material injury, I must also consider whether the dumped and subsidized imports pose a threat of material injury. The statute provides a list of nine factors that I am to consider.¹³³ The statute also instructs me that

Any determination ... that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition.¹³⁴

¹³⁰ Report at I-51, Table 15. Capacity utilization also declined more in cold-rolled than in plate. However, the effect of the dumping and subsidies in cold-rolled was so small that there could be no material injury almost regardless of the condition of the industry. I therefore focus on a comparison of the plate and corrosion-resistant industries -- the two industries where the potential for a finding of material injury was present.

¹³¹ *Id.* at I-60, Table 18.

¹³² Compare *Id.* at I-70, Table 25, with I-83, Table 40.

¹³³ 19 U.S.C. 1677(7)(F)(i).

¹³⁴ 19 U.S.C. 1677(7)(F)(ii) (emphasis added).

I join the negative threat determinations contained in the Commission opinions. These determinations cover the threat of material injury by imports of (1) hot-rolled products from all of the subject countries, (2) cold-rolled products from Argentina, Austria, Belgium, Brazil, Canada, France, Italy, Japan, and Spain, (3) corrosion-resistant products, other than clad plate, from Brazil, Mexico, New Zealand, and Sweden; (4) clad plate from France and Japan, and (5) cut-to-length plate from France, Italy, and Korea. The discussion contained there provides sufficient support for my negative determinations in those cases.¹³⁵ In the cases of cold-rolled products from Germany, Korea, and the Netherlands and of cut-to-length plate from Germany, Poland, Romania, and the United Kingdom, I join the discussion in the Additional and Dissenting Views of Commissioner Crawford.

Here I examine the threat of material injury by reason of imports of corrosion-resistant products, other than clad plate, from Australia, Canada, France, Germany, Japan, and Korea. With the exception of imports from Canada and Japan, imports from none of these countries accounted for more than 1.5 percent of U.S. consumption at any point during the period of investigation.¹³⁶ For imports from a country with a market share of 1.5 percent or less to rise to the level where there is a real risk of material injury, they would have to increase by a factor of at least three. I see no indication in the record of these investigations to indicate that any such large increase in market share is imminent. Therefore, and after considering the other statutorily directed factors, I conclude that there is no threat of material injury by reason of imports from these countries.

Looking at imports of corrosion-resistant products, other than clad plate, from Japan, I note that Japan's market share declined during the period of investigation -- from 6.6 percent in 1990 to 6.1 percent in 1992 on a quantity basis and from 7.6 percent in 1990 to 7.2 percent on a value basis.¹³⁷ While Japanese capacity to produce corrosion-resistant steel rose by approximately 12 percent between 1990 and 1992, a slight decline is forecast in 1993.¹³⁸ In addition, capacity utilization has remained high throughout the period of investigation.¹³⁹ While U.S. inventories of the Japanese product increased both absolutely and as a percentage of their sales in the United States, inventories at the end of 1992 were only 11.2 percent of annual sales of Japanese corrosion resistant steel in the United States and were only 0.5 percent of U.S. apparent consumption of the product.¹⁴⁰

Imports of corrosion-resistant products from Canada accounted for 3.4 percent of U.S. apparent consumption on a quantity basis and 3.0 percent on a value basis in 1992.¹⁴¹ This represented more than a doubling of Canadian market share during the period of investigation. Canadian capacity [***] throughout the period of investigation. However, capacity utilization in

¹³⁵ While I agree that the evidence of no current price suppression or depression supports that finding that there is no "probability that imports of the merchandise will enter ... at prices that will have a depressing or suppressing effect", I note that my determinations that there is no current price depression or suppression is based on the analysis in this opinion, not that contained in the Commission opinion.

¹³⁶ Report at I-149, Table 107.

¹³⁷ *Id.* Again these figures include clad plate imports. However, exclusion of clad plate would cause little if any change in the values.

¹³⁸ *Id.* at I-119, Table 76.

¹³⁹ *Id.*

¹⁴⁰ Based on data in *Id.* at I-95, Table 48.

¹⁴¹ *Id.* at I-149, Table 107.

1992 was [***] from 1990 levels.¹⁴² Furthermore, even if the Canadian producers had been able to increase their capacity utilization to a very high 95 percent and had been able to sell all of their increased production in the U.S. market, this increase would only amount to [***] percent of U.S. apparent consumption of corrosion resistant steel.

Inventories of Canadian corrosion-resistant steel held in the United States more than doubled between 1990 and 1992. However, as a percent of U.S. shipments of the Canadian product, they declined from 23.4 percent to 16.6 percent.¹⁴³ Finally, these inventories accounted for only 0.2 percent of U.S. consumption of these products.

Another factor suggesting that there is no threat of material injury by reason of imports from either Canada or Japan is the low degree of substitutability between domestic and imported products. When products are only substitutable to such a limited degree, import levels that would otherwise threaten injury are much less threatening.

Based on the above considerations, I conclude that there is no real threat of imminent material injury by reason of imports of corrosion-resistant products from Canada or Japan.

No Critical Circumstances in Imports of Plate from Spain

I do not find critical circumstances involving imports of cut-to-length plate from Spain. There was a large shipment of Spanish plate into the United States in November 1992. Indeed, the quantity of Spanish plate imported into the United States during that month was larger than the imports that entered this country during any other single month between October 1991 and January 1993.¹⁴⁴ However, this shipment appears to be consistent with the sporadic nature of imports of Spanish plate, perhaps reflecting the need to ship in large quantities to obtain low cost transportation.¹⁴⁵

Furthermore, there were no imports of Spanish plate in December 1992 or January 1993, and U.S. inventories of these products were much lower at the end of 1992 than at the end of 1991.¹⁴⁶

I therefore conclude that there is no need to impose retroactive duties on imports of cut-to-length plate from Spain.

¹⁴² Id. at I-104, Table 62.

¹⁴³ Id. at I-95, Table 48.

¹⁴⁴ Id. at L-5, Table L-2.

¹⁴⁵ This is the argument made by Spanish respondents. See Spanish Respondents' Post-Hearing Brief at 15.

¹⁴⁶ Report at I-91, Table 45.

ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

Certain Flat-Rolled Carbon Steel Products

**Invs. Nos. 701-TA-319-332, 334, 336-342, 344, 347-353; and
Invs. Nos. 731-TA-573-579, 581-592, 594-597, 599-609, 612-619 (Final)**

Based on the record in these investigations, I determine that there are five like products: hot-rolled carbon steel flat products, cold-rolled carbon steel flat products, cut-to-length carbon steel plate, corrosion-resistant clad plate, and corrosion-resistant carbon steel flat products other than clad plate. I join in the discussions and determinations included in the majority views except as noted therein and below. These views will briefly summarize and provide additional explanation of the reasoning that led to my determinations.

Hot-Rolled Carbon Steel Flat Products--I determine that the domestic industry producing hot-rolled carbon steel flat products is not materially injured or threatened with material injury by reason of cumulated subject imports from Brazil, Canada, and the Netherlands. I further determine that subject imports from Belgium, France, Germany, and Japan are negligible and are not causing material injury, nor do they threaten to cause material injury to the domestic industry producing hot-rolled carbon steel products. I also determine that subject imports from Korea are not causing material injury, nor do they threaten to cause material injury to this domestic industry. A discussion of my determination in the investigation involving negligible imports from France is set forth below in these separate views. A discussion of my determinations in all other investigations involving hot-rolled carbon steel flat products is set forth in the majority's Hot-Rolled Views.

Cold-Rolled Carbon Steel Flat Products--I determine that the domestic industry producing cold-rolled carbon steel flat products is not materially injured or threatened with material injury by reason of cumulated subject imports from Canada, Germany, Japan, Korea and the Netherlands. I further determine that subject imports from Argentina, Austria, Belgium, Brazil, France, Italy, the Netherlands, and Spain are negligible and are not causing material injury, nor do they threaten to cause material injury to the domestic industry producing cold-rolled carbon steel products. A discussion of my determinations with respect to negligible imports from Brazil and the Netherlands, and threat of material injury determinations with respect to subject imports from Germany, Korea, and the Netherlands is set forth in these separate views. My determinations in all other investigations involving cold-rolled carbon steel flat products are set forth in the majority's Cold-Rolled Views.

Cut-to-Length Carbon Steel Plate Products--I determine that the domestic industry producing cut-to-length carbon steel plate products is materially injured by reason of cumulated subject imports from Belgium, Brazil, Canada, Finland, Mexico, Spain, and Sweden. I further determine that subject imports from France, Germany, Italy, Korea, Poland, Romania, and the United Kingdom are negligible and are not causing material injury, nor do they threaten material injury to the domestic industry producing cut-to-length carbon steel plate products. A discussion of my determinations with respect to negligible imports from Germany, Poland, Romania, and the United Kingdom is set forth in these separate views along with my threat determinations in these investigations. My determinations in all other investigations involving cut-to-length carbon steel plate products are discussed in the majority's Cut-to-Length Views.

Corrosion-Resistant Clad Plate--I determine that the domestic industry producing corrosion-resistant clad plate products is not materially injured, nor threatened with material injury, by reason of subject imports from France and from Japan, which I have determined to be negligible. My determinations in these two investigations are discussed in the majority's Corrosion-Resistant Plate Views.

Corrosion-Resistant Carbon Steel Flat Products Other Than Clad Plate--I determine that the domestic industry producing corrosion-resistant carbon steel flat products other than clad plate is materially

injured by reason of cumulated subject imports from Australia, Canada, France, Germany, Japan and Korea. I further determine that subject imports from Brazil, Mexico, New Zealand, and Sweden are negligible and are not causing material injury, nor are they threatening material injury to the domestic industry producing these products. My determinations in all investigations involving subject imports of these products are set forth in the majority's Corrosion-Resistant Plate Views.

I. Additional Views Concerning the Negligibility Exception to Cumulation

The Commission must cumulatively assess the volume and price effects of imports from two or more countries subject to investigation if such imports compete with each other and with the domestic like product. An exception to mandatory cumulation is provided where the Commission determines that subject imports from a country are negligible and have no discernible adverse impact on the domestic industry. In applying this exception, the legislative history of the 1988 Act stresses that we are to apply the exception sparingly and that it is not to be used to subvert the purpose and general application of the mandatory cumulation provision of the statute.¹ I have been mindful of these cautions in my negligibility determinations in these investigations.

As discussed above, I have determined that certain subject imports are negligible and do not have a discernible adverse impact on the domestic industries producing these like products. Therefore, I have not cumulated the volume and price effects of these imports in assessing material injury by reason of the subject imports. I have further determined that subject imports from none of the non-cumulated countries, when analyzed separately, are causing material injury, or threatening material injury to the domestic industries producing these like products. Because of the considerable caution expressed in the legislative history in applying the negligibility exception, I elaborate in these separate views on the discussions in the various majority views regarding the application of the exception, particularly with respect to my findings on the price sensitive nature of the domestic markets for these like products.

In deciding if imports are negligible and have a discernible adverse impact on the domestic industry, the statute instructs us to evaluate all relevant economic factors, including, but not limited to, (1) whether the volume and market share of the imports are negligible, (2) whether sales transactions involving the imports are isolated and sporadic, and (3) whether the domestic market is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.² The legislative history notes other economic factors the Commission should consider such as a history of an industry long battered by unfair import competition and situations involving fungible products.³

Volume and Market Share

In examining the volume and market share of imports, the Commission has never established a numerical market share percentage or value benchmark for application of the exception. The significance of a particular share of the market cannot be examined in isolation but must be considered in the context of the degree of price sensitivity of the market. The legislative history directs us to interpret the negligible import exception "in a manner that makes sense given the

¹ H.R. Rep. No. 40, 100th Congress., 1st Sess., pt. 1, at 131 (1987).

² 19 U.S.C. § 1677(7)(C)(v).

³ H.R. Rep. No. 40, 100th Cong., 1st Sess., pt. 1, at 130 (1987); see also H.R. Rep. 576, 100th Cong., 2d Sess. 621 (1988). See also Torrington Co. v. United States, 790 F. Supp. 1161 (CIT 1992) at 1171.

realities of the marketplace."⁴ In this context, I find price sensitivity of the market to be an indicator of "the realities of the marketplace."

Ceteris paribus, the more price sensitive the market, the more likely it is that a low market share will have a discernible adverse impact on the domestic industry. Conversely, the less price sensitive the market, the higher the import market share necessarily must be to cause a discernible adverse impact.⁵ For these reasons, I have considered the volume and market share of subject imports not in isolation but in the context of the price sensitivity of the market in determining whether the subject imports have a discernible adverse impact on the domestic industry.

Isolated and Sporadic Sales Transactions

The Commission has almost always used import shipments as a proxy to determine whether import sales transactions are isolated and sporadic. In certain industries where transportation costs or other factors constrain sales of imports to areas close to their port of entry, the use of this methodology is more appropriate. In addition, in industries not characterized by large inventories, shipments of imports may in fact be a perfectly valid proxy for sales transactions. As market realities move away from these two situations, import shipment data become less of an indicator of the possible effect of negligible imports.

In the instant investigations, I note that transportation costs and other factors can limit the shipment of imports to areas close to the port of entry. Moreover, inventories tend to be low relative to shipments, although this relationship differs by importer and by like product.⁶ For these reasons, I have considered import shipment data to be a reasonable indicator of isolated and sporadic sales transactions in these investigations and have examined these data in applying the negligible imports exception.

Price Sensitivity

The statute requires the Commission to evaluate whether the domestic market under consideration is price sensitive, "so that a small quantity of imports can result in price suppression or depression."⁷ Price sensitivity measures the way domestic prices respond to changes in demand and other market conditions. In determining price sensitivity for each of the like product markets, I considered four factors: (1) the overall sensitivity of demand to changes in the price of the product (the elasticity of demand), (2) the responsiveness of domestic supply to changes in market price (the elasticity of supply), (3) the availability of nonsubject imports, and (4) the aggregate substitutability of the subject imports for the domestic like product (the elasticity of substitution between subject imports and the domestic like product). These factors together allow me to assess whether a small quantity of subject imports can have a price depressing or suppressing effect on the domestic like product. I will discuss each in turn.

(1) Sensitivity of Demand. The sensitivity of demand, or "elasticity of demand," measures how purchasers respond to changes in price. It is important in analyzing a market because it tells us,

⁴ H.R. Rep. No. 40, 100th Cong., 1st Sess., pt. 1, 131 (1987).

⁵ In Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom, Invs. Nos. 731-TA-486-494, USITC Pub. 2359 at 33-36 (Feb. 1991) (Prelim), the Commission found in a highly price sensitive market, the only countries not candidates for the negligibility exception were those with more than 2 percent market share. See also Torrington Co. v. United States, 790 F. Supp. 1161 (CIT 1992) at 1171.

⁶ Report at Tables 45-48.

⁷ 19 USC § 1677 (7)(C)(v).

for example, the extent to which purchasers maintain the same quantity of purchases in the face of price increases, or alternatively reduce purchases and buy substitute products or do without altogether. Purchase decisions in the face of price changes will be affected primarily by three factors:

- The existence, availability and commercial viability of substitute products. For example, if purchasers have access to alternative products that meet their needs, at competitive prices, they are less likely to be willing to pay higher prices, and more likely to switch to the alternative products. Purchasers who have no good alternatives are likely to continue to buy the product, regardless of price hikes.

- The importance of price, compared with other, non-price factors in the purchase decision. Where the product is used as an input in a downstream product, purchase decisions will be affected by the product's cost relative to the overall cost of the downstream product. If the product's cost comprises a major portion of the total cost of the downstream product, purchasers are more likely to resist a price increase. Where the product's cost is but a small part of the total cost of the downstream product, purchasers will more likely be willing to pay a higher price.

- The price and availability of substitutes for the downstream product into which the product is incorporated. Purchasers making downstream products for which there are good substitutes are less able to pass any price increases along to their purchasers, and so are less willing to pay a higher price themselves. Where there are no downstream substitutes, or few good substitutes, purchasers are more willing to accept price hikes, as they can be passed along through their own price increases. Similarly, a price reduction will be more or less important to purchasers depending on its effect on domestic sales.

The record in these investigations supports the finding that the overall sensitivity of demand for plate, corrosion-resistant clad plate, corrosion-resistant products other than clad plate, hot-rolled carbon steel, and cold-rolled carbon steel each is relatively low (i.e., the elasticity of aggregate demand for each of these products is inelastic). In the plate market, few purchasers were able to identify any possible substitutes for plate or for the end use products in which plate is used. Purchasers also indicated that price is very important, but is not the single most important factor considered when purchase decisions are made. Furthermore, plate products generally account for only a small share of the total production cost of end products in which they are used.⁸

In the hot-rolled market, the elasticity of demand is also low, primarily due to the lack of viable substitutes for hot-rolled products and for the downstream products into which they are incorporated, and the importance of non-price factors to purchasers. Price ranks fourth in importance behind other, non-price factors, in purchaser decisions. In addition, hot-rolled steel is not a large cost component in final end use applications. Nor is price the most important factor, relative to non-price factors, in the corrosion-resistant and cold rolled markets. These products also comprise a small portion of the cost of production of the final end use products into which they are incorporated. Although purchasers identified more possible substitutes for corrosion-resistant and cold-rolled products, viable commercial substitutes are still somewhat limited, as they are for the downstream products into which they are incorporated. Therefore these markets too are characterized by a low sensitivity of demand to price changes. Other factors, however, must be considered in determining the overall price sensitivity of these markets.

(2) Sensitivity of Domestic Supply. Whereas sensitivity of domestic demand measures purchasers' responses to changes in prices, the sensitivity of supply, or "elasticity of domestic supply," measures the reactions of producers to changes in market prices. Sensitivity of domestic supply, that is, domestic producer responses, is largely a function of the amount of unused capacity in the domestic industry. The domestic industry's capacity utilization rate and the cost and time

⁸ EC-Q-082 at 74-75. See also Staff Memo INV-Q-115 at 261.

required to add new capacity are also important determinants, along with the level of inventories and the ease with which the industry could divert exports into or out of the domestic market in response to price changes.

Unused capacity is important in measuring the domestic industry's response to price changes, and consequently the price sensitivity of a market. In general, an industry with high levels of unused capacity responds to changes in market conditions by increasing or reducing production, not by changing prices. If market prices increase and there is unused capacity, producers will increase production in order to increase their capacity utilization rates, and in so doing will prevent the price increase from being sustained. As a result, prices will fall back to the original levels.⁹ The ability to increase or reduce production serves to stabilize prices. Therefore price effects --either depression or suppression-- are unlikely to occur. (On the other hand, if a domestic industry is operating at high capacity utilization rates, a price hike is more likely to stick, as there is little or no additional production available to satisfy purchaser demand.)

Information gathered by the staff on the cost and time required to add new capacity suggests it is unlikely that domestic producers could add significant capacity for any of the subject products in the short run. Export levels are low, and so could not provide an additional source of supply. These factors together tend to lower the overall domestic supply elasticity estimates for each of the five like products.¹⁰

More important in my analysis, however, is the high volume of unused capacity and low rate of capacity utilization reported by the domestic industries during the period of investigation. The capacity utilization rate in the plate industry never exceeded 66.3 percent during the period of investigation. Total 1992 domestic capacity to produce plate exceeded apparent consumption by 2.0 million tons, or 40.1 percent.¹¹

Capacity utilization in the hot-rolled industry never exceeded 82.0 percent during the period of investigation. The total 1992 domestic capacity to produce hot-rolled steel exceeded apparent consumption by 9 million tons, or 17.8 percent of apparent consumption.¹²

Capacity utilization in the cold-rolled industry never exceeded 82.2 percent during the period of investigation and total cold-rolled productive capacity in 1992 exceeded apparent U.S. consumption by 5.9 million tons, or 20.9 percent.

Capacity utilization in the corrosion-resistant industry (including clad plate which is a very small portion of production), never exceeded 82.1 percent. Excess productive capacity in 1992 exceeded apparent U.S. consumption by 1.5 million tons, or 10.9 percent.¹³

The large amounts of unused capacity and low rates of capacity utilization have significant implications for the price sensitivity of these steel markets, particularly for the plate market. In a highly competitive market such as steel, with significant amounts of unused capacity, even if small

⁹ This assumes no changes in the domestic cost of production. If costs of production decline, the price would fall, and competitors would prevent producers from cutting prices by less than their costs decline. Similarly, if costs rise, prices would rise, but producers would be prevented from raising prices by more than the increase in costs.

¹⁰ EC-Q-082 at 18-19.

¹¹ Id. at 20.

¹² Id. at 21.

¹³ Id. at 23.

quantities of imports were to displace U.S. production, they are unlikely to have a depressing or suppressing effect on prices.

(3) Availability of Nonsubject Imports. The availability of nonsubject imports can have a significant effect on the price sensitivity of the market by acting as an alternative competitive source of supply. The more competitors in the market, the less likely it is that any one source will have an effect on the prevailing market price. The evidence in the record suggests that nonsubject imports are not an important factor in these markets. Specifically, nonsubject imports of cut-to-length plate accounted for only 1.5 percent of consumption in 1992.¹⁴ Nonsubject imports of hot-rolled accounted for only 0.6 percent of consumption in 1992.¹⁵ Cold-rolled nonsubject imports accounted for only 0.4 percent of consumption in 1992¹⁶ while corrosion-resistant nonsubject imports accounted for only 1.2 percent of consumption in 1992.¹⁷

(4) Substitutability. A critical factor in determining the overall price sensitivity of these markets is the degree to which subject imports and the domestic like products are substitutable ("elasticity of substitution"). Although many of the factors that determine substitutability are discussed generally in the various majority views, the importance I give to substitutability in determining whether markets are price sensitive warrants a more detailed discussion.

Substitutability reflects the degree of differentiation between the domestic product and subject imports, differences in terms of sale, and other non-price factors considered by purchasers in making purchase decisions.

A primary factor in all flat rolled steel markets in these cases relates to the quality of the domestic product as compared with each of the subject imports. Other important factors include supplier qualifications, lead times between order and delivery, the extent to which specialized and niche products imported from a particular country are not produced in the United States, before and after sales service, technical support, Buy-American policies, freight charges and minimum order size.¹⁸ The record contains considerable evidence on these factors, provided both from the parties' briefs and from the producers' and purchasers' questionnaire responses. I find purchaser questionnaire responses are particularly informative for these analyses.

Based on the information in the record, it is clear that the five flat-rolled carbon steel products under investigation are not standard commodity-type products with high degrees of substitutability between the domestic and subject foreign products in most possible end use applications. On the contrary, they are markets characterized by a high level of product differentiation and substantial differences in terms of sale and in other non-price factors considered important by purchasers. Buyers tend to maintain fairly rigid purchase criteria. Product quality was cited more often than any other factor, including price, as critical in a purchaser's sourcing decisions in all markets.¹⁹ Purchasers also cited "better quality" more often as the reason why they had purchased subject imports even though a comparable domestic product was available at a lower

¹⁴ Report at C-3.

¹⁵ Id. at C-4.

¹⁶ Id. at C-5.

¹⁷ Id. at C-6. This table includes data for corrosion-resistant clad plate.

¹⁸ EC-Q-082 at 23.

¹⁹ Report at I-157-160.

delivered price.²⁰ Conversely, purchasers cited non-price reasons for purchasing flat-rolled carbon steel products from domestic sources when comparable products were available at a lower delivered price from subject imports.²¹ These reasons included shorter lead times, more reliable supply, and Buy-American policies.

The record also indicates that most buyers do not tend to change their sources of supply from order to order or with price fluctuations. More than half of all purchasers in each of the product markets reported that they have not changed suppliers over the past five years. Reasons cited for remaining with the same supplier over this period are diverse, but many reported longstanding supplier relations, before and after sales service, supplier qualifications, quality, and availability of product as primary reasons.²² This extensive evidence indicates that the decision to add or replace a supplier can best be characterized as an objective decision based on a number of different factors, and not an impulsive one based on price or any other single factor.²³

Virtually all manufacturing end users of flat-rolled carbon steel require their suppliers to become certified or qualified with respect to physical and performance characteristics of the products they sell. The extent of the qualification process is generally a function of the level of sophistication of the end product, and may take from several weeks to two years.²⁴

Although price is not the deciding factor in any of the flat-rolled steel markets under consideration in these cases, the record evidence indicates that it is of greatest importance in the cut-to-length plate market. It is of less importance in the corrosion-resistant market, and an even lesser factor in the cold-rolled and hot-rolled markets.

Petitioners argue that the flat-rolled carbon steel products in these investigations are fungible. I find that not only are the products not fungible, but the record contains substantial evidence that the products in each market in these cases are highly differentiated, with numerous differences in the products themselves, terms of sale and other non-price factors that are important to purchasers.

Although the degree of substitutability in the five like product markets varies somewhat, these factors substantially limit the degree of substitutability between the subject imports and the domestic like product in each market. Therefore, I find that the substitutability between subject imports and the domestic like products to be low in the cold-rolled, hot-rolled, and corrosion-resistant markets. I find low to moderate substitutability in the plate market.

Price Sensitivity Finding

The statute provides a clear definition of price sensitivity for purposes of determining negligibility, to wit, whether the market is "price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression."²⁵ I have discussed the four elements that determine price sensitivity as defined in the statute, that is, in terms of effects on

²⁰ *Id.* at I-161.

²¹ *Id.* at I-161. Buy-American policies were reported to apply to anywhere from less than 1 percent to 100 percent of total 1992 purchases. See EC-Q-082 at 25.

²² EC-Q-082 at 24.

²³ *Id.* at 23-24.

²⁴ *Id.* at 27.

²⁵ 19 U.S.C. § 1677(7)(C)(v).

domestic prices. The record demonstrates these are industries characterized by low elasticity of demand, which can point toward price sensitivity if, for example, the like-products are highly substitutable and the domestic industry is operating at full capacity.

However, other parts of the analysis capture factors that outweigh the low elasticity of demand as a determinant and cause me to conclude that the markets are not price sensitive. Specifically, subject imports are not fungible with domestic products, and in fact have a low or at most moderate substitutability with domestic like products. Price is not the sole or even the most important factor in purchase decisions; rather, quality is cited most often by purchasers, along with numerous other "critical" and "very important" factors that go both to the product itself and to terms of sale and other considerations deemed important by purchasers.

The second key factor that is inconsistent with a finding of price sensitivity in these markets is the substantial availability of unused capacity in the domestic industry. Large unused capacity causes the domestic industries to react to changes in market conditions, including any small volume of imports, by changing production levels, rather than changing prices. Therefore, small quantities of imports cannot have the effect of depressing prices or suppressing a desired price increase by the domestic industry.

With respect to the cut-to-length plate market, the record suggests somewhat more price sensitivity to small quantities of subject imports than the other markets examined, based on evidence that purchasers consider price to be a more important factor in their sourcing decisions on plate. In addition, as discussed in the Cut-to-Length Plate Views, the plate market has a greater concentration of commercial-grade products that are more often purchased on the basis of price.

The statute directs us, however, to consider whether the market is price sensitive, not whether it is relatively more or less price sensitive than other markets in these investigations. Based on record evidence on the four factors I have considered to determine price sensitivity, I conclude on balance that the markets for hot-rolled, cold-rolled, corrosion resistant clad plate, corrosion resistant other than clad plate, and cut-to-length plate are not price sensitive as defined in the statute.

II. Negligibility and Material Injury Determinations

Hot-Rolled Carbon Steel Flat Products

I concur in the majority's findings with respect to negligible imports of hot-rolled steel products. In addition I find that imports from France are negligible. Imports of hot-rolled products from France accounted for 0.9 percent of total apparent domestic consumption in 1990, 0.6 percent in 1991 and 0.8 percent in 1992.²⁶ The value of hot-rolled products from France was \$172.1 million in 1990, \$97.2 million in 1991 and \$139.3 million in 1992.²⁷ These values are insignificant in an industry that measured domestic consumption over \$14.5 billion in 1992.²⁸

As discussed above, the market for hot-rolled steel is not price sensitive. Therefore a small volume of imports is not likely to have any adverse impact on the domestic industry. However, the potential of any adverse effect of this level of subject imports from France is reduced further because of the particularly attenuated degree of competition between these imports and domestic hot-rolled products.²⁹ A majority of purchasers reported that French hot-rolled products are superior in quality

²⁶ Report at Table 103.

²⁷ Id. at Table 94.

²⁸ Id. at Table C-2. See also Torrington Co. v. United States, 790 F.Supp. 1161 (CIT 1992) at 1171.

²⁹ French Prehearing Br., Hot-Rolled Section, at 7.

to domestic products, as alleged by the French producer respondent.³⁰ The perceptions of these purchasers is reflected in the consistent pattern of overselling by French products during the period of investigation (61 of 68 comparisons).³¹ Imports from France were not isolated and sporadic. However, the low level of imports, the attenuated degree of competition, and a market that is not price sensitive combine to convince me that imports from France are negligible and have no discernable adverse impact on the domestic industry.

Cold-Rolled Carbon Steel Flat Products

I concur in the majority's findings with respect to negligible imports of cold-rolled products. In addition, I find that imports of cold-rolled products from Brazil and the Netherlands are negligible. Imports of cold-rolled products from Brazil accounted for approximately 0.5 percent (by volume) of apparent domestic consumption in each year during the period of investigation.³² The value of imports from Brazil was \$62.1 million in 1990, \$62.6 million in 1991 and \$60.0 million in 1992.³³ These values are insignificant in an industry that measured domestic consumption over \$11 billion in 1992.³⁴

As discussed above, the market for cold-rolled steel is not price sensitive. Therefore a small volume of imports is not likely to have any adverse impact on the domestic industry. However, the potential effect is reduced further because the substitutability of imports from Brazil with domestic cold-rolled products is low.³⁵

Imports of cold-rolled steel from the Netherlands accounted for 0.5 percent (by volume) of apparent domestic consumption in 1990, 0.6 percent in 1991 and 0.6 percent in 1992.³⁶ The value of imports from the Netherlands was \$70.4 million in 1990, \$65.3 million in 1991 and \$71.9 million in 1992.³⁷ These values are insignificant in an industry that measured domestic consumption over \$11 billion in 1992.³⁸

Approximately [***] percent of imports from the Netherlands were products for which there was no domestic production. These niche product imports further reduced the potential for any adverse impact on the domestic industry.³⁹

³⁰ Report at Table 109, stating that French products are superior to the domestic product for reasons such as surface, shape, finish, gauge control, cleanliness and formability.

³¹ Id. at Tables 110-113.

³² Id. at Table 105.

³³ Id. at Table 95.

³⁴ Id. at Table C-3. See also Torrington Co. v. United States, 790 F. Supp. 1161 (CIT 1992) at 1171.

³⁵ EC-Q-082 at 36.

³⁶ Report at Table 105.

³⁷ Id. at Table 95.

³⁸ Id. at Table C-3. See also Torrington Co. v. United States, 790 F. Supp. 1161 (CIT 1992) at 1171.

³⁹ EC-Q-082 at 53.

Pricing data reflects predominant underselling by imports from Brazil and the Netherlands,⁴⁰ and sales of those imports do not appear to have been isolated and sporadic.⁴¹ However, the consistently low market shares of imports from Brazil and the Netherlands over the period of investigation, the low substitutability of those imports, and a market that is not price sensitive, combine to convince me that imports from Brazil and the Netherlands are negligible and have no discernable adverse impact on the domestic industry.

Cut-to-Length Carbon Steel Plate Products

I concur in the majority's findings with respect to negligible imports of plate products. In addition, I find that imports from Germany, Poland, Romania and the United Kingdom are negligible.

Germany's share of apparent domestic consumption by volume decreased steadily from 1.1 percent in 1990 to 0.8 percent in 1991 and then to 0.4 percent in 1992.⁴² The value of German imports decreased from \$26.7 million in 1990 to \$17.2 million in 1991 and then to \$11.2 million in 1992.⁴³

Germany's 20,665 short tons of imported plate are insignificant in an industry that measured annual domestic consumption at almost 5 million short tons in 1992.⁴⁴ Imports of niche products accounted for a substantial portion of imports from Germany. Although there was significant domestic production of all but one of these products, the fact that the remaining product accounted for a significant portion of German imports contributed to the low substitutability of German imports.⁴⁵

Imports from the United Kingdom declined from 0.8 percent of apparent domestic consumption in 1990 to 0.7 percent in 1991 and then to 0.4 percent in 1992.⁴⁶ The value of plate imports from the U.K. dropped from \$18.3 million in 1990 to \$13.2 million in 1991 and then to \$7.7 million in 1992. These values are insignificant in an industry that measured domestic consumption close to \$2 billion in 1992.⁴⁷

Overall plate imports from the United Kingdom also had a low level of substitutability with domestic cut-to-length plate products.⁴⁸ Imports from neither Germany nor the United Kingdom were isolated and sporadic.⁴⁹ The available price data indicate mixed underselling and overselling by

⁴⁰ Report at Tables 110-113.

⁴¹ Id. at Tables L-1, M-3 and M-5.

⁴² Id. at Table 101.

⁴³ Id. at Table 93.

⁴⁴ Id. at Table C-1. See also Torrington Co. v. United States, 790 F. Supp. 1161 (CIT 1992) at 1171.

⁴⁵ EC-Q-082 at 43.

⁴⁶ Report at Table 101.

⁴⁷ Id. at Table C-1. See also Torrington Co. v. United States, 790 F. Supp. 1161 (CIT 1992) at 1171.

⁴⁸ EC-Q-082 at 57.

⁴⁹ Report at Tables M-1, L-1 and M-5.

imports from Germany and consistent underselling by imports from the United Kingdom.⁵⁰ Imports from Poland held 0.5 percent, 0.8 percent, and 0.5 percent of apparent domestic consumption (by volume) during 1990, 1991, and 1992, respectively. The value of plate imports from Poland declined from \$9.5 million in 1990 to \$7.4 million in 1992.⁵¹ These values are insignificant in a market that measured domestic consumption close to \$2 billion in 1992.⁵²

Plate imports from Romania held a market share of 0.6 percent, 0.8 percent, and 0.4 percent of apparent domestic consumption (by volume) in 1990, 1991, and 1992, respectively. The value of imports from Romania declined from \$12.5 million in 1990 to \$6.7 million in 1992.⁵³ These values are insignificant in an industry that measured domestic consumption close to \$2 billion in 1992.⁵⁴

Information on the substitutability of imports from Poland and Romania is limited, but based upon what information is available, they are estimated to have a low substitutability with domestic products. Polish producers normally do not produce to ASTM specifications, and imports from both countries require long lead times between order and delivery. Both of these factors are considered important by purchasers.⁵⁵

I have found the market for cut-to-length carbon steel plate products to be relatively more sensitive to price than the other like product markets. However, it is not price sensitive by the terms of the statutory definition, such that a small amount of imports can have a price suppressive or depressive impact. Therefore, the small market shares of imports from Germany, Poland, Romania, and the United Kingdom, their low levels of substitutability with domestic plate, and a market that is not price sensitive, combine to convince me that imports from Germany, Poland, Romania, and the United Kingdom are negligible and have no discernable adverse impact on the domestic industry.

Having determined that imports from neither Germany, Poland, Romania nor the United Kingdom have a discernable adverse impact on the domestic industry producing cut-to-length plate, I also find that the domestic industry is not materially injured by reason of the dumped imports from any of these countries.

III. Threat of Material Injury by Reason of the Unfairly Traded Imports

In making a determination of whether an industry is threatened with material injury, the Commission considers, among other relevant economic factors, several criteria set forth in the statute.⁵⁶ A determination that an industry "is threatened with material injury shall be made on the basis of evidence that the threat is real and that actual injury is imminent. Such a determination may

⁵⁰ Id. at Tables 110-113.

⁵¹ Id. at Table 101 and 93.

⁵² Id. at Table C-1. See also Torrington Co. v. United States, 790 F. Supp. 1161 (CIT 1992) at 1171.

⁵³ Id. at Tables 101 and 93.

⁵⁴ Id. at Table C-1. See also Torrington Co. v. United States, 790 F. Supp. 1161 (CIT 1992) at 1171.

⁵⁵ EC-Q-082 at pg 53-55, Staff Memo at Figure I (pg I-157).

⁵⁶ 19 U.S.C. § 1677(7)(F)(i).

not be made on the basis of mere conjecture or supposition."⁵⁷ The evidence on the record must show more than a "mere possibility" that injury might occur.⁵⁸ A finding that the industry "almost" experienced injury or is "vulnerable" to future injury is neither a necessary nor sufficient condition for finding any threatened injury will be material.

I join the discussions in the Cold-Rolled Views and the Cut-to-Length Plate Views concerning cumulation for threat analysis.⁵⁹ Set forth below are separate threat determinations for each subject country.

Cold-Rolled Carbon Steel Flat Products

Germany. I find that the domestic industry producing cold-rolled carbon steel flat products is not threatened with material injury by reason of imports of cold-rolled sheet from Germany. No export subsidies were determined by the Commerce Department for German cold-rolled products. German capacity fell during the period of investigation from 9.1 million tons in 1990 to 8.3 million tons in 1992. Capacity utilization increased from 74.4 percent in 1990 to 77.8 percent in 1992.⁶⁰ Imports of German cold-rolled steel were valued at \$183.4 million and held a 1.1 percent market share in 1990; although market share increased to 1.2 percent in 1992, value dropped to \$166.3 million.⁶¹ There is no indication in the record that imports of cold-rolled sheet from Germany will sell at prices depressing or suppressing domestic prices, since German cold-rolled products consistently oversold the domestic industry.⁶² U.S. inventories of German cold-rolled products decreased from [***] percent of U.S. sales in 1990 to [***] percent of sales in 1992.⁶³ No persuasive evidence suggests product shifting in the German cold-rolled market. In addition, only between 3.7 and 3.9 percent of total German cold-rolled shipments were shipped to the U.S. during the period of investigation and there is no indication this pattern will change.⁶⁴ No allegation has been made that imports from Germany of cold-rolled sheet have impeded or may impede existing development and production efforts of the domestic industry. No other adverse trends have been demonstrated indicating a probability that imports of cold-rolled sheet from Germany are a real threat of material injury and that actual injury is imminent.

Korea. I find that the domestic industry producing cold-rolled carbon steel flat products is not threatened with material injury by reason of imports of cold-rolled sheet from Korea. Although Korean capacity [***] from [***] tons in 1990 to [***] tons in 1992, capacity utilization [***] percent and was as high as [***] percent.⁶⁵ Also, Korean cold-rolled imports increased only from \$54 million and 0.4 percent market share in 1990 to \$72.6 million and 0.6 percent market share in

⁵⁷ 19 U.S.C. § 1677(7)(F)(ii).

⁵⁸ Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780 (1981).

⁵⁹ I also join the general discussion in the Hot-Rolled Views relating to the limited potential for product shifting resulting from the Commission's determinations in these investigations.

⁶⁰ Report at I-112.

⁶¹ Id. at I-147.

⁶² Id. at I-172-175.

⁶³ Id. at I-90.

⁶⁴ Id. at I-112.

⁶⁵ Id. at I-121.

1992, which does not suggest a real threat of material injury. Imports of cold-rolled sheet from Korea experienced a large percentage increase in market share, but because of the extremely low market share base and absolute volume, this increase is not significant. The Department of Commerce also determined that Korea provided export subsidies for cold-rolled products at only 0.04 percent ad valorem.⁶⁶

The probability is low that imports of cold-rolled sheet from Korea will sell at prices depressing or suppressing domestic prices, since penetration is low and Korean cold-rolled products consistently oversold the domestic industry.⁶⁷ Furthermore, Korean shipments of cold-rolled products to the U.S. represented between [***] and [***] percent of total Korean shipments during the period of investigation.⁶⁸ U.S. inventories of Korean cold-rolled products [***] from [***] tons in 1990 to [***] tons in 1992.⁶⁹ No allegation has been made that imports of cold-rolled sheet from Korea have impeded or may impede existing development and production efforts of the domestic industry. No persuasive evidence suggests product shifting in the Korean market. No other adverse trends have been demonstrated indicating any probability that imports of cold-rolled sheet from Korea are a real threat of material injury and that actual injury is imminent.

Netherlands. I find that the domestic industry producing cold-rolled carbon steel flat products is not threatened with material injury by reason of imports of cold-rolled sheet from the Netherlands. No export subsidies were determined by the Commerce Department for Dutch cold-rolled products. In a U.S. market for cold-rolled steel measured in excess of \$11 billion, imports of cold-rolled sheet from the Netherlands were valued at \$70.4 million and 0.5 percent market share in 1990 and \$71.9 million and 0.6 percent market share in 1992. Capacity utilization [***] during the period of investigation.⁷⁰ U.S. shipments as a percent of all shipments of cold-rolled products from the Netherlands were also stable at between [***] and [***] percent during the period of investigation.⁷¹ N.V.W. (Hoogovens' importer) does not maintain inventories in the U.S.⁷² No allegation has been made that imports from the Netherlands of cold-rolled sheet have impeded or may impede existing development and production efforts of the domestic industry. No persuasive evidence suggests product shifting in the Netherlands' market. No other adverse trends have been demonstrated indicating a probability that imports of cold-rolled sheet from the Netherlands are a real threat of material injury and that actual injury is imminent.

Cut-to-Length Carbon Steel Plate Products

Germany. I find that the domestic industry producing cut-to-length plate products is not threatened with material injury by reason of plate products from Germany. No export subsidies were determined by the Commerce Department for German plate products. German capacity increased during the period of investigation. German capacity utilization decreased from 1990 to 1992 and is

⁶⁶ Id. E-16.

⁶⁷ Id. at I-172-175.

⁶⁸ Id. at I-121.

⁶⁹ Id. at I-136.

⁷⁰ Id. at I-125. Capacity utilization [***] from [***] percent in 1990 to [***] percent in 1992.

⁷¹ Id. at I-125.

⁷² Respondent's Brief at 37.

projected to decline further in 1993.⁷³ Dillinger (the predominant German importer of plate) has stated that it has no plans to increase capacity.⁷⁴ U.S. market penetration by imports of plate products from Germany decreased steadily from 1.1 percent in 1990 to 0.8 percent in 1991 and to 0.4 percent in 1992.⁷⁵ The value of Germany's exports to the U.S. fell from \$26.7 million in 1990 to \$11.1 million in 1992.⁷⁶ They represent only 1.6 percent of Germany's total shipments.⁷⁷ The low and decreasing volume of imports from Germany make it unlikely they will have any price depressing or suppressing effects on domestic prices. No persuasive evidence of product shifting exists. Inventories of German plate products in the United States have declined significantly during the period of investigation.⁷⁸ No allegation has been made that imports from Germany of plate products have impeded or may impede existing development and production efforts of the domestic industry. No other adverse trends have been demonstrated indicating any probability that imports of plate products from Germany are a real threat of material injury and that injury is imminent.

Poland. I find that the domestic industry producing cut-to-length plate products is not threatened with material injury by reason of plate products from Poland. No export subsidies were determined by the Commerce Department for Polish plate products. Polish capacity [***] during the period of investigation, decreasing from [***] tons in 1990 to 1.1 million in 1992. Capacity utilization [***], with [***] from [***] percent in 1990 to [***] percent in 1992.⁷⁹ Although U.S. inventories of Polish plate increased from 337 tons in 1990 to [***] tons in 1992,⁸⁰ [***] tons represents less than [***] percent of U.S. plate consumption.⁸¹ The value of Polish imports were at \$19.5 million in 1990, dropping to \$7.4 million in 1992.⁸² Market share in the U.S. increased in 1991, but fell back to its previous level of 0.5 percent in 1992.⁸³ Polish plate is unique in its combination of multiple party transaction processes, longer negotiation periods, and requirement of advanced sales, making it unlikely that imports would constitute a real threat of material injury to the domestic industry. Furthermore, there is no evidence to support the position that these imports have impeded or will impede existing development and production efforts of the domestic industry. No other adverse trends have been demonstrated indicating any probability that imports of plate products from Poland are a real threat of material injury and that injury is imminent.

Romania. I find that the domestic industry producing cut-to-length plate products is not threatened with material injury by reason of plate products from Romania. No export subsidies were determined by the Commerce Department for Romanian plate products. Romanian capacity [***]

⁷³ Report at I-109.

⁷⁴ Id. Respondent's Brief at 17.

⁷⁵ Report at I-142.

⁷⁶ Respondent's Brief at 18.

⁷⁷ Report at I-109.

⁷⁸ Id. at Table 45.

⁷⁹ Id. at I-127.

⁸⁰ Id. at I-133.

⁸¹ Id. at Table 101.

⁸² Id. at I-127.

⁸³ Id. at I-128.

during the period of investigation from [***] tons in 1990 to [***] tons in 1992. Although capacity utilization [***] from [***] percent in 1990 to [***] percent in 1991, it [***] to [***] percent in 1992.⁸⁴ U.S. market penetration by imports of plate products from Romania decreased from 0.6 percent in 1990 to 0.4 percent in 1992.⁸⁵ U.S. importers reported extremely low shipments and inventories of Romanian plate at the end of 1992.⁸⁶ Romania is the only country under investigation that does not receive most-favored-nation status tariff treatment, causing a 16 percent cost disadvantage when compared to other foreign plate producers. There is no evidence that the low level of Romanian imports will cause a price depressing or suppressing effect on domestic prices. No allegation has been made that imports of Romanian plate products have impeded or may impede existing development and production efforts of the domestic industry. No other adverse trends have been demonstrated indicating any probability that imports of plate products from Romania are a real threat of material injury and that injury is imminent.

United Kingdom. I find that the domestic industry producing cut-to-length plate products is not threatened with material injury by reason of plate products from the United Kingdom. No export subsidies were determined by the Commerce Department for U.K. plate products. Capacity and capacity utilization in the United Kingdom [***] between 1990 and 1992.⁸⁷ The value of U.K. imports of plate has declined from \$18.3 million in 1990 to \$7.7 million in 1992, with a comparable decline in market share from 0.8 percent in 1990 to 0.5 percent in 1992.⁸⁸ U.S. exports represent only a [***] portion of the U.K.'s total shipments of plate products.⁸⁹ U.S. inventories of U.K. plate declined from [***] tons in 1990 to [***] tons in 1992.⁹⁰ The 1992 amount represents less than [***] percent of U.S. plate consumption.⁹¹ There is no evidence that the U.K. plate imports will have a price depressing or suppressing effect on domestic prices. No allegation has been made that imports from the United Kingdom of plate products have impeded or may impede existing development and production efforts of the domestic industry. No other adverse trends have been demonstrated indicating any probability that imports of plate products from the United Kingdom are a real threat of material injury and that actual injury is imminent.

⁸⁴ Id. at I-128.

⁸⁵ Id. at I-142.

⁸⁶ Id. at Table 45.

⁸⁷ Id. at I-131.

⁸⁸ Id. at I-142.

⁸⁹ Id. at I-131.

⁹⁰ Id. at I-133.

⁹¹ Id. at I-56.

ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER JANET A. NUZUM

I concur with the majority of my colleagues in most of the issues relevant to these determinations, and therefore join in the Views of the Commission, except as noted therein. To the extent that my approach or rationale differed somewhat from that of my colleagues, or I considered additional factors, these additional views attempt to express these differences. For those investigations in which I dissented from the majority's determinations, these views set forth my determinations and reasons therefor.

I hope that these additional and dissenting views shed some light on the reasons why I made the determinations I made in these flat-rolled steel investigations. The record for these 72 investigations is extraordinarily large and complex, and time has not permitted me to identify in these written views every factor and every piece of evidence relevant to my various determinations. Nevertheless, hopefully these views, in conjunction with the Views of the Commission, will convey the framework for my analysis and reasons for my decisions.

I. SUMMARY OF DETERMINATIONS

A. Hot-Rolled Steel Investigations

On the basis of the record developed in these final investigations, I find that the industry in the United States producing hot-rolled carbon steel flat products, including plate in coils, (hot-rolled steel) is neither materially injured nor threatened with material injury by reason of imports of such products from Belgium, Brazil, France, Germany, and Korea that the U.S. Department of Commerce (Commerce) has found to be subsidized by the Governments of the respective countries (subsidized imports) and sold at less-than-fair value in the United States (LTFV imports). I also find that the industry is neither materially injured nor threatened with material injury by reason of LTFV imports of hot-rolled steel from Canada, Japan, and the Netherlands. For purposes of my present injury determinations, I considered the cumulated imports of all countries subject to the hot-rolled steel investigations¹ with the exception of Korea. I found that the imports from Korea did not compete with the imports from the other countries subject to the hot-rolled steel investigations and, therefore, did not cumulate the imports from Korea with those other imports.² I made a separate negative present injury determination with regard to Korea. I did not cumulate imports from any country for purposes of my threat analysis on hot-rolled steel.

B. Cold-Rolled Steel Investigations

On the basis of the record developed in these final investigations, I find that the industry in the United States producing cold-rolled carbon steel flat products (cold-rolled steel) is not materially injured by reason of subsidized and LTFV imports of such products from Austria, Belgium, Brazil, France, Germany, Italy, Korea, and Spain. I also find that the industry is not materially injured by reason of LTFV imports of cold-rolled steel from Argentina, Canada, Japan, and the Netherlands. For purposes of my present injury determinations, I considered the cumulated imports of all countries subject to the cold-rolled steel investigations with the exceptions of Argentina and Austria. I exempted the imports from these two countries from cumulation on the basis that such imports were

¹ I have included imports from South Africa in the cumulated import totals for purposes of my present injury determinations for all flat-rolled carbon steel products.

² I note that I would also have made negative present injury determinations had I cumulated the imports from all countries subject to the hot-rolled steel investigations.

individually negligible and had no discernible adverse impact on the domestic industry.³ I made separate negative present injury determinations with regard to Argentina and Austria.

For purposes of my threat determinations on cold-rolled steel, I cumulated the imports from Belgium, Brazil, France, Germany, Italy, Korea, the Netherlands, and Spain. I find that the industry in the United States producing cold-rolled steel is threatened with material injury by reason of these cumulated imports. I further find that, but for the suspension of liquidation, the domestic cold-rolled steel industry would have been materially injured by reason of the imports cumulated for my threat analysis. I find that the industry is not threatened with material injury by reason of imports of cold-rolled steel from either Argentina, Austria, Canada, or Japan.

C. Corrosion-Resistant Steel Investigations

On the basis of the record developed in these final investigations, I find that the industry in the United States producing corrosion-resistant carbon steel flat products other than clad plate (corrosion-resistant steel⁴) is materially injured by reason of subsidized and LTFV imports of such products from Brazil, France, Germany, Korea, and Mexico. I also find that the industry is materially injured by reason of subsidized imports of corrosion-resistant steel from New Zealand and Sweden, and LTFV imports of corrosion-resistant steel from Australia, Canada, and Japan. For purposes of these determinations, I considered the cumulated imports of all countries subject to the corrosion-resistant investigations.

D. Clad Plate Investigations⁵

On the basis of the record developed in these final investigations, I find that the industry in the United States producing clad plate is neither materially injured nor threatened with material injury by reason of subsidized and LTFV imports of such products from Brazil, France, Germany, Korea, and Mexico. I also find that the industry is neither materially injured nor threatened with material injury by reason of subsidized imports of clad plate from New Zealand and Sweden, and LTFV imports of clad plate from Australia, Canada, and Japan. I cumulated imports from France and Japan for purposes of my present injury determinations and for my threat determinations.

E. Cut-to-Length Plate Investigations

On the basis of the record developed in these final investigations, I find that the industry in the United States producing cut-to-length carbon steel plate (plate) is materially injured by reason of subsidized and LTFV imports of these products from Belgium, Brazil, France, Germany, Mexico, Spain, Sweden, and the United Kingdom. I also find that the industry is materially injured by reason of LTFV imports of plate from Canada, Finland, Poland, and Romania. For purposes of my present injury determinations, I considered the cumulated imports of all countries subject to the plate investigations with the exceptions of Italy and Korea. I exempted the imports from these two countries from cumulation on the basis that such imports were individually negligible and had no discernible adverse impact on the domestic industry. I find that the industry in the United States

³ I note that I would also have made negative present injury determinations had I cumulated the imports from all countries subject to the cold-rolled steel investigations.

⁴ My use of the term corrosion-resistant steel does not include clad plate, which I find to be a separate like product. As a practical matter, however, the vast majority of the data for corrosion-resistant steel on the public record includes very small quantities of clad plate.

⁵ I have made determinations with regard to all countries for which clad plate was included within the defined scope of the subject imports, i.e., for all countries subject to the corrosion-resistant investigations. I note that the record contains evidence of imports of clad plate from only France and Japan.

producing plate is neither materially injured nor threatened with material injury by reason of imports of such products from either Italy or Korea.⁶ Finally, I make an affirmative critical circumstances finding for plate from Spain.

II. LEGAL STANDARD

Under section 705(b) of the Tariff Act of 1930, as amended (the Act), the Commission determines whether "an industry in the United States is materially injured, or is threatened with material injury," by reason of imports of the merchandise found by Commerce to be subsidized.⁷ Under section 735(b) of the Act, the Commission determines whether "an industry in the United States is materially injured, or is threatened with material injury," by reason of imports of the merchandise found by Commerce to be sold at LTFV in the United States.⁸ Section 771(7)(A) of the Act defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."⁹

In making these determinations, the Commission is specifically required to consider the volume of imports, the effect of imports on prices in the United States, and the impact of the imports on domestic producers of the like product.¹⁰ Many factors are considered by the Commission in its investigation under this framework. "The presence or absence of any factor which the Commission is required to evaluate . . . shall not necessarily give decisive guidance" with respect to our determination.¹¹ Decisions are based on the record as a whole.

In determining whether or not an industry is materially injured by reason of subsidized and LTFV imports, the Commission may consider alternative causes of injury, but is not to weigh causes.¹² The Commission need not determine that the subsidized and LTFV imports are "the principal, a substantial, or a significant cause of material injury."¹³ Congress clearly indicated that to do so "has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; industries that are often the most vulnerable to less-than-fair-value imports."¹⁴ Rather, a finding that the subject imports are contributing to any material injury is sufficient.¹⁵

The Commission's determination must be based on positive evidence in the record; it may not be based on speculation or supposition. In evaluating the record, the Commission may weigh the

⁶ Material retardation of the establishment of an industry is not at issue in any of these investigations on flat-rolled carbon steel products.

⁷ 19 U.S.C. § 1671d(b).

⁸ 19 U.S.C. § 1671d(b).

⁹ 19 U.S.C. § 1677(7)(A).

¹⁰ 19 U.S.C. § 1677(7)(B).

¹¹ 19 U.S.C. § 1677(7)(E)(ii).

¹² E.g., Citrosuco Paulista, S.A. v. United States, 704 F.Supp. 1075, 1101 (CIT 1988).

¹³ S. Rep. No. 249, 96th Cong., 1st Sess. 57, 74 (1979).

¹⁴ Id. at 74-75.

¹⁵ See, e.g., Metallverken Nederland, B.V. v. United States, 728 F.Supp. 730, 741 (CIT 1989); Citrosuco Paulista, S.A. v. United States, 704 F.Supp. 1075, 1101 (CIT 1988).

evidence and selectively rely on certain evidence as more credible; however, the Commission's determination in the final analysis must be supported by substantial evidence on the record.¹⁶

III. LIKE PRODUCT AND DOMESTIC INDUSTRY

I concur with my colleagues that there are five like products in these investigations, consisting of (1) hot-rolled carbon steel flat products, (2) cold-rolled carbon steel flat products, (3) corrosion-resistant carbon steel flat products other than clad plate, (4) clad plate, and (5) cut-to-length carbon steel plate. I therefore join in the discussions of like product as expressed in the Views of the Commission.¹⁷ I further concur that the domestic industries consist of all U.S. producers of the respective like products and join in the discussions of domestic industry and related parties as expressed in the Views of the Commission.¹⁸

IV. CUMULATION

I concur with my colleagues that, for each of the five like products, there exists a reasonable overlap of competition between the subject imports from each country and both other subject imports and domestic production, with the sole exception of hot-rolled steel from Korea. I generally join in the discussions with regard to competition for purposes of cumulation as expressed in the Views of the Commission.¹⁹ I have, however, arrived at conclusions different from those of my colleagues in particular investigations because I have taken a more restrictive approach in applying the negligibility exception. The basis for this approach and my analysis and findings are set forth below.

Also unlike my colleagues, in analyzing threat of material injury in the cold-rolled steel investigations, I exercised my discretion to cumulate the imports from most of the subject countries. Certain factors considered in deciding to cumulate these imports are also noted below. The analysis and findings are presented in my discussion of threat of material injury.

A. Legal Framework for Cumulation and the Negligibility Imports Exception

Although I agree with much of the majority's views on the mandatory cumulation provision and the negligible imports exception, my application of these provisions of the statute in these investigations differs in certain respects from those of my colleagues. Therefore, I believe it is useful to set forth my views on the legal framework for the application of the cumulation provision and the negligible imports exception to that provision.

A proper understanding of the negligible imports exception to cumulation begins with the cumulation provision itself. When Congress enacted the negligible imports exception to the cumulation requirement, it restated the purpose of that requirement:

¹⁶ 19 U.S.C. § 1516a(b)(1)(B).

¹⁷ See Views of the Commission on Hot-Rolled Steel Products (Hot-Rolled Views) at "Like Product"; Views of the Commission on Cold-Rolled Steel Products (Cold-Rolled Views) at "Like Product"; Views of the Commission on Corrosion-Resistant Steel Products (Corrosion-Resistant Views) at "Like Product"; and Views of the Commission on Cut-to-Length Plate (Plate Views) at "Like Product". I note that the Corrosion-Resistant Views include the discussion on clad plate, which is a separate like product.

¹⁸ See discussions of "Domestic Industry" and "Related Parties" at, respectively, Hot-Rolled Views, Cold-Rolled Views, Corrosion-Resistant Views, and Plate Views.

¹⁹ See discussion of "Competition" at, respectively, Hot-Rolled Views, Cold-Rolled Views, Corrosion-Resistant Views, and Plate Views.

[C]ompetition from unfairly traded imports from several countries simultaneously often has a hammering effect on the domestic industry. This hammering effect may not be adequately addressed if the impact of the imports are analyzed separately on the basis of their country of origin. The cumulation requirement is thus an effort to make the application of the injury analysis more realistic in terms of recognizing the actual effects of unfair import competition.²⁰

The cumulation provision requires the Commission to assess the volume and price effects of subject imports from several countries on a cumulated basis where those imports compete both with each other and with the domestic like product.²¹ The negligible imports exception to this general rule implicitly recognizes that in certain, narrow instances, a very small amount of unfairly traded imports from a particular country may have "no discernable adverse impact" on the domestic industry, even though those imports are entering the United States simultaneously with more significant unfairly traded imports from other countries. In those instances, the statute provides that the Commission is "not required to apply" the cumulation requirement.²²

The legislative history of this provision makes very clear that Congress intended it to be applied sparingly and only in extraordinary circumstances. The House report, for example, states:

While this amendment gives some limited discretion to the ITC to refrain from cumulative injury assessment with respect to imports from a particular source, the Commission shall apply this exception narrowly and only in circumstances where it is clear that imports from that source are so small and so isolated that they could not possibly be having any injurious impact on the U.S. industry. The ITC shall apply this exception with particular care in situations involving fungible products, where a small quantity of low-priced imports can have a very real effect on the market.²³

The Conference report made clear that the Congress intended "that the ITC apply the exception narrowly and that it not be used to subvert the purpose and general application of the requirement."²⁴ Rather, the provision was intended to provide the Commission with sufficient discretion to avoid ridiculous results from a strict application of the mandatory cumulation provision.²⁵

²⁰ H.R. Rep. No. 40, Part 1, 100th Cong., 1st Sess. 131 (Part I 1987).

²¹ See 19 U.S.C. § 1677(C)(iv)(I) ("For purposes of [evaluating the volume of imports and the effect of imports on prices]...the Commission shall cumulatively assess the volume and effect of imports from two or more countries of the product subject to investigation if such imports compete with each other and with the products of the domestic industry in the United States market."). This cumulated assessment is mandatory in present injury analysis; in threat of injury analysis cumulation is discretionary.

²² 19 U.S.C. § 1677(7)(C)(v).

²³ H.R. Rep. No. 40, supra, at 130 (emphasis added).

²⁴ H.R. Rep. No. 576, 100th Cong., 2d Sess. 621 (1988); see also id. at 131.

²⁵ H.R. Rep. No. 40, supra, at 131. ("Certain cases have been brought to the attention of the Committee where strict application of the cumulation mandate has led to results which are anomalous to an objective analysis of market dynamics."); see also Torrington Company v. United States, 790 (continued...)

It is easy to understand Congress' concern that this provision not undermine the purpose and general application of the cumulation requirement. Where small volumes of imports are entering the United States from several countries at the same time, a liberal application of the exception could result in the exclusion of much of those imports from a cumulated analysis. That result, in turn, could dilute the "hammering effect" of unfairly traded imports on the domestic industry, which could affect the outcome of any causation analysis.

To guard against such outcomes, the statute requires the Commission to evaluate "all relevant economic factors" in making its determination on negligibility. The statute specifically enumerates three such factors: (i) the volume and market share of the imports; (ii) whether sales of the imports are "isolated and sporadic"; and (iii) the price-sensitivity of the domestic market for the like product.²⁶

The statute makes plain, however, that these are not necessarily the only relevant economic factors.²⁷ Indeed, in applying the negligible imports exception in previous cases, the Commission has considered several other economic factors to be relevant. These include: (i) whether the domestic industry is "already suffering considerable injury and has long been battered by import price competition;"²⁸ (ii) respective trends in market penetration;²⁹ (iii) cross-ownership of foreign producers;³⁰ and (iv) the degree of competition of the imported product with the domestic product.³¹

It is, of course, well-established that Congress did not provide the Commission with any numerical standard for measuring whether certain imports are negligible.³² Nor has the Commission ever adopted such a numerical standard on its own.³³ The significance or insignificance of a small

²⁵(...continued)

F. Supp. 1161, 1171 (Ct. Int'l Trade 1992) ("[T]he Commission is directed to interpret the negligible import exception in a manner that makes sense in light of the market.").

²⁶ 19 U.S.C. §1677(7)(C)(v).

²⁷ Id. (stating that the Commission "shall consider all relevant economic factors, including, but not limited to . . ." the three specifically enumerated factors) (emphasis added).

²⁸ Stainless Steel Butt-Weld Pipe Fittings from Korea and Taiwan, Invs. Nos. 731-TA-563-564 (Preliminary) USITC Pub. 2534 (July 1992) at 16, n. 61 (citing, inter alia, H.R. Rep. No. 40, Part 1, 100th Cong., 1st Sess. 131 (Part I 1987)).

²⁹ See Ferrosilicon from Kazakhstan and the Ukraine, Invs. Nos. 731-TA-566 and 599 (Final) USITC Pub. 2616 (Mar. 1993) at 19-25.

³⁰ See Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, The Netherlands, Sweden, and the United Kingdom, Invs. Nos. 731-TA-486 - 494 (Preliminary) USITC Pub. 2359 (Feb. 1991) at 28-29.

³¹ Id. at 24, 33-36.

³² H. R. Rep. No. 40, supra, at 131. ("The Committee does not provide in the legislation a specific numerical standard for what constitutes 'negligible' in recognition that what may be 'negligible' imports in volume or market share for one industry may be different for another industry.")

³³ See, e.g., Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, Invs. Nos. 731-TA-532-537 (Final) USITC (continued...)

volume of imports turns on a variety of factors, including the nature and condition of the domestic industry in question. Applying a numerical standard across investigations could lead to an arbitrary and mechanistic application of the negligibility standard rather than an application that looks at the realities of the marketplace. Indeed, the express refusal by Congress to legislate a numerical standard underscores the importance of examining all relevant economic factors when considering whether to apply the negligible imports exception to particular imports in an investigation.

It also bears noting that several factors relevant to analysis of negligibility are also relevant in analyzing whether there is a reasonable overlap of competition. For example, whether sales of imports from a particular country are limited to a particular region of the country is relevant to both whether those imports reasonably overlap with other imports and the domestic product and whether they are "isolated and sporadic." Likewise, evidence that particular imports are priced substantially higher than other imports or the like product could suggest the absence of any reasonable overlap of price competition, as well as the absence of any discernible adverse price effect. Similarly, the relative degree of competition between particular imports and other imports and the domestic product -- whether for quality reasons or other reasons -- is relevant, again, to whether there is a reasonable overlap of competition and whether there is a discernible adverse impact.

It is not enough for imports from a particular country subject to investigation to be very small to warrant exemption from cumulation. The statute also requires that the imports have "no discernible adverse impact" on the domestic industry. In my view, a logical interpretation of this provision is to consider not only whether the imports, by themselves, have a discernible adverse impact, but also whether they discernibly contribute to the adverse impact that the other, cumulated imports are having on the domestic industry. Thus, for example, if the imports in question increased their market penetration, albeit from one very low level to a slightly higher, but still low level, the likelihood is that those imports contributed to the adverse volume effects of the cumulated imports.³⁴

Finally, the statute makes clear that the Commission is never required to apply the negligible imports exception.³⁵ After considering all the relevant economic factors, if there is even a slight question that applying the negligibility provision might subvert the application of the mandatory cumulation provision itself, my approach in these investigations has been to exercise my discretion not to apply the exception. I also have exercised my discretion not to apply the exception in instances (such as the hot-rolled steel investigations) where it appears that the cumulated imports are not a cause of material injury. By doing so, I can be more certain that I have fully assessed the complete impact of the cumulated imports on the domestic industry before arriving at a negative determination that completely denies the industry relief.

B. Factors Relevant to Application of the Negligibility Exception

I have relied on a variety of factors in determining whether imports from any one country subject to investigation are negligible and have no discernible adverse impact on the domestic

³³(...continued)

Pub. 2564 (Oct. 1992) at 29 ("In examining the volume and market share of imports, we stress that we used no numerical 'bright line' cutoff for determining whether imports were negligible.")

³⁴ For this reason, I look closely at trends in import volumes, as well as levels of volume.

³⁵ See 19 U.S.C. § 1677(C)(v). ("The Commission is not required to apply [the mandatory cumulation provision]... in any case in which the Commission determines that imports... subject to investigation are negligible and have no discernable adverse impact on the domestic industry.")

industry. My analysis has not been limited to, or particularly dependent on, volume indicators.³⁶ I did consider the absolute volume and value of imports, in terms of both levels and trends.³⁷ However, the relative volumes of imports were of greater importance to my analysis. I examined imports relative to both total apparent consumption, and open market consumption.³⁸ For hot-rolled and cold-rolled products, I placed more weight on shares of open market (or merchant) consumption.³⁹ The negligibility exception applies to imports having no discernible adverse impact on the domestic industry. In my view, it is in the merchant market, where the imports compete most directly with U.S. products, that such an impact may be more readily discerned.⁴⁰ With regard to all these volume indicators, I placed somewhat more weight on the annual data for 1992, and for changes from 1991 to 1992. Also with regard to presence in the market, I have taken into account information that would indicate whether sales of the imported products were "isolated or sporadic"⁴¹ -- concentrated in certain regions,⁴² channels of distribution,⁴³ or periods of time.⁴⁴

For the subject imports from each country, I have considered the degree of competition with domestic and other subject imported products. Factors in this analysis include relative price levels,⁴⁵

³⁶ Indeed, in these investigations, where petitioners have strenuously emphasized the price-suppressing and price-depressing effects of the subject imports, I have closely examined the pricing data for each country to determine whether imports from individual countries could have contributed to the alleged overall adverse price effects.

³⁷ Rather than cite each reference to the Report of the Commission (Report) with respect to each country and each product, I note here that import data are presented at tables 93-96.

³⁸ Market shares of total apparent consumption are presented at tables 101, 103, 105, and 107. I relied on market shares measured in terms of quantity, not value.

³⁹ Shares of open market consumption for these products are presented in the Report at tables 104 and 106.

⁴⁰ It is for this same reason that, in my injury determinations, I have considered the volume effects of the imports within the merchant market. There, however, I have placed no less weight on the volume effects of the imports measured in terms of the total market. Both sets of data provide information relating to the impact of the subject imports on the condition of the industry as a whole. I concur fully with my colleagues in that it is the industry as a whole that we must consider.

⁴¹ I note that in very few instances did sales of imports from any country appear to be either isolated or sporadic. I have placed relatively less weight on this factor.

⁴² I considered the ports-of-entry -- grouped by Gulf Coast, East Coast, West Coast, and Great Lakes regions -- for each product and country. This information is presented in the Report at app. M. I note that there is some concentration of U.S. production facilities in the Midwest (see, e.g., Report at I-42). Thus, where imports were concentrated in the Great Lakes or East Coast regions, I did not find this information to be supportive of a finding that sales of the imports were isolated.

⁴³ Summary information on the number of identified importer-consignees is presented in the Report at table M-5. I note that the subject imports from all countries were distributed through similar channels of distribution -- end users and distributors/service centers.

⁴⁴ Summary information on monthly imports is presented in the Report at table L-1. Additional information is presented at table L-2.

⁴⁵ Summary information on underselling and overselling is presented in the Report at tables 110-113. Detailed information is presented at app. N.

confirmations of lost sales and revenues,⁴⁶ evidence of any concentration of products in particular market segments,⁴⁷ product quality,⁴⁸ and the relative average unit values of the imports from various countries.⁴⁹ In addition, I considered the various specific arguments made by the parties with regard to degree of competition and negligibility.⁵⁰

I have considered information on both ownership interests between producers in the various countries subject to investigation, and the degree of price sensitivity in the individual product markets. For hot-rolled and cold-rolled products, I have focused on price sensitivity in the merchant market.⁵¹ Finally, I have considered the nature and extent of subsidization and dumping, as determined by Commerce.⁵²

With regard to my threat of injury analysis in the cases of hot- and cold-rolled steel, I considered whether the volume and price data for individual countries showed trends different from those evident for the imports cumulated for purposes of my present injury determinations. I looked

⁴⁶ Summary information on confirmed lost sales and revenues by product and country is presented in the Report at tables 115, 116 and 117. Further information on a product basis is presented in EC-Q-084. I did not view either a relatively small number or relatively small quantities of lost sales as ruling out a finding of no discernible adverse impact.

⁴⁷ I find that the record in general does not support the conclusion that imports from individual countries consisted in large part of "niche" or "specialty" products that were not supplied by either domestic producers or other subject countries to at least a significant degree. I have noted instances where some portion of the imports from one country appear to be concentrated in certain narrow market segments that were not supplied to a significant degree by U.S. producers or other subject countries. (I use this terminology to distinguish my observations based on the record from the allegations of the parties.)

Summary information on competition within identified market segments is presented in the Report at tables F-1 - F-4. Additional information on imports is presented at tables 97-100.

⁴⁸ Summary information on product quality as reported by purchasers is presented in the Report at table 109.

⁴⁹ My use of unit values in this cumulation analysis is limited to a comparison of the average unit values of the subject imports from the various countries, presented in the Report at tables 93-96. Where the unit values for certain countries were relatively high, I treated this as suggesting that the bulk of the imports from these countries consists of high-value products for which price is less likely to be a determining factor in a purchase decision. I note that unit values are largely a reflection of product mix and that there is considerable product differentiation within the various industries.

⁵⁰ I have considered all of the arguments raised by all of the parties. In these views, however, I have only noted those arguments which I considered as providing particularly persuasive evidence of no adverse impact for purposes of my determinations on negligibility. I join my colleagues in addressing other arguments in the Views of the Commission.

⁵¹ The Commission is directed to assess price sensitivity in terms of whether "a small quantity of imports can result in price suppression or depression." 19 U.S.C. § 1677(7)(C)(v). Prices relate most directly to merchant market sales. (Transfer values and related party transactions, in contrast, are based to varying degrees on merchant market prices, costs-of-production, and other corporate policies.) Thus, it is in the merchant market where imports can most directly affect prices.

⁵² Summary information on subsidy and dumping margins, as of the date of the Commission's vote in these investigations, is presented in the Report at table 7. A more detailed discussion is presented at app. E.

specifically at increases in market share at the expense of domestic producers and declines in import prices relative to U.S. prices. In both cases, increases in import market share were either small or did not appear to be at the expense of domestic producers. The prices of imported hot-rolled steel from most suppliers appeared to coincide with the cumulated pattern of increasing overselling. In the case of cold-rolled steel, however, I noted that a number of the individual countries showed patterns of underselling. This factor weighed in favor of cumulation in evaluating threat in the case of cold-rolled steel.⁵³

C. Cumulation in Hot-Rolled Steel Investigations

Korea

I did not cumulate imports from Korea with imports from other countries subject to the hot-rolled investigations and, therefore, did not need to address the issue of negligibility. Having not cumulated these imports for purposes of present injury, I also declined to cumulate them for purposes of my threat analysis.

General Observations

The U.S. hot-rolled industry lost a small portion of the merchant market from 1991 to 1992. I have, therefore looked closely at changes in import levels in that period. I note that no lost sales or revenues were confirmed for any of the countries subject to the hot-rolled steel investigations. Also, imports from each country were sold in each of the four identified regions during 1990-92. Except as noted, price comparisons for all countries showed a majority of overselling, and imports from each country were sold in every month during this period.

With regard to price sensitivity, I find the merchant market to be moderately price sensitive. Two-thirds of U.S. merchant shipments and imports are sold to producers/end users. These sales generally require meeting predetermined specifications and some are pursuant to contracts or long-term supply relationships. However, one-third of U.S. merchant shipments and imports are sold to distributors/service centers. These sales include more commercial grade products required by a range of end users and are more commonly spot sales.⁵⁴

Canada, France, and the Netherlands

Based primarily on their significant presence in the U.S. market throughout 1990-92, I do not find that imports of hot-rolled steel from either Canada, France, or the Netherlands were negligible and had no adverse impact on the domestic industry. These countries accounted for 5.0 percent, 2.1 percent and 1.5 percent, respectively, of the U.S. hot-rolled merchant market in 1992. The corresponding shares of total 1992 U.S. consumption were 1.9 percent, 0.8 percent and 0.6 percent. In addition, the volume of imports from each increased from 1991 to 1992. Sales of these products were neither isolated nor sporadic during the period of investigation. Information on unit values and identified market segments did not show these imports to be concentrated in specialty products. I further note that for the smallest of these three suppliers, the Netherlands, price comparisons showed a majority of underselling, although two of three purchasers reported that U.S. and Dutch products were comparable in quality.⁵⁵

⁵³ I also considered the extent to which there was some commonality amongst the various countries with regard to the factors the Commission is directed to consider in making a threat determination.

⁵⁴ Report at table 14.

⁵⁵ Report at table 109.

Belgium

Belgium was consistently the smallest supplier of hot-rolled steel amongst the subject countries throughout the period, and essentially left the U.S. market in 1992. That year saw imports of only approximately 2,000 short tons (tons), valued at less than \$1 million, and representing even a merchant market share of less than 0.1 percent. Imports entered the United States in 32 months during 1990-92. In 1992, the products were imported by 5 firms, and were present in each of the four identified geographic regions of the country with no particular concentration.

Price comparisons show a clear pattern of overselling. The average unit value of imports from Belgium rose sharply from 1991 to 1992, exceeding the average unit values of every other subject country except Japan. No ownership ties with any other subject foreign producer of hot-rolled steel were reported. Belgium had final subsidy margins ranging from 1 percent to 26 percent and final dumping margins ranging from 22 percent to 62 percent. Although the circumstances regarding imports from Belgium present strong arguments to apply the negligible imports exception, I decline to apply the negligibility exception to hot-rolled imports from any country.

Brazil

U.S. imports from Brazil rose sharply from 1991 to 1992, totalling 156,000 tons and \$47 million in 1992. This corresponded to increases in market shares to 0.8 percent of the merchant market and 0.3 percent of the total market. There were 17 identified importers in 1992, and the products were present in each of the four identified regions that year with no particular concentration, but very little presence in the Pacific region.

Price comparisons show a majority of overselling but a significant portion of underselling as well. Purchasers reported the quality of the U.S. and Brazilian products to be comparable. The average unit value of the hot-rolled imports from Brazil was among the lowest of all subject countries in each year during 1990-92. Brazil had final subsidy margins ranging from 6 percent to 45 percent and final antidumping duties ranging from 40 percent to 87 percent. Based on their presence in the U.S. market throughout 1990-92, the increase in imports in 1992, and evidence of a significant degree of competition with the domestic and other imported products, I do not find that imports of hot-rolled steel from Brazil were negligible and had no adverse impact on the domestic industry.

Germany

In 1992, U.S. imports of German hot-rolled steel reached levels of 197,000 tons and \$71 million. The comparable 1990 and 1991 totals were substantially higher. Despite the decline, these imports still represented 1.0 percent of merchant consumption in 1992. During 1990-91, the corresponding merchant market shares were 1.6 percent and 1.5 percent, respectively. (Total market shares declined from 0.6 percent in 1990 to 0.5 percent in 1991 and to 0.4 percent in 1992.) Fifteen importers were identified for 1992, and the imports were present in each of the four identified regions with no particular concentration.

Price comparisons show a clear pattern of overselling. The average unit value of the imports from Germany exceeded the average unit value of all subject hot-rolled imports throughout the period. A small volume of the imports from Germany consisted of products for which there was little or no U.S. production reported. Germany had a final subsidy margin of only 1 percent and a final dumping margin of 29 percent. Based on their significant presence in the U.S. market throughout the period, I do not find that imports of hot-rolled steel from Germany were negligible and had no discernible adverse impact on the domestic industry.

Japan

Imports of hot-rolled steel from Japan declined steadily to a low in 1992 of 136,000 tons, valued at \$62 million, and representing 0.7 percent of open market consumption and 0.3 percent of total apparent consumption. In 1992, there were 16 identified importers, and the imports were present in each of the four identified regions with no particular concentration.

All price comparisons showed overselling. The average unit value of these imports exceeded by a considerable margin the average unit values of imports from every other subject country throughout 1990-92. A significant share of the imports from Japan consisted of products for which either little or no U.S. production, or imports from other subject countries, were reported. These data tend to support respondents' arguments that the imports from Japan consist largely of specialty products and that even commodity products sell at a premium. No ownership ties with any other subject foreign producer of hot-rolled steel were reported. Japan was not subject to a countervailing duty investigation. Final dumping margins were 27 percent. Although the circumstances regarding imports from Japan present strong arguments to apply the negligible imports exception, I decline to apply the negligibility exception to hot-rolled steel imports from any country.

D. Cumulation in Cold-Rolled Steel Investigations

General Observations

Apparent U.S. consumption of cold-rolled steel substantially recovered in 1992, after a sharp decline in 1991; pricing, however, remained depressed and the industry incurred an operating loss despite a rebound in the volumes of production and shipments.⁵⁶ I have, therefore, looked particularly closely for evidence of any discernible adverse impact from imports in 1992. Except as noted, no lost sales or revenues were confirmed for any of the countries subject to the cold-rolled steel investigations, and imports from each country were sold in every month during 1990-92. Imports from each country were sold in each of the four identified regions during this period.

With regard to price sensitivity, I find the cold-rolled merchant market to be moderately price sensitive. About 70 percent of both U.S. merchant shipments and imports are sold to producers/end users.⁵⁷ These sales generally require meeting predetermined specifications and some are pursuant to contracts or long-term supply relationships. However, some 30 percent of both U.S. merchant shipments and imports are sold to distributors/service centers. These sales include more commercial grade products required by a range of end users and are more commonly spot sales.⁵⁸

Brazil, Canada, Germany, Japan, Korea, and the Netherlands

Based primarily on their significant presence in the U.S. market throughout 1990-92, I do not find that imports of cold-rolled steel from either Brazil, Canada, Germany, Japan, Korea, or the Netherlands were negligible and had no discernible adverse impact on the domestic industry. These countries each accounted for 1.0 percent or more of the U.S. cold-rolled merchant market in 1992. The corresponding shares of total U.S. consumption were at least 0.5 percent that same year. Japan was the largest supplier throughout the period, with market shares that did not fall below 2.7 percent measured in terms of U.S. merchant consumption, and 1.3 percent measured against total apparent U.S. consumption. The volumes of imports from Brazil, Canada, Germany, Korea, and the Netherlands each increased from 1991 to 1992. The market shares of Canada, Germany, and Korea

⁵⁶ Report at table C-3.

⁵⁷ Report at table 14.

⁵⁸ Id.

also increased during this period. Sales from none of the six countries were either isolated or sporadic during the period of investigation.⁵⁹

Price comparisons for Brazilian, German, and Dutch products showed a majority of underselling and there were confirmed lost sales and lost revenues for Brazil, Germany, and Korea. Finally, I note that the average unit values of the imports from the three smaller suppliers -- Brazil, Korea, and the Netherlands -- remained below the average unit values of all subject cold-rolled imports throughout the period.⁶⁰

Argentina

U.S. imports from Argentina fell by more than 50 percent from 1991 to 1992. The 1992 levels of 34,000 tons and \$14 million were slightly above 1990 levels. The Argentine market share rose sharply in 1991 but fell back to 1990 levels in 1992, to end at 0.2 percent (merchant) and 0.1 percent (total). Imports entered in only 19 months during 1990-92. In 1992, only 1 firm was identified as having imported the products; these imports entered through ports-of-entry in the Great Lakes and East Coast regions in 6 of the 12 months.

Purchaser price comparisons showed all overselling although a smaller number of larger volume producer/importer comparisons showed predominantly underselling. The average unit values of the imports from Argentina remained below the average unit values of all subject cold-rolled steel imports throughout the period; the trend in unit values showed a steady increase, albeit from a low starting point. Argentina was not subject to a subsidy investigation. Final dumping margins were 52 percent. Based on the sharp decline in imports in 1992, overall small market share, absence from the market in 17 of 36 months during 1990-92, and evidence of overselling reported by purchasers, I find that imports of cold-rolled steel from Argentina were negligible and had no discernible adverse impact on the domestic industry. I have decided therefore not to cumulate these imports with those of other countries subject to the cold-rolled steel investigations both in my injury analysis as well as in my threat analysis.

Austria

With 1992 quantities of only 2,000 tons and \$2 million, Austria essentially abandoned the U.S. market in 1992. This drop followed a smaller decline from 1990 to 1991. Market shares declined to less than 0.1 percent by either measure. There were only 4 importers in 1992. Also in 1992, imports entered only through ports in the Great Lakes and East Coast regions.

The price comparisons show a majority of underselling and there was 1 confirmed instance of a lost sale or revenue. The average unit value of the imports from Austria were low during 1990-91; the 1992 unit value appears to reflect a concentration in very high-value products. Austria had a final subsidy margin of 6 percent and a final dumping margin of 18 percent. Based on the overall small market share, the steady decline in imports during 1990-92, and the absence of any evidence of adverse impact in 1992, I find that imports of cold-rolled steel from Austria were negligible and had no adverse impact on the domestic industry. I have decided therefore not to cumulate these imports with those of other countries subject to the cold-rolled steel investigations, both in my present injury analysis as well as in my threat analysis.

⁵⁹ I note, however, that imports from Korea were concentrated in the Gulf and West Coast regions.

⁶⁰ I note that a significant share, but not a majority, of the imports from both Japan and the Netherlands consisted of products for which either little or no U.S. production, or imports from other subject countries, were reported. A much smaller share of imports from Germany and Brazil consisted of products for which there was little or no U.S. production reported.

Belgium

Imports of cold-rolled steel from Belgium increased steadily during the period, totalling 127,000 tons and \$55 million in 1992. As shares of both the merchant and total markets, the imports fluctuated, ending at 0.9 percent and 0.4 percent, respectively. There were 6 identified importers in 1992, and the imports were present in each of the four identified regions with a concentration in the Gulf region.

The price comparisons show a majority of overselling but a significant portion of instances of underselling. The average unit values of the imports from Belgium remained below the average unit values of all subject cold-rolled steel imports throughout the period. Belgium had final subsidy margins ranging from 1 percent to 26 percent and a final subsidy margin of 15 percent.⁶¹ Based on their significant presence in the U.S. market throughout 1990-92, steady increase in volumes, and evidence of a significant degree of competition with domestic and other imported products, I do not find that imports of cold-rolled steel from Belgium were negligible and had no adverse impact on the domestic industry.

France

In 1992 imports from France were 125,000 tons, valued at \$60 million. The French market shares were fairly steady throughout the period ranging from 0.9 percent to 1.0 percent in terms of merchant consumption and from 0.4 percent to 0.5 percent in terms of total apparent U.S. consumption. In 1992, the imports were present in each of the four identified regions with a concentration in the Midwest and East Coast regions.⁶² There were 8 identified importers in that year.

The price comparisons show only a slim majority of overselling. There were 3 instances of confirmed lost sales and revenues. The average unit values of the imports from France varied very slightly from the average unit values of all subject cold-rolled imports throughout the period. Only a small volume of the imports from France consisted of products for which there was little or no U.S. production reported. France had a final subsidy margin of 15 percent and a final dumping margin of 110 percent. Based primarily on their significant presence in the U.S. market throughout 1990-92 and evidence of a significant degree of competition with domestic and other imported products, I do not find that imports of cold-rolled steel from France were negligible and had no adverse impact on the domestic industry. I also note the reported ownership tie between Spanish and French cold-rolled producers.⁶³

Italy

Imports of Italian products showed small increases during the period, with 1992 U.S. imports of 48,000 tons valued at \$20 million. The merchant market shares were 0.3 percent-0.4 percent, and the total market shares 0.1 percent-0.2 percent, during the period. Imports entered in 35 months during 1990-92, including all 12 months of 1992. Also in 1992, the imports were present in each of the four identified regions, with a concentration in the East Coast region, and there were 3 identified importers.

⁶¹ I note the Belgian respondents provided documentation suggesting that a portion of the imports consisted of products not available from domestic producers, and that certain purchasers specifically requested Belgian products. Belgian respondents' Prehearing Br. ex. 2, and Posthearing Br. at 4-5.

⁶² I note that the French respondents indicated that they targeted segments of the market so as to avoid competition with domestic producers. French respondents' Posthearing Br. at 10-11.

⁶³ Spanish cold-rolled respondents' Posthearing Br. at pp. 13-15.

The price comparisons show a preponderance of underselling and there were 2 confirmed lost sales totalling nearly \$800,000. The average unit values of the imports from Italy remained below the average unit values of all subject cold-rolled steel imports throughout the period. Italy had final subsidy margins ranging from 4 percent to 73 percent and a final dumping margin of 50 percent. Based primarily on the steady increase in the volume of imports and evidence of a significant degree of competition with domestic and other imported products, I do not find that imports of cold-rolled steel from Italy were negligible and had no adverse impact on the domestic industry. I also note the substantial weighted-average subsidy finding by Commerce.

Spain

U.S. imports of cold-rolled steel from Spain more than tripled in quantity from 1991 to 1992, reaching 32,000 tons.⁶⁴ The 1992 import value presented is \$20 million. Spain's market share was small even in terms of the merchant market, but did increase in 1992. Imports entered in 34 months during 1990-92, including all 12 months of 1992. In 1992, three firms imported and distributed Spanish products in three of the four identified regions, with a concentration in the Gulf and East Coast regions.

The price comparisons show a clear pattern of underselling. The average unit values of the imports from Spain remained below the average unit values of all subject cold-rolled imports throughout the period. Spain had a final subsidy margin of 37 percent and a final dumping margin of 43 percent. Based primarily on the increase in the volume of imports in 1992 and evidence of a significant degree of competition with domestic and other imported products, I do not find that imports of cold-rolled steel from Spain were negligible and had no adverse impact on the domestic industry. I also note the substantial subsidy finding by Commerce and cross ownership with a firm in another country subject to these cold-rolled steel investigations.

E. Cumulation in Corrosion-Resistant Steel Investigations

General observations

Apparent consumption of corrosion-resistant steel decreased somewhat from 1990 to 1991 but rebounded in 1992 to a level above that of 1990. The U.S. corrosion-resistant steel industry, however, lost market share over the entire period to the subject imports. I therefore have looked closely at the changes in individual countries' import levels during this period.

With respect to price sensitivity, I find the corrosion-resistant steel market to be rather price insensitive. Almost 80 percent of U.S. merchant shipments and 70 percent of imports are sold to end users. These sales generally require meeting predetermined specifications and are often pursuant to contracts or long-term supply relationships. Qualification requirements further limit the role price is likely to play in some purchase decisions. Only 20 percent of U.S. merchant shipments and 30 percent of imports are sold to distributors/service centers. These sales include some commercial grade products required by a broad range of end users.⁶⁵

⁶⁴ With the exception of these quantity data, nonrectangular cold-rolled products have not been excluded from the imports presented for Spain. I note that certain other data are overstated and/or unadjusted.

⁶⁵ I note that, notwithstanding the price insensitivity of the corrosion-resistant market, I have not found imports from any country subject to the corrosion-resistant investigations to be negligible and to have no discernible adverse impact. In this market, small quantities of imports alone may not cause price suppression or depression. I found, however, that the smaller (arguably negligible) subject suppliers each showed evidence of having had a discernible adverse impact on the domestic corrosion-resistant industry.

Australia, Canada, Germany, Japan, and Korea

Based primarily on their significant presence in the U.S. market during 1990-92, I do not find that imports of corrosion-resistant products from either Australia, Canada, Germany, Japan, or Korea were negligible and had no discernible adverse impact on the domestic industry. Each of these countries accounted for significant volumes and market shares. In 1992, volumes for the five countries ranged from 184,000 tons to 825,000 tons; market shares ranged from 1.4 percent to 6.1 percent of U.S. consumption. Furthermore, except for Japan, all volumes and market shares increased over the period. Japan on the other hand, was by far the largest supplier and had overall only slightly decreasing volumes and market shares. None of the imports from the five countries were isolated or sporadic. Imports entered in all 36 months of the period, through a number of importers. All imports were distributed throughout the United States, except for those from Australia and Canada which were present in three out of the four regions.

Price comparisons show a preponderance of overselling with respect to Australia, Germany, and Japan. The record is mixed with respect to Canada and Korea, with a majority of underselling in the case of Canada and a majority of overselling in the case of Korea. Three of these countries -- Germany, Japan, and Korea -- had confirmed lost sales or lost revenues. Canada, Germany, Japan, and Korea each served market segments which were not served by U.S. producers, but these were either small or minor portions of the total imports of corrosion-resistant products from these countries. Japan served market segments which were not also served by other subject imports, but again these were only a minor portion of total imports from Japan. Finally, like the unit values of other subject imports, the unit values of imports from each of these countries also decreased overall.

Brazil

Imports of corrosion-resistant products from Brazil declined from 22,000 tons in 1990 to 16,000 tons in 1992, valued at \$8 million. Brazil's share of U.S. consumption decreased from 0.2 percent to 0.1 percent from 1990 to 1991 and remained at that level in 1992. Imports entered in 26 out of 36 months of the period (including 10 months of 1992), and were sold by ten importers in 1992.

The record contains only one price comparison, in which, in 1991, a small amount of Brazilian product oversold U.S. product by a small margin. There was one confirmed lost sale involving a relatively small quantity, and the report from one purchaser indicated that Brazilian product is comparable in quality to domestic product. The unit value for imports from Brazil remained well below the average unit value of all subject imports. Furthermore, in 1992 the unit value dropped substantially and became the lowest among all unit values. Based on the lack of significant pricing data, and in view of other evidence of adverse impact, I decline to find that imports of corrosion-resistant products from Brazil were negligible and had no adverse impact on the industry. I further note Brazil's high final subsidy margin of 30 percent.

France

The volume of imports of corrosion-resistant products from France increased over 50 percent during the period of investigation to 95,000 tons in 1992 valued at \$53 million. France's market share increased steadily from 0.5 percent in 1990 to 0.7 percent in 1992. Imports entered in all months from 1990-92, through five importers in 1992, and were distributed throughout the United States.

Price comparisons show 10 instances of underselling and 12 instances of overselling by generally comparable margins. There was one confirmed lost sale. Seven purchasers considered the French product comparable in quality to the domestic product, and two purchasers considered it superior. France served some market segments which were not served by U.S. producers; however, these were only a very small portion of total imports from France. The unit value of imports from

France was well below the average unit value of all subject imports and decreased. France had a final subsidy margin of 15 percent, and final dumping margins ranging from 53 percent to 110 percent. Based on their significant presence in the U.S. market throughout 1990-92, the increasing volume and market share, and the evidence in the record of significant competition between French imports, other imports, and U.S. products, I do not find that imports from France of corrosion-resistant products were negligible and had no adverse impact on the industry.

Mexico

Imports from Mexico of corrosion-resistant products declined in 1991 but rose in 1992 to 108,000 tons, only 700 tons less than in 1990. Mexico's percentage share of U.S. consumption was 0.9 percent in 1990, 0.7 percent in 1991, and 0.8 percent in 1992. The value of these imports in 1992 was \$68 million. Imports entered in all 36 months, through 11 importers in 1992, with almost all sales occurring in the Gulf region.

The 8 available price comparisons, all of very small volumes, showed overselling by Mexican products; 4 comparisons are from 1990, 2 from 1991, and 1 from 1992. There were no allegations of lost sales or lost revenues. Mexico served some market segments which were not also served by U.S. producers; however, these were but a small portion of total corrosion-resistant imports from Mexico. The unit value of imports from Mexico declined steadily. Mexico had final subsidy margins ranging from 6 percent to 48 percent and a final dumping margin of 65 percent. Based on their significant presence in the U.S. market throughout 1990-92, the increased volume and market share in 1992, and on the evidence of a significant degree of competition with the domestic and other imported products, I do not find that imports of corrosion-resistant products from Mexico were negligible and had no discernible adverse impact on the industry. I also note the weighted-average subsidy margins.

New Zealand

Imports from New Zealand of corrosion-resistant products increased from 1990 to 1991 and decreased in 1992 to 24,000 tons, a level comparable to 1990. In terms of percentage share of U.S. consumption, these imports rose from 0.2 percent in 1990 to 0.3 percent in 1991 and returned to 0.2 percent in 1992. The value of 1992 imports was \$14 million. Imports entered in 27 months during 1990-92 through two importers and were distributed in three of the four regions during the period of investigation.

Price comparisons, most of which are from 1990 and 1991, show a preponderance of overselling. Three purchasers viewed New Zealand product as comparable in quality to domestic product. There were no allegations of lost sales or lost revenues. The unit value declined substantially from 1990 to 1991, at a steeper rate of decline than any of the other subject imports' unit values, and remained at a level below that of the average unit value of all subject imports in 1992. Furthermore, the New Zealand respondent acknowledges that there are cross-ownership ties between BHP, the sole producer in Australia, and NZS, the sole producer in New Zealand; BHP has increased its ownership share of NZS over the period of investigation. In addition, I note that the New Zealand and the Australian companies used the same related importer for sales to the United States. New Zealand had a final subsidy margin of 36 percent, but was not subject to an antidumping investigation. Based on their presence in the U.S. market throughout 1990-92, evidence of competition with the domestic and other imported products, cross-ownership ties with a foreign producer in another country subject to the corrosion-resistant investigations, and the high final subsidy margin, I decline to find that imports of corrosion-resistant imports from New Zealand were negligible and had no discernible adverse impact on the industry.

Sweden

The volume of imports of corrosion-resistant products from Sweden increased steadily from 11,000 tons in 1990 to 29,000 tons valued at \$16 million in 1992. Sweden's percentage share of

U.S. consumption rose from 0.1 percent in 1990 to 0.2 percent in 1991 and 1992. Imports entered in 32 out of 36 months, through 5 importers in 1992, and were distributed in all four regions during the period of investigation.

The record shows 4 instances of underselling and 2 instances of overselling; the underselling was at significantly higher margins than the overselling. Two allegations of lost sales or revenues were confirmed. The unit value fell in 1991 and rose in 1992 to a level comparable to 1990; however, it remained well below the average unit value of all subject imports. The major Swedish producer stated that the company has no cross-ownership ties with any other foreign producer of corrosion-resistant products. Sweden had a final subsidy margin of 4 percent, but was not subject to an antidumping investigation. Based on their presence in the U.S. market throughout 1990-92, the steadily increasing volume of imports, and evidence of competition with the domestic and other imported products, I do not find that imports of corrosion-resistant products from Sweden were negligible and had no discernible adverse impact on the industry.

F. Cumulation in Clad Plate Investigations

No parties have argued that imports of clad plate from France and Japan did not compete with each other and the domestic like product during the period of investigation. The record indicates that there were imports of clad plate from Japan throughout the period examined, while imports of clad plate from France entered only in 1992.⁶⁶ There is no evidence as to whether the imports of clad plate from France and Japan and domestic clad plate consisted of similar cladding materials, which could affect the overlap of competition among the products. Given the paucity of specific product data, and the fact that imports from both subject countries were present with the domestic product in the market in 1992, I find there is a reasonable overlap of competition between imports of clad plate from France and from Japan and the domestic like product.

Clad plate was imported from France in the last year of the period of investigation. In terms of absolute tonnage, these imports were admittedly very small. In terms of market share, however, imports of clad plate from France in 1992 were at a level that exceeded levels which I found elsewhere to weigh in favor of negligibility.

The Commission did not receive separate pricing data for clad plate and there are no disaggregated unit values for imports of clad plate from France. I cannot say, therefore, that the record clearly establishes that imports of clad plate from France have no discernible adverse effect on the domestic industry. Consistent with my approach to mandatory cumulation and application of the negligibility exception,⁶⁷ I decline to find that imports of clad plate from France are negligible and have no discernible adverse impact on the domestic industry.

G. Cumulation in Cut-to-Length Plate Investigations

General observations

The volume of U.S. producers' shipments declined overall during the period of investigation. U.S. market share increased slightly from 1990-91, but decreased in 1992, when consumption rose, to a level below that of 1990. I therefore have looked closely at the volumes and market shares of individual subject countries for any discernible adverse effect.

I find the plate market to be price sensitive. About one-half of U.S. merchant shipments and about one-fifth of imports are sold to end users. These sales generally require meeting predetermined specifications and some are pursuant to contracts or long-term supply relationships.

⁶⁶ Report at table C-8.

⁶⁷ See discussion supra.

The other one-half of U.S. merchant shipments and about four-fifths of imports go to distributors/service centers. These sales include more commodity products required by a broad range of end users and are more commonly spot sales.⁶⁸

Belgium, Brazil, Canada, Finland, Mexico, Spain, and Sweden

Based primarily on their significant presence in the U.S. market throughout 1990-92, I do not find that imports of plate from either Belgium, Brazil, Canada, Finland, Mexico, Spain, or Sweden were negligible and had no discernible adverse impact on the domestic industry. Although absolute volumes of imports for some countries decreased over the period, market shares remained significant. In 1992 the volumes of imports ranged from 46,000 tons to 184,000 tons; market shares ranged from 0.9 percent to 3.7 percent. None of the imports were isolated or sporadic. Imports entered in 34-36 months of the period, through a number of importers, from all these countries except Spain; imports from Spain entered in 27 months, and through one importer in 1992. All imports, except those from Mexico, were distributed in at least three of the four regions during 1990-92; imports from Mexico were sold in two regions.

The price comparisons for products from all countries except Canada show a preponderance of underselling. In the case of Canada, a little over one-third of the price comparisons show underselling. There were confirmed instances of lost sales or lost revenues with respect to imports from four of the countries -- Belgium, Brazil, Canada, and Spain. Imports from Brazil served market segments reportedly not served by U.S. producers, but these were a minor portion of total plate imports from Brazil. Imports from Mexico also served market segments reportedly not served by other subject imports, but these were a very small portion of total imports from Mexico. Unit values for all imports except those from Germany decreased overall.

France

Imports of plate from France increased from 1990 to 1991 and decreased in 1992 to 7,000 tons, valued at \$3 million and accounting for 0.1 percent of the quantity of U.S. consumption. Imports from France entered in all 36 months, through 4 importers in 1992, and were distributed throughout the United States.

Price comparisons show a mix of 29 instances of underselling and 14 instances of overselling. Three purchasers found French plate to be comparable in quality to domestic plate, and one purchaser found it superior. There were seven confirmed instances of lost revenues.⁶⁹ The unit value decreased during 1990-92 but remained above the average unit value of all subject imports. In addition, there are cross-ownership ties between the French producer Usinor Sacilor and the German producer Dillinger, also a respondent in these plate investigations. France had a final subsidy margin of 15 percent and a final dumping margin of 53 percent. Based on their presence in the U.S. market throughout 1990-92, evidence of underselling along with market price sensitivity, and the cross-ownership tie with a producer in another country subject to these plate investigations, I do not find that imports of plate from France were negligible and had no discernible adverse impact on the domestic industry.

⁶⁸ I note that, notwithstanding the price sensitivity of the plate market, I have found imports from two countries subject to the plate investigations to be negligible and not to have had a discernible adverse impact. In this market, small quantities of imports may cause price suppression or depression. I found two of the smaller subject suppliers to be negligible based not only on the very small volume of imports from each but also on declines in those volumes during the period of investigation, and on evidence weighing against a finding of discernible adverse impact.

⁶⁹ These confirmed lost revenues were based on letters solicited by a petitioner.

Germany

The volume and value of imports of plate from Germany declined over the period to 21,000 tons in 1992, valued at \$11 million, representing 0.4 percent of U.S. consumption. Imports entered in all months of the period, through 6 importers in 1992, and were distributed throughout the United States with a concentration in the Gulf region.

The unit value decreased very slightly from 1990 to 1991 but increased substantially in 1992. However, two-thirds of the 67 price comparisons show underselling. Five purchasers viewed German plate as comparable in quality to domestic plate, while one purchaser viewed it as superior. There were no confirmed instances of lost sales or lost revenues. The record shows that German plate was not concentrated in market segments not served by other importers; nor was most of German plate concentrated in segments not served by U.S. producers. In addition, as noted above, there are cross-ownership ties between the German producer Dillinger and the French producer Usinor Sacilor. Final subsidy margins for Germany ranged from 0.5 percent to 15 percent. The final dumping margin was 35 percent. Based on their significant presence in the U.S. market throughout 1990-92 and evidence of a significant degree of competition with the domestic and other imported products, I do not find that imports of plate from Germany were negligible and had no discernible adverse impact on the domestic industry.

Italy

Although plate imports from Italy increased from 1990 to 1991, they dropped sharply in 1992 to 3,000 tons, valued at \$1 million. Italy's share of U.S. consumption rose from 0.2 percent to 0.4 percent from 1990 to 1991, but fell to less than 0.1 percent in 1992. Imports entered in 25 of the 36 months, but in 1992 they entered in only five months and were sold in only two regions. There were also only two importers in 1992.

Six of eight price comparisons showed underselling; however, these sales were of very small quantities, which decreased from year to year, at decreasing margins of underselling. There was one lost revenue allegation, but it was denied. The unit value decreased from 1990 to 1991 but then increased in 1992 to a level 10 percent higher than the average unit value of all subject imports. Italy had final subsidy margins ranging from 4 percent to 73 percent, and a final dumping margin of 54 percent. Based on their small share of the market during 1990-91 and the substantial decrease in volume and market share from 1991 to 1992, I find that imports of plate from Italy were negligible and had no discernible adverse impact on the domestic industry.

Korea

The volume of plate imports from Korea decreased steadily from 1990-92, falling to 9,000 tons in 1992, valued at \$3 million, representing 0.2 percent of the quantity of U.S. consumption. Imports entered in 35 of the 36 months; there were 3 importers in 1992 and sales were concentrated in one region, the West, with some also in the East.

The price comparisons show a clear pattern of overselling. Four purchasers considered plate imports from Korea to be comparable in quality to domestic product, and one considered it to be superior. Of lost revenues allegations, 9 were confirmed.⁷⁰ The unit value also fell over the period and remained somewhat below the average unit value of all subject imports. Korea had a final countervailing duty of 3 percent and a final antidumping duty of 9 percent. Based on their steadily decreasing volume and market share and pattern of overselling, I find that imports of plate from Korea were negligible and had no discernible adverse impact on the domestic industry.

⁷⁰ These confirmed lost revenues include 8 confirmed by letters solicited by a petitioner.

Poland

Imports of plate from Poland increased from 1990 to 1991 and then decreased in 1992 to 25,000 tons, a level comparable to 1990. The value of these imports in 1992 was \$7 million; market penetration in 1992 was 0.5 percent of U.S. consumption. Imports entered in 25 out of 36 months, through 6 importers in 1992, and were distributed in three of the four regions, with a concentration in the Gulf.

Of 21 available price comparisons, 14 showed overselling and 7 showed underselling. There were 3 confirmed instances of lost sales or lost revenues.⁷¹ The unit value decreased over the period and remained below the average unit value of total subject imports. Poland was not subject to a countervailing duty investigation. The final antidumping duty was 62 percent.

Based on their significant presence throughout 1990-92 and evidence of a significant degree of competition with domestic and other imported products, I do not find that imports of plate from Poland were negligible and had no discernible adverse impact on the domestic industry.

Romania

Plate imports from Romania increased somewhat from 1990-91 but decreased to 18,000 tons in 1992, valued at \$7 million and representing 0.4 percent of U.S. consumption. Imports entered in 32 months during 1990-92. There were 2 importers in 1992, and concentration of sales was in the Gulf and East Coast regions throughout the period.

Twelve out of 13 price comparisons show underselling. There were no confirmed instances of lost sales or lost revenues. The unit value decreased overall; however, in relation to the average unit value of all subject imports, the Romanian unit value initially was lower but by 1992 was somewhat higher. In addition, respondents stated that there is no cross-ownership with any other company operating in the United States. Romania was not subject to a countervailing duty investigation. The final antidumping duty was 75 percent. Based on their significant presence throughout 1990-92 and the evidence of underselling in this price sensitive market, I do not find that imports of plate from Romania were negligible and had no adverse impact on the domestic industry.

United Kingdom

The volume and value of plate imports from the United Kingdom declined over the period to 21,000 tons in 1992, valued at \$8 million and representing 0.4 percent of U.S. consumption. Imports entered in all 36 months during 1990-92, through three importers in 1992, and were distributed throughout the United States.

Almost all the price comparisons showed underselling; only 4 out of 40 indicated overselling. One purchaser reported that U.K. plate is comparable in quality to domestic plate. There were no confirmed instances of lost sales or lost revenues. The unit value decreased over the period to a level in 1992 which was slightly above the average unit value of all subject imports. The United Kingdom had final countervailing duties ranging from 1 percent to 12 percent, and a final antidumping duty of 109 percent. Based on their significant presence throughout 1990-92 and the evidence of underselling in this price sensitive market, I do not find that imports of plate from the United Kingdom were negligible and had no discernible adverse impact on the domestic industry.

V. VOLUME OF THE SUBJECT IMPORTS

The Commission is required to consider the volume of the subject imports, and whether "the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or

⁷¹ These confirmed instances include 2 by letter solicited by a petitioner.

relative to production or consumption in the United States, is significant."⁷² I generally find it more probative to evaluate these increases in volume relative to domestic production or consumption rather than by absolute levels.

I join in the discussions with regard to the volume effects of the subject imports as expressed in the Views of the Commission. My analysis varies somewhat from those of my colleagues because for each like product I have cumulated a greater volume of the subject imports. I have also taken into account import penetration of hot-rolled and cold-rolled steel in the merchant market. These additional elements of my analysis and findings are set forth below.

A. Hot-Rolled Steel Volumes

Cumulated Imports

In terms of quantity, U.S. imports of hot-rolled steel on a cumulated basis (all imports subject to investigation except Korea) declined from 1.9 million tons in 1990 to 1.7 million tons in 1991, and then rose to 2.2 million tons in 1992 -- an overall increase of 12.7 percent.⁷³ These imports represented 3.8 percent of total apparent U.S. consumption in both 1990 and 1991, and 4.4 percent in 1992, for an increase of 0.6 percentage points.⁷⁴ Cumulated import penetration in terms of merchant sales followed a similar trend, going from 10.2 percent in 1990 and 1991 to 11.3 percent in 1992, for a 1.1-percentage point gain.⁷⁵ U.S. producers' share of the total market declined from 94.4 percent in 1990 to 94.1 percent in 1991 and to 93.3 percent in 1992.⁷⁶ In terms of the merchant market, the share reported⁷⁷ for U.S. producers also declined steadily, from 84.8 percent in 1990 to 84.2 percent in 1991 and to 82.6 percent in 1992.⁷⁸

Viewed in isolation, neither the absolute volume of imports, nor the increase in that volume, nor the imports' share of the merchant market is insignificant. Import penetration in the total market, in contrast, was very small. U.S. industry market shares in both markets (total and merchant) were consistently far greater than subject import market shares. In view of the large U.S. market shares, the overall declines in domestic shares of either market are also very small. In this context, the 0.6 percentage point shift in market share from the domestic industry to the subject imports can only be viewed as minor. I also observe that U.S. producers' shipments followed the general trends in total and merchant market consumption, which first declined and then rose. In such circumstances as these, I find that the increase in volume of the subject imports relative to domestic production is not significant.

⁷² 19 U.S.C. § 1677(7)(C)(i).

⁷³ Report at table 94.

⁷⁴ Report at table 103.

⁷⁵ Report at table 104.

⁷⁶ Report at table 103.

⁷⁷ The calculation of merchant market consumption includes captive imports, mainly from Korea. To the extent that these imports increased, the size of the merchant market is increasingly (if only slightly) overstated. As a result, the decline in U.S. producers' share of the merchant market is also overstated.

⁷⁸ Report at table 104.

Korea

I join the discussion regarding imports of hot-rolled steel from Korea as expressed in the Views of the Commission on Hot-Rolled Steel Products.

B. Cold-Rolled Steel Volumes

Cumulated Imports

U.S. imports of the cold-rolled steel on a cumulated basis (all imports subject to investigation except Argentina and Austria) declined from 1.6 million tons in 1990 to 1.5 million tons in 1991, and then rose to 1.8 million tons in 1992 -- an overall increase of 13.0 percent.⁷⁹ These imports represented 5.7 percent of total apparent U.S. consumption in 1990, 5.8 percent in 1991, and 6.4 percent in 1992, for an overall increase of 0.7 percentage points.⁸⁰ Cumulated import penetration in terms of merchant sales followed a similar trend, going from 11.5 percent in 1990 to 12.0 percent in 1991 and to 12.8 percent in 1992, for a 1.3-percentage point gain overall.⁸¹ U.S. producers' share of the total market declined from 93.0 percent in 1990 to 92.9 percent in 1991 and then rose to 93.1 percent in 1992, an overall gain of 0.1 percentage points.⁸² In terms of the merchant market, U.S. producers' share followed a similar trend, declining from 85.9 percent in 1990 to 85.5 percent in 1991 and then rising to 86.1 percent in 1992.⁸³

Neither the absolute volume of imports, nor the increase in that volume, nor the imports' share of the merchant market is insignificant. Import penetration in the total market, in contrast, was very small. U.S. industry market shares in both markets were consistently far greater. In view of the large U.S. market shares, the overall increases in these shares are tiny; I would tend to characterize the U.S. market share as stable. In any event, the increase in cumulated import penetration does not appear to have been at the expense of the domestic industry, which suffered no loss in market share either overall or in the most recent period of comparison (1991-92). I therefore find that the increase in market share of the cumulated imports is not significant for purposes of present injury analysis.

Argentina

I join the discussion regarding imports of cold-rolled steel from Argentina as expressed in the Views of the Commission on Cold-Rolled Steel Products. I further observe that the share of imports from Argentina in the cold-rolled merchant market fluctuated from 0.2 percent to 0.6 percent and back to 0.2 percent during 1990-92.⁸⁴ This share was small throughout the period, showed no overall increase, and declined sharply in the final year under investigation.

⁷⁹ Report at table 95.

⁸⁰ Report at table 105.

⁸¹ Report at table 106.

⁸² Report at table 105.

⁸³ Report at table 106.

⁸⁴ Id.

Austria

I join the discussion regarding cold-rolled steel imports from Austria as expressed in the Views of the Commission on Cold-Rolled Steel Products. I further observe that the share of imports from Austria in the cold-rolled merchant market declined from 0.6 percent to 0.5 percent and to less than 0.1 percent during 1990-92.⁸⁵ This share was small throughout the period and showed a steady decline, particularly marked in the final year under investigation.

C. Corrosion-Resistant Steel Volumes

In terms of quantity, U.S. imports of corrosion-resistant steel on a cumulated basis declined from 1.7 million tons in 1990 to 1.6 million tons in 1991, and then rose to 2.2 million tons in 1992 -- an overall increase of 31.2 percent.⁸⁶ These imports represented 12.9 percent of total apparent U.S. consumption in 1990, 13.6 percent in 1991, and 16.1 percent in 1992, for an overall increase of 3.2 percentage points.⁸⁷ U.S. producers lost a corresponding 2.9 percentage points of the total market, falling steadily from 85.6 percent in 1990 to 82.7 in 1992.⁸⁸

The absolute volume of imports is not insignificant; neither is the imports' share of the merchant market. Certainly the overall increase in absolute volumes was substantial. Although the U.S. industry market share was consistently far greater than the cumulated import market share, I find that the steady shift in market share from the domestic industry to the cumulated imports, although small, was significant. I therefore find that increases in the volume of the subject imports, both in absolute terms and relative to domestic production, were significant.

D. Clad Plate Volumes

I find that the volume of LTFV and subsidized imports of corrosion-resistant clad plate from France and Japan was not significant and had no significant adverse effect on the domestic industry throughout the period examined. The volume of imports increased from 1990 to 1991, and declined in 1992 to levels below that of 1990.⁸⁹ Similarly, as a percentage of domestic consumption, the cumulated imports' share of apparent domestic consumption increased from 1990 to 1991, but then declined rapidly in 1992 to levels below 1990.⁹⁰ Since the record indicates there are no imports of clad plate from any other sources, the domestic industry clearly benefitted from the decline in market share held by the cumulated imports in 1992.

E. Cut-to-Length Plate Volumes

Cumulated Imports

In terms of quantity, U.S. imports of plate on a cumulated basis (all imports subject to investigation except Italy and Korea) declined from 715,000 tons in 1990 to 607,000 tons in 1991, and then rose to 701,000 tons in 1992 -- an overall decline of 2.0 percent, but an increase of

⁸⁵ Id.

⁸⁶ Report at table 96.

⁸⁷ Report at table 107.

⁸⁸ Id.

⁸⁹ Report at table C-8.

⁹⁰ Id.

15.5 percent from 1991 to 1992.⁹¹ These imports represented 12.6 percent of total apparent U.S. consumption in 1990, 12.7 percent in 1991, and 14.1 percent in 1992, an overall increase of 1.5 percentage points, most of which occurred from 1991 to 1992.⁹² U.S. producers' share of the total market increased from 84.9 percent in 1990 to 85.4 percent in 1991 and then declined to 84.1 percent in 1992.⁹³ This represents an overall decline of 0.8 percentage points, and a 1.3-percentage point decline from 1991 to 1992.

The absolute volume of imports declined overall; however, neither the absolute volume of imports, nor the imports' share of the market is insignificant. As a share of total apparent consumption, the subject import market share increased slightly while the domestic industry lost a smaller portion of the market. The U.S. industry market share was consistently far greater than the subject import market share. Overall, the loss of market share by the domestic industry to the subject imports was small. From 1991 to 1992, however, the apparent shift in market from U.S. producers to the subject imports was larger. I also observe that U.S. producers' shipments essentially stagnated in volume from 1991 to 1992 whereas the imports increased in volume. In view particularly of the trends for 1991-92, I find that absolute or relative increases in the volume or market share of the subject imports were significant.

Italy

I join the discussion regarding imports of plate from Italy as expressed in the Views of the Commission on Cut-to-Length Plate.

Korea

I join the discussion regarding imports of plate from Korea as expressed in the Views of the Commission on Cut-to-Length Plate.

VI. PRICE EFFECTS OF THE SUBJECT IMPORTS

The Commission is also required to consider the effects of the subject imports on prices in the United States for the like product. In evaluating this effect, the Commission must consider whether there has been significant price underselling by the subject imports, and whether the subject imports either depress prices to a significant degree, or prevent price increases which otherwise would have occurred to a significant degree.⁹⁴

I join in the discussions with regard to the price effects of the subject imports as expressed in the Views of the Commission.⁹⁵ My analysis varies somewhat from those of my colleagues because for each like product I have cumulated a greater volume of the subject imports. Set forth below are certain observations on my part which are incorporated more generally in the views of the majority.

The Commission gathered information relating to the price effects of the subject imports in various forms. First, we requested total quarterly quantities and net f.o.b. value data for 18

⁹¹ Report at table 93.

⁹² Report at table 101.

⁹³ Id.

⁹⁴ 19 U.S.C. § 1677(7)(C)(ii).

⁹⁵ See discussion of "Price Effects" at, respectively, Hot-Rolled Views, Cold-Rolled Views, Corrosion-Resistant Views, and Plate Views.

individual representative⁹⁶ products for 1990-92. Eighteen U.S. producers, 72 importers, and 83 purchasers provided such data, from which quarterly average unit values were calculated. Price trends and comparisons were based on the quarterly average unit values for 18 identified products on a country-specific basis. Four sets of price comparisons were attempted for each of the 18 products for each of the subject countries: 1) producer vs. importer sales to manufacturers/end users; 2) producer vs. importer sales to distributors/service centers; 3) purchases by manufacturers/end users of domestic vs. imported products; and 4) purchases by distributors/service centers of domestic vs. imported products.⁹⁷

Specifically in response to party requests, the Commission also gathered annual quantity and value data for 68 identified "niche" products, from which annual average unit values were calculated.⁹⁸ In addition, we gathered information on price discount policies, contracts and purchase agreements, transportation costs and freight equalization policies, payment terms, lead times, changes in demand, quality comparisons, certification and prequalification procedures, and factors considered in making a purchase decision.⁹⁹ Again in response to party requests, we requested information on nonprime and other slab sales by U.S. mills.¹⁰⁰ Finally, the Commission investigated a great number of domestic producers' lost sales and revenue allegations.¹⁰¹

My analysis of both underselling and price depression/suppression is based on the aggregate price effects for the countries I cumulated for each like product. Individual country price trends for individual products, based in nearly all cases on relatively small quarterly volumes, showed substantial fluctuations relative to U.S. price trends during 1990-92. I particularly examined, for example, price comparisons for the countries that accounted for the largest share of the cumulated imports for each product. I likewise closely examined the pricing data for the countries that represented the largest reported quarterly volumes for each of the 18 identified products. I placed somewhat greater weight on producer-importer price comparisons because these tended to be based on larger volume quarterly transactions. For the same reason, I placed greater weight on the quarterly average unit value comparisons for the 18 nonniche products than on the annual average unit value comparisons for the 68 identified niche products.

⁹⁶ See Report at n.219. The parties to these investigations participated in the selection of the products and the choice of data-collection methodology. *Id.* Petitioners subsequently questioned the reliability of the pricing data received. The Commission's efforts to respond to these concerns are discussed in the Hot-Rolled Views at "Price Effects".

⁹⁷ Instances of underselling/overselling and the ranges of margins, by country and product, are summarized for each of these four sets of comparisons in the Report at tables 110-113, respectively. The actual calculated weighted-average quarterly prices and margins of underselling/overselling for each country and product are presented in app. N. Graphs of producer-importer price trends were presented in EC-Q-080.

⁹⁸ These unit values are present in the Report at app. F.

⁹⁹ This information is presented in the Report at "Prices."

¹⁰⁰ *Id.*

¹⁰¹ Specifically in response to concerns expressed by petitioners at the Commission's hearing, the Commission attempted to investigate the greatest practicable quantity of these lost sales and revenue allegations. The Commission ultimately contacted purchasers accounting for about 50 percent (by tonnage) of the total allegations regarding both cold-rolled steel and plate. Coverage for hot-rolled steel was over 65 percent and coverage for corrosion resistant over 75 percent. Memorandum EC-Q-084.

I have not viewed the mere absence of significant underselling as suggesting that the prices of the imported products could not have contributed in a significant way to either price depression or price suppression.¹⁰² Whatever my observations with regard to overselling or underselling, I have independently examined the available pricing data for evidence of significant price depression or suppression.

A. Hot-Rolled Steel Pricing

Cumulated Imports

The pricing data for hot-rolled steel generally showed substantial margins of overselling by the cumulated imports. I observed that the instances of overselling increased over the period of investigation. Also, although both domestic and imported prices tended to decline overall, I observed that the prices of the cumulated imports generally declined at a lesser rate. I find, therefore, that there is neither substantial evidence of significant price underselling nor evidence of significant price depression or suppression by the subject imports.

Underselling. Including all four sets of pricing comparisons for the 3 selected hot-rolled products, the quarterly price comparisons for the cumulated imports showed 67 instances of underselling, with margins ranging from less than 1 percent to 35 percent, and 301 instances of overselling, with margins ranging from less than 1 percent to 98 percent. Each of these four sets of price comparisons showed, individually, a majority of overselling by the cumulated imports. With the exception of the Netherlands, each of the subject countries also showed a majority of overselling based on all price comparisons. I note that the largest supplier of hot-rolled product to the United States in 1992, Canada, had 56 instances of overselling, with margins of 1 to 98 percent, and 14 instances of underselling, with margins of 4 to 33 percent. The second largest of the cumulated countries, France, had 61 instances of overselling, with margins of less than 1 percent to 38 percent, and 7 instances of underselling, with margins of 1 to 21 percent. The Netherlands was the third-largest supplier. The record, therefore, does not support a finding of significant underselling.

Price depression and suppression. I observed that the instances of overselling tended to increase over the period 1990-92. In many instances, overselling margins for individual countries also increased in magnitude.¹⁰³ I am therefore not inclined to view price comparisons as evidence supporting a conclusion of price depression and suppression.

Price trends for both domestic and imported products tended to decline over the period of investigation, with a substantial portion of the overall domestic price declines registered from the first quarter to the third quarter of 1991. I join the discussion and analysis of price trends as presented in the Views of the Commission on Hot-Rolled Steel Products. Along with my colleagues, I do not find the pricing data and information of record support a conclusion of either significant price depression or significant price suppression.

¹⁰² I note in this regard that many of the importer and purchaser respondents have argued that the subject imports offer higher quality than do domestic products. Nonprice advantages may explain, in some cases and to some degree, overselling by the subject imports.

¹⁰³ I note, for example: product 5 sold to manufacturers/end users (specifically for France and Japan, accounting for the largest quarterly imported volumes reported); product 6 sold to manufacturers/end users (for Germany, again accounting for the largest volumes); product 5 sold to distributors/service centers (France, largest volumes); and, on balance, product 6 sold to distributors/service centers (for Canada and Germany, largest volumes). The same trend was observed for some other price series accounting for smaller volumes. For other price series the margins of overselling/underselling were relatively constant or fluctuated with no clear trend. It was in a minority of series that margins of overselling declined or underselling increased. Report at app. N.

Korea

I join the discussion regarding imports of hot-rolled steel from Korea as expressed in the Views of the Commission on Hot-Rolled Steel Products.

B. Cold-Rolled Steel Pricing

Cumulated Imports

The pricing data for cold-rolled steel showed a majority of overselling by the subject imports. The degree of overselling appeared to remain relatively constant throughout the period of investigation. Both domestic and imported prices of cold-rolled steel tended to decline overall. I did not observe that the prices of the cumulated imports declined at a lesser rate than did the comparable domestic products. I find, therefore, that there is neither substantial evidence of significant price underselling nor substantial evidence of significant price depression or suppression by the imports of cold-rolled steel.

Underselling. Including all four sets of pricing comparisons for the 5 selected cold-rolled products, the quarterly price comparisons for the cumulated imports showed 332 instances of underselling, with margins ranging from less than 1 percent to 41 percent, and 409 instances of overselling, with margins ranging from less than 1 percent to 130 percent. Each of these four sets of pricing comparisons showed, individually, a majority of overselling for the cumulated imports. Only 5 of the cumulated countries showed individual patterns of overselling based on all price comparisons; these five include, however, the largest, third-largest, and fourth-largest suppliers of cold-rolled steel imports in 1992. For each of these three countries, the highest margins of overselling exceeded the highest margins of underselling.

Although a number of individual countries showed a pattern of underselling, I do not find that the cumulated price effects indicate significant underselling. I note specifically the lack of any pattern of underselling in either of the two major market segments (sales to producers/end users and sales to distributors/service centers). I further note that there did not appear to be either a marked increase in the instances of underselling or a marked decrease in the margins of overselling. I find, therefore, that the record does not support a conclusion of significant underselling by the imports of cold-rolled steel.

Price depression and suppression. Observed margins of underselling and overselling fluctuated by product and channel of distribution over the period 1990-92.¹⁰⁴ The cumulated price effects suggest that the degree of overselling remained relatively constant during the period of investigation. I am therefore not inclined to view price comparisons as supporting a conclusion of significant price depression or suppression.

Price trends for both domestic and imported cold-rolled steel products tended to decline over the period of investigation. I join the discussion and analysis of price trends as presented in the

¹⁰⁴ Product 8 sold to manufacturers/end users shows a shift away from overselling and towards underselling by the subject import; product 11 sold to manufacturers/end users shows decreasing margins of overselling; and product 12 sold to manufacturers/end users shows increased margins of overselling. Product 9 purchased by manufacturers/end users showed increased margins of overselling; product 11 purchased by manufacturers/end users showed decreased overselling; and product 12 purchased by manufacturers/end users showed increased underselling. Product 8 purchased by distributors/service centers showed decreased margins of underselling; and products 9 (at least for one major supplier), 11, and 12 purchased by distributors/service centers showed increased margins of overselling. For other price series the margins of overselling/underselling were relatively constant or fluctuated with no clear trend. Report at app. N. This analysis is weighted towards those trends based on larger quarterly volumes.

Views of the Commission on Cold-Rolled Steel Products. Along with my colleagues, I do not find that the pricing data and information of record support a conclusion of either significant price depression or significant price suppression by the subject imports of cold-rolled steel.

Argentina

I join the discussion regarding imports of cold-rolled steel from Argentina as expressed in the View of the Commission on Cold-Rolled Steel Products.

Austria

I join the discussion regarding cold-rolled steel imports from Austria as expressed in the Views of the Commission on Cold-Rolled Steel Products.

C. Corrosion-Resistant Steel Pricing

The pricing data for corrosion-resistant steel showed overselling in sales to manufacturers/end users but half underselling in sales to distributors/service centers; the underselling was more prevalent towards the end of the period examined. Both domestic and imported prices were either steady or declined slightly. For sales to manufacturers/end users, I did not observe that the prices of the cumulated imports declined at a lesser rate than did the comparable domestic products. I did make this observation for sales to distributors/service centers. I find, therefore, that with respect to corrosion-resistant steel, there is substantial evidence of significant price underselling and evidence of significant price depression or suppression by the subject imports.

Underselling. Including all four sets of pricing comparisons for the 6 selected corrosion-resistant products, the quarterly price comparisons for the cumulated imports showed 88 instances of underselling, with margins ranging from less than 1 percent to 30 percent, and 188 instances of overselling, with margins ranging from less than 1 percent to 96 percent. Most of the individual countries, including most of the larger suppliers, also showed a majority of overselling based on all price comparisons. Both sets of pricing comparisons for sales to manufacturers/end users showed a majority of overselling by the cumulated imports of corrosion-resistant steel. Pricing comparisons for sales to distributors/service centers, however, showed equal amounts of overselling and underselling overall. For 1992, however, the observations of underselling were particularly marked.¹⁰⁵

Price depression and suppression. Observed margins of underselling and overselling fluctuated by product and channels of distribution over the period 1990-92.¹⁰⁶ I am therefore not inclined to view price comparisons in and of themselves as evidence strongly supporting a conclusion of significant price depression or suppression, although I note that I found the underselling in the distributor/service center market to be significant.

¹⁰⁵ See, e.g., Report at tables N-31 - N-36.

¹⁰⁶ Products 15 and 18 sold to manufacturers/end users show a shift away from overselling and towards underselling by the subject imports, and product 16 sold to manufacturers/end users shows increased margins of overselling. Product 13 sold to distributors/service centers shows a shift away from overselling and towards underselling, and product 15 sold to distributors/service centers shows increased underselling. Product 13 purchased by manufacturers/end users showed decreased margins of underselling, and products 17 and 18 purchased by manufacturers/end users showed decreased overselling from 1990 to 1991. For other price series the margins of overselling/underselling were relatively constant or fluctuated with no clear trend. Report at app. N. This analysis is weighted towards those trends based on larger quarterly volumes.

Price trends for both domestic and imported corrosion-resistant products remained stable or declined slightly over the period examined. I join the discussion and analysis of price trends for corrosion-resistant steel as presented in the Views of the Commission on Corrosion-Resistant Steel Products. Along with my colleagues, I find that the pricing data and information of record support a conclusion of significant price depression or price suppression by the subject imports.

I base this finding primarily on the generally steeper decline in prices of imported products, as compared with prices of domestic products, in the distributor/service center market. I find that declining prices in this smaller market segment support the conclusion of significant price suppression/depression even in the face of less clear evidence of price suppression/depression in the larger manufacturer/end user market segment. Qualification processes and single-sourcing practices by major automotive and other end user customers appear to lessen the role of price in sales to such customers. Evidence of any adverse price effect is therefore less likely to be discernible in this market. It is therefore in the distributor/service center market where it is more appropriate to consider the effects of import prices.

D. Clad Plate Pricing

I find no evidence of significant adverse price effects by the cumulated imports of clad plate. As noted above, the Commission did not receive specific pricing data for clad plate. The unit value data, however, indicate no correlation between the unit values for domestically-produced clad plate and those of the cumulated imports that evinces adverse price suppressing or depressing effects.¹⁰⁷ Further, as indicated in the majority's views, an analysis of the domestic industry's cost of goods sold as a ratio to net sales provides additional support for the conclusion that there were no significant price suppressing or depressing effects from imports of clad plate.¹⁰⁸

E. Cut-to-Length Plate Pricing

Cumulated Imports

The pricing data for plate showed substantial and consistent underselling by the cumulated imports. Also, domestic and imported prices declined steadily during the period examined. I conclude, on the basis of the underselling observed and the degree of competition in the plate market, that both underselling and price depression by the subject imports were significant.

Underselling. Including all four sets of pricing comparisons for the four selected plate products, the quarterly price comparisons for the cumulated imports showed 305 instances of underselling, with margins ranging from less than 1 percent to 48 percent, and 140 instances of overselling, with margins ranging from less than 1 percent to 66 percent. All but one of the individual cumulated countries also showed a majority of underselling based on all price comparisons. Three of these four sets of pricing comparisons showed, individually, a majority of underselling for the cumulated plate imports. The pricing data showing mostly overselling accounted for only about 5 percent of total observations.

Nonprice factors do not appear to account substantially for the observed underselling. The majority of both domestic and imported plate is produced in three standardized commercial grades;

¹⁰⁷ Report at table C-8.

¹⁰⁸ See "No Material Injury by Reason of Imports of Clad Plate from Japan and France" in Corrosion-Resistant Views.

thus, price competition is not likely to be significantly attenuated by limited substitutability¹⁰⁹ among highly specialized and differentiated products.

Price depression and suppression. Observed margins of underselling were relatively constant over the period 1990-92. I am therefore not inclined to view price comparisons in and of themselves as evidence strongly supporting a conclusion of significant price depression and suppression, although I note that I found the underselling to be significant based on the consistent and substantial margins observed.

Price trends for both domestic and imported plate products declined over the period examined. I join the discussion and analysis of price trends with respect to plate as presented in the Views of the Commission. Along with my colleagues, I find that the pricing data and information of record support a conclusion of significant price depression or price suppression by the subject imports of plate. This finding is based in large part on the significance of the underselling and the marked degree of substitutability of the imported and domestic products.

VII. IMPACT OF THE SUBJECT IMPORTS ON THE CONDITION OF THE DOMESTIC INDUSTRIES

I join my colleagues in their discussions of the impact of the subject imports on each of the domestic industries as expressed in the Views of the Commission. I also join in the discussions of conditions of competition and the levels and trends of the various domestic industries' indicators.¹¹⁰

Some discussion in the majority views addresses factors other than imports that appear to have contributed to the generally poor state of the domestic industries. I concur that such factors played a role, perhaps even a substantial role, in whatever depressed conditions beset these industries. In determining whether or not an industry is materially injured by reason of subsidized and LTFV imports, the Commission may consider alternative causes of injury.¹¹¹ However, a finding that the subject imports are contributing to the material injury is sufficient for an affirmative present injury finding.¹¹²

I find that the record does not support the conclusion that the domestic industry producing hot-rolled steel is materially injured by reason of the subject imports of hot-rolled steel. I base this finding on the lack of substantial evidence supporting a causal nexus between depressed conditions of the hot-rolled industry and either the volume or price effects of the subject hot-rolled imports. I note that approximately two-thirds of hot-rolled steel production is captively consumed in the production

¹⁰⁹ I note the various discussions of substitutability in "Price Effects" in, respectively, Hot-Rolled Views, Cold-Rolled Views, Corrosion-Resistant Views, and Plate Views. While I share the conclusions drawn, the discussions overstate my reliance on this particular factor. Inherent in my analysis of volume effect, price effect, and impact on the industry is a recognition of the degree to which the domestic and imported products are or are not substitutable in the marketplace. Substitutability is particularly relevant to my assessment of whether any underselling, price depression, or price suppression is significant. I do not reach a separate conclusion or judgement with regard to substitutability; I simply include it among the many factors which contribute to my overall analysis.

¹¹⁰ See discussions of "Impact on the Affected Domestic Industry", "Conditions of Competition", and "Condition Factors" at, respectively, Hot-Rolled Views, Cold-Rolled Views, Corrosion-Resistant Views, and Plate Views.

¹¹¹ E.g., Citrosuco Paulista, S.A. v. United States, 704 F.Supp. 1075, 1101 (CIT 1988).

¹¹² See, e.g., Metallwerken Nederland, B.V. v. United States, 728 F.Supp. 730, 741 (CIT 1989); Citrosuco Paulista, S.A. v. United States, 704 F.Supp. 1075, 1101 (CIT 1988).

of cold-rolled steel products; thus, a large portion of the overall hot-rolled steel industry is shielded to some extent from direct import competition.

I also find that the record does not support the conclusion that the domestic industry producing cold-rolled steel is materially injured by reason of the subject imports of cold-rolled steel. I likewise base this finding on the lack of substantial evidence supporting a causal nexus between depressed conditions of the cold-rolled industry and either the volume or price effects of the subject cold-rolled imports. I note that approximately one-half of cold-rolled production is captively consumed in the production of corrosion-resistant steel products; thus, a large portion of the overall cold-rolled steel industry is shielded to some extent from direct import competition.

In contrast, the record does support the conclusion that the domestic industry producing corrosion-resistant steel is materially injured by reason of the subject cumulated imports of corrosion-resistant steel. In this case there is substantial evidence of a causal nexus to depressed conditions of the cold-rolled industry and both adverse volume and price effects of the subject cumulated corrosion-resistant imports. I specifically note the continued financial losses of the domestic industry, and its inability to operate at higher levels of capacity utilization, during a period (1992) of improved demand. I find that the increased volume of the imports contributed to the industry's inability to operate at higher production levels, and I find that both the increased volumes and price depressing or suppressing effect of the imports contributed to the industry's inability to operate at higher levels of profitability. I join the confidential discussion of the impact of clad plate imports in the Views of the Commission on Corrosion-Resistant Steel Products.

Finally, with regard to plate, the record also supports the conclusion that the domestic industry producing plate is materially injured by reason of the cumulated imports of plate. In this case, too, there is substantial evidence of a causal nexus to depressed conditions of the plate industry and both adverse volume and price effects of the cumulated plate imports. I specifically note the depressed financial condition of the domestic industry, and declines in production and shipments during the period examined. I find that increases in the market share of the subject cumulated imports were at the expense of U.S. production, shipments, employment, and revenues. I also conclude that substantial underselling by the cumulated imports contributed further to declining per-unit revenues and overall financial performance.

VIII. THREAT OF MATERIAL INJURY

Section 771(7)(F) of the Act directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." The statute specifically states, "[s]uch a determination may not be made on the basis of mere conjecture or supposition." The Commission considers ten statutory factors, as well as any other relevant economic factors.¹¹³ Our reviewing court has stated that the ten statutory factors primarily serve as guidelines for the Commission's analysis of the likely impact of future imports. In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.¹¹⁴

¹¹³ I note that I have considered information submitted by the petitioners regarding alleged cartels in the steel sector. This information is not inconsistent with generally held views about distortions in international steel trade. However, I did not place great weight on this information. For purposes of our statutory mandate, we must rely on information which is specific and concrete as evidence of a real and imminent threat of material injury.

¹¹⁴ 19 U.S.C. § 1677(7)(F)(iii)(I).

I join my colleagues in determining that the industry in the United States producing hot-rolled steel is not threatened with material injury by reason of the subject hot-rolled steel imports.¹¹⁵

I determine that there is a threat of material injury from cumulated imports of cold-rolled steel¹¹⁶ from Belgium, Brazil, France, Germany, Italy, Korea, the Netherlands, and Spain. I determine, however, that there is no threat of material injury from imports of cold-rolled steel from Argentina, Austria, Canada, and Japan, and I join in the discussion, except as otherwise noted, of the majority of the Commission with respect to these four countries.¹¹⁷

I determine that the industry in the United States producing clad plate is not threatened with material injury by reason of cumulated imports from France and Japan.

Finally, I determine that the industry in the United States producing plate is not threatened with material injury by reason of imports of plate from Italy and Korea. I join in the discussion of the majority of the Commission with respect to these two countries.¹¹⁸

A. Cumulation for Threat Analysis

In analyzing whether subject imports pose a threat of material injury, the Commission is not required to cumulate imports, but has the discretion to do so. I affirmatively exercised this discretion to cumulate most of the imports subject to the cold-rolled steel investigations. I have decided to cumulate imports from these particular countries after carefully considering a number of factors. In explaining my approach, which differs from that of my colleagues, I believe it is useful to begin with the statute and legislative history.

The legislative history to the Trade Agreements Act of 1979 underscores the importance of the threat section of the statute.

The "threat of material injury" standard is intended to permit import relief under the countervailing duty and antidumping laws before actual material injury occurs and should be interpreted in a manner to prevent actual material injury from occurring. Relief should not be delayed if evidence exists for concluding that the threat of material injury is sufficiently real.¹¹⁹

In 1984, Congress added the statutory threat factors that we are required to address in every investigation.¹²⁰ In doing so, Congress recognized that:

. . . the projection of future events is necessarily more difficult than the evaluation of current data. Accordingly, a determination of threat will require a careful assessment of identifying current trends and

¹¹⁵ See "Determinations Regarding Threat of Material Injury" in Hot-Rolled Views.

¹¹⁶ I note that the cumulated import volumes and market shares include south Africa.

¹¹⁷ See "Determinations Regarding Threat of Material Injury" in Cold-Rolled Views.

¹¹⁸ See "Determinations Regarding Threat of Material Injury" in Plate Views.

¹¹⁹ H.R. Rep. No. 317, 96th Cong., 1st Sess. 47 (1979) (emphasis added); see also S. Rep. No. 249, 96th Cong., 1st Sess. 89 (1979).

¹²⁰ See H.R. Rep. No. 1156, 98th Cong., 2d Sess. (1984) 174.

competitive conditions in the marketplace. This will require the ITC to conduct a thorough, practical, and realistic evaluation of how it operates, the role of imports in the market, the rate of increase in unfairly traded imports, and their probable future impact on the industry."¹²¹

Thus, making a threat determination is not simply a matter of totalling up the number of threat factors that do or do not support an affirmative threat determination. The statutory factors are only the starting point of what should be a "thorough, practical and realistic" analysis.

In determining whether imports pose a threat of material injury to the domestic industry, the Commission is permitted, but not required, to cumulatively assess "to the extent practicable" the price and volume effects of subject imports from two or more countries.¹²² The statute requires that the imports "compete with each other, and with like products of the domestic industry, in the United States market" and that they be subject to antidumping or countervailing duty investigation.¹²³ The statute also expressly states that cumulation for threat is subject to the same negligibility exception as the mandatory cumulation requirement.¹²⁴

Thus, the statute makes clear that the factors the Commission is required to consider for mandatory cumulation and negligibility are also relevant for purposes of cumulating for threat. Given that the purpose of the threat provision is to prevent actual material injury from occurring, it is my view that the Commission should generally cumulate imports to the extent practicable when making its threat determination.

I believe it is particularly appropriate to cumulate imports in investigations such as the instant ones where there are small amounts of unfair imports from numerous countries and a history of unfair import competition. As compared to a country-by-country threat analysis, a cumulative threat analysis is more likely to capture the full scope of that import competition and be a more realistic assessment of whether that competition is likely to become injurious to the domestic industry in the near future.

At the same time, I am mindful of the statute's implicit caution that cumulation for threat should be done only "to the extent practicable." Although it is important to capture the full scope of the likely future impact of imports on the domestic industry, it is equally important not to overstate that likely future impact. Accordingly, in addition to the factors that I consider in determining whether to cumulate for purposes of determining present material, I carefully examined the most recent volume and price trends of the subject imports in determining whether to cumulatively assess their likely future effects on the domestic industry. Similarities in adverse trends weighed in favor of cumulation.

I also examined whether imports from a particular country exhibited either a general pattern of underselling or a narrowing of overselling margins during the period of investigation as compared to imports from other countries. Imports that may have demonstrated relatively high margins of overselling at the beginning of the period of investigation but narrower margins of overselling (or actual underselling) by the end of the period likely contributed to price depression or suppression in the domestic market. I then looked for evidence of similar patterns by imports from other countries

¹²¹ Id.

¹²² 19 U.S.C. § 1677(F)(iv).

¹²³ Id.

¹²⁴ Id.

to discern whether there was, in effect, a "price band" within which all of these imports and the domestic products competed.

It should be obvious from the foregoing discussion that cumulation for threat does not require choosing to cumulate all countries or no countries. Rather, it is entirely appropriate, in my view, to examine carefully the similarities and differences in trends among different countries and cumulate only those countries that share similar adverse trends. Indeed, this approach is necessary to ensure that the likely impact of future imports that demonstrate similar adverse trends is neither understated nor overstated.

I respectfully disagree with my colleagues concerning the relevance to our cumulation analysis of the fact that many imports are from European Community (EC) countries. I believe that this is a relevant factor -- although by no means the only factor -- in deciding whether to cumulate in the context of threat. Petitioners have provided evidence of a significant degree of coordination of policies concerning steel production among the EC countries.¹²⁵ There are efforts underway to improve the competitiveness of the steel producers in the EC countries. Those efforts, if successful, will improve the ability of even small individual producers in these countries to compete in the United States market.

Finally, as noted above, the statute directs that cumulation for threat is subject to the negligible imports exception. In my analysis, finding imports to be negligible for purposes of mandatory cumulation weighed against cumulating those imports with other imports for purposes of my threat analysis.

B. Exercise of Discretion to Cumulate for Purposes of Threat

In exercising my discretion to cumulate imports for purposes of a threat analysis, I am mindful of the following: 1) my determinations to cumulate for present injury; 2) the lack of evidence of cumulated adverse volume and price effects for present injury and the extent to which price and volume trends for individual countries suggest any contrary evidence; and 3) the condition of the domestic industries and whether the industries demonstrated any vulnerability to future adverse volume or price effects from imports.

Having applied the negligibility exception to certain imports in analyzing present injury, I decided similarly not to cumulate those imports for purposes of threat analysis. I therefore decline to cumulate 1) imports of cold-rolled steel from Argentina and Austria, and 2) imports of plate from Italy and Korea.

I next considered the volume effects observed for the cumulated hot-rolled and cold-rolled imports.¹²⁶ Neither the increases in import penetration of the cumulated hot-rolled or cold-rolled imports appeared to me to be significant in light of the fact that these U.S. industries experienced no significant loss of market share during 1990-92. Thus, no individual country that increased its market share appeared to do so at the significant expense of a U.S. industry. On this basis I was unable to identify any countries that individually had a significant adverse volume effect during 1990-92. This finding weighed against cumulation on the basis of volume trends.

With regard to price trends, I noted that while I find no significant underselling or price depression/suppression by either the cumulated hot-rolled or cold-rolled steel imports, U.S. prices for both products declined somewhat during 1990-92. With regard to hot-rolled steel, I noted that every country except the Netherlands showed a pattern of overselling, often by substantial and even

¹²⁵ Petitioners' Prehearing Br., Vol. 4, 114-116.

¹²⁶ My analysis with regard to cumulation of imports of clad plate for purposes of threat is set forth below.

increasing margins, during the period examined. The Netherlands also presented evidence of price declines. Thus, while cumulation for the Netherlands appeared logical, I was unable to identify any other country with whose hot-rolled product to cumulate the Dutch hot-rolled product. These circumstances weighed against cumulation for threat in the hot-rolled steel investigations.

Different circumstances presented themselves, however, in the cold-rolled investigations. A number of countries -- Brazil, Germany, Italy, the Netherlands, and Spain -- showed, individually, a majority of underselling during the period examined. In addition, price trends for these same countries -- and Belgium, France and Korea -- showed marked declines from 1990 to 1992.

The third step in my analysis regards the vulnerability of the domestic hot-rolled and cold-rolled steel industries. In both cases, U.S. producers maintained substantial market shares, and the decline in the domestic hot-rolled market share I concluded was insignificant. With volume of production very important because of high fixed costs, the industries had successfully held substantial market share despite increased imports.

I consider both industries to be vulnerable to continued or future price competition. Although both industries saw increased demand in 1992 compared with 1991, in neither case did prices rise to any marked degree. Continued losses in 1992 by the industries were a reflection of these depressed price levels.

In light of these observations and particularly the differing price trends for the hot-rolled steel imports as opposed to the cold-rolled steel imports, I determined not to exercise my discretion to cumulate imports of hot-rolled steel for purposes of my threat determinations in these investigations. As for cold-rolled steel, however, I chose to exercise my discretion to cumulate the imports from Belgium, Brazil, France, Germany, Italy, Korea, the Netherlands, and Spain. This decision is based on my conclusion that the domestic cold-rolled industry is vulnerable to the effects of future adverse price effects. The countries cumulated each showed significant evidence of discernible adverse price effects.

I decline to cumulate the cold-rolled imports from either Canada or Japan based on the lack of substantial evidence of similar adverse price effects. While imports from Canada showed significant margins of underselling for one product, the volumes upon which these margins were based were extremely small. Price trends for the Canadian products based on more substantial volumes showed consistent overselling. These trends, unlike those of most of the cumulated countries, showed no marked decline vis-a-vis domestic products during 1990-92. One price trend for Japan showed a marked decline; no other did. Also, Japanese margins of overselling were consistently large.

C. Cumulation of Cold-Rolled Steel Imports from Belgium, Brazil, France, Germany, Italy, Korea, the Netherlands, South Africa, and Spain

After having identified the countries for which I believed cumulation is appropriate, I examined their trends more closely to see whether there were any additional similarities.

First of all, volumes of imports of cold-rolled products from each of these countries, except those from France, increased from 1991 to 1992. However, imports from France decreased only slightly and returned to almost the exact same level as 1990. Secondly, price comparisons for most of these countries show a preponderance of underselling. Belgium, France and Korea show a majority of overselling, but also have significant amounts of underselling; furthermore, France and Korea are among the five countries which have confirmed lost sales or lost revenues. In addition, prices for imports from these countries fluctuated within a narrow band, closely tracking domestic prices. In 1992, unit values for every country, except Germany, were below the average unit value of all subject cold-rolled imports; Germany's unit value was slightly above the average. Finally, I note that the record indicates that Italy and Spain, both members of the EC, have applied to the EC

for assistance in restructuring their steel industries. For all of the foregoing additional reasons, I determine that it is appropriate to cumulate the imports of cold-rolled products from these countries.

D. Affirmative Determinations Regarding Cumulated Cold-Rolled Steel Imports

I determine that the industry in the United States producing cold-rolled steel is threatened with material injury by reason of imports from Belgium, Brazil, France, Germany, Italy, Korea, the Netherlands, and Spain. I make this determination "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." I have considered, in addition to the statutory factors, the vulnerability of the domestic cold-rolled steel industry to the likely future volume and price effects of the subject imports of cold-rolled steel.

Statutory Factors for Threat of Material Injury

Nature of subsidies. All countries, except the Netherlands, were subject to countervailing duty investigations. The subsidies determined by the Department of Commerce range from 0.6 percent to 73 percent. The subsidies include export subsidies with respect to Brazil and Korea. The export subsidy, in each case, is a small portion of the total subsidy. The existence of subsidy findings, in many cases substantial subsidy findings, for all but one of these countries supports an affirmative threat determination for the cumulated countries.

Foreign capacity and unused/underutilized capacity. There has been no substantial increase in capacity in any of the countries with one exception.¹²⁷ In view of worldwide overcapacity in the steel industry, I do not consider this factor to weigh heavily against an affirmative threat determination.

On a cumulated basis, there is significant unused/underutilized capacity. In 1992, the difference between reported capacity and production for the cumulated countries was over 6 million tons. Exports to the United States in that same year totalled approximately 1 million tons.¹²⁸ Industries such as this, with high fixed costs, have an incentive to operate at the highest levels of production possible. The presence of such substantial underutilized capacity, especially relative to the recent volume of exports to the United States, supports an affirmative threat determination. With the U.S. steel market being the largest in the world, I find that increases in capacity or production by the subject cumulated cold-rolled suppliers are likely to result in significant increases in exports to the United States.

Increases in market penetration. The volume of imports from those countries cumulated for my threat determinations increased by 25 percent from 1991 to 1992.¹²⁹ With respect to market share, the percentage of total U.S. consumption represented by these cumulated countries rose from 3.7 percent to 4.4 percent from 1991 to 1992. The percentage of open market consumption rose from 7.8 percent to 8.4 percent.¹³⁰ The rapid increase in the volume of imports near the end of the period examined supports an affirmative threat determination. Increases in market share by these imports during the period examined appeared to be at the expense of other imports rather than at the expense of U.S. producers. Future increases in market share are more likely to be at the expense of U.S. producers simply because there are fewer "other" imports to displace. Because of the high

¹²⁷ Report at tables 54, 57, 66, 70, 73, 79, 84, and 89.

¹²⁸ *Id.*

¹²⁹ The volume of total subject imports increased by 15 percent, in contrast.

¹³⁰ In contrast, the share of U.S. consumption of all subject imports increased only slightly from 6.4 percent to 6.5 percent; and total subject imports' share of merchant consumption actually decreased slightly from 13.1 percent to 13.0 percent.

fixed costs of production, any significant increase would reach injurious levels. I have put somewhat less weight on this factor, however, because I find it less likely that the U.S. industry will yield future market share than that it will hold market share at the expense of lower prices.

Price depression/suppression. Price comparisons of these cumulated cold-rolled steel imports show a preponderance of underselling.¹³¹ In addition to the evidence of underselling, the record shows that prices of the cumulated imports declined more steeply than prices of domestic products.¹³² This suggests that the imports from the countries I cumulated for these threat determinations, are likely to have a price-suppressing or price-depressing effect in the future. This is precisely the type of adverse impact to which the industry shows itself to be especially vulnerable. This factor has, therefore, weighed heavily in my affirmative threat determinations.

Increases in U.S. inventories. There have been no significant increases with respect to U.S. importers' inventories of imports from these countries.¹³³ The record establishes, however, that carrying costs of inventory are high in the cold-rolled steel industry. Therefore, it is not the practice to hold significant inventories. This factor did not weigh heavily in my decision.

Product shifting. There is the potential for product-shifting to cold-rolled steel in light of my affirmative determinations with regard to corrosion-resistant steel products and plate from some of these same countries.¹³⁴ Because the feedstock for corrosion-resistant steel is cold-rolled steel, there is the potential for some increased sales of the cold-rolled steel itself. There is somewhat less potential for shifting production from plate to cold-rolled steel due to the fact that these products are produced from the same raw material but on different finishing lines. I have not placed great weight on the potential for product-shifting because the record does not contain clear evidence that product shifting alone will result in a significant increase in the level of exports of cold-rolled steel by the cumulated countries to the United States.

Impact on development and production efforts. I find that the cumulated imports could have negative effects on existing development and production efforts of the domestic industry. Both by their volume and aggressive pricing, these imports could negatively affect planned improvements by the domestic industry scheduled to begin between 1993 and 1996.¹³⁵

Other relevant factors. Germany's cold-rolled products were subject to investigation by Argentina, which reached a preliminary affirmative determination in November 1992.¹³⁶

¹³¹ The total of price comparisons for all subject imports show a clear majority of overselling, however, which was a factor in my negative present injury determinations. I further note that there were 14 confirmed lost sales or lost revenues with respect to five of the eight countries. Also, the average unit value of cumulated imports was somewhat below that of the average unit value of total subject imports.

¹³² In contrast, for purposes of my present injury determinations, price trends showed no such pattern on a cumulated basis.

¹³³ Report at table 47.

¹³⁴ I note that only some of the same foreign producers exported both cold-rolled and corrosion-resistant steel, or both cold-rolled steel and plate.

¹³⁵ Report at "Current and Planned Investment Projects"; see also Report at app. G.

¹³⁶ Report at I-111. I note that as of the date of the Commission's vote in these investigations, Germany's and France's cold-rolled products also were subject to an antidumping investigation by
(continued...)

Section 1673(b)(4)(B) Determination

In accordance with 19 U.S.C. § 1673(b)(4)(B), I must make an additional finding as to whether material injury by reason of the cumulated imports for which I have made an affirmative threat finding would have been found but for the suspension of liquidation of entries of such imports. This finding is required so that Commerce may impose dumping duties as of the appropriate date. Suspension of liquidation occurred in these investigations on February 4, 1993, the date of Commerce's preliminary affirmative determinations.

The record suggests that imports of carbon steel products subject to these investigations declined because of the suspension of liquidation. Based on the information in the record, I believe that, in the absence of suspension of liquidation, the imports of cold-rolled steel which I cumulated for purposes of my threat determinations would have continued to enter the United States at levels and prices that would have caused material injury to the domestic cold-rolled steel industry. I base this finding on my analysis of the domestic industry's extreme vulnerability to price suppressing and depressing effects from these cumulated imports. Accordingly, I find that had there not been suspension of liquidation, the domestic cold-rolled steel industry would have been materially injured by reason of the cumulated imports.

E. Negative Determinations Regarding Cumulated Clad Plate Imports

There is a lack of information concerning imports of clad plate that I normally would examine to determine whether it is appropriate to cumulate imports of clad plate for threat. We do not have segregated pricing data for the imports from the respective countries, so I cannot determine whether imports from France and Japan demonstrated similar or divergent pricing trends. The information concerning foreign producer capacity, production, capacity utilization, etc., for France and Japan come from different periods of investigation.¹³⁷ Given the very small volumes of imports, however, I have determined to exercise my discretion to cumulate the imports so as to ensure that I have assessed the full likely impact of these imports on the domestic industry in the immediate future.

I find that the domestic industry producing clad plate is not threatened with material injury by reason of imports of clad plate from France and Japan. Commerce made an affirmative subsidy determination with respect to imports of corrosion-resistant steel products from France. I note, however, that none of the subsidies that were the basis of Commerce's affirmative determination were export subsidies.¹³⁸

The data concerning French capacity and capacity utilization do not provide evidence that imports of clad plate from France will pose a threat to the domestic industry in the near future.¹³⁹ Similarly, data concerning projected production, capacity, and capacity utilization also are not

¹³⁶ (...continued)

Canada. Id. at I-106, I-111. No antidumping finding had been made, however, nor was any antidumping remedy in place at that time. This factor did not provide support for my threat determinations for the cumulated cold-rolled imports.

¹³⁷ As noted in the majority's views, the only information we have concerning production of clad plate in Japan comes from the record in the preliminary investigation. See discussion of "No Threat of Material Injury by Reason of Subject Imports of Clad Plate from France and Japan" in Corrosion-Resistant Views.

¹³⁸ See Report at E-4, E-17.

¹³⁹ Report at table I-1.

indicative of a threat to the domestic industry.¹⁴⁰ In short, there is no persuasive evidence in the record to support a finding that excess French production capacity poses a threat of material injury to the domestic industry.

Data concerning Japanese clad plate production and capacity do not indicate that there is significant unused or underutilized capacity that would pose a threat of material injury to the domestic industry.¹⁴¹ Capacity utilization information also does not indicate any imminent increase in excess capacity.¹⁴²

There has not been a rapid increase in United States market penetration by the cumulated imports. To the contrary, as discussed above, market penetration declined sharply from 1991 to 1992. Evidence concerning home market shipments of French clad plate also does not indicate that exports of clad plate to the U.S. are likely to increase in the imminent future.¹⁴³ There is no persuasive evidence that there will be any rapid increase in U.S. market penetration or that the penetration will increase to an injurious level in the immediate future.

I also do not find evidence that cumulated imports will enter the United States in the immediate future at prices that will have a suppressing or depressing effect on U.S. prices. As noted above, I found no correlation between prices for the cumulated imports and domestic prices, as reflected in the unit values, during the period examined. The record also does not suggest any substantial future increase in inventories of clad plate in France or Japan that would threaten the domestic industry.¹⁴⁴

There is no persuasive evidence in the record that imports from either France or Japan, whether examined separately or cumulatively, have impeded research and development expenditures by the domestic industry, or will have a negative effect on the industry's development and production efforts.

Finally, I find no evidence of other demonstrable adverse trends with respect to these imports, whether examined separately or cumulatively, that would support a finding of threat of material injury by reason of the these imports.

IX. CRITICAL CIRCUMSTANCES

A. Corrosion-Resistant Steel from Mexico

Commerce found that critical circumstances exist with respect to subject imports of corrosion-resistant steel from Mexico. For the reasons discussed below, I make a negative critical circumstances determination.¹⁴⁵

¹⁴⁰ Id.

¹⁴¹ See Memorandum INV-Q-121 at B-1, table B-1.

¹⁴² Id.

¹⁴³ See Report at table I-1.

¹⁴⁴ See Report at table I-1; Memorandum INV-Q-121 at B-1, table B-1.

¹⁴⁵ I concur with the majority's general discussion concerning the critical circumstances provision of the statute and incorporate that discussion here by reference. See discussion of "Critical Circumstances" in Corrosion-Resistant Views.

In this investigation, any retroactive duties would only be imposed on imports entering the United States after November 6, 1992, ninety days prior to the notice of suspension of liquidation, published on February 4, 1993. The record reflects an increase in imports from Mexico after the filing of the petition on June 30, 1992. Further, it appears that retroactive imposition of duties would capture approximately 50 percent of this increase.¹⁴⁶ However, the record does not provide evidence that the increase in imports necessarily reflects an attempt by the Mexican respondents to avoid the imposition of duties. Specifically, although the monthly levels of imports during this period are somewhat high in certain instances, they do not appear to be dramatically higher than earlier monthly levels of imports from Mexico.¹⁴⁷ Moreover, the volume of imports from Mexico that would be subject to retroactive imposition of duties constitutes a very small amount of domestic consumption of corrosion-resistant steel products in 1992.

Based on the foregoing, I find that retroactive imposition and collection of duties on imports of corrosion-resistant steel from Mexico entering during the 90-day period is not necessary to prevent the recurrence of the material injury caused by such imports. Therefore, I find that the effectiveness of the antidumping duty order on imports of corrosion-resistant steel from Mexico will not be materially impaired by declining to impose retroactive duties on such imports.

B. Cut-to-Length Plate from Spain

I make an affirmative finding with respect to critical circumstances for cut-to-length-plate from Spain. I concur with the reasons set forth in Commissioner Rohr's views.¹⁴⁸

¹⁴⁶ Report at app. L, table L-2.

¹⁴⁷ Id.

¹⁴⁸ See Additional and Dissenting Views of Commissioner David B. Rohr Concerning Cut-to-Length Plate Products.

