

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STAINLESS STEEL SHEET AND STRIP FROM FRANCE, GERMANY, ITALY,
JAPAN, THE REPUBLIC OF KOREA, MEXICO, TAIWAN, AND THE UNITED KINGDOM
Investigations Nos. 701-TA-380-382 and 731-TA-797-804 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3208, July 1999)

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CERTAIN STAINLESS STEEL SHEET AND STRIP FROM FRANCE, GERMANY, ITALY, JAPAN, THE REPUBLIC OF KOREA, MEXICO, TAIWAN, AND THE UNITED KINGDOM

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from France, Italy, and the Republic of Korea (Korea) of certain stainless steel sheet and strip² that have been found by the Department of Commerce to be subsidized by the Governments of France, Italy, and Korea.³ The Commission also determines, pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom of certain stainless steel sheet and strip that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).³ The Commission further determines that critical circumstances do not exist with respect to imports of subject merchandise from Nisshin Steel Co. Ltd., Nippon Yakin Kogyo, Nippon Metal Industries, and Nippon Steel Corp. of Japan and Taihan of Korea.⁴

BACKGROUND

The Commission instituted these investigations effective June 10, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by Allegheny Ludlum Corporation, Pittsburgh, PA; Armco, Inc.,⁵ Pittsburgh, PA; J&L Specialty Steel, Inc.,⁶ Pittsburgh, PA; Washington Steel Division of Bethlehem Steel Corporation, Washington, PA; the United Steelworkers of America, AFL-CIO/CLC; Butler Armco Independent Union; and Zanesville Armco Independent Organization, Inc.

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 merchandise subject to these investigations is stainless steel sheet and strip in coils and is currently classified in the following subheadings of the Harmonized Tariff Schedule of the United States (HTS): 7219.13.00, 7219.14.00, 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00, 7219.90.00, 7220.12.10, 7220.12.50, 7220.20.10, 7220.20.60, 7220.20.70, 7220.20.80, 7220.20.90, and 7220.90.00.

³ Commissioner Askey dissenting.

⁴ Commerce made affirmative determinations of critical circumstances with respect to these companies and negative determinations with respect to all other producers in Japan and Korea and all producers in Germany, Italy, and Taiwan. Critical circumstances were not alleged with respect to imports from France, Mexico, and the United Kingdom.

⁵ Armco, Inc., Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. are not petitioners in the antidumping investigation relating to Mexico.

⁶ J&L Specialty Steel, Inc. is not a petitioner in the countervailing duty and antidumping investigations relating to France.

The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain stainless steel sheet and strip from France, Italy, and Korea were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and that imports of certain stainless steel sheet and strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of January 14, 1999 (64 FR 2504). The hearing was held in Washington, DC, on May 25, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is materially injured by reason of imports of certain stainless steel sheet and strip from France, Italy and Korea that the Department of Commerce (“Commerce”) found to be subsidized and by reason of certain stainless steel sheet and strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom that Commerce found to be sold at less than fair value (“LTFV”).¹ We further find that critical circumstances do not exist with respect to subject imports from Japan and Korea.

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

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

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁵ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁶ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁷ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise subsidized and sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁸

¹ Commissioner Askey dissenting. She joins Parts I-III A of these Views.

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(10).

⁵ See, e.g., Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁶ See, e.g., Nippon Steel, 19 CIT at 454-55.

⁷ Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990) aff’d, 938 F.2d 1278 (Fed. Cir. 1991).

⁸ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F.

(continued...)

B. Product Description

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

[C]ertain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.⁹

The stainless steel sheet and strip (“SSSS”) subject to these investigations closely follows industry distinctions for sheet and strip product thickness and width, as detailed by the American Society for Testing and Materials (“ASTM”), ASM International (“ASM”), and the American Iron and Steel Institute (“AISI”).¹⁰ Sheet is a flat-rolled product that is under 4.75 mm in thickness and over 610 mm in width.¹¹ Strip is a flat-rolled product that is under 4.75 mm in thickness and under 610 mm in width.¹² Strip that is a of thickness of 0.13 mm and less (by definition) is referred to commercially as “foil.”¹³ While SSSS is produced and sold in either flat or coiled form, only coiled SSSS that has been annealed (heat treated for softening) and pickled (descaled) is subject to these investigations.¹⁴

Stainless steel sheet and strip is used in consumer and industrial applications where the corrosion resistance, heat resistance, or design characteristics of stainless steel are required.¹⁵ For example, the automotive industry uses sheet and strip to manufacture trim, exhaust and emission-control systems, and wheel covers.¹⁶ Sheet and strip also is used by the chemical and construction industries, as well as by

⁸(...continued)

Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

⁹ Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 Fed. Reg. 30574, 30574-30575 (Dept. of Commerce June 8, 1999). Commerce also excluded a number of specific products from the scope of these investigations. Id. at 3075.

¹⁰ Certain Stainless Steel and Sheet and Strip From France, Germany, Italy, Japan, The Republic of Korea, Mexico, Taiwan, and The United Kingdom, (“SSSS Prelim.”), Invs. Nos. 701-TA-380-382 and 731-TA-797-804 (Preliminary), USITC Pub. 3118, p. 4

¹¹ Confidential Staff Report (June 18, 1999) (“CR”) I-6, I-9; Public version of Staff Report (“PR”) at I-5.

¹² CR at I-6; PR at I-5.

¹³ CR at I-6; PR at I-7.

¹⁴ CR at I-6; PR at I-5.

¹⁵ CR at I-6; PR at I-5.

¹⁶ CR at I-6; PR at I-5.

appliance and industrial equipment manufacturers.¹⁷ Sheet and strip is used to manufacture pipe and tubing for use in the chemical, pharmaceutical, dairy, and pulp and paper industries, among others.¹⁸

C. Domestic Like Product Issues

In the preliminary phase of these investigations, the Commission found a single domestic like product, “certain stainless steel sheet and strip in coils,” corresponding with Commerce’s description of the subject merchandise.¹⁹ There are two domestic like product issues in these final phase investigations. The first concerns whether the domestic like product should be expanded beyond the scope of the subject merchandise to include stainless steel plate.²⁰ The second concerns whether one particular grade of stainless sheet and strip, Grade 409, is a separate like product from other SSSS.²¹ As explained below, we again find a single domestic like product, “stainless steel sheet and strip in coils” corresponding to the scope of the subject merchandise.

1. Whether the domestic like product should be defined more broadly than the subject merchandise to include stainless steel plate.

In the preliminary determinations, the Commission decided not to expand the definition of the domestic like product to include stainless steel plate. In these final phase investigations, some Respondents have repeated their prior arguments that stainless steel plate should be included in the domestic like product.²²

The Commission recently addressed the corresponding issue in its final phase investigations of Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan,²³ *i.e.*, that the

¹⁷ CR at I-6; PR at I-5.

¹⁸ CR at I-7; PR at I-7.

¹⁹ Petitioner’s Prehearing Br. at 14.

²⁰ *See* Italian Respondents, Acciaci Speciali Terni, S.p.A. and Acciaci Speciali Terni, USA, Inc.’s, (“AST”) Prehearing Br. at 4-14; German Respondents, Krupp Thyssen Nirostat GmbH and Krupp Hoesch Steel Products, Inc.’s, (“Krupp”), Prehearing Br. at 6-16.

²¹ *See* Respondents’ Prehearing Br. at 3.; *See also* the Japanese Respondents’ Prehearing Br. at 2-24 and Posthearing Br. at 1-9, for a full rendition of the Grade 409 argument.

²² Chairman Bragg notes that Respondents raised an additional argument for the first time in these final phase investigations and which was addressed at the hearing. Italian Respondents’ Prehearing Br. at 4-14, Krupp Respondents at 6-16. Respondents argue that the Commission was inconsistent in its preliminary determination to include foil and exclude stainless steel plate from its like product definition because, in determining not to include SS plate, the Commission relied on the relative thicknesses of the articles to distinguish between SS plate and SSSS; in contrast the Commission declined to address the role of product thickness in determining to include foil. Chairman Bragg finds that Respondents’ argument is based on a misaligned comparison. Unlike SS plate, foil is within the scope of the instant investigations. Thus, the question for the Commission is not whether the like product definition should be expanded beyond the scope to include domestically-produced foil; rather, it is whether foil should be considered part of the same like product as other domestically-produced SSSS. The Commission’s preliminary determination that foil is not a separate like product does not bear on its determination that SS plate is not “like” sheet and strip.

²³ Inv. Nos. 701-TA-376, 377, and 379 (Final) and Invs. Nos. 731-TA-788-793 (Final) USITC Pub. 3188 (May (continued...))

product “like” imported stainless steel plate should include SSSS. In the final Plate determinations, the Commission reaffirmed its finding in the preliminary determinations in these investigations, that SSSS was not part of the domestic like product corresponding to the subject stainless steel plate. In reaching that determination, the Commission noted that it had performed a detailed comparison of the two products in the preliminary investigations of SSSS, and had found “no information in the record of [the Plate] investigations that [led it] to question the Commission’s reasoning in the SSSS Prelim.”²⁴ Accordingly, the Commission decided not to expand the definition of stainless steel plate to include SSSS. In the final phase of these investigations, as in the final phase of the Plate investigations, no new evidence has been obtained that would alter the Commission’s reasoning in the preliminary determination. Therefore, we reaffirm the Commission’s decision in the SSSS Prelim. not to include stainless steel plate within the domestic like product.

2. Whether Grade 409 should be considered a separate domestic like product.

In the final phase of these investigations, Respondents argue that Grade 409, a grade of SSSS originally developed for the automotive exhaust and emission control market, should be defined as a separate like product. As discussed below, application of the like product factors results in our finding that Grade 409 SSSS is not a separate domestic like product.

Physical characteristics and uses: Grade 409 shares the essential chemical elements of stainless steel.²⁵ Grade 409 is one of several low chromium ferritic steels, including Grades 405 and 410.²⁶ The chromium content of Grade 409 is kept to a minimum to ensure processability while preserving its corrosion resistance.²⁷ As a result, Grade 409 has a dull, whitish finish.²⁸

Grade 409 stainless steel was developed originally because the automotive industry needed a stainless steel for use in catalytic and exhaust system applications where high corrosion resistance was required but surface appearance was of secondary concern.²⁹ Since its original introduction into the market, Grade 409 stainless steel has been increasingly used in a variety of other applications in which heat resistance and/or corrosion resistance is more important than appearance.³⁰ Grade 409 stainless steel is used in the production of appliances, caskets, food service, shelving, fuel filters, O-rings and miscellaneous hardware.³¹

²³(...continued)
1999) at 5.

²⁴ Id.

²⁵ Transcript of Hearing May 27, 1999 (“Hearing Tr.”) at 41. Stainless steel has by weight 1.2 percent or less of carbon and 10.5 percent or more of chromium. Id.

²⁶ Hearing Tr. at 41.

²⁷ Hearing Tr. 109.

²⁸ Hearing Tr. at 41.

²⁹ Hearing Tr. at 4-43, 109-110. Petitioners’ Prehearing Br. at 21. Japanese Respondents Br. at 6.

³⁰ Hearing Tr. at 41-43.

³¹ Comments on draft questionnaires filed by Gibson, Dunn & Crutcher (Dec. 15, 1998) on behalf of the Japanese Respondents. Hearing Tr. at 218-19. Based on the domestic producers’ data, purchases of Grade 409 for non-automotive applications account for a large segment of the SSSS market. Petitioners’ Posthearing Br., Exhibit 1, question 15. CR at II-4; PR at II-2.

Although Grade 409 stainless steel has some unique qualities due to its low chromium content, it nonetheless embodies the same essential physical characteristics of other SSSS, such as corrosion resistance. In addition, while it is generally manufactured for specialized uses, the same is true of a large portion of SSSS production.³²

Interchangeability: Even for automotive uses, Grade 409 is interchangeable with other SSSS low chromium grades. For example, the record indicates that Grades 434 and 439 are also commonly used in a variety of automotive applications, including exhaust systems, and 300 grades, such as 304, 316, and 321, are also used in automotive applications (*e.g.* tail pipe ends).³³

For its non-automotive uses, Grade 409 is interchangeable with other SSSS grades in applications in which heat resistance and/or corrosion resistance is more important than appearance. However, since it lacks the high-glossed surface of some other SSSS grades, Grade 409 is not interchangeable in applications where appearance is an important factor, such as automotive trim. Although Grade 409 may not be interchangeable with all other SSSS grades for use in special applications, the same is true for a large portion of SSSS, which generally is custom produced.³⁴

Channels of Distribution: As with other types of SSSS sold for special uses, most Grade 409 SSSS is sold directly to end users. Similarly, over half of all SSSS sold by domestic producers and one-fifth of all SSSS imports are sold directly to end users.³⁵

Common Manufacturing Facilities, Employees, and Processes: Although foreign producers may produce Grade 409 on carbon steel production lines, domestic producers produce Grade 409 on the same lines as other SSSS products.³⁶ All domestic producers of Grade 409 reported using the same facilities, equipment, and employees used to produce other grades of SSSS.³⁷ The process used is generally dictated by the equipment available to the producer, rather than by any inherent characteristic of Grade 409.³⁸

Producer and Customer Perceptions: Domestic producers and purchasers indicate that they view all SSSS as custom-produced.³⁹ According to the domestic producers, Grade 409 is regarded simply as another SSSS product. They further reported that the process by which Grade 409 is ordered and handled is not different from that for other specialty steel products.⁴⁰ The purchasers who responded to the Commission's questionnaire did not distinguish Grade 409 from other SSSS, suggesting that they too perceive Grade 409 as another type of speciality SSSS product.

Price: Grade 409 SSSS is among the least expensive grades of SSSS. However, when sold in the same finish, Grades 430, 434, 405 and 410 are in the same price range as Grade 409.⁴¹

Where the domestically manufactured merchandise is itself within the continuum of similar products, the Commission generally does not consider each item of merchandise to be a separate like

³² Hearing Tr. at 41-45, 230.

³³ Hearing Tr. at 41-45, 61-64.

³⁴ Hearing Tr. at 41-45, 61-64, 230.

³⁵ CR at I-9, Table I-2; PR at I-7, Table I-3.

³⁶ Hearing Tr. at 42-47.

³⁷ Hearing Tr. at 37, 41-42, 63-64; Domestic Producers Questionnaire Responses at 24.

³⁸ For example, ***, ***.

³⁹ Hearing Tr. at 40-41, 230.

⁴⁰ Hearing Tr. at 41-42, 45.

⁴¹ Petitioners' Prehearing Br. at 24.

product, but considers the continuum itself to be the domestic like product.⁴² Based on the above analysis, we find that Grade 409 is one SSSS product that falls within the continuum of all stainless steel sheet and strip. Accordingly, we find a single domestic like product consisting of all SSSS.⁴³

D. Domestic Industry and Related Parties

The domestic industry is defined as “the producers as a [w]hole of a domestic like product”⁴⁴ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁴⁵ Based on our finding that the domestic like product consists of all SSSS, we define the corresponding domestic industry as all domestic producers of stainless steel sheet and strip in coils, as the Commission did in the preliminary determinations.⁴⁶

We must further decide whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to section 771(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry a producer that is related to an exporter or importer of subject merchandise, or which is itself an importer. Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.⁴⁷

⁴² See e.g., Steel Wire Rod From Canada, Germany, Trinidad and Tobago, Invs. Nos. 701-TA-763-766 (Final), USITC Pub. No. 3075 at 7.

⁴³ Various Respondents argue that the Commission should find separate like products corresponding to the speciality or “niche” products that they export to the United States. These Respondents contend that their products do not compete with any domestic products. Even if these Respondents are correct that there are no domestic products exactly like their exports to the United States, the Commission would still be required to define the domestic product “most similar in characteristics and uses with, the subject imports.” 19 U.S.C. § 1677(10); See Hot-rolled Steel From Brazil, Japan, and Russia, Invs. Nos. 701-TA-384 (Preliminary) and 731-TA-806-808 (Preliminary), USITC Pub. 3142 (Nov. 1998) at n.14. In light of similar size and chemical requirements, common production methods and machinery, similar channels of distribution to end users, similar customization for end users, and similar pricing practices relative to value and cost added, we would define SSSS as the domestic like product. Consistent with our finding that Grade 409 falls within the continuum of SSSS grades, various product types within those SSSS grades are a fortiori other products in the continuum. We have, however, considered Respondents’ arguments as they relate to competition for cumulation purposes and as conditions of competition.

⁴⁴ 19 U.S.C. § 1677(4)(A).

⁴⁵ See United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int’l Trade 1994), aff’d, 96 F. 3d 1352 (Fed. Cir. 1996).

⁴⁶ SSSS Prelim. at 14. In the preliminary determinations, the Commission determined that rerollers should be included in the domestic industry based on the overall nature of rerollers’ production-related activities in the United States. Id. at 14-15. No party has raised any issues challenging that determination, and there is nothing in the record to suggest that rerollers’ production-related activity has changed. Consequently, we reaffirm our finding in the preliminary determination to include rerollers in the domestic industry.

⁴⁷ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
 - (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether
- (continued...)

With respect to the investigations involving LTFV and subsidized imports from France, one U.S. producer, J&L Specialty Steel Corp. (“J&L”), meets the statutory definition of “related party,” because it is wholly owned by French Respondent Usinor, the principal producer of subject imports from France.⁴⁸ In the preliminary phase of these investigations, the Commission found that appropriate circumstances did not exist to exclude J&L from the domestic industry.⁴⁹

In the final phase of these investigations, none of the parties has argued for the exclusion of J&L, and no new evidence warrants changing this finding. In 1998, J&L was the *** U.S. integrated steel producer, accounting for over *** short tons or *** percent of 1998 U.S. shipments.⁵⁰ J&L does not ***.⁵¹ Given these facts, we find that J&L’s primary interest lies in domestic production and not importation. Therefore, we find that appropriate circumstances do not exist to exclude J&L from the domestic industry.⁵² Accordingly, we define the domestic industry to consist of all domestic producers of SSSS.

II. CUMULATION⁵³

⁴⁷(...continued)

the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and

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

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. *See, e.g., Sebacic Acid from the People’s Republic of China*, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

⁴⁸ CR at III-2, Table III-1; PR at III-2, Table III-1. *See* 19 U.S.C. 1677(4)(B)(ii)(II)(1997). Usinor’s Ugine Division produces the stainless steel products subject to these investigations, while its Uginox subsidiary imports and sells those products in the United States.

⁴⁹ SSSS Prelim. at 14-15.

⁵⁰ CR at III-2, Table III-1; PR at III-2, Table III-1.

⁵¹ In contrast to the volume of J&L’s domestic shipments, total shipments of French imports in 1998 were *** short tons. CR at IV-6, Table IV-2; PR at IV-5, Table IV-2.

⁵² Id.

⁵³ In these final investigations, Respondent Avesta claims that the subject imports from the United Kingdom are “negligible,” because ***. The statute requires that the Commission make its negligibility computation “based on the most recent 12-month period preceding the filing of the petition for which data are available,” 19 U.S.C. §

(continued...)

Section 771(7)(G)(i) of the Act requires the Commission to cumulate imports from all countries as to which petitions were filed on the same day if such imports compete with each other and with domestic like product in the United States market.⁵⁴ In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors:

- (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
- (4) whether the imports are simultaneously present in the market.⁵⁵

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.⁵⁶ Only a “reasonable overlap” of competition is required.⁵⁷

The petitions in these investigations were filed on the same day, so the first statutory test for cumulation is satisfied. Therefore, we are required to determine whether there is a reasonable overlap of competition both between the domestic like product and subject imports from each of the subject countries, as well as among the imports from the subject countries. In the preliminary phase of these investigations, the Commission cumulated imports from all eight subject countries, finding a sufficient degree of fungibility of the subject imports with each other and the domestic merchandise, presence in the same geographic markets, an overlap in channels of distribution for the subject imports, and the presence of domestic like

⁵³(...continued)

1677(24)(a), which in these investigations was from June 1997 through May 1998. Based upon estimates using available data, total SSSS imports during the June 1997-May 1998 period were 360,717 short tons, while subject imports from the United Kingdom were *** short tons, or *** percent of the total imports, well above the 3 percent negligibility threshold. *See* CR at IV-4, Table IV-1; 19 U.S.C. §1677(24). Accordingly, there is no basis for terminating these investigations with respect to the United Kingdom on negligibility grounds. 19 U.S.C. §1671d(b). No other country asserts that its imports are negligible.

⁵⁴ 19 U.S.C. § 1677(7)(G)(I). There are four exceptions to the cumulation provision, none of which apply to these investigations.

⁵⁵ *See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan*, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff'd*, *Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

⁵⁶ *See, e.g., Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

⁵⁷ *See Goss Graphic System, Inc. v. United States*, 22 CIT ___, slip op. 98-147 at 8 (Oct. 16, 1998) (“cumulation does not require two products to be highly fungible”); *Wieland Werke*, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); *United States Steel Group v. United States*, 873 F. Supp. 673, 685-86 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

product and subsidized and LTFV imports from each of the subject countries in the U.S. market during each year of the investigation period.⁵⁸

In the final phase of these investigations, we again find that each of the criteria for cumulation is met. The parties do not dispute that subject imports from all eight countries were present in the U.S. market throughout the period of investigation. Nor do they dispute that subject imports from all eight countries and the domestic like product compete in the same geographic markets nationwide. The record shows that there is also an overlap in the channels of distribution of the subject imports and the domestic like product, in that most domestic producers, as well as most importers of subject imports, sold SSSS to a combination of service centers/distributors and end users.

There is also a sufficient degree of fungibility among subject imports from all eight countries and with the domestic like product to warrant cumulating the subject imports. In general, the domestic product and the subject imports are fungible given the general conformity to ASTM specifications, and the common grade and/or gauge categories under which many fall. Moreover, all domestic producers and most importers consider domestic and imported products made to the same specifications to be physically interchangeable.

Some Respondents argue that their imports are not fungible given that most of their imports are speciality or “niche” products that have no counterparts among the domestic like product or merchandise from other subject countries.⁵⁹ However, despite the presence of these claimed “niche” products, there is a substantial percentage of other fungible subject imports from each of the eight countries. All of the so-called niche products, with the exception of the French bright annealed SSSS, accounted for less than *** percent of the total subject imports from each country.⁶⁰ With respect to France, Usinor claims that French bright annealed product accounted for *** percent of total French imports.⁶¹ Although this number suggests that there is a limited overlap between the French speciality product and the domestic product and the other subject imports, a substantial percentage of the other subject imports from France, nearly *** percent of total subject imports from France, overlap with the domestic product and subject imports from other subject countries.⁶²

Based on the evidence in the record of the general fungibility among the subject imports and the domestic like product, nationwide sales, similar channels of distribution, and the simultaneous presence of all subject imports in the U.S. market, we again find a reasonable overlap of competition among the imports

⁵⁸ SSSS Prelim, at 17-18.

⁵⁹ According to various Respondents, these so-called niche products include French bright annealed and polished stainless steel sheet and strip of 36 inches or greater; UK grade 301 high tensile spring steel strip; UK doctor blade steel; lithographic sheet; Japanese grade 403 stainless steel; Italian floor plate; UK HyClad SSSS; and German precision strip. *See* Usinor’s Prehearing Br. at 4-5; Lee Steel Strip’s Prehearing Br. at 2-3; Printing Developments, Inc.’s Prehearing Br. at 1-3; Sumitomo’s Prehearing Br. at 1-2; Italian Respondents’ Prehearing Br. at 17-19; Avesta’s Posthearing Br. at 7; and Ergste’s Prehearing Br. at 2-6. No similar arguments were raised by the Mexican, Korean or Taiwanese Respondents with respect to subject imports from their countries.

⁶⁰ Petitioners have identified a domestic product that competes with each niche product. *See* Petitioners’ Posthearing Br. at Exhibit 1, 8-11.

⁶¹ CR at I-15; PR at I-15.

⁶² Although we note that Korea primarily exports Grade 304 to the United States and that Japan primarily exports Grade 409, we find that this distinction is not significant given the overlap of each with other subject imports and the domestic like product. *See infra* n. 72.

from all eight countries.⁶³ Therefore, we find that subject imports compete with each other and the domestic like product in the U.S. market. Consequently, we cumulate subject imports from all subject countries for purposes of analyzing whether the domestic industry has been materially injured by reason of subject imports.⁶⁴

III. MATERIAL INJURY BY REASON OF SUBSIDIZED AND LTFV IMPORTS

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.^{65 66} In making these determinations, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers

⁶³ Commissioner Askey notes that a decision to cumulate the volume and effects of subject imports does not mean that all cumulated imports have identical positive or negative effects on the U.S. market. *See*, Dissenting Views of Commissioner Thelma J. Askey.

⁶⁴ Commissioner Crawford finds that substitutability not fungibility more accurately reflects the statute with respect to cumulation. *See* Dissenting Views Of Commissioner Crawford, Stainless Steel Bar From Brazil, India, Japan and Spain, Invs. Nos. 731-TA-678,679,681 and 682 (Final), USITC Pub. 2856 (Feb. 1995). In these investigations, Commissioner Crawford and Commissioner Askey found that the imports from Korea and Japan do not compete with each other. They note that *** of the subject imports from Korea consisted of Grade 304 and that *** of the subject imports from Japan were of Grade 409. CR at II-8; PR at II-4. They find that these two grades are not substitutable for each other, and therefore, subject imports from Japan and subject imports from Korea do not compete with each other.

⁶⁵ 19 U.S.C. §§ 1671d(b) and 1673d(b).

⁶⁶ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded 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 are 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 less-than-fair-value imports.” S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). 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, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the unfairly traded 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 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); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, *see* Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Invs. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (Mar. 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745(Final), USITC Pub. 3034 at 35 (Apr. 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), aff’g, 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

of the domestic like product, but only in the context of U.S. production operations.⁶⁷ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁶⁸ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁹ No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁰

For the reasons discussed below, we determine that the domestic stainless steel sheet and strip industry is materially injured by reason of subsidized and LTFV imports from the subject countries.⁷¹

A. Conditions of Competition

Several conditions of competition are relevant to our determination. Apparent consumption of SSSS increased throughout the period of investigation, growing by 4.9 percent from 1996 to 1997, and by another 6.5 percent from 1997 to 1998.⁷² While apparent consumption rose by a total of 11.7 percent during the period of investigation, the domestic producers increased their capacity by 9.3 percent.⁷³

Another condition of competition is the general substitutability among SSSS grades. Although SSSS is generally produced according to customer specifications, there is a broad overlap of certain standard grades.⁷⁴ Additionally, although substitutability may be somewhat limited among certain speciality products, a sizeable portion of the volume of both U.S. production and subject imports consists of commodity grades of SSSS that are substitutable with each other.⁷⁵ Most SSSS producers are capable of producing a wide range of SSSS products to meet specific customer demands, and typically produce SSSS to order.^{76 77}

⁶⁷ 19 U.S.C. § 1677(7)(B)(I). The Commission “may consider such other economic factors as are relevant to the determination,” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

⁶⁸ 19 U.S.C. § 1677(7)(A).

⁶⁹ 19 U.S.C. § 1677(7)(C)(iii).

⁷⁰ 19 U.S.C. § 1677(7)(C)(iii).

⁷¹ Commissioner Askey dissenting.

⁷² CR at IV-5; PR at IV-4. In terms of quantity, apparent consumption was 1,563,725 short tons in 1996, 1,640,800 in 1997, and 1,747,442 in 1998.

⁷³ U.S. producers’ capacity in short tons was 1,913,709 in 1996, 2,004,648 in 1997, and 2,092,165 in 1998. CR at II-8, Table III-2; PR at III-5, Table III-2.

⁷⁴ Although stainless steel products are offered in some 57 grades (including grade variants) by U.S. producers, actual shipments in sheet and strip form are heavily concentrated in just a few commodity grades. Petitioners’ Prehearing Br. at 44. As Petitioners note in their Prehearing Brief, the AISI reported that in 1998, three grades, 304 (and its variants), 409, and 316/316L accounted for almost 70 percent of total U.S. stainless steel production, with Grade 304 alone accounting for over one half of that total. Petitioners’ Prehearing Br. at 44. Moreover, in all of the five major grades identified in the Staff Report, there is both substantial U.S. production as well as a substantial volume of subject imports. CR at II-8- 9, Tables II-2-6; PR at II-4-6, Tables II-2-6.

⁷⁵ CR at II-8-9, Tables II-2-6; PR at II-4-6, Tables II-2-6.

⁷⁶ Hearing Tr. at 41-45; 230.

⁷⁷ As noted, Commissioner Crawford finds that the subject imports from Korea and Japan are not substitutable for each other. However, she finds these subject imports are fairly good substitutes for the domestic product. In
(continued...)

In addition, price is among the most important factors in purchasing decisions, along with several other factors (product quality, consistency, and availability).⁷⁸ The importance of price is further demonstrated by the fact that price terms in contracts for SSSS are frequently renegotiated to take advantage of lower market prices.⁷⁹

B. Volume of the Subject Imports⁸⁰

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁸¹

The volume of subject imports⁸² increased significantly over the investigation period, first growing by 5.1 percent between 1996 and 1997, followed by a 13.3 percent increase between 1997 and 1998.⁸³ During the same period, the value of subject imports decreased by 3.3 percent.^{84 85}

The cumulated market share of the subject countries held steady at 14.9 percent in 1996 and 1997, then increased slightly to 15.9 percent in 1998. By value, the market share held by the subject countries remained steady at 14.2 percent in 1996 and 1997, and increased slightly to 15.2 percent in 1998.⁸⁶

Although U.S. producers increased capacity by 9.3 percent during the period of investigation, their share of the market did not grow.⁸⁷ U.S. producers’ market share remained relatively stable in 1996 and 1997, at 80.8 percent and 81.3 percent respectively, but decreased slightly in 1998, dropping to 79.6

⁷⁷(...continued)

addition, she finds that the subject imports from the other countries (except France) are fairly good substitutes for each other and the domestic product.

⁷⁸ CR at II 18-19; PR at II 11-12.

⁷⁹ CR at V-12-V-13; PR at V-9.

⁸⁰ Commissioner Crawford joins only in the factual, numerical discussion of the volume of the imports here. She does not rely on any analysis of trends in the market share of subject imports or other factors in her determination of material injury by reason of the subject imports. She makes her finding of the significance of volume in the context of the price effects and impact of the subject imports. For the reasons discussed below, she finds that the volume of subject imports is significant in light of its price effects and impact.

⁸¹ 19 U.S.C. § 1677(7)(C)(I).

⁸² As noted, Commissioner Crawford finds that the subject imports from Korea and Japan are not substitutable for each other, and thus she does not cumulate SSSS from these two sources. Therefore, for purposes of her determination with respect to Korea, she has evaluated the volume of cumulated subject imports from all countries excluding Japan; for her determination with respect to Japan, she has evaluated the volume of cumulated subject imports for all countries excluding Korea; and, for her determinations with respect to the other six countries, she has evaluated the volume of cumulated subject imports from all eight countries.

⁸³ On a quantity basis, shipments of the cumulated subject imports increased from 232,717 short tons in 1996, to 244,541 short tons in 1997 and to 277,015 short tons in 1998. CR at IV-6, Table IV-2; PR at IV-5, Table IV-2.

⁸⁴ On a value basis, shipments of subject imports decreased from \$452.4 million in 1996, to \$432.8 million in 1997 and to \$437.6 million in 1998. CR at IV-6, Table IV-2; PR at IV-5, Table IV-2.

⁸⁵ Commissioners Hillman and Koplán find the volume of subject imports, relative to domestic apparent consumption, is significant.

⁸⁶ CR at IV-7, Table IV-3; PR at IV-6, Table IV-3.

⁸⁷ CR at III-7; PR at III-6.

percent.⁸⁸ Despite a 10 percent increase in the volume of U.S. producers' shipments during the period of investigation, the value of their shipments fell by nearly the same amount, 9.9 percent. U.S. producers' market share by value increased from 80.5 percent in 1996, to 81.4 percent in 1997, but fell to 79.9 percent in 1998.^{89 90}

Likewise, the nonsubject imports' share of the market remained steady during the investigation period, beginning at 4.3 percent in 1996, falling to 3.8 percent in 1997, and ending at 4.6 percent in 1998. Their share of the market based on value, however, declined slightly overall, beginning at 5.3 percent in 1996, falling to 4.4 percent in 1997, and rising slightly to 4.9 percent in 1998.⁹¹

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports,

the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁹²

As mentioned in our discussion of conditions of competition, the domestic like product and the subject imports are generally substitutable, particularly within and among the major grades. In addition, price is identified by purchasers and producers as one of the most important factors in purchasing decisions. There is also evidence that sale contracts for SSSS are often renegotiated to take advantage of lower market prices.

Prices for both the domestic like product and subject imports declined over the period of investigation. The Commission collected quarterly pricing data on seven SSSS products considered to be representative of the SSSS market.⁹³ Even though U.S. producers' prices increased slightly for five of the six products for which prices were reported in the last quarter of the period of investigation, prices at the end of the period of investigation were still significantly lower (24.2 percent to 32.0 percent lower) than those at

⁸⁸ CR at IV-5; PR at IV-4.

⁸⁹ CR at IV-7, Table IV-3; PR at IV-6, Table IV-3.

⁹⁰ Chairman Bragg finds the absolute volume of subject imports, and the increase in such volume over the period of investigation, to be significant, particularly in light of the negative price effects of subject imports in the U.S. market, discussed *infra*. Such negative price effects are reflected in the fact that while U.S. producers' shipments increased 10 percent over the period of investigation, the value of their shipments declined by 9.9 percent.

⁹¹ CR at IV-7, Table IV-3; PR at IV-6, Table IV-3.

⁹² 19 U.S.C. § 1677(7)(C)(ii).

⁹³ U.S. prices fell by \$642 per ton (28.4 percent) for product 1; \$342 per ton (24.2 percent) for product 2; \$499 per ton (24.4 percent) for product 3; \$944 per ton (31.6 percent) for product 4; \$729 per ton (32.0 percent) for product 5; and \$671 per ton (28.9 percent) for product 7. CR at V-32-38, Tables V-3-8; PR at V-16-24, Tables V-3-8. There is no pricing data for product 6, Grade 434, as no domestic producer or importer reported any sales of that product.

the beginning of the period of investigation.⁹⁴ Essentially, prices declined across the board for all SSSS products during a period of record high demand.

Although it has been argued that the price declines were a result of a decline in raw material costs, the record evidence shows otherwise. According to the pricing data in the record, the overall decline in prices per ton for each of the six products outpaced the decline in raw material costs. For example, the average price of product 1 (Grade 304) fell by \$642 per ton from the first quarter of 1996 to the fourth quarter of 1998. However, alloy costs fell by only \$394 per ton over the same period. Similarly, the average price of product 3 (Grade 430) fell by \$499 per ton, yet the calculated alloy costs fell only \$64 per ton.⁹⁵ In addition, based on unit value, the unit net sales values declined faster (\$372 per short ton) than

⁹⁴ CR at V-32-38, Tables V-3-8; PR at V-16-24, Tables V-3-8.

⁹⁵ Commissioner Crawford finds that the subject imports are having only slight effects on domestic prices. To evaluate the price effects of unfairly traded imports, she compares the domestic prices that existed when the imports were traded unfairly with what domestic prices would have been had the imports been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. Except between Korea and Japan, SSSS is quite substitutable among sources, and thus even relatively small margins likely would have resulted in a shift in demand away from the subject imports. Because nonsubject imports are only a small presence in the market, accounting for only a 4.6 market share in 1998, nearly all of any shift in demand away from the subject imports likely would have been captured by the domestic industry. As noted, in her determinations in these investigations Commissioner Crawford cumulated the subject imports from all countries except Japan for her determination with respect to Korea; she cumulated the subject imports from all countries except Korea for her determination with respect to Japan; and, for her determinations with respect to the other six countries, she cumulated the subject imports from all eight countries.

For her determination with respect to Korea, the cumulated market share of the subject imports (excluding Japan) was *** percent in 1998. With antidumping and countervailing duty margins of 10.64 percent and 5.38 percent, respectively, and niche products accounting for *** percent of its imports, which limits substitutability, it is likely that only a small portion of France's *** percent market share would have shifted to the domestic industry. With a moderate dumping margin of 14.84 percent, it is likely that only some of the UK's *** percent market share would have been captured by domestic producers. With antidumping and countervailing duty margins of 11.17 percent and 1.03 - 12.22 percent, respectively, it is likely that much of the *** percent market share held by the subject imports from Italy also would have shifted to the domestic industry. Korean antidumping and countervailing duty margins ranged from 0.00 - 58.79 percent and from 0.65 to 59.30 percent, respectively. At these margins, it is likely that most of the demand for these subject imports would have shifted to the domestic industry. However, one Korean producer received a *de minimus* dumping margin and only a 2.64 percent countervailing duty margin, and thus it is likely that this producer would have continued to sell its product at fairly traded prices. Therefore, only some of the *** percent market share of Korean imports would have been captured by the domestic industry. Similarly, Taiwan margins ranged from 0.98 - 34.95 percent, but one importer accounting for a substantial portion of total Taiwan imports received a *de minimus* dumping margin, and thus its product would have continued to be sold at fairly traded prices. Therefore, only some of the *** percent market share for subject imports from Taiwan would have shifted to the domestic product. The margins for Germany and Mexico exceed 25 percent, and thus it is likely that nearly all of their combined market share of *** percent would have been captured by the domestic industry. In sum, at fairly traded prices the large majority of the demand for the cumulated market share of *** percent likely would have shifted to the domestic industry.

For her determination with respect to Japan, the cumulated market share of the subject imports (excluding Korea) was *** percent in 1998. Japanese margins are quite large, ranging from 37.13 - 57.87 percent, and thus nearly all of the *** percent market share of these subject imports likely would have shifted to the domestic industry. Consequently, the vast majority of the demand for the cumulated market share of *** percent likely would have shifted to the domestic industry.

For her determinations with respect to the other six countries, the cumulated market share of all eight

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overall production costs (raw material costs fell by \$218 per short ton and labor and other costs fell by \$40 per short ton).⁹⁶

Instead, the decline in prices can be attributed to a significant degree to the increasing volume of subsidized and LTFV imports. Given the product mix and close price competition, a mix of overselling and underselling by subject imports is not unexpected. Indeed, the pricing data show that subject imports both oversold and undersold the domestic like product. However, underselling occurred more frequently, with subject imports underselling the domestic product in 196 of 321 possible quarterly price comparisons (61.0 percent) between 1996 and 1998.⁹⁷

We find that the influx of the unfairly-traded subject imports played an important role in the price decline in this market.⁹⁸ In sum, based on the substitutability of the subject imports and the domestic like product, the general price-based competition of the SSSS market, the parallel declines in domestic and subject import prices during a period of record demand, the increasing subject import volumes and the evidence of general underselling, we find that the subject imports have depressed domestic prices for SSSS to a significant degree.

D. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.” These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and

⁹⁵(...continued)

countries was 15.9 percent in 1998. Based on the above analysis, the vast majority of the demand for these cumulated subject imports likely would have shifted to the domestic industry.

For all of her determinations, Commissioner Crawford finds that shift in demand towards the domestic product would have been significant. Nonetheless, the significant increase in demand for the domestic product would not have allowed the domestic industry to raise its prices significantly. The domestic industry had a large amount of unused capacity and substantial inventories that would have been available to satisfy the increased demand. There are six major domestic producers that compete among themselves. Thus, the available capacity, inventories, and competition within the domestic industry would have imposed price discipline in the market. However, the increase in demand would have been sufficiently large that the domestic industry could have increased its prices somewhat. Consequently, Commissioner Crawford finds that the subject imports are having only slight effects on domestic prices.

⁹⁶ CR at VI-2 and VI-14; PR at VI-2 and VI-4.

⁹⁷ CR at V-32-38, Tables V3-8; PR at V-12-20, Tables V-3-8.

⁹⁸ Chairman Bragg finds that, notwithstanding the seemingly minimal increase in U.S. market share of subject imports (*i.e.* the share of total U.S. apparent consumption accounted for by subject imports increased from 14.9 percent in 1996 and 1997 to 15.9 percent in 1998, CR at IV-7, Table IV-3; PR at IV-6, Table IV-3), the increasing volume of predominately lower-priced subject imports during the period of investigation exerted much broader negative price effects in the U.S. market for SSSS. For example, although U.S. purchasers may have continued in large part to purchase SSSS from traditional suppliers in the United States, prices were often renegotiated downward. *See e.g.*, CR at V-12 to V-13; PR at V-9.

research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the industry.”^{99 100 101}

As discussed earlier, apparent consumption of SSSS increased throughout the period of investigation, growing by 11.7 percent. At the same time, the domestic producers increased their capacity in order to improve productivity and meet increasing demand. Indeed, they were able to expand their capacity by 9.3 percent, increase productivity by 11.9 percent,¹⁰² and were able to lower costs.¹⁰³ Under these circumstances, the domestic industry should have experienced both significant increases in sales and profitability.¹⁰⁴ Faced with the increasing volumes of unfairly-traded subject imports, the domestic industry,

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

¹⁰⁰ As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider “the magnitude of the margin of dumping” in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). The margins most recently published by Commerce with respect to the subject countries are those in Commerce’s final determination. With respect to the French producers, Commerce assigned a dumping margin of 10.64 percent. With respect to the German producers, Commerce assigned a dumping margin of 25.72 percent. With respect to the Italian producers, Commerce assigned a dumping margin of 11.7 percent. With respect to Korean producers, Commerce assigned dumping margins as follows: Pohang Iron & Steel Co., Ltd., 12.12 percent; Inchon Iron & Steel Co., Ltd., 0.00 percent; Taihan Electric Wire Co., Ltd., 58.79 percent; and “All Others” 12.12 percent. With respect to Japanese producers, Commerce assigned dumping margins as follows: KSC Steel Corporation 37.13 percent; Nippon Steel Corporation, Nisshin Steel Co., Ltd., Nippon Yakin Kogyo, and Nippon Metal Industries 57.87 percent; and “All Others” 37.13 percent. With respect to Mexican producers, Commerce assigned a margin of 30.86. With respect to Taiwanese producers, Commerce assigned dumping margins as follows: Tung Mung/Ta Chen and Tung Mung 14.95 percent; Chang Mien 0.98 percent; YUSCO/Ta Chen and YUSCO, 34.95 percent; and “All Others”, 12.61 percent. Finally, with respect to producers from the United Kingdom, Commerce assigned a dumping margin of 14.84 percent.

¹⁰¹ Chairman Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

¹⁰² U.S. productivity increased from 77.6 tons per 1,000 hours in 1996, to 78.8 tons per 1,000 hours in 1997, and to 86.8 tons per 1,000 hours in 1998. CR C-4, Table C-1; PR at C-4, Table C-1.

¹⁰³ U.S. producers’ capacity in short tons was 1,913,709 in 1996, 2,004,648 in 1997, and 2,092,165 in 1998. CR at III-8, Table III-2; PR at III-5, Table III-2. The cost of goods sold per unit declined from \$1,773 in 1996, to \$1,667 in 1997, and to \$1,540 in 1998, or an overall decline of 13.1 percent over the period of investigation. CR at C-4, Table C-1; PR at C-4, Table C-1.

¹⁰⁴ Commissioner Crawford does not rely on any analysis of the trends in the statutory impact factors in her determination of material injury by reason of the subject imports, but concurs in the conclusion that the subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of unfairly traded imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were traded unfairly with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors, as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the unfairly traded imports, and so she gauges the impact through those effects. In this regard, the impact on the domestic industry’s prices, sales and overall revenues is critical, because the impact on

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however, was forced to lower its prices in order to compete and preserve market share. Thus, despite record demand and falling raw material costs, lower-priced subject imports forced the domestic industry to lower prices significantly, severely impacting profitability.

The domestic industry increased its capacity 9.3 percent between 1996 and 1998, increasing 4.8 percent from 1996 to 1997, and then by 4.4 percent from 1997 to 1998. Although the increase in domestic production capacity was slightly less than the 11.7 percent increase in apparent consumption, the domestic industry's increased capacity almost immediately became excess capacity due to the increasing volume of subject imports. The domestic industry's capacity utilization rates declined from 73.0 percent in 1996, to 71.6 percent in 1997 and 69.6 percent in 1998.

Although apparent consumption grew significantly and costs of goods sold declined, operating income dramatically declined by more than two-thirds, dropping from \$224.5 million in 1996, to \$152.9 million in 1997, and to \$44.8 million in 1998. The ratio of operating income to net sales declined from 8.4 percent in 1996, to 5.9 percent in 1997, and to 1.8 percent in 1998.¹⁰⁵ The rapid decline in operating income resulted from the domestic industry's decision to reduce prices in response to the increasing volume of unfairly traded imports in order to maintain its critical market share in this price sensitive market. As discussed earlier, average selling prices fell faster than the decline in the average costs of goods sold, resulting in lower profitability.¹⁰⁶

Although domestic apparent consumption on a volume basis rose by 11.7 percent, the value of domestic shipments declined by 9.9 percent.¹⁰⁷ Concurrently, average unit values of domestic shipments declined from \$2,024 per short ton in 1996, to \$1,862 per short ton in 1997, and finally to \$1,657 per short ton in 1998.¹⁰⁸

As a consequence of the decline in the domestic industry's profitability, its ability to invest in improving its production process and expand its production lines has been severely affected. While the value of domestic producers' fixed assets rose slightly with the completion of ongoing capital investments, new

¹⁰⁴(...continued)

the other industry indicators (*e.g.*, employment, wages, etc.) is derived from this impact.

As she noted earlier, the domestic industry would have been able to increase its prices only slightly had the subject imports been priced fairly. Therefore, the primary impact on the domestic industry would have been on its output and sales. At fairly traded prices the shifts in demand toward the domestic product would have been significant for all her determinations. The increases in demand for the domestic product would have been substantial, and the domestic industry could have increased its production and sales to satisfy the increased demand. The domestic industry would have captured the large majority of the demand for the subject imports, and thus its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been unfairly traded. Therefore, the domestic industry would have been materially better off if the subject imports had been fairly traded. Consequently, in each of her determinations Commissioner Crawford determines that the domestic industry is materially injured by reason of the subject imports.

¹⁰⁵ CR at VI-10, Table VI-2; PR at VI-4, Table VI-2. If start-up expenses for various new production lines are excluded from the data, the operating margin would increase to 8.6 percent in 1996, 7.0 percent in 1997, and 2.6 percent in 1998. CR at VI-1; PR at VI-I. Respondents attribute some of the decline in operating income to difficulties experienced by J&L with its new direct roll, anneal and pickle line. Commission staff verified J&L's questionnaire data. The staff report reflects adjustments in J&L's operating loss margins, capacity data and inventory levels. CR at VI-1; PR at VI-1.

¹⁰⁶ CR at VI-1; PR at VI-1.

¹⁰⁷ CR at III-9; PR at VI-2, VI-4.

¹⁰⁸ CR at III-8, Table III-3; PR at III-6, Table III-3.

capital expenditures decreased during the period of investigation.¹⁰⁹ Similarly, overall research and development expenses also fell and capital improvement projects were suspended.¹¹⁰

Accordingly, in light of the domestic industry's declining prices, deteriorating financial condition, declining capacity utilization and market share, in the face of increasing subject import volume and declining subject import prices, and despite increasing U.S. consumption, we determine that the domestic industry producing SSSS is materially injured by reason of the subsidized and LTFV imports from the subject countries.

IV. CRITICAL CIRCUMSTANCES

Because Commerce made affirmative critical circumstances determinations with respect to certain imports from Japan and Korea and we have determined that the domestic SSSS industry is materially injured by reason of subject imports from Japan and Korea, we must further determine "whether the imports subject to the affirmative [Commerce critical circumstances] determinations . . . are likely to undermine seriously¹¹¹ the remedial effect of the [antidumping order or countervailing duty order] to be issued."¹¹² The URAA Statement of Administrative Action indicates that the Commission is to determine "whether, by massively increasing imports prior to the effective date of the relief, the importers have seriously undermined the remedial effect of the order."¹¹³

In its final determinations, based on the facts available, Commerce made affirmative findings of critical circumstances with respect to four Japanese producers: Nippon Steel Corporation, Nisshin Steel Corporation, Nippon Yakin Kogyo, and Nippon Metal Industries.¹¹⁴ Commerce also made an affirmative finding of critical circumstances based on the facts available with respect to one Korean producer, Taihan Electric Wire.¹¹⁵ Commerce made negative critical circumstances determinations with respect to Japanese producer Kawasaki Steel Corporation and "all other" Japanese producers and with respect to two Korean producers, POSCO and Incheon.¹¹⁶

Consistent with Commission practice, in considering the timing and volume of imports, we have compared import quantities prior to the filing of the petition with those subsequent to the filing of the

¹⁰⁹ CR at VI-19, Table VI-5; PR at VI-7, Table VI-5.

¹¹⁰ CR at VI-19, Table VI-5; PR at VI-7, Table VI-5, *see* Petitioners' Prehearing Br. at 64.

¹¹¹ For Commissioner Crawford's interpretation of the legal standard of "undermine seriously," *see* Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999) at 27-28 (Views of Chairman Bragg and Commissioners Crawford and Askey).

¹¹² 19 U.S.C. § 1617d(b)(4)(A)(i) and §1673d(b)(4)(A)(i). The statute further provides that in making this determination:

the Commission shall consider, among other factors it considers relevant--

- (I) the timing and volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

19 U.S.C. § 1673d(b)(4)(A)(i) and §1673d(b)(4)(A)(ii)

¹¹³ SAA at 877.

¹¹⁴ *See* 64 Fed. 30574, 30578, 30585-86 (June 8, 1999).

¹¹⁵ *See* 64 Fed. Reg. 30664, 30670-71 (June 8, 1999).

¹¹⁶ *See* 64 Fed. Reg. at 30578, 30585, 30670-71.

petition.¹¹⁷ Although Commerce typically compares the import volume of the subject merchandise for the three months immediately preceding and following the filing of the petition,¹¹⁸ we are not required to analyze the same comparison periods that Commerce analyzed.¹¹⁹

We generally consider the six month period before and after the filing of the petition for purposes of our critical circumstances analysis, unless there is a basis to warrant examining a different period.¹²⁰ In these investigations, the petition was filed approximately mid-year, on June 10, 1998. Accordingly, we considered the data relevant to critical circumstances for all of 1998,¹²¹ which approximately corresponds to the six month period preceding the filing of the petition and the six month period between initiation and Commerce's preliminary antidumping findings in December, 1998. In no period do we find that the imports subject to Commerce's affirmative critical circumstances determinations would undermine seriously the remedial effect of the orders.

Imports from the four Japanese producers declined slightly from *** short tons in the first half of 1998 to *** short tons in the second half of the year, after the petition was filed. Therefore, there was no surge after the filing of the petition. Even discounting the subject imports that entered the United States during June (the month the petition was filed) and considering only the five month periods preceding and following June, the relevant subject imports from Japan increased by only *** from *** short tons during January-May to *** short tons during July-November.¹²² This increase is not significant enough to warrant a finding that the subject imports would undermine seriously the remedial effect of the order.

For two products, Japanese prices (which include data for all Japanese producers, not simply the four pertinent producers) were lower in the third quarter of 1998 (*i.e.*, the three months after the filing of the petition) than in the second quarter of 1998 (*i.e.*, the three months before and including the filing of the petition).¹²³ For another product, Japanese prices for all producers were higher in the third quarter of 1998 than in the second quarter of 1998.¹²⁴ Although the average value per ton declined from *** during January-

¹¹⁷ See Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999) at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplan), 28 (Views of Chairman Bragg and Commissioners Crawford and Askey); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 19 (April 1997).

¹¹⁸ See 19 C.F.R. § 351.206(i); See, Notice of Preliminary Determination of Sales at Less Than Fair Value . . . : Stainless Steel Sheet and Strip in Coils From Japan, 64 Fed. Reg. 108, 112 (Jan. 1, 1999); Notice of Preliminary Determination of Sales at Less Than Fair Value . . . : Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 Fed. Reg. 137 (Jan. 4, 1999).

¹¹⁹ See Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

¹²⁰ See, e.g., Certain Hot-rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 (June 1999) at 33-34 & n. 129; Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999) at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplan), 28 (Views of Chairman Bragg and Commissioners Crawford and Askey); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (April 1997) at 19; Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

¹²¹ CR at IV-9, Table IV-4; PR at IV-7, Table IV-4.

¹²² CR at IV-9, Table IV-4; PR at IV-7, Table IV-4.

¹²³ See CR at V-18, V-20, Tables V-4 and V-5; PR at V-14, V-15, Tables V-4 and V-5.

¹²⁴ See CR at V-16, Table V-3; PR at V-12, Table V-3.

June 1998 to *** during July through December,¹²⁵ we do not find these data particularly significant, given our conclusion regarding the volume of imports from the four Japanese producers imported after the petition was filed. We do not have inventory data for these Japanese producers. We therefore looked at inventories of all subject imports from Japan. Although end-of-the-year inventories in the United States of all subject imports from Japan were substantially higher in 1998 than in 1997, the size of these inventories was dwarfed by the size of Japanese producers' SSSS inventories in Japan, although these inventories did decrease from 1997 to 1998.¹²⁶ However, we do not place much weight on this information because it is not limited to the four producers subject to Commerce's determination and, with respect to U.S. inventories, may not be limited to imports shipped after the petition was filed.

Subject imports from Korean producer Taihan entered the United States during each of the six months preceding and including the filing of the petition, for a total of *** short tons.¹²⁷ All but *** short tons entered during January-May 1998. After June, the month the petition was filed, Taihan's imports ceased altogether.¹²⁸ Therefore, there was no surge in imports after the petition was filed.

The available pricing data for Korea (which includes prices for four Korean producers for which Commerce did not find critical circumstances) indicated that prices were lower in the third quarter of 1998 than in the second quarter of 1998.¹²⁹ We do not find this particularly significant, given that no imports from Taihan entered the United States after June 1998. End-of-the-year inventories in the United States of subject imports from Korea (which again includes data for imports other than those subject to the Commerce's critical circumstances finding) were lower than 1997 inventories, as were the inventories held in Korea by Korean producers.¹³⁰

In sum, we do not find that the record evidence indicates that the relevant subject imports from Japan and Korea would undermine seriously the remedial effect of the respective orders. Accordingly, we make negative critical circumstances findings with respect to the relevant producers in both Japan and Korea.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing SSSS is materially injured by reason of subsidized imports of SSSS from France, Italy, and Korea, and LTFV imports of SSSS from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom. We also determine that critical circumstances do not exist with respect to subject imports from Japan or Korea.

¹²⁵ See CR at IV-9, Table IV-4; PR at IV-7, Table IV-4.

¹²⁶ CR at C-3, Table C-1; PR at C-3, Table C-1. CR at VII-10, Table VII-4; PR at VII-4, Table VII-4. Together, U.S. importers' 1998 inventories of subject imports from Japan and Japanese producers' 1998 inventories were *** short tons as compared to *** short tons in 1997.

¹²⁷ CR at IV-9, Table IV-4; PR at IV-7, Table IV-4.

¹²⁸ *Id.*

¹²⁹ See CR at V-17, Table V-3; PR at V-12, Table V-3.

¹³⁰ CR at C-3, Table C-1 and CR at VII-12, Table VII-5; PR at VII-5, Table VII-5. Together, U.S. importers' 1998 inventories of subject imports from Korea and Korean producers' 1998 inventories were a total of *** short tons as compared to *** short tons in 1997.

DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

I find that the record in this case does not support a determination that the domestic industry is materially injured or threatened with material injury by reason of the subject imports. Therefore, I dissent from the views of the majority of the Commission. I do, however, join the majority's conclusions on domestic like product and the domestic industry, as well as its conditions of competition and its conclusions as to cumulation, except where otherwise noted.

I. The Domestic Industry Is Not Materially Injured By Reason of Subject Imports

In considering whether the domestic industry is being injured by the subject imports, the Commission is statutorily directed to consider the volume of the subject imports, their effect on prices in the United States for the domestic like product, and the impact of the imports on domestic producers of the domestic like product.¹ The Commission may also consider other relevant economic factors.²

For the purpose of analyzing volume and price effects in its material injury determination, the Commission must cumulatively assess the volume and effect of the subject merchandise for all countries for which petitions were filed on the same day if such imports compete with each other and with the domestic like product in the United States.³ I have determined not to cumulate imports from Korea with imports from Japan because they do not show a sufficient overlap of competition.

Cumulating subject imports does not relieve the Commission of the obligation to consider whether certain of those imports may have disparate effects on the U.S. market. Cases such as this one involving different grades of merchandise along a continuum illustrate this principle. Although stainless steel sheet and strip within the same grade is a highly substitutable commodity product, the differing grades do not necessarily compete with each other. Thus, simply adding the volumes of cumulated import and attributing similar price effects to them will oversimplify the nature of competition in the industry and may overstate the impact of subject imports in the market. For example, imports of highly specialized products, such as bright and annealed stainless steel sheet and strip from France, do not have the same effect in the marketplace as do imports of Grade 304, which compete in a much larger segment of the market.

A. Volume

In considering the volume of the subject imports, the statute directs the Commission to consider whether the volume of the subject imports, or any increase in that volume (either in absolute terms or relative to production or consumption in the United States) is significant.⁴

Subject imports did not increase in significant volume over the POI. Subject imports excluding Korea increased *** percent over the period of investigation, while subject imports excluding Japan increased *** percent.⁵ This increase occurred in a period during which demand rose 11.7 percent.⁶ Subject imports excluding Korea increased their share of the U.S. market by *** percent and subject

¹ 19 U.S.C. § 1677(7)(B).

² Id.

³ 19 U.S.C. § 1677(7)(G).

⁴ 19 U.S.C. § 1677(7)(C)(i).

⁵ CR and PR at Table C-1.

⁶ Id.

imports excluding Japan increased their share of the market by *** percent.⁷ These incremental market share increases demonstrate the insignificance of the volume increases relative to domestic consumption.

B. Price

In considering the price effects of the subject imports, the statute directs the Commission to consider: 1) whether there has been significant price underselling by the subject imports as compared with the price of domestic products; and 2) whether the subject imports otherwise depress prices to a significant degree or prevent price increases (that would otherwise have occurred) to a significant degree.⁸

The record reflects mixed underselling and overselling, with subject imports underselling domestic merchandise in 63.1 percent of the possible quarterly comparisons.⁹ Underselling comparisons are of limited probative value given the generally small size of the margins of both over- and under-selling; in fact, when underselling margins of 5 percent or less are excluded, imports undersold U.S. products in only approximately 30 percent of comparisons.¹⁰ Further, prices vary depending on contractual terms and volume discounts.¹¹ Both domestic producers and importers sell on both contract and spot bases, and price comparisons do not necessarily account for differences in price occasioned by the different sales terms. Domestic firms also acknowledged selling products from inventory at prices higher than demanded for sales directly from production.¹²

Prices for stainless steel sheet and strip generally declined through 1996, increased slightly in mid-1997, and declined again in 1998.¹³ Prices for some five of seven types of products for which staff collected questionnaire data increased in the last two quarters of 1998.¹⁴ These price changes are likely due to factors other than imports, including competition among domestic producers, which consist of both re-rollers and integrated steel companies. Declines in prices are also attributable to notable declines in the cost of raw material costs, such as nickel, molybdenum, and ferro-chromium.¹⁵ Looking at the record as a whole, imports do not appear to have had significant price suppressing or depressing effects during the three-year period the Commission has traditionally examined in making its material injury determination.

C. Impact

For purposes of assessing the impact of the subject imports on the domestic industry, the statute directs the Commission to consider several factors, including: 1) declines in the industry's output (i.e., production), sales, market share, profits, productivity, return on investments and capacity utilization; 2) factors affecting domestic prices; 3) negative effects on the industry's cash flow, inventories, wages,

⁷ Id.

⁸ 19 U.S.C. § 1677(7)(C)(ii).

⁹ CR and PR at Table V-15. These price data represent only a small portion of imports from most subject countries. See, CR and PR at Table V-2.

¹⁰ CR and PR at Table V-9 - V-14.

¹¹ CR at V-12. PR at V-9. Some domestic producers offer volume rebates, and one importer reported discounts and rebate schedules modeled on those offered by domestic mills.

¹² CR at V-13. PR at V-9.

¹³ CR at V-15. PR at V-11.

¹⁴ Id.

¹⁵ CR and PR at Table V-1; CR at V-1 - V-4. PR at V-1-V-3

growth, and ability to raise capital and investment; 4) negative effects on their existing development and production efforts; and 5) the size of the margin.¹⁶

The domestic industry's production and sales have in fact grown over the period of investigation. Production increased 4.3 percent over the POI, while shipments increased 10.0 percent.¹⁷ The industry's market share has declined by only 1.3 percent over the POI.¹⁸ Capacity utilization declined somewhat over the period, falling from 73.0 percent in 1996 to 69.6 percent in 1998.¹⁹ The domestic industry maintained its productivity and sales over the POI, but did not capture increased sales opportunities presented by rising demand and therefore lost market share.

Overall, the domestic industry's profits declined over the period but remained positive. Gross profits fell from \$342.4 million in 1996 to \$179.2 million in 1998, while operating profits fell from \$224.5 million in 1996 to \$44.7 million in 1998.²⁰ Operating income as a ratio to net sales fell from 8.4 percent in 1996 to 1.8 percent in 1998.²¹ Financial data for the integrated producers were generally negative, while financial data for the re-rollers were generally positive. The integrated producers showed a significant decline in gross profits, with profits falling from \$307.1 million in 1996 to \$140.2 million in 1998; re-rollers, which account for a smaller share of the market, showed a slight improvement in gross profits.²² Three of the integrated producers showed negative operating margins in 1998, and all except one showed decreases in operating margins. The re-rollers showed generally positive operating margins (except for one start-up company); re-rollers' operating income rose from 12.6 percent in 1996 to 15.4 percent in 1998.²³

The number of production and related workers fell from 8,441 to 8,154 over the period, a decline of 3.4 percent.²⁴ Hourly wages, however, rose from \$19.41 to \$21.33, and productivity increased 11.9 percent.²⁵ Inventories declined about 6.7 percent over the period.²⁶

The record does not support attributing the decline in profitability and operating income to subject imports. Integrated producers and re-rollers show divergent financial performance, which suggests that competition among the domestic industry is a significant factor in financial performance. In addition, two of the three integrated producers that showed negative operating incomes just finished significant capital expansions -- J&L recently commissioned a new direct roll anneal and pickle line at a cost of more than

¹⁶ 19 U.S.C. § 1677(7)(C)(iii). I note that Commerce has found dumping margins ranging from 37.13 to 57.87 percent for Japanese producers; margins ranging from 0.98 to 34.95 percent for Taiwanese producers; margins ranging from 0.0 to 58.79 percent for Korean producers; margins of 10.64 percent for French producers; margins of 25.72 percent for German producers; margins of 11.17 percent for Italian producers; margins of 30.86 percent for Mexican producers; and margins of 14.84 percent for U.K. producers. See, CR at Table I-2.

¹⁷ CR and PR at Table C-1.

¹⁸ Id.

¹⁹ CR and PR at Table III-2.

²⁰ CR and PR at Table VI-1.

²¹ Id.

²² CR and PR at Table VI-2.

²³ Id.

²⁴ CR and PR at Table III-5.

²⁵ Id.

²⁶ CR and PR at Table III-4.

***, while North American Stainless completed installing a new Steckel hot-rolling mill in 1998.²⁷ Two other integrated producers, one of which showed declining operating margins and one of which showed improving margins, also added new capacity during the period.²⁸ Each company allocated expenses for those improvements to stainless steel sheet and strip production.²⁹

Imports of Grade 409 stainless steel sheet and strip illustrate the lack of causal nexus between subject imports and the domestic industry's performance and the impropriety of attributing equivalent effects to all subject merchandise, even if cumulated for purposes of volume and price effects. Imports of Grade 409 increased by 12,618 short tons from 1996 to 1998; this increase accounts for 28.5 percent of the total increase in subject imports during that period.³⁰ Yet, the only U.S. producers that ship grade 409 had *** operating margins on sales of Grade 409 throughout the POI.³¹

Capital expenditures dropped from \$195.9 million in 1996 to \$97.4 million in 1998, yet such a decline is not unexpected after a period of expansion such as the industry showed in the mid-1990s.³² Research and development expenses decreased slightly, falling from \$19.0 million in 1996 to \$17.1 million in 1998.³³ The value of fixed assets rose during that period, climbing from \$1.1 billion to \$1.4 billion.³⁴

Prices declined over the POI, but attributing the price declines to the effects of imports is not supported by the record, as discussed above. Competition among various domestic producers is keen, and the price of important raw material inputs fell over the period.

Overall, the evidence indicates that the domestic industry is not currently experiencing material injury by reason of the subject imports. The domestic industry alleged 208 instances of lost sales amounting to *** and 15 instances of lost revenues amounting to ***.³⁵ Staff confirmed very few of these instances; however, even if all are viewed as accurate, the lost sales amount to only *** percent of total domestic sales.³⁶ Certainly the industry's financial indicators were worse in 1998 than they had been in 1997, but in 1998 the industry remained profitable and domestic production increased. Subject import volumes rose slightly, and those imports captured a minimal increase in market share by supplying increased demand.

II. The Domestic Industry Is Not Threatened With Material Injury By Reason of the Subject Imports

Because I have concluded that the domestic industry is not materially injured by reason of the subject imports, I must also determine whether the industry is threatened with material injury by reason of

²⁷ CR at III-3 - III-4. PR at III-3

²⁸ CR at III-7. PR at III-7.

²⁹ CR at VI-10 - VI - 11. PR at VI-4

³⁰ CR and PR at Table C-1 and Table C-2.

³¹ CR at III-3 and PR at III-1-III-2; CR and PR at Table C-2.

³² CR and PR at Table VI-5.

³³ Id.

³⁴ Id.

³⁵ CR at V-38. PR at V-28.

³⁶ CR and PR at Table C-1.

those imports.³⁷ The statute directs me to consider nine enumerated factors when performing this threat analysis.³⁸ In making my determination, I have considered all statutory factors that are relevant to these investigations.³⁹

When performing my threat analysis in these preliminary phase investigations, I have closely considered the statutory requirement that I assess whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued . . .” before making an affirmative threat finding.⁴⁰ Moreover, I have closely considered the requirement that my determination not be made “on the basis of mere conjecture or supposition.” Finally, I have considered the threat factors “as a whole” when making my threat determination.

A. Cumulation

The Commission has the discretion to cumulate imports of the subject merchandise for purposes of making its determination of threat of material injury if such imports meet certain statutory requirements, which are the same as those considered when deciding whether to cumulate for a present material injury determination.⁴¹ In past cases, the Commission has also examined other factors, such as differences in pricing and volume trends among subject countries, in determining whether to cumulate for purposes of the threat determination.⁴²

For purposes of my threat analysis, I continue not to cumulate imports from Korea and Japan with each other. In addition, I have not cumulated imports from France and the United Kingdom, due to their falling market shares and low volumes. French imports fell *** percent from a high of *** short tons to *** short tons, while U.K. imports fell *** percent from a high of *** short tons to *** short tons.⁴³ French market share fell from *** percent to *** percent, while U.K. market share fell from *** percent to *** percent.⁴⁴

B. Analysis of Statutory Threat Factors

When determining whether the domestic industry is threatened with material injury by reason of the subject imports, the Commission will often examine the health of the industry to determine whether the industry is “vulnerable” to material injury from subject imports, although “vulnerability” is not itself a

³⁷ 19 U.S.C. §§ 1673d(b), 1677(7)(F).

³⁸ 19 U.S.C. §1677(7)(F).

³⁹ 19 U.S.C. § 1677(7)(F)(i). Factor VII of section 1677(7)(F)(i) is inapplicable. In addition, subject merchandise from France, Japan, and Mexico are the subject of antidumping investigations in Brazil. CR at VII-2, VII-9, and VII-11. The record does not indicate that antidumping duties have been imposed against the merchandise, and I do not find that the existence of these investigations suggests a threat of material injury to the domestic industry. See 19 U.S.C. § 1677(7)(F)(iii)(I).

⁴⁰ 19 U.S.C. §§ 1671b(a), 1673b(a), & 1677(7)(F)(ii).

⁴¹ 19 U.S.C. § 1677(H).

⁴² *Torrington Co. v. United States*, 790 F. Supp. 1161, 1172 (Ct. Int’l Trade 1992) (affirming Commission’s decision not to cumulate for purposes of threat determination when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries).

⁴³ CR and PR at Table C-1.

⁴⁴ *Id.*

statutory threat factor. I do not find that the domestic industry is vulnerable in this case. The industry's financial indicators have remained positive, though they are down from 1997 levels.

The Commission is to determine whether imports of subject merchandise are likely to increase as a result of any countervailable subsidies. Commerce made affirmative subsidy determinations with respect to producers from France, Italy, and Korea.⁴⁵ In particular, Commerce identified six programs as conferring export subsidies on Korean producers. I do not find that the existence of these subsidies indicates a likely increase in imports of subject merchandise. Exports from all three countries have been, and remain, small. Except for one producer, which received emergency government loans resulting from its bankruptcy, Korean countervailing duty rates were small and even *de minimis* for two companies. Thus, the Korean export subsidies are unlikely to encourage large volumes of exports.⁴⁶

The statute directs the Commission to consider whether there is "any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports."⁴⁷ Capacity has grown, and is projected to grow, only moderately among subject countries. In 1999, capacity is expected to increase *** percent in France, *** percent in Germany, *** percent in Italy, *** percent in Korea, and *** percent in the United Kingdom, while Taiwanese and Mexican capacity is projected to remain steady and Japanese capacity is expected to decrease.⁴⁸ In addition, capacity utilization was generally high in 1998, at *** percent in France, *** percent in Germany, *** percent in Italy, 83.1 percent in Japan, *** percent in Korea, *** percent in Mexico, *** percent in Taiwan, and *** percent in the United Kingdom.⁴⁹ Foreign producers therefore have limited ability to increase production.

Exports to the United States from each of the subject countries represented a small share of overall export shipments.⁵⁰ Additionally, the evidence suggests that the Asian market is recovering from its recent downturn and that Asian demand for steel will consequently increase, thus providing attractive alternate markets for subject countries' exports.

The Commission must also consider whether there has been "a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports."⁵¹ Imports from the United Kingdom and France actually decreased by volume and lost market share during the period. Considered cumulatively, imports from Germany, Italy, Japan, Mexico, and Taiwan increased 38.4 percent, while imports from Germany, Italy, Korea, Mexico, and Taiwan increased 40.9 percent.⁵² These increases are primarily driven by increased exports from Taiwan, and smaller increases from Mexico, Korea, and Japan. These increases are not significant, however, given the still-small volume increases of such imports compared to the size of the domestic market. Thus, market share of imports from Germany, Italy, Japan, Mexico, and Taiwan increased 2.6

⁴⁵ Commerce calculated countervailing duty rates of 5.38 percent for French producers, rates ranging from 1.03 to 12.22 percent for Italian producers, and rates ranging from 0.65 to 59.30 percent for Korean producers. CR and PR at Table I-2.

⁴⁶ 64 Fed. Reg. 30636, 30663-64 (June 8, 1999).

⁴⁷ 19 U.S.C. § 1677(F)(II).

⁴⁸ CR and PR at Tables VII-1 - VII - 8.

⁴⁹ Id.

⁵⁰ CR at II-12 - II-15. PR at II-8 - II-10

⁵¹ 19 U.S.C. § 1677(F)(III).

⁵² CR and PR at Table C-1.

percent, while market share of imports from Germany, Italy, Korea, Mexico, and Taiwan increased 2.3 percent.⁵³

The statute requires the Commission to consider “whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports.”⁵⁴ I find that subject imports are unlikely imminently to have price suppressing or depressing effects for the same reasons I found no price effects in my present material injury determination.

The statute also directs the Commission to consider “inventories of the subject merchandise.”⁵⁵ Though inventories have grown over the period of investigation, they remain extremely small at 48,399 short tons. Inventories were 16.4 percent of subject imports in 1998.⁵⁶ Inventories thus do not pose a threat to the domestic industry.

The Commission is to consider whether there is a “potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.”⁵⁷ Stainless steel sheet and strip is produced on specialized equipment in specialized mills, and therefore foreign producers have little if any capacity for product shifting.⁵⁸

Part of the Commission’s threat determination is considering “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.”⁵⁹ As noted previously, the industry has increased capacity 9.3 percent and production 4.3 percent over the POI.⁶⁰ Although capital expenditures declined from 1996 to 1998 (from \$195.9 million to \$97.4 million), such a decrease is to be expected after significant expenditures to increase capacity and modernize equipment.⁶¹ R&D expenses also decreased, falling from \$18.98 million in 1996 to \$17.1 million in 1998.⁶²

The statute also requires the Commission to consider “any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).”⁶³ Here, the record evidence suggests no other adverse effects.

The domestic industry is not threatened with material injury by reason of the subject imports. Domestic market share fell only 1.3 percent over the period of investigation, while domestic capacity and production increased. The increase in volume of subject imports over the period is small relative to domestic production as a whole. Foreign capacity utilization was high during the period of investigation, suggesting limited ability on the part of producers to increase exports to the United States. Subject imports

⁵³ Id.

⁵⁴ 19 U.S.C. § 1677(F)(IV).

⁵⁵ 19 U.S.C. § 1677(F)(V).

⁵⁶ CR and PR at Table VII-9.

⁵⁷ 19 U.S.C. § 1677(F)(VI).

⁵⁸ Legal Issues Memo at 63-64.

⁵⁹ 19 U.S.C. § 1677(F)(VIII).

⁶⁰ CR and PR at Table C-1.

⁶¹ CR and PR at Table VI-5.

⁶² Id.

⁶³ 19 U.S.C. § 1677(7)(F)(IX).

are unlikely to enter the United States in sufficient volume to have an effect on prices and a concomitant effect on the domestic industry.