

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN COLD-ROLLED STEEL PRODUCTS FROM ARGENTINA, BRAZIL,
CHINA, INDONESIA, JAPAN, RUSSIA, SLOVAKIA, SOUTH AFRICA,
TAIWAN THAILAND, TURKEY, AND VENEZUELA

Investigations Nos. 701-TA-393-396 and 731-TA-829-840 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3214, July 1999)

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of certain cold-rolled steel products, provided for in headings 7209, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Brazil. The Commission further determines, pursuant to 19 U.S.C. § 1677(24)(A), that the subject imports from Indonesia, Thailand,² and Venezuela that are alleged to be subsidized are negligible and its investigations are thereby terminated pursuant to 19 U.S.C. § 1671b(a)(1).³ The Commission also determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of such imports from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela that are alleged to be sold in the United States at less than fair value.

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under section 703(b) and section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 705(a) and section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

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 Commissioner Koplán dissenting with respect to allegedly subsidized imports from Thailand.

³ Chairman Bragg, however, further finds that imports from Indonesia, Thailand, and Venezuela will imminently exceed the statutory negligibility threshold, and makes an affirmative threat determination with regard to such imports.

BACKGROUND

On June 2, 1999, a petition was filed with the Commission and the Department of Commerce by Bethlehem Steel Corp., Bethlehem, PA; Gulf States Steel, Inc., Gadsden, AL; Ispat Inland, Inc., East Chicago, IN; LTV Steel Co., Inc., Cleveland, OH; National Steel Corp., Mishawaka, IN; Steel Dynamics, Inc., Fort Wayne, IN; U.S. Steel Corp.; a unit of USX Corp., Pittsburgh, PA; Weirton Steel Corp., Weirton, WV; the Independent Steelworkers Union; and United Steel Workers of America, Pittsburgh, PA, alleging that an industry in the United States is materially injured by reason of subsidized or LTFV imports of certain cold-rolled steel products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela. Accordingly, effective June 2, 1999, the Commission instituted antidumping investigations Nos. 701-TA-393-396 (Preliminary) and investigations Nos. 731-TA-829-840 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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 June 9, 1999 (64 FR 31018). The conference was held in Washington, DC, on June 23, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 19, 1999. The views of the Commission are contained in USITC Publication 3214 (July 1999), entitled *Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela: Investigations Nos. 701-TA-393-396 and 731-TA-829-840 (Preliminary)*.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of certain cold-rolled steel products from Brazil that are allegedly subsidized and by reason of imports of certain cold-rolled steel products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela that are allegedly sold in the United States at less than fair value (“LTFV”).

We also find that imports of certain cold-rolled steel products from Indonesia, Thailand, and Venezuela that are allegedly subsidized are negligible.^{1 2}

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.³ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”⁴

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that 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.”⁵ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product

¹ Chairman Bragg dissenting. Chairman Bragg found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports from Indonesia, Thailand, and Venezuela. See Additional and Dissenting Views of Chairman Lynn M. Bragg Regarding Imports from Indonesia, Thailand, and Venezuela.

² Commissioner Koplán dissenting as to allegedly subsidized imports from Thailand. Commissioner Koplán found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports from Thailand. See Additional and Dissenting Views of Commissioner Stephen Koplán Regarding Imports from Indonesia, Thailand, and Venezuela.

³ 19 U.S.C. § 1671b(a); 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT __, Slip Op. 96-51 at 4-6 (March 11, 1996).

⁴ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁵ 19 U.S.C. § 1677(4)(A).

constitutes a major proportion of the total domestic production of the product.”⁶ 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”⁷

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.⁸ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁹ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁰ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹¹

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as:

[C]ertain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

⁸ See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁹ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

¹⁰ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹¹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

rolling process (i.e., products which have been “worked after rolling”)--for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”) steels, high strength low alloy (“HSLA”) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedules of the United States (“HTSUS”), are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these investigations unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of these investigations:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

The merchandise subject to these investigations is typically classified in the HTSUS at subheadings:

7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8015, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (“U.S. Customs”) purposes, the written description of the merchandise under investigation is dispositive.¹²

Carbon steel is a combination of carbon and iron that is usefully malleable as first cast, in which iron predominates by weight over each of the other contained elements and in which the carbon content is two percent or less, by weight.¹³ The term “cold rolling” refers to a process in which the product is fed into a rolling mill at ambient temperature.¹⁴ Cold rolling is performed to reduce product thickness, to give the steel specific mechanical properties, or to give the steel specific surface texture.¹⁵ After cold rolling, the certain cold-rolled steel product is typically annealed and then temper-rolled.¹⁶ Certain cold-rolled steel products have a variety of uses, including automotive, construction, container, and appliance applications.¹⁷

C. Domestic Like Product Issues

Petitioners assert that the Commission should find a single domestic like product consisting of all certain cold-rolled steel products.¹⁸ Respondents assert that several products are sufficiently distinct to be treated as separate like products. As discussed below, we determine for the purpose of the preliminary phase of these investigations that there is one domestic like product consisting of all certain cold-rolled steel products.

1. Tin Mill Black Plate

Respondents argue that tin mill black plate is a separate like product.¹⁹ Petitioners claim that tin mill black plate is a part of the domestic like product consisting of all certain cold-rolled steel products.²⁰

Tin mill black plate is flat-rolled carbon steel in thicknesses of 0.0141 inches and less. Most tin

¹² 64 Fed. Reg. 34194 (June 25, 1999).

¹³ CR at I-4; PR at I-3.

¹⁴ CR at I-6; PR at I-4.

¹⁵ CR at I-6; PR at I-4.

¹⁶ CR at I-7; PR at I-5.

¹⁷ CR at I-8; PR at I-5.

¹⁸ Petitioners’ Postconference Brief at 2-6.

¹⁹ Japanese Respondents’ Postconference Brief at 9.

²⁰ Petitioners’ Postconference Brief at 11-12.

mill black plate is captively consumed in the production of tin plate, while open market shipments are sold to producers of containers, closures, signs, toys, brake line tubing, and other applications.²¹

Tin mill black plate is produced using similar production processes as those used for other certain cold-rolled steel products.²² Tin mill black plate is created from the same raw material as other certain cold-rolled steel and is produced on similar, or sometimes the same, equipment as other certain cold-rolled steel.²³ Tin mill black plate differs from other certain cold-rolled steel most notably in its channels of distribution, with tin mill black plate being more likely to be captively consumed than other certain cold-rolled steel.²⁴ Differences exist in applications, although there is apparently some overlap. Some variations exist in price, interchangeability, and producer and customer perceptions, but we do not find these differences to be substantial enough to differentiate tin mill black plate from all certain cold-rolled steel as a like product. The Commission considered this same like product issue in its investigation of cold-rolled steel products in 1993,²⁵ and the record of these investigations contains no new information to indicate a different conclusion is appropriate. We therefore find that tin mill black plate is properly included in a single domestic like product of certain cold-rolled steel products.

2. Cold-Rolled Motor Lamination Steels and Nonoriented Electrical Steels

Respondents have urged that cold-rolled motor lamination steels and nonoriented electrical steel should be a separate like product from certain cold-rolled steel products.²⁶ Petitioners assert that both cold-rolled motor lamination steels and nonoriented electrical steel are properly classified in the same domestic like product as certain cold-rolled steel.²⁷ Cold-rolled motor lamination steel is a low carbon sheet steel intended for applications where electrical core loss and permeability are important features.²⁸ Cold-rolled motor lamination steel obtains its special qualities from the presence of silicon,²⁹ although other alloying elements, such as phosphorus and aluminum, may be present.³⁰ Like cold-rolled motor lamination steel, nonoriented electrical steel contains silicon (up to 2.25 percent by weight) and aluminum to increase electrical resistance. Unlike cold-rolled motor lamination steel, nonoriented electrical steel undergoes a special continuous annealing process.³¹

Cold-rolled motor lamination steel and nonoriented electrical steel differ from certain cold-rolled products in that alloys such as silicon, phosphorus, and aluminum are added to the mix at the melt stage.³² Cold-rolled motor lamination steel and electrical steel are designed for magnetic characteristics and have

²¹ CR at I-9; PR at I-6.

²² CR at I-9; PR at I-6.

²³ CR at I-9, PR at I-6.

²⁴ Petitioners' Postconference Brief at 9; CR at I-8; PR at I-6.

²⁵ Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Invs. Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353 (Final) and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 (August 1993) at 87-89.

²⁶ Japanese Respondents' Postconference Brief at 18.

²⁷ Petitioners' Postconference Brief at 12.

²⁸ CR at I-9, PR at I-6.

²⁹ Petitioners' Postconference Brief at 12; Japanese Respondents' Postconference Brief at 20-21.

³⁰ CR at I-9, PR at I-6.

³¹ CR at I-10, PR at I-7.

³² CR at I-10; PR at I-6.

specific end uses.³³ Some price and perception differences exist between cold-rolled motor lamination steel, nonoriented electrical steel, and certain cold-rolled steel. However, cold-rolled motor lamination steel and nonoriented electrical steel are typically manufactured by producers of certain cold-rolled steel, using the same equipment as is used in the production of certain cold-rolled steel.³⁴ The suitability of cold-rolled motor lamination steel and nonoriented electrical steel for particular purposes is no greater than the suitability of other products within the continuum of certain cold-rolled steel products for some applications. Similar price differences exist across the continuum of certain cold-rolled steel products; for example, the price difference in this instance is no greater than that claimed by respondents to exist between tin mill black plate and other certain cold-rolled steel.³⁵ We therefore find that cold-rolled motor lamination steel and nonoriented electrical steel are properly included in a single domestic like product of certain cold-rolled steel. We will gather additional information regarding this product in any final phase of these investigations and may revisit our like product determination at that time.

3. Cold-rolled Strip

Responding strip producers argue that cold-rolled strip should be a separate like product.³⁶ Domestic strip producers support the inclusion of strip steel within the domestic like product as defined by petitioners.³⁷ Cold-rolled strip is a flat-rolled carbon steel product in widths from over 0.5 inches to 23 15/16 inches and in thicknesses of 0.2499 inches and under.³⁸ Cold-rolled strip is produced to closer tolerances than certain cold-rolled sheet, or with specific temper, or with specific prepared or rolled edges, or with specific finishes.³⁹

The production process for cold-rolled strip steel is virtually identical to that for other certain cold-rolled steel; moreover, cold-rolled strip steel is sometimes made on the same equipment as other certain cold-rolled steel.⁴⁰ Width alone in certain cold-rolled steel does not provide a sufficiently bright line to find separate domestic like products.⁴¹ While differences in price do exist, petitioners have indicated that there is substantial overlap in the price between strip and wider certain cold-rolled steel.⁴² They have also indicated some degree of overlap in applications.⁴³ The differences in width, as well as some differences in price and end uses, are no greater than those existing between other grades of certain cold-rolled steel. We therefore find that cold-rolled strip steel is properly included in a single domestic like product of certain cold-rolled steel.

³³ CR at I-10; PR at I-6, I-7.

³⁴ CR at I-10; PR at I-6.

³⁵ Japanese Respondents' Postconference Brief at 16-17.

³⁶ Russian Strip Producers' (TransCommodities International, Kennett International, and Magnetogorsk Metallurgica Kombinat) Postconference Brief at 1.

³⁷ Association of Cold-Rolled Strip Steel Producers' Postconference Brief at 1.

³⁸ CR at I-11, PR at I-7.

³⁹ CR at I-11; PR at I-7.

⁴⁰ Association of Cold-Rolled Strip Steel Producers' Postconference Brief at 7.

⁴¹ Similarly, the Commission typically has refused to rely on thickness alone as a dividing line between domestic like products, as with tin mill black plate in the earlier investigation on cold-rolled steel. See, e.g., Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664 at 87-88.

⁴² Association of Cold-Rolled Strip Steel Producers' Postconference Brief at 6.

⁴³ Association of Cold-Rolled Strip Steel Producers' Postconference Brief at 6.

4. Non-rectangular Shapes (“Blanks”)

Respondents claim that products of non-rectangular shape (“blanks”) should be considered a separate like product⁴⁴ under either our traditional like product test or under a semifinished product analysis.⁴⁵ ⁴⁶ Petitioners claim that such non-rectangular products are properly included in a single domestic like product with other certain cold-rolled steel.⁴⁷ Blanks are cut from sheets by either shearing or stamping.⁴⁸ Non-rectangular shapes may have contours without 90 degree angles or with 90 degree angles but in which holes or patterns are punched.⁴⁹

Blanks are made from the same material as certain cold-rolled steel⁵⁰ and move through the same channels of distribution.⁵¹ However, respondents have raised legitimate issues about the interchangeability of blanks with certain cold-rolled steel, as well as the existence of common manufacturing facilities, employees, and methods. Application of the semifinished product analysis also would appear to support the contention that blanks are more properly considered a separate downstream product.⁵² In this preliminary phase of these investigations, however, we lack sufficient information for a thorough analysis of blanks. While we are including blanks in a single domestic like product of certain cold-rolled steel products for purposes of this preliminary phase of these investigations, we will seek further information during any final phase of these investigations and may reexamine our like product determination at that time.

⁴⁴ Brazilian Respondents’ Postconference Brief at 4.

⁴⁵ Brazilian Respondents’ Postconference Brief at 17-21.

⁴⁶ The Commission has employed a semifinished product analysis rather than its traditional analysis when analyzing whether a product at an earlier stage of its production process is “like” a finished or further processed product. Under this analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article, or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA 736 and 737 (Final), USITC Pub. 2988 (Aug. 1996) at 6 n.23.

⁴⁷ Petitioners’ Postconference Brief at 17.

⁴⁸ CR at I-11; PR at I-7.

⁴⁹ Brazilian Respondents’ Postconference Brief at 5.

⁵⁰ Petitioners’ Postconference Brief at 18.

⁵¹ Petitioners’ Postconference Brief at 17; Brazilian Respondents’ Postconference Brief at 19.

⁵² There are independent uses of certain cold-rolled steel other than in the production of blanks, although the record suggests there is some overlap in markets for certain cold-rolled steel and blanks, as both may go to the automotive sector or into the fabrication of steel drums. Physical characteristics of certain cold-rolled steel differ from blanks in that blanks may have contours or areas punched out; blanks also have definite dimensions, while certain cold-rolled steel will have a definite width but not necessarily a definite length in coil. Creating blanks from certain cold-rolled steel requires additional equipment and is typically done in a separate facility; respondents estimate that blanking adds 30 to 45 percent to the value of the finished product. CR at I-8, I-11; PR at I-5, I-7-I-8; Brazilian Respondents’ Postconference Brief at 17-21.

5. Hardened and Tempered High-Carbon Steel

Respondents argue that hardened and tempered high-carbon steel should be a separate like product.⁵³ Petitioners do not address this question. Respondents define hardened and tempered high-carbon steel as having a carbon content of 0.74 and above.⁵⁴ Hardened and tempered high-carbon steel strip is processed through a special continuous heat-treating line to develop desired hardness and tensile strength for such applications as springs, knives, dies, and blades.⁵⁵

Respondents describe differences in physical characteristics, channels of distribution, manufacturing facilities, producer and customer perceptions, and price.⁵⁶ Respondents further claim that hardened and tempered high-carbon steel is not interchangeable with certain cold-rolled steel products. While we note that such differences do exist, we find that those differences are no greater than those existing within the continuum of cold-rolled steel. In cases such as the present one, where the domestically manufactured merchandise is made up of a continuum of similar products, the Commission generally does not consider each item of merchandise to be a separate domestic like product that is only “like” its counterpart in the scope, but considers the continuum itself to constitute the domestic like product.⁵⁷ We therefore find that hardened and tempered high-carbon steel is properly included in a single domestic like product of certain cold-rolled steel. We will seek additional information on this product and may reexamine our like product determination in any final phase of these investigations.⁵⁸

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product”⁵⁹ 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.⁶⁰ Based on our finding that the domestic like product consists of all certain cold-rolled steel products included within the scope of these investigations, for purposes of these preliminary determinations, we find that the domestic industry consists of all domestic producers of these products.

⁵³ Mangels’s Postconference Brief at 3.

⁵⁴ Mangels’s Postconference Brief at 3.

⁵⁵ CR at I-12; PR at I-8.

⁵⁶ Mangels’s Postconference Brief at 5-12.

⁵⁷ Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 701-TA-368-371 (Final), USTIC Pub. 3075 (November 1997) at 7.

⁵⁸ Respondents claim that shadow mask steel is a separate like product, and note that there is no domestic production of that product. Buckbee Mears Postconference Brief at 1. However, under the statute, if there is no domestic production of a product, the Commission must find the domestic product that is “the most similar in characteristics and uses with” the subject imports. See, e.g., Certain Polyester Staple Fiber from Korea and Taiwan, Inv. Nos. 731-TA-825-826 (Preliminary), USITC Pub. 3197 (May 1999) at 6 and n.26. That product here is certain cold-rolled steel. We will seek additional information on this product in any final phase of these investigations and may reexamine our like product determinations at that time.

⁵⁹ 19 U.S.C. § 1677(4)(A).

⁶⁰ 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).

We consider two issues with respect to the domestic industry: (1) whether the production of certain cold-rolled steel products includes the operation of processors producing blanks; and (2) whether any producers should be excluded as related parties.

1. The Inclusion of Processors of Blanks in the Domestic Industry

In deciding whether a firm qualifies as a domestic producer, the Commission often has analyzed the overall nature of a firm's production-related activities in the United States,⁶¹ although production-related activity at minimum levels could be insufficient to constitute domestic production.⁶² The Commission generally considers six factors:

- (1) source and extent of the firm's capital investment;
- (2) technical expertise involved in U.S. production activities;
- (3) value added to the product in the United States;
- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the like product.⁶³

With respect to the third factor, Commission practice has not clearly established a specific level of U.S. value added, or product finished value, required to qualify as a domestic producer.⁶⁴ No single factor is

⁶¹ See, e.g., Sulfur Dyes from China and the United Kingdom, Inv. Nos. 731-TA-548 and 551 (Final), USITC Pub. 2602 (Feb. 1993); Dry Film Photoresist from Japan, Inv. No. 731-TA-622 (Preliminary), USITC Pub. 2555 (Aug. 1992) at 14; Dynamic Random Access Memories of One Megabit and Above from the Republic of Korea, Inv. No. 731-TA-556 (Preliminary), USITC Pub. 2519 (June 1992) at 11-12.

⁶² Ferrovandium and Nitrided Vanadium from Russia, Inv. No. 731-TA-702 (Final), USITC Pub. 2904 (June 1995) at I-8.

⁶³ See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA-736 and 737 (Final), USITC Pub. 2988 (Aug. 1996) at 7-8; Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) at I-11 n.37.

⁶⁴ See Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 (June 1994) at I-8-9 & n.34 ("no single factor -- including value added -- is determinative and . . . value added information becomes more meaningful when other production activity indicia are taken into account"); Low Fuming Brazing Copper Wire and Rod from New Zealand, Inv. No. 731-TA-246 (Final), USITC Pub. 1779 (Nov. 1985) (the Commission concluded that twenty percent value added by flux coaters was sufficient); see also Low Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-246 (Final), USITC Pub. 1790 (Jan. 1986) (value added in the United States was ten to twenty percent).

The Commission has also stated that a "modest percentage of domestically sourced parts or raw materials as a percentage of cost does not necessarily mean that a firm is not a domestic producer." Certain All Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (Mar. 1989) at 13-14. Conversely, the Commission has decided not to include a firm in the domestic industry where its operations contributed only a "minor percentage of the total value" of the product. Certain Radio Paging and Alerting Devices from Japan, Inv. No. 731-TA-102 (Final), USITC Pub. 1410 (Aug. 1983) (operations involved assembly and soldering of foreign-sourced parts involving little technical skill); see also Color Television Receivers from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-134 and 135 (Final), USITC Pub. 1514 (Apr. 1984) at 7-8 (Commission emphasized for the first time that no single factor--including value added--is determinative).

determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation.⁶⁵

We note at the outset that our findings are based on the limited information available in this preliminary phase of these investigations. Given the limited data available, we find that the record in these investigations provides some support for including processors of blanks in the domestic industry.⁶⁶ Processors appear to invest a significant amount of capital in relatively sophisticated processing operations and to account for a significant share of overall employment in the U.S. industry.⁶⁷ The value added by such processing is not minor.⁶⁸ In this preliminary phase of these investigations, we have no industry data on processors, so the determination as to whether to include these processors in the industry is essentially without effect. We intend to examine this issue closely in any final phase of these investigations.

Based on the foregoing, for the purposes of these preliminary determinations, we include all producers of certain cold-rolled steel in the domestic industry.

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.⁶⁹ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁷⁰

a. California Steel and National Steel

California Steel is wholly owned by Kawasaki, a Japanese producer of subject merchandise, and Vale do Rio Doce, a Brazilian firm.⁷¹ National Steel is two-thirds owned by NKK, a Japanese producer of

⁶⁵ See Silicon Carbide from The People's Republic of China, Inv. No. 731-TA-651 (Final), USITC Pub. 2779 (June 1994) at I-11 n.49.

⁶⁶ Vice Chairman Miller does not reach a conclusion on whether processors of blanks are producers of certain cold-rolled steel.

⁶⁷ Joint Respondents' Postconference Brief at 13-14.

⁶⁸ Joint Respondents' Postconference Brief at 15.

⁶⁹ 19 U.S.C. § 1677(4)(B).

⁷⁰ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the date for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

⁷¹ CR at Table III-1; PR at Table III-1.

subject merchandise.⁷² Both of these firms appear to be related parties under (ii)(II) or (III) of the related parties provision.⁷³

Consequently, we consider whether “appropriate circumstances” exist to exclude either of these companies from the domestic industry. California Steel accounted for *** of total domestic production in 1998, while National Steel accounted for ***.⁷⁴ Neither party imported certain cold-rolled steel from subject countries in 1998.⁷⁵ Neither party appears to derive any concrete benefits or operate in a manner different from other domestic producers as a result of its relationship with the foreign producer or importer parent. The financial performance of both firms was ***. California Steel *** the petition, while National Steel is a petitioner in all of the subject cases except that against Japan. Accordingly, both firms’ interests appear to be those of domestic producers. Based on the information available on the record at this time, we do not find that appropriate circumstances exist to exclude either of these producers from the domestic industry.

b. ***

*** is an integrated producer. Its 1998 share of domestic production was ***. In 1998, *** purchased *** of subject merchandise originally imported from Japan. Subject imports were *** of production.

*** is a cold-reduction mill only.⁷⁶ Its share of 1998 production was ***.⁷⁷ In 1998 the company imported *** amounts from Brazil and Japan, as well as from other nonsubject countries.⁷⁸

*** is a cold-reduction mill only.⁷⁹ Its share of domestic production in 1988 was *** percent.⁸⁰ In 1998 the company purchased *** of subject merchandise originally imported from Japan.⁸¹ Subject imports were *** of production.

*** is an integrated producer.⁸² During the period examined, it purchased approximately ***.⁸³ In contrast, the firm accounted for *** of domestic production. It is the *** largest producer of certain cold-rolled steel in the United States.⁸⁴ Subject imports in 1998 were *** of production.

*** is a cold-reduction mill only.⁸⁵ During 1998 it imported *** of subject merchandise from Japan, *** from Turkey, and an additional *** from nonsubject countries.⁸⁶ Its share of domestic production in 1998 was ***.⁸⁷ Subject imports in 1998 were *** of production.

⁷² CR at Table III-1; PR at Table III-1.

⁷³ 19 U.S.C. § 1677(4)(B)(ii)(II), (III).

⁷⁴ CR at Table III-1; PR at Table III-1.

⁷⁵ Commissioner Crawford finds that the primary interest of these firms lies in production, not importation, and thus appropriate circumstances do not exist to exclude them from the domestic industry.

⁷⁶ CR at Table III-1; PR at Table III-1.

⁷⁷ CR at Table III-1; PR at Table III-1.

⁷⁸ CR at IV-1 and Table IV-1; PR at IV-1 and Table IV-1.

⁷⁹ CR at Table III-1; PR at Table III-1.

⁸⁰ CR at Table III-1; PR at Table III-1.

⁸¹ CR at IV-1, n.4; PR at IV-1, n.4.

⁸² CR at Table III-1; PR at Table III-1.

⁸³ CR at IV-1, n.5; PR at IV-1, n.5.

⁸⁴ CR at Table III-1; PR at Table III-1.

⁸⁵ CR at Table III-1; PR at Table III-1.

⁸⁶ CR at IV-1, n.2; PR at IV-1, n.2.

⁸⁷ CR at Table III-1; PR at Table III-1.

*** is a cold-reduction mill only.⁸⁸ During 1998 it purchased *** of subject merchandise originally imported from Japan.⁸⁹ Its share of domestic production in 1998 was ***.⁹⁰ Subject imports were *** of production.

Four of the six firms, ***, appear to have only purchased and not directly imported subject merchandise. Accordingly, they would be “related parties” only if their purchases were so large that they would amount to “direct or indirect control” of an importer or exporter within the meaning of the statute.⁹¹ The quantities of purchases of each of these four firms do not appear large enough to warrant such a finding. Consequently, these four firms do not appear to be related parties.

Moreover, appropriate circumstances do not exist to exclude any of these firms. The ratio of imported subject merchandise to total production was *** for each of these six companies, ranging from *** and was especially ***. The *** ratio of imports to production clearly indicates that the predominant interest of these firms lies in production rather than in importing.⁹² Four of the six companies have *** shares of domestic production that *** of them could be *** without danger of skewing industry data. The remaining two firms, however, together account for *** of domestic production. One of *** indicated it purchased the imported product ***.⁹³ Accordingly, we do not exclude any domestic producers as related parties for purposes of these preliminary determinations.

⁸⁸ CR at Table III-1; PR at Table III-1.

⁸⁹ CR at Table IV-1, n. 2; PR at Table IV-1, n.2.

⁹⁰ CR at Table III-1; PR at Table III-1.

⁹¹ Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-392 (Preliminary) and 731-TA-815-822 (Preliminary), USITC Pub. 3181 (April 1999) at 12.

⁹² Commissioner Crawford finds that the primary interest of these firms lies in production, not importation, and thus appropriate circumstances do not exist to exclude them from the domestic industry.

⁹³ Petitioners’ Postconference Brief at 20.

III. NEGLIGIBLE IMPORTS

Imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.⁹⁴ The statute further provides that imports from a single country which comprise less than three percent of total imports of such merchandise may not be considered negligible if there are several countries subject to investigation with negligible imports and the sum of such imports from all those countries in the aggregate accounts for more than seven percent of the volume of all such merchandise imported into the United States.⁹⁵

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volumes of imports from the several countries with negligible imports will imminently exceed seven percent of all such merchandise imported into the United States.⁹⁶ By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.⁹⁷

In the case of countervailing duty investigations involving developing countries, the statute further provides that the negligibility limits are four percent and nine percent, rather than three percent and seven percent.⁹⁸ The statute defines "developing country" as any country so designated by the U.S. Trade Representative.⁹⁹

The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.¹⁰⁰

A. The Antidumping Investigations

To evaluate negligibility, we considered official import statistics for the period April 1, 1998, through March 31, 1999.¹⁰¹ Negligibility is an issue for five of the 12 countries: Argentina with an import share at 2.96 percent; Indonesia at 2.54 percent; Slovakia at 1.83 percent; Taiwan at 1.68 percent; and Venezuela at 2.50 percent.¹⁰² The combined import share of these five countries, 11.51 percent, exceeds the seven percent statutory negligibility threshold. We therefore find that none of the subject imports from these countries are negligible for purposes of our present material injury analysis for these antidumping investigations.

⁹⁴ 19 U.S.C. § 1677(24)(A)(I)(I).

⁹⁵ 19 U.S.C. § 1677(24)(A)(ii).

⁹⁶ 19 U.S.C. § 1677(24)(A)(iv).

⁹⁷ 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

⁹⁸ 19 U.S.C. § 1677(24)(B).

⁹⁹ 19 U.S.C. § 1677(36)(A).

¹⁰⁰ 19 U.S.C. § 1677(24)(C). See also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) ("SAA").

¹⁰¹ CR at Table IV-3; PR at Table IV-3.

¹⁰² CR at Table IV-3; PR at Table IV-3.

B. The Countervailing Duty Investigations

The petition included countervailing duty allegations against four countries: Brazil, Indonesia, Thailand, and Venezuela. Each of the four has been designated a developing country by the U.S. Trade Representative.¹⁰³ Brazil's share of imports, at 7.25 percent, clearly exceeds the negligibility level for developing countries. The individual shares of the remaining three countries are: Indonesia with an import share at 2.54 percent; Thailand with 3.41 percent; and Venezuela with 2.50 percent.¹⁰⁴ The combined import share for the remaining three countries, at 8.45 percent, is below the aggregated negligibility level of nine percent prescribed by statute.¹⁰⁵ We therefore find that subject imports from Indonesia, Thailand, and Venezuela are negligible for purposes of our present material injury analysis.

We also do not find, pursuant to 19 U.S.C. § 1677(24)(A)(iv) and 19 U.S.C. § 1677(24)(B), that subject imports from Indonesia, Thailand, or Venezuela will imminently account for more than four percent individually, or nine percent in the aggregate, of the total volume of certain cold-rolled steel imports.^{106 107}

¹⁰³ 63 Fed. Reg. at 29948 (June 2, 1998).

¹⁰⁴ CR at Table IV-3; PR at Table IV-3.

¹⁰⁵ Petitioners argue that imports are not negligible for purposes of a material injury analysis, on the grounds that the aggregated import share of all negligible countries is 12 percent. Petitioners' Postconference Brief at 20-21. Petitioners reach this conclusion by cross-aggregating imports from Indonesia, Thailand, and Venezuela with countries not subject to countervailing duty investigations. However, the SAA specifically provides that the special rule for determining negligibility for developing countries applies only to countervailing duty investigations. SAA at 856. Accordingly, we have not adopted petitioners' interpretation of the statute.

¹⁰⁶ We are aware that Section 771(24)(A)(iv) can be read to indicate that the negligibility threshold levels for a threat determination are three percent individually and seven percent in the aggregate even for developing countries in countervailing duty investigations. 19 U.S.C. § 1677(24)(A)(iv). Section 771(24)(A)(iv) sets the negligibility levels at three and seven percent, respectively, for threat analysis, and section 771(24)(B) does not specifically amend section 771(24)(A)(iv) for countervailing duty investigations of developing countries. However, section 771(24)(B) clearly indicates a statutory intent to provide special treatment to developing countries subject to countervailing duty investigations. Failure to apply the four percent/nine percent thresholds in such cases would lead to anomalous results that indicate an internal ambiguity in the statutory scheme. Developing countries subject to countervailing duty investigations would virtually never get the benefit of the higher negligibility thresholds, as a negligibility finding for present injury would merely lead to an application of the lower levels for threat and a likelihood that such investigations would continue, rather than terminate, on negligibility grounds. There is no indication that the benefit of higher negligibility thresholds was intended to apply only to present injury analysis and not for threat. We believe the intent of section 771(24)(B), combined with the legislative history and the guidance of the SAA, support the use of the higher negligibility thresholds throughout investigations of developing countries subject to countervailing duty investigations. See H.R. Rep. No. 103-826, pt. 1, at 71-72 (1994); 1994 U.S.C.C.A.N. 3843-44; SAA at 856.

¹⁰⁷ Chairman Bragg dissenting. Chairman Bragg found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports from Indonesia, Thailand, and Venezuela. See Additional and Dissenting Views of Chairman Lynn M. Bragg Regarding Imports from Indonesia, Thailand, and Venezuela. Chairman Bragg does not join the remainder of the majority's views concerning the negligibility of imports from Indonesia, Thailand, and Venezuela.

¹⁰⁸ Commissioner Koplan dissenting as to imports from Thailand. Although he joins the preceding discussion regarding the interpretation of the statutory negligibility thresholds, he found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports from Thailand. See Additional and Dissenting Views of Commissioner Stephen Koplan Regarding Imports from

(continued...)

Indonesia. Indonesian subject imports' share of total imports fluctuated during the period examined, ranging from 0.8 percent in 1996, falling to 0.6 percent in 1997, and rising to 2.6 percent in 1998. Indonesian subject imports' share of total imports was 2.54 percent for the period April 1, 1998, through March 31, 1999.¹⁰⁹ Production capacity is projected to *** in 1999; capacity utilization has *** in both 1999 and 2000.¹¹⁰ Inventories were significantly *** in the interim period of January through March 1999, compared to the same period in 1998.¹¹¹ Inventories of imports from Indonesia held by U.S. importers were only ***,¹¹² and orders of only *** were in place after March 31, 1999.¹¹³ Given the *** level of inventories and the *** level of capacity utilization, we conclude that subject imports from Indonesia will not imminently exceed four percent.

Thailand. Thai subject imports are relatively recent entrants into the U.S. market and were present in only two of the 24 months in 1996 through 1997 and in five months in 1998.¹¹⁴ Thai subject imports' share of total imports rose from 0.0 percent in 1996 to 2.0 percent in 1998. Thai subject imports' share of total imports was 3.41 percent for the period April 1, 1998, through March 31, 1999.¹¹⁵ Capacity utilization rates are at *** and are projected to remain at that level throughout 1999 and 2000.¹¹⁶ While production capacity is projected to *** in 1999 and 2000, shipments to the United States are projected to ***,¹¹⁷ Thai imports held by U.S. importers were ***,¹¹⁸ The only outstanding order for Thai subject imports after March 31, 1999, was for ***,¹¹⁹ Given the *** capacity utilization rates, the *** level of inventories, and lack of outstanding orders, we conclude that subject imports from Thailand will not imminently exceed four percent.

Venezuela. Venezuelan subject imports' share of total imports rose throughout the period examined, increasing from 0.6 percent in 1996 to 1.3 percent in 1997 to 2.2 percent in 1998. Venezuelan subject imports' share of total imports was 2.50 percent for April 1, 1998, through March 31, 1999.¹²⁰ Venezuelan production capacity is projected to *** in 1999, and capacity utilization rates are projected to be *** in 1999 and *** in 2000.¹²¹ Inventories were *** in interim 1999 compared to interim 1998,¹²² and there were *** inventories of Venezuelan subject imports held by U.S. importers at the end of interim 1999.¹²³ Outstanding orders after March 31, 1999, amounted to ***,¹²⁴ Given the *** level of inventories, the lack of significant orders in place, and *** capacity utilization rates, we conclude that subject imports from Venezuela will not imminently exceed four percent.

¹⁰⁸ (...continued)

Indonesia, Thailand, and Venezuela. Commissioner Koplan does not join the remainder of the majority's views concerning the negligibility of imports from Indonesia, Thailand, and Venezuela.

¹⁰⁹ CR at Table IV-3; PR at Table IV-3.

¹¹⁰ CR at Table VII-3; PR at Table VII-3.

¹¹¹ CR at Table VII-3; PR at Table VII-3.

¹¹² CR at Table VII-12; PR at Table VII-12.

¹¹³ CR at VII-21; PR at VII-9.

¹¹⁴ CR at Table IV-5; PR at Table IV-5.

¹¹⁵ CR at Table IV-3; PR at IV-3.

¹¹⁶ CR at Table VII-9; PR at Table VII-9.

¹¹⁷ CR at Table VII-9; PR at Table VII-9.

¹¹⁸ CR at Table VII-12; PR at Table VII-12.

¹¹⁹ CR at VII-21; PR at VII-9.

¹²⁰ CR at Table IV-3; PR at Table IV-3.

¹²¹ CR at Table VII-11; PR at Table VII-11.

¹²² CR at Table VII-11; PR at Table VII-11.

¹²³ CR at Table VII-12; PR at Table VII-12.

¹²⁴ CR at VII-21; PR at VII-9.

Aggregate. Given that we have found there is little potential for significant growth in the share of total imports by any of the three subject countries, we conclude that the aggregate share of these three countries will not imminently exceed nine percent. The share for combined subject imports was 8.45 percent for the period April 1, 1998, through March 31, 1999, and given the facts recited above, we find little potential for that share to imminently exceed nine percent. Accordingly, pursuant to section 703(a)(1),¹²⁵ the countervailing duty investigations for Indonesia, Thailand, and Venezuela are terminated by operation of law.

IV. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(I) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.¹²⁶ In assessing whether subject imports compete with each other and with the domestic like product,¹²⁷ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;¹²⁸
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.¹²⁹

¹²⁵ 19 U.S.C. § 1671b(a)(1).

¹²⁶ 19 U.S.C. § 1677(7)(G)(I).

¹²⁷ The SAA (at 848) expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd 859 F.2d 915 (Fed. Cir. 1988).

¹²⁸ Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. In these investigations, she finds there is sufficient substitutability to conclude there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. Therefore, she concurs with her colleagues that the subject imports should be cumulatively assessed. However, in any final phase investigations she intends to examine further the substitutability between the domestic like product and subject imports of certain cold-rolled steel products from Russia, Japan, and the other countries subject to investigation. See Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan, and Spain, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

¹²⁹ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. 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 1988) (continued...)

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 subject imports compete with each other and with the domestic like product.¹³⁰ Only a “reasonable overlap” of competition is required.¹³¹

One of the four statutory exceptions to the general cumulation rule applies to these investigations, as the countervailing duty investigations of Indonesia, Thailand, and Venezuela are terminated by operation of law as a result of the Commission’s negligibility finding with regard to allegedly subsidized subject imports from these three countries.¹³² However, the antidumping investigations of those countries have not been terminated, and subject imports allegedly sold at LTFV from Indonesia, Thailand, and Venezuela may be cumulated with other subject imports.

B. Analysis

For purposes of these preliminary determinations, with respect to all remaining investigations, we find that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product.

1. Fungibility

The record shows that U.S. mills’ certain cold-rolled steel competes for sales with similar subject imports from all subject countries, and subject imports are generally considered broadly interchangeable by all producers and a majority of importers.¹³³ Some quality concerns about Chinese and Russian subject imports were noted by one domestic producer, while some importers noted that interchangeability between the domestic like product and Japanese subject imports was limited, as some Japanese subject imports were custom designed or were products not made in the United States.¹³⁴ Limited interchangeability between Brazilian subject imports and the domestic like product was claimed by two importers; two also cited limited interchangeability between Russian subject imports and the domestic like product; one importer cited limited interchangeability of subject imports from Argentina, Indonesia, and Venezuela.¹³⁵

All domestic producers asserted that subject imports are broadly interchangeable with other subject imports.¹³⁶ A majority of importers also believe subject imports are broadly interchangeable with all other

(...continued)

Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

¹³⁰ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

¹³¹ See Goss Graphic System, Inc. v. United States, ___ CIT ___, slip op. 98-147 at 8 (Oct. 16, 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

¹³² The applicable exception concerns countries as to which investigations have been terminated. The other three exceptions concern imports from Israel, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

¹³³ CR at II-6; PR at II-4.

¹³⁴ CR at II-6-II-7; PR at II-4.

¹³⁵ CR at II-6-II-7; PR at II-4.

¹³⁶ CR at II-8; PR at II-5.

subject imports.¹³⁷ Four importers claimed that Japanese subject imports were most likely not to be interchangeable with other subject imports by importers, noting limited or no interchangeability with subject imports from Argentina, China, Indonesia, Russia, and Slovakia.¹³⁸ One importer argued that Thai subject imports are not interchangeable with those from Russia, Slovakia, South Africa, and Taiwan, while another claimed a lack of interchangeability between Argentina and Brazil and Brazil and Indonesia.¹³⁹

A majority of domestic producers agreed that nonprice differences between subject imports and the domestic like product were not a significant factor in sales.¹⁴⁰ One domestic producer believed quality differences were always important, while two others noted nonprice factors as being significant in sales of Chinese, Indonesian, Japanese, Russian, or Turkish subject imports.¹⁴¹ Importers were more likely to claim that factors other than price, such as quality, availability, or delivery, are significant in sales decisions and that these factors were significant with regard to China, Indonesia, Russia, Slovakia, Thailand, Turkey, and Venezuela.¹⁴²

Both Japanese and Taiwanese respondents argued against cumulating their subject imports on the grounds that subject imports from these countries were more varied and thus less fungible.¹⁴³ However, for both of these countries, the more varied subject imports represented only *** of total subject imports from each country, with the remainder being of the same general type as other subject imports.¹⁴⁴

The survey of price by product indicated that there were sales of each of the three products for which data were gathered from all subject countries.¹⁴⁵ The pricing data collected by the Commission indicates a substantial concentration of sales from all sources in three common size and grade specifications.¹⁴⁶ Product-specific price comparisons also indicated a striking similarity in price across all countries in the later quarters of data, providing further evidence that quality differences among subject imports from these countries are not so important as to constitute a basis for non-cumulation.¹⁴⁷

2. Geographic Overlap

Domestically produced certain cold-rolled steel is sold to distributors and end users throughout the United States.¹⁴⁸ Subject imports from nine of the twelve countries entered every region during the period examined.¹⁴⁹ Subject imports from two countries—Slovakia and Thailand—entered three of the four regions; subject imports from Venezuela were present in fewer than three regions during the period examined.¹⁵⁰

¹³⁷ CR at II-8; PR at II-5.

¹³⁸ CR at II-8; PR at II-5.

¹³⁹ CR at II-8; PR at II-5.

¹⁴⁰ CR at II-7; PR at II-4.

¹⁴¹ CR at II-7; PR at II-4.

¹⁴² CR at II-7-II-8; PR at II-4-II-5.

¹⁴³ Japanese Respondents' Postconference Brief at 29-30; Taiwanese Respondent's Postconference Brief at 6.

¹⁴⁴ Japanese Respondents' Postconference Brief at 29-30; Taiwanese Respondent's Postconference Brief at 6.

¹⁴⁵ CR at Table V-1; PR at Table V-1.

¹⁴⁶ The pricing data accounted for 40.4 percent of imports from Argentina; 27.7 percent from Brazil; 38.4 percent from China; 35.9 percent from Indonesia; 22.4 percent from Japan; 65.4 percent from Russia; 81.9 percent from Slovakia; 63.7 percent from South Africa; 54.9 percent from Taiwan; 86.6 percent from Thailand; 43.5 percent from Turkey; and 64.5 percent from Venezuela. CR at V-9; PR at V-8.

¹⁴⁷ CR at Table V-2; PR at Table V-2.

¹⁴⁸ CR at IV-11; PR at IV-9.

¹⁴⁹ CR at Table IV-4; PR at Table IV-4.

¹⁵⁰ CR at Table IV-4; PR at Table IV-4.

Subject imports from Thailand and Venezuela were the most concentrated, with over 90 percent of all subject imports from each country entering the Gulf region.¹⁵¹ However, the Gulf region was also the leading port of entry for subject imports from several other countries, including Argentina, Brazil, Japan, Russia, and South Africa.¹⁵² Some countries, such as China and South Africa, had relatively small shares of total subject imports entering specific regions, but maintained some presence even in those regions during the period examined.¹⁵³

3. Channels of Distribution

Sixty percent of the domestic like product is consumed internally.¹⁵⁴ Of the domestic product that reaches the merchant market, a little over 60 percent goes to end users, while the remainder goes to service centers and distributors.¹⁵⁵ Subject imports are likewise sold both to end users and to distributors and service centers.¹⁵⁶

4. Simultaneous Presence

Domestically produced certain cold-rolled steel was present throughout the period examined.¹⁵⁷ Imports from four of the 12 subject countries entered in every month between January 1996 and March 1999; imports from another three countries entered in 38 of the 39 months covered.¹⁵⁸ Imports from Slovakia entered in only five months of 1996 but were present in every subsequent month through March 1999.¹⁵⁹ Of the four remaining countries, subject imports from each were present in more months of 1998 than in preceding years; only subject imports from Thailand were present in fewer than half the months of 1998 but were present in all three months of 1999.¹⁶⁰ The Thai cold-rolling enterprise is relatively new, and Thai subject imports could not have had a regular presence in the U.S. market in the earlier part of the survey period. We view the steady presence of Thai subject imports in the latter part of the period as sufficient presence in the U.S. market.

5. Conclusion

Based on the record in these preliminary investigations, we find there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. With respect to fungibility, we note that product differentiation issues exist between the domestic like product and certain subject imports and between certain subject imports from different subject countries.

¹⁵¹ CR at Table IV-4; PR at Table IV-4.

¹⁵² CR at Table IV-4; PR at Table IV-4.

¹⁵³ CR at Table IV-4; PR at Table IV-4.

¹⁵⁴ CR at I-8; PR at I-5.

¹⁵⁵ CR at I-8; PR at I-6.

¹⁵⁶ CR at I-8; PR at I-6. According to the product/channel of distribution data collected in this investigation, *** of domestic shipments of products 1, 2, and 3 went to service centers and *** went to end users, while *** of subject import shipments went to service centers and *** went to end users. OINV Memoranda INV-W-161 (July 15, 1999).

¹⁵⁷ CR at IV-11; PR at IV-10.

¹⁵⁸ CR at Table IV-5; PR at Table IV-5.

¹⁵⁹ CR at Table IV-5; PR at Table IV-5.

¹⁶⁰ CR at Table IV-5; PR at Table IV-5.

We also note some variance in geographic overlap and simultaneous presence in the market. Nevertheless, based on the record in this preliminary phase of these investigations, we find a reasonable overlap of competition exists, and we therefore cumulate all subject imports for our analysis. We intend to examine these issues closely in any final phase of these investigations.

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND/OR LTFV IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.¹⁶¹ ¹⁶² In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹⁶³ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹⁶⁴ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the

¹⁶¹ 19 U.S.C. § 1671b(a) and 1673b(a).

¹⁶² Commissioner Crawford notes that the statute requires that the Commission determine whether there is a reasonable indication that a domestic industry is “materially injured by reason of” the allegedly 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*, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and *Steel Concrete Reinforcing Bars from Turkey*, Inv. No. 731-TA-745(Final), USITC Pub. 3034 at 35 (April 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).

¹⁶³ 19 U.S.C. § 1677(7)(B)(I). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also *Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

¹⁶⁴ 19 U.S.C. § 1677(7)(A).

state of the industry in the United States.¹⁶⁵ 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.”¹⁶⁶

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing certain cold-rolled steel is materially injured by reason of subject imports from Brazil that are allegedly subsidized and by reason of subject imports from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela that are allegedly sold in the United States at less than fair value.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in these investigations.

1. Captive Consumption

The domestic industry captively consumes the majority, *i.e.*, 60 percent, of its production of the domestic like product in the manufacture of downstream articles.¹⁶⁷ Accordingly, we have considered whether the statutory captive production provision requires us to focus our analysis primarily on the merchant market when assessing market share and the factors affecting the financial performance of the domestic industry.^{168 169}

¹⁶⁵ 19 U.S.C. § 1677(7)(C)(iii).

¹⁶⁶ 19 U.S.C. § 1677(7)(C)(iii).

¹⁶⁷ CR at I-8; PR at I-6.

¹⁶⁸ The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), provides:

(iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that --

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,

(II) the domestic like product is the predominant material input in the production of that downstream article, and

(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

¹⁶⁹ Chairman Bragg and Commissioner Askey note that the statute requires the Commission to analyze the impact of the subject imports on all domestic production operations, including both captive and merchant market shipments. *See* 19 U.S.C. §§ 1677(4)(A) and 1677(7)(B). Moreover, they note that, even if the statutory provisions are met and the captive production provision applies, it merely permits the Commission to “focus

(continued...)

We find that the threshold provision of the captive production has been met, as domestic producers internally transfer 60 percent of their domestic production for captive consumption and sell the remaining 40 percent on the merchant market. However, we find that the record contains insufficient information to determine the applicability of factors (I) and (III) of the captive production provision. We note, in particular, the differing definitions of downstream products provided by petitioners and respondents. Petitioners claim two downstream products are produced from internally-transferred certain cold-rolled steel: corrosion-resistant steel and tin mill products.¹⁷⁰ Respondents assert that domestic producers also produce blanks, as well as furniture and other pipes and tubes, as downstream products.¹⁷¹ We are unable to reconcile these opposing claims on the basis of the evidence available.¹⁷² We will seek additional information, including data from purchasers, in any final phase of these investigations and will reexamine the applicability of the captive production provision at that time.

Even when the captive production provision is not applied, however, we may take into consideration the existence of a significant volume of captive production as a relevant condition of competition.¹⁷³ For purposes of these preliminary determinations, we do so here.¹⁷⁴

2. Other Conditions of Competition

Demand for certain cold-rolled steel has been relatively strong over the period examined. Demand for certain cold-rolled steel is tied closely to the state of the overall economy, with significant portions of demand going to automotive and appliance applications.¹⁷⁵ Apparent domestic consumption in the merchant market rose 8.2 percent between 1996 and 1997.¹⁷⁶ Apparent domestic consumption in the merchant market dropped slightly in 1998, but 1998 levels were still 7.4 percent above 1996 consumption.¹⁷⁷ A slight increase occurred in the first three months of 1999 compared to the same period in 1998.¹⁷⁸ Demand growth was more stable in the total market for certain cold-rolled steel products. Total apparent domestic consumption, including internal transfers, grew 4.4 percent in 1997 and a further

¹⁶⁹ (...continued)

primarily” on the merchant market operations of the industry; the provision does not allow the Commission to disregard the industry’s captive consumption completely. 19 U.S.C. § 1677(7)(C)(iv).

¹⁷⁰ Petitioners’ Postconference Brief at 29.

¹⁷¹ Joint Respondents’ Postconference Brief at 29.

¹⁷² Commissioner Crawford notes that, given the time constraints of preliminary investigations, the Commission does not have the data to evaluate fully the issues surrounding the applicability of the captive consumption provision. This provision provides an exception to the general rule of considering the domestic industry as a whole. She finds that the record does not support a conclusion that all criteria of the exception are met. Therefore, she finds that the captive production provision does not apply. Consequently, her analysis focuses on whether there is a reasonable indication of material injury by reason of the subject imports to the domestic industry as a whole.

¹⁷³ See, e.g., Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico, Inv. Nos. 731-TA-794-796 (Final), USTIC Pub. 3190 (May 1999) at 14.

¹⁷⁴ To the extent that the remainder of these Views discuss merchant market data first, and aggregated data second, these Views do not reflect the sequence of analysis engaged in by Chairman Bragg and Commissioner Askey. See, e.g., Certain Hot-Rolled Steel Products from Japan, Inv. No. 731-TA-807, USITC Pub. 3202 (June 1999) at 29 n.24.

¹⁷⁵ CR at II-1; PR at II-1.

¹⁷⁶ CR at Table III-3; PR at Table III-3.

¹⁷⁷ CR at Table III-3; PR at Table III-3.

¹⁷⁸ CR at Table III-3; PR at Table III-3.

2.6 percent in 1998, for an overall increase of 7.0 percent between 1996 and 1998.¹⁷⁹ Total apparent domestic consumption, including internal transfers, increased 1.9 percent between interim 1998 and interim 1999.¹⁸⁰

During this time period, the domestic industry steadily increased its production capacity. Total domestic production capacity increased by 3.8 percent between 1996 and 1997, and by 3.7 percent between 1997 and 1998, for an overall increase of 7.7 percent between 1996 and 1998.¹⁸¹ An additional increase, of 0.7 percent, occurred in the interim 1999 period compared to the same period in 1998.¹⁸² Thus, between 1996 and 1998, capacity increased by a greater amount than did total apparent consumption, both in percentage terms (7.7 versus 7.0) and in terms of absolute volume (2.72 million tons versus 2.29 million tons).¹⁸³ Capacity utilization rates declined despite increased production levels in part due to the new capacity added during the period examined.¹⁸⁴ U.S. producers' capacity utilization rates declined from 87.2 percent in 1996 to 83.3 percent in 1998, but increased slightly in interim 1999 to 85.1 percent.¹⁸⁵

The ratio of inventories to total shipments increased from 6.1 percent to 6.2 percent in 1998 but fell to 5.7 percent during interim 1999, the same rate recorded in interim 1998.¹⁸⁶ *** U.S. producers indicated they exported during the period examined.¹⁸⁷ U.S. producers' export shipments were small compared to domestic shipments; they increased between 1996 and 1997, but declined in 1998.¹⁸⁸ The share, by quantity, of U.S. producers' export shipments declined from 0.8 percent in 1996 to 0.6 percent in 1998.¹⁸⁹

U.S. mills producing and selling certain cold-rolled steel products reported that domestically produced and imported certain cold-rolled steel products are broadly interchangeable.¹⁹⁰ A majority of importers also reported that domestically produced and imported certain cold-rolled steel products are broadly interchangeable.¹⁹¹ However, many importers identified specific limitations on interchangeability.¹⁹²

The majority of the U.S. producers reported that nonprice differences between U.S.-produced and subject imports are not a significant factor in their firms' sales of certain cold-rolled steel products.¹⁹³ Unlike U.S. producers, a higher share of importers indicated that nonprice differences are significant in sales of certain cold-rolled steel products.¹⁹⁴ The most important differences cited were quality, availability, and delivery.¹⁹⁵

¹⁷⁹ CR at Table III-3; PR at Table III-3.

¹⁸⁰ CR at Table III-3; PR at Table III-3.

¹⁸¹ CR at Table III-2; PR at Table III-2.

¹⁸² CR at Table III-2; PR at Table III-2.

¹⁸³ CR at Tables IV-6 and C-1; PR at Tables IV-6 and C-1.

¹⁸⁴ CR at Tables III-2 and C-1; PR at Tables III-2 and C-1.

¹⁸⁵ CR at Table III-2; PR at Table III-2.

¹⁸⁶ CR at II-3; PR at II-2.

¹⁸⁷ CR at II-2; PR at II-2.

¹⁸⁸ CR at II-2; PR at II-2.

¹⁸⁹ CR at II-2-II-3; PR at II-2.

¹⁹⁰ CR at II-6, II-8, II-9; PR at II-4, II-5, II-6.

¹⁹¹ CR at II-6, II-8, II-9; PR at II-4, II-5, II-6.

¹⁹² CR at II-7, II-8-II-9; PR at II-4, II-5, II-6.

¹⁹³ Such factors include quality, availability, transportation network, product range, and technical support. CR at II-7-II-8; PR at II-4-II-5.

¹⁹⁴ CR at II-7-II-8; PR at II-4-II-5.

¹⁹⁵ CR at II-7; PR at II-4-II-5.

A significant portion of all certain cold-rolled steel sold in the merchant market is sold pursuant to contracts; half of responding domestic producers reported that more than half of their sales were by contract.¹⁹⁶ The remainder is sold on the spot market. Of the merchant market sales by U.S. producers, approximately 60 percent is sold directly to end users, while the remaining 40 percent is sold to distributors or service centers.¹⁹⁷

Although the market is still dominated by basic oxygen furnace mills,¹⁹⁸ the period examined has seen increased participation in the certain cold-rolled steel market by producers operating electric arc furnaces (EAF), including the introduction of one new firm.¹⁹⁹ EAF mills rely on scrap as their primary raw material and may benefit from price differences between scrap and iron ore, which is more likely to be used by basic oxygen furnace mills.²⁰⁰ In addition, re-rollers, which typically buy hot-rolled band and then cold roll it, may benefit from declining hot-rolled steel prices.²⁰¹

Finally, we note the presence of a product, thin gauge hot-rolled steel (TGHR), which is neither covered by the scope of these investigations nor included in the domestic like product. TGHR at this time accounts for a small share of the market but potentially could compete with certain cold-rolled steel for a variety of applications.

B. Volume

Section 771(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.”^{202 203}

The merchant market share of total subject imports rose throughout the period examined, with subject imports gaining market share at the expense of subject producers. The subject imports accounted for 7.5 percent of the total merchant market in 1996, 11.6 percent in 1997, and 14.7 percent in 1998.²⁰⁴ Subject imports accounted for a greater share of the merchant market in interim 1999, 12.6 percent, than in the same period in 1998, when subject imports accounted for 9.6 percent of the merchant market.²⁰⁵ During that same period, the domestic producers’ share of the merchant market slipped from 83.9 percent in 1996 to 79.8 percent in 1997 and to 77.0 percent in 1998.²⁰⁶ The domestic producers’ share of the merchant market was lower in the first three months of 1999 than in the same period in 1998, 80.9 percent

¹⁹⁶ CR at V-2; PR at V-8.

¹⁹⁷ CR at I-8; PR at I-6.

¹⁹⁸ CR at III-4; PR at III-4. Based on responses to the Commission’s questionnaires, basic oxygen furnace mills accounted for *** of 1998 production of certain cold-rolled steel. Electric arc furnace mills accounted for ***; re-rollers accounted for the remaining ***. CR at Table III-1; PR at Table III-1.

¹⁹⁹ CR at III-5; PR at III-5.

²⁰⁰ CR at V-1; PR at V-1.

²⁰¹ CR at V-1; PR at V-1.

²⁰² 19 U.S.C. § 1677(7)(C)(I).

²⁰³ Commissioner Crawford joins only in the factual, numerical discussion of the volume of 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 a reasonable indication 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.

²⁰⁴ CR at Table IV-9; PR at Table IV-9.

²⁰⁵ CR at Table IV-9; PR at Table IV-9.

²⁰⁶ CR at Table IV-9; PR at Table IV-9.

compared to 85.2 percent.²⁰⁷ Nonsubject imports commanded a steady share of the market throughout the years 1996 through 1998, ranging between 8.3 and 8.6 percent.²⁰⁸

Market shares showed somewhat similar trends for the industry as a whole,²⁰⁹ including captive consumption as well as open market sales. Subject imports accounted for 3.5 percent of the market in 1996, then rose to 5.5 percent in 1997 and 6.8 percent in 1998.²¹⁰ Thus, the market share of subject imports increased 1.3 percentage points between 1997 and 1998. The total market share of subject imports was higher in the first three months of 1999, at 5.6 percent, than in the same period in 1998, when subject imports accounted for 4.3 percent.²¹¹ At this same time, the share accounted for by domestic production decreased. The share of total apparent domestic consumption accounted for by domestic production was 92.6 percent in 1996, 90.4 percent in 1997, and 89.4 percent in 1998.²¹² The domestic producers' share of total apparent domestic consumption was lower in interim 1999 than in interim 1998, 91.5 percent compared to 93.3 percent in the earlier period.²¹³ Again, the share of nonsubject imports was fairly steady, with the nonsubject imports ranging from 3.8 to 4.1 percent of total apparent domestic consumption between 1996 and 1998.²¹⁴

Total subject imports increased from 1.126 million tons in 1996 to 2.370 million tons in 1998, an increase of 110.6 percent.²¹⁵ Total subject imports rose an additional 31.9 percent in interim 1999 to 469,409 tons, compared to 376,334 tons in interim 1998.²¹⁶ During that same time period, domestic shipments to the merchant market declined from a 1997 peak of 12.921 million tons to 12.375 million tons in 1998.²¹⁷ Domestic shipments to the merchant market declined 5.0 percent in interim 1999 to 3.188 million tons, compared to 3.356 million tons in interim 1998.²¹⁸

Nevertheless, total domestic shipments, including internal transfers, actually grew in volume during the period examined, rising 3.3 percent between 1996 and 1998 to 31.189 million tons.²¹⁹ Total domestic shipments showed virtually no change between interim 1998 and interim 1999.²²⁰

The actual volume of subject imports, compared to domestic shipments, remained relatively small over the period examined; domestic producers continued to account for nearly 90 percent of the total market (including internal transfers) and for 77 percent of the merchant market. The subject imports gained some market share during the period examined while the domestic producers' share declined, despite growth in total domestic consumption. For purposes of these preliminary determinations, we therefore find the volume of subject imports to be significant.

²⁰⁷ CR at Table IV-9; PR at Table IV-9.

²⁰⁸ CR at Table IV-9; PR at Table IV-9.

²⁰⁹ As noted previously, for purposes of these preliminary investigations, Commissioner Crawford found that the captive production provision does not apply. Therefore, her analysis of volume reflects the role of subject imports in the U.S. market as a whole, and does not exclude consideration of the domestic industry's captive consumption of cold-rolled steel.

²¹⁰ CR at Table IV-8; PR at Table IV-8.

²¹¹ CR at Table IV-8; PR at Table IV-8.

²¹² CR at Table IV-8; PR at Table IV-8.

²¹³ CR at Table IV-8; PR at Table IV-8.

²¹⁴ CR at Table IV-8; PR at Table IV-8.

²¹⁵ CR at Table IV-7; PR at Table IV-7.

²¹⁶ CR at Table IV-7; PR at Table IV-7.

²¹⁷ CR at Table IV-7; PR at Table IV-7.

²¹⁸ CR at Table IV-7; PR at Table IV-7.

²¹⁹ CR at Table IV-6; PR at Table IV-6.

²²⁰ CR at Table IV-6; PR at Table IV-6.

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.²²¹

The evidence gathered in these investigations indicates that there is a significant degree of substitutability between the subject merchandise and the domestic like product, and that price, quality, and ability to supply are all important considerations for purchasers.^{222 223}

Price declines were notable throughout the period and across products. The average unit value (AUV) of subject imports fell 4.4 percent between 1996 and 1997, from \$471 to \$450.²²⁴ A further decline of 10.5 percent occurred in 1998, as the AUV for subject imports dropped to \$403.²²⁵ Altogether, the AUV of subject imports fell 14.4 percent between 1996 and 1998.²²⁶ By interim 1999, the AUV for subject

²²¹ 19 U.S.C. § 1677(7)(C)(ii).

²²² CR at II-5-II-9; PR at II-4-II-6.

²²³ Commissioner Crawford finds that the substitutability between the domestic like product and subject imports of cold-rolled steel is moderated by the substantial share of the domestic like product that is captively consumed by the domestic industry. Her analysis of the price effects of the subject imports follows.

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 for subject imports from Russia, cold-rolled steel is moderately substitutable among sources, and thus even relatively small margins likely would have resulted in a shift in demand away from the subject imports. In these investigations, the alleged margins of dumping ranged from 17 to 25 percent for Argentina, China, and South Africa; from 14 to 33 percent for Turkey; and from approximately 30 to 80 percent for other subject countries. Therefore, most of the demand for subject imports likely would have shifted away at fairly traded prices. Nonsubject imports are a small presence in the market, accounting for only 3.8 percent of the market in 1998, and thus nearly all of any shift in demand away from the subject imports likely would have been captured by the domestic industry.

The cumulated market share of the subject imports was 6.8 percent in 1998. Thus, the shift in demand toward the domestic product would not have been particularly large. However, Commissioner Crawford finds that shift in demand toward the domestic product would have been significant. Nonetheless, the increase in demand for the domestic product would not have allowed the domestic industry to raise its prices significantly. The domestic industry had sufficient unused capacity and inventories that would have been available to satisfy the increased demand. There are six major domestic producers and at least 13 smaller producers that compete among themselves. Thus, the available capacity, inventories, and competition within the domestic industry would have imposed considerable 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 slight effects on domestic prices.

²²⁴ CR at Table IV-2; PR at Table IV-2.

²²⁵ CR at Table IV-2; PR at Table IV-2.

²²⁶ CR at Table IV-2; PR at Table IV-2.

imports had fallen to \$367, down 20.3 percent from the same period in 1998.²²⁷ In contrast, the AUV for nonsubject imports fell only 5.4 percent between 1996 and 1998.²²⁸ The AUV for domestic shipments to the merchant market fell 3.0 percent between 1996 and 1998 and dropped 7.0 percent between interim 1998 and interim 1999.²²⁹ The AUV of all domestic shipments, including internal transfers, slipped 3.6 percent between 1996 and 1998 and fell 8.5 percent between interim 1998 and interim 1999.²³⁰

Price declines are also significant when measured by the specific product pricing data obtained in these investigations, which also reflect significant underselling by subject imports. Price declines were particularly notable and consistent for products 2 and 3.²³¹ Of the 500 quarterly comparisons available in this record, subject imports undersold domestic products in 394 instances, or in nearly 80 percent of all comparisons.²³² Underselling margins in those quarterly comparisons ranged from *** to ***.²³³

The specific product pricing data obtained in these investigations also showed significant price declines across all product/channel of distribution combinations.²³⁴ Specific product price comparisons also showed a significant degree of convergence, with the price gap between subject imports with perceived higher quality (such as those from Japan) and those with perceived quality problems (such as those from Russia) narrowing significantly over the survey period.²³⁵

We note that other factors in the current market may be placing pressure on domestic prices. The effect on domestic prices of increased domestic capacity, including new EAF mill capacity, increased productivity and cost declines, as well as the potential competition from an evolving product, TGHR, require additional scrutiny in any final phase of these investigations.²³⁶ However, while we acknowledge the presence of these factors in the market, we still find that subject imports themselves have depressed prices to a significant degree.

D. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.²³⁷ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive

²²⁷ CR at Table IV-2; PR at Table IV-2.

²²⁸ CR at Table IV-2; PR at Table IV-2.

²²⁹ CR at Table III-3; PR at Table III-3.

²³⁰ CR at Table C-1; PR at Table C-1.

²³¹ CR at Table V-2; PR at Table V-2.

²³² CR at V-20-V21; PR at V-14.

²³³ CR at V-20-V21; PR at V-14.

²³⁴ CR at Table V-2; PR at Table V-2.

²³⁵ CR at Table V-2; PR at Table V-2.

²³⁶ Respondents have also cited imports from Korea as a factor affecting domestic prices. Joint Respondents' Postconference Brief at 80-82. We have not gathered pricing data on any nonsubject imports, including imports from Korea, of certain cold-rolled steel and decline to assess the effect on domestic prices of nonsubject imports without such information. We will examine the role of nonsubject imports more closely in any final phase of these investigations.

²³⁷ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{238 239 240}

The data show a domestic industry with declines in a number of key indicators, despite increases in overall shipments and domestic consumption. Total production capacity rose 7.7 percent between 1996 and 1998.²⁴¹ Total production increased at the more modest rate of 2.9 percent between 1996 and 1998, causing capacity utilization rates to decrease from 87.2 percent in 1996 to 83.3 percent in 1998.²⁴² Despite a modest increase of 0.7 percent in capacity between interim 1998 and interim 1999, the decline of 1.3 percent in production left capacity utilization rates lower in interim 1999 than in interim 1998.²⁴³ During the period examined, the number of production-related workers dropped 3.8 percent between 1997 and 1998 and fell 2.5 percent for the years 1996 through 1998.²⁴⁴ The number of production-related workers fell 2.3 percent between interim 1998 and interim 1999.²⁴⁵ Hours worked by production-related workers fell 1.5 percent between 1996 and 1998 and dropped more sharply in interim 1999, down 6.4 percent from the same interim period in 1998.²⁴⁶ Capital expenditures decreased throughout the period examined, while R&D expenditures peaked in 1997 and slipped in 1998 and in interim 1999.²⁴⁷

The domestic industry saw operating income on merchant sales, expressed as a ratio of net sales, fall by half between 1997 and 1998.²⁴⁸ For the first three months of 1999, operating income was negative.²⁴⁹ The same result occurred for both merchant sales and internal transfers combined: a sharp drop in operating income between 1997 and 1998, with operating income turning negative in the first quarter of 1999.^{250 251 252} The number of domestic producers with negative operating income has risen over

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

²³⁹ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce stated that the estimated dumping margins were as follows: Argentina, 24.53; Brazil, from 31.48 to 63.32; China, from 21.33 to 23.72; Indonesia, 43.90; Japan, 26.60 to 53.04; Russia, 56.80 to 73.98; Slovakia, 61.28 to 63.45; South Africa, 16.65; Taiwan, 38.20 to 54.54; Thailand, 57.57 to 80.67; Turkey, 13.85 to 32.91; and Venezuela, 25.54 to 56.72. 64 Fed. Reg. at 34194 (June 25, 1999).

²⁴⁰ 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).

²⁴¹ CR at Table C-1; PR at Table C-1.

²⁴² CR at Table C-1; PR at Table C-1.

²⁴³ CR at Table C-1; PR at Table C-1.

²⁴⁴ CR at Table C-1; PR at Table C-1.

²⁴⁵ CR at Table C-1; PR at Table C-1.

²⁴⁶ CR at Table C-1; PR at Table C-1.

²⁴⁷ CR at Table VI-7; PR at Table VI-7.

²⁴⁸ CR at Table VI-1; PR at Table VI-1.

²⁴⁹ CR at Table VI-1; PR at Table VI-1.

²⁵⁰ CR at Table VI-5; PR at Table VI-5.

²⁵¹ We are mindful of the arguments raised by respondents regarding the valuations placed by domestic producers on their internal transfers. In any final phase of these investigations, we will examine the valuation of all transfers, as well as cost allocations, following our usual methodology.

²⁵² Commissioner Crawford does not rely on any analysis of the trends in the statutory impact factors in her determination of a reasonable indication 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

(continued...)

the period. With respect to merchant sales, only *** had negative operating income in 1996, compared to *** in 1998 and *** in the first quarter of 1999.²⁵³ With respect to combined merchant sales and internal transfers, the number of domestic producers with negative operating income in 1996 was ***; that number rose to *** in 1998 and to *** in the first quarter of 1999.²⁵⁴

In sum, based on the increases in the volume of the subject imports; the declines in average unit values of the subject imports and in the domestic industry's sales prices; underselling by subject imports; and the adverse trends in the financial condition of the domestic industry, particularly in the latter part of the survey period, as evidenced by the increasing number of domestic producers posting operating losses, we find that the subject imports are having an adverse impact on the domestic industry producing certain cold-rolled steel.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing certain cold-rolled steel products is materially injured by reason of imports of certain cold-rolled steel products from Brazil that are allegedly subsidized and by reason of imports of certain cold-rolled steel products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela that are allegedly sold in the United States at less than fair value.

²⁵² (...continued)

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 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 shift in demand toward the domestic product would have been significant. The increase in demand for the domestic product would have been significant, 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, Commissioner Crawford determines that there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports.

²⁵³ CR at Table VI-1; PR at Table VI-1.

²⁵⁴ CR at Table VI-6; PR at Table VI-6.

**ADDITIONAL AND DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG
REGARDING IMPORTS FROM INDONESIA, THAILAND, AND VENEZUELA**

Although I concur with my colleagues in finding that subject imports from Indonesia, Thailand, and Venezuela, are negligible for purposes of assessing present material injury in the context of the instant preliminary countervailing duty investigations, I further find, however, that there is a potential that subject imports from these three countries will imminently exceed the applicable aggregate negligibility threshold. Accordingly, I respectfully dissent from that portion of the majority's views which finds to the contrary.

Negligibility:

For the reasons set forth fully in the majority's views, I find that the appropriate negligibility thresholds to be applied to developing countries in the Commission's assessment of threat of material injury in countervailing duty investigations are 4 percent (individually) and 9 percent (in the aggregate). Because subject imports from Indonesia, Thailand, and Venezuela, together accounted for 8.45 percent of total imports during the most recent twelve month period preceding the filing of the petitions for which data are available,¹ I find such imports to be negligible for purposes of assessing present material injury. I note, however, the relatively slim margin by which imports from these three countries fell below the applicable negligibility threshold.

Significantly, although subject imports from Indonesia, Thailand, and Venezuela, fell below the aggregate negligibility threshold during the applicable twelve month period, the most recent quarterly import data indicate otherwise. Specifically, during the first quarter of 1999, subject imports from these three countries accounted for 10.2 percent of total imports of the subject merchandise into the United States,² well in excess of the negligibility threshold. This compares to a combined 1.1 percent share of total imports for Indonesia, Thailand, and Venezuela, in the first quarter of 1998, and a 6.8 percent share of total imports in calendar year 1998.³

Moreover, sharply increasing individual trends among the three countries further indicate that subject imports from Indonesia, Thailand, and Venezuela, will imminently exceed the aggregate negligibility threshold.⁴ With regard to Indonesia, subject imports increased by over four times between 1996 and 1998, and by over one-third between interim 1998 and interim 1999 (albeit from a relatively low import volume base in interim 1998).⁵ With regard to Thailand, the record indicates that there were virtually no subject imports during the period of investigation until 1998, and even then, in only five months during the entire year;⁶ for all of 1998, subject imports from Thailand amounted to 74,045 short tons.⁷ In comparison, subject imports from Thailand during the first quarter of 1999 amounted to 55,378

¹ See Table IV-3, CR at IV-10, PR at IV-9.

² See Table IV-6, CR at IV-13, PR at IV-12.

³ See *id.*

⁴ In this regard, I note that the Statement of Administrative Action ("SAA") to the Uruguay Round Agreements Acts states that "****mport volumes at the conclusion of the 12-month period examined for purposes of considering negligibility may be below the negligibility threshold, but increasing at a rate that indicates that they are likely to imminently exceed that threshold during the period the Commission examines in conducting its threat analysis." SAA at 186.

⁵ See Table IV-6, CR at IV-13, PR at IV-12.

⁶ See Tables IV-5 and IV-6, CR at IV-13 and IV-13, PR at IV-11 and IV-12.

⁷ Table IV-6, CR at IV-13, PR at IV-12. Thus, on an annualized basis, subject imports from Thailand would have amounted to 177,708 short tons in 1998, which would correspond to 4.8 percent of total imports in that year.

short tons, or almost three-quarters of the import volume for the preceding year.⁸ With regard to Venezuela, subject imports increased by almost five times between 1996 and 1998, and by over three times between interim 1998 and interim 1999 (albeit from a relatively low import volume base in interim 1998).⁹

In my analysis, I have not placed great weight on export projections contained in the staff report which are based upon responses to Commission questionnaires. Data submitted to the Commission project that subject imports from Indonesia, Thailand, and Venezuela, will total *** in 1999.¹⁰ However, data submitted in response to Commission questionnaires as supplemented by official statistics from the Department of Commerce indicate that imports from these three countries during the first quarter of 1999 already amounted to 75,779 short tons, which is roughly *** percent of the total import volume projected for all of 1999 based solely on questionnaire responses.¹¹ At this rate, projected annual imports from Indonesia, Thailand, and Venezuela, would have been realized **. Accordingly, I decline to place great weight on the export projections contained in the staff report.

An examination of production capacity and capacity utilization, particularly with regard to Thailand, further supports my determination. Although production capacity and capacity utilization levels for Indonesia and Venezuela generally *** over the period of investigation,¹² data for Thailand depict a much different scenario.

Production capacity in Thailand increased almost *** between 1997 and 1998, and is projected to increase an additional *** percent in 1999.¹³ Moreover, capacity utilization for Thailand has been at *** percent for each period examined by the Commission, and is projected to remain so in 1999 and 2000.¹⁴ Thus, the increase in capacity projected for 1999 translates into an additional *** of production available for export—which alone constitutes an amount equivalent to *** percent of total imports into the United States in 1998.¹⁵

Finally, I note that U.S. importers' reported orders and deliveries of subject imports from Indonesia, Thailand, and Venezuela, after March 31, 1999, are **. I decline to place great weight on the evidence of U.S. importers' reported orders and deliveries contained in the staff report, because of the substantial increases in import volumes from these three countries evidenced during the period of investigation (and in particular the increases during the first quarter of 1999).¹⁷ These increases indicate the very real potential for rapid increases in imports from these countries within relatively short periods of time; accordingly, I find that evidence of U.S. importers' reported orders and deliveries is of limited probative value.

Based upon all of the foregoing, and in particular the fact that subject imports from Indonesia,

⁸ *See id.*

⁹ *See id.*

¹⁰ *See* Tables VII-3, VII-9, and VII-11, CR at V-II-7, VII-17, and VII-20, PR at VII-4, VII-8, and VII-9.

¹¹ *See* Table IV-6, CR at IV-13, PR at IV-12.

¹² Production capacity in Indonesia declined by *** percent between 1996 and 1998, and is projected to decline a further *** percent in 1999, while capacity utilization declined from *** percent in 1996 to *** percent in 1998, but is projected to increase to *** percent in 1999. Table VII-3, CR at VII-7, PR at VII-4. Production capacity in Venezuela remained constant 1996 and 1998, and is projected to decline *** percent in 1999, while capacity utilization increased from *** percent in 1996 to *** percent in 1998, and is projected to increase further to *** percent in 1999. Table VII-11, CR at VII-20, PR at VII-9.

¹³ *See* Table VII-9, CR at VII-17, PR at VII-9.

¹⁴ *Id.*

¹⁵ *See id.* and Table IV-6, CR at IV-13, PR at IV-12.

¹⁶ CR at VII-21, PR at VII-9.

¹⁷ Table IV-6, CR at IV-13, PR at IV-13.

Thailand, and Venezuela, already accounted for 10.2 percent of total imports during the most recent period for which the Commission has data, I am satisfied that “there is a potential that . . . the aggregate volumes of imports from Indonesia, Thailand, and Venezuela will imminently exceed” nine percent of the volume of all such merchandise imported into the United States.¹⁸ Accordingly, I turn to whether there is a reasonable indication that subject imports from these three countries threaten material injury to the domestic industry.

Legal Standard:

In assessing whether there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports from Indonesia, Thailand, and Venezuela, the statute directs the Commission to consider “whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued”¹⁹ The Commission may not make such a determination “on the basis of mere conjecture or supposition,”²⁰ and considers the threat factors²¹ as a whole; indeed, the presence or absence of any such factor is not dispositive of the Commission’s determination.²² In making my determination, I have considered all statutory factors that are relevant to these investigations.²³

Cumulation:

The statute provides that the Commission may, in determining threat of material injury, cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.²⁴ I note that I have joined the majority in cumulating subject imports from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, for purposes of assessing present material injury in the preliminary antidumping investigations and the preliminary countervailing duty investigation involving Brazil. The same analysis supports cumulation of all subject imports in the assessment of threat of material injury by reason of allegedly subsidized imports from Indonesia, Thailand, and Venezuela.²⁵ Accordingly, for the reasons set forth fully in the majority’s views, I find there is a reasonable overlap of competition among subject imports and

¹⁸ 19 U.S.C. § 1677(24)(A)(iv); *see also* 19 U.S.C. § 1677(24)(B). Because I find there is a potential that aggregate subject imports from Indonesia, Thailand, and Venezuela, will imminently exceed nine percent of total imports, I need not address whether there is a potential that subject imports from any of these three countries, individually, will imminently exceed 4 percent of total imports. *See infra n. 25.*

¹⁹ 19 U.S.C. § 1677(7)(F)(ii).

²⁰ *Id.*

²¹ 19 U.S.C. § 1677(7)(F)(i).

²² *See* 19 U.S.C. § 1677(7)(F)(ii).

²³ 19 U.S.C. § 1677(7)(F)(i). I note that factor (VII) is not relevant, as it concerns raw and processed agricultural products.

²⁴ *See* 19 U.S.C. § 1677(7)(H).

²⁵ For additional discussion of my approach to cumulation in similar contexts, I refer to my dissenting views regarding imports from the Czech Republic in Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387-392 (Preliminary) and 731-TA-815-822 (Preliminary), USITC Pub. No. 3181 (April 1999), as well as my dissenting views regarding imports from Germany in Stainless Steel Wire Rod From Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. 3126 (Sept. 1998).

between subject imports and the domestic like product. I therefore cumulate all subject imports for purposes of my threat analysis.

Threat of Material Injury:

For purposes of assessing the threat of material injury posed by subject imports from Indonesia, Thailand, and Venezuela, I am mindful of the fact that I have joined my colleagues in finding a reasonable indication that the domestic industry is materially injured by reason of cumulated imports from all twelve countries subject to the preliminary antidumping investigations, including Indonesia, Thailand, and Venezuela. In conjunction with the reasonable indication of present material injury caused by these cumulated subject imports, I further determine that there is also a reasonable indication that subject imports from Indonesia, Thailand, and Venezuela, pose an imminent threat of material injury to the domestic industry.

First, I note that the Department of Commerce has not stated whether the alleged subsidies under investigation are described under Article 3 or Article 6.1 of the Subsidies Agreement.²⁶ I further note, however, that Petitioners assert that the alleged subsidies are either export subsidies, or are subsidies that confer *ad valorem* benefits exceeding five percent.²⁷

Second, I note that although capacity utilization in Thailand has been at *** percent in 1997 and 1998, and is projected to remain so in 1999 and 2000, capacity utilization in Indonesia is projected to increase from *** percent in 1998 to *** percent in 1999 and *** percent in 2000 (albeit in the face of a projected *** percent decline in production capacity),²⁸ while capacity utilization in Venezuela is projected to increase from *** percent in 1998 to *** percent in 1999 and *** percent in 2000 (albeit in the face of a projected *** percent decline in production capacity).²⁹ Moreover, as noted, production capacity in Thailand is projected to increase from *** in 1998 to *** in 1999 and *** in 2000, increases of *** percent and *** percent, respectively.³⁰ I find that this record evidence indicates a likelihood of substantially increased subject imports into the United States.

Third, as noted, subject imports from each of the three countries have increased at significant rates throughout the period of investigation, and have continued to do so in the first quarter of 1999.³¹ I find that this record evidence indicates a likelihood of substantially increased subject imports into the United States.

Fourth, I note that with regard to pricing, subject imports from Indonesia undersold the domestic like product in 13 out of 15 quarterly pricing comparisons, with an average margin of underselling of *** percent.³² Subject imports from Thailand undersold the domestic like product in all 12 quarterly pricing comparisons, with an average margin of underselling of *** percent.³³ As for Venezuela, subject imports undersold the domestic like product in all 31 quarterly pricing comparisons, with an average margin of underselling of *** percent.³⁴ I find that this record evidence indicates that subject imports are entering the United States at prices that are likely to have a significant depressing or suppressing effect on domestic

²⁶ See Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, Indonesia, Thailand, and Venezuela, 64 Fed. Reg. 34204 (June 25, 1999).

²⁷ Petitioners' Postconference Brief and Responses to Questions at 57-60.

²⁸ See Table VII-3, CR at VII-7, PR at VII-4.

²⁹ See Table VII-11, CR at VII-20, PR at VII-9.

³⁰ See Table VII-9, CR at VII-17, PR at VII-8.

³¹ See Table IV-6, CR at IV-13, PR at IV-12.

³² Table V-3, CR at V-22, PR at V-15.

³³ Table V-3, CR at V-23, PR at v-16.

³⁴ *Id.*

prices, and are likely to increase demand for further imports.

Fifth, I note that while end-of-period inventories in both Indonesia and Venezuela generally declined over the period of investigation, the ending inventory in Thailand increased significantly between 1998 and interim 1999 (notwithstanding *** for calendar year 1999). Specifically, the ending inventory in Thailand in 1998 was ***; in comparison, the first quarter 1999 ending inventory was ***, representing a *** percent increase over the interim 1998 level of ***.³⁵

Sixth, I note that capital expenditures by the domestic industry declined significantly over the period of investigation, i.e. by over *** percent between 1996 and 1998, and by over *** percent between interim 1998 and interim 1999.³⁶ During the same periods, research and development expenses incurred by the domestic industry *** levels.³⁷ Given the critical role of capital investment in maintaining competitiveness in this industry, I find the record evidences a reasonable indication of actual and potential negative effects on the production efforts of the domestic industry by reason of subject imports.

Conclusion:

In conclusion, I have considered the entirety of the record evidence in these preliminary investigations, and based upon the foregoing discussion, I determine that there is a reasonable indication that subject imports from Indonesia, Thailand, and Venezuela, pose an imminent threat of material injury to the domestic industry.

³⁵ Table VII-9, CR at VII-17, PR at VII-8.

³⁶ See Table VI-7, CR at VI-15, PR at VI-9.

³⁷ *Id.*

**ADDITIONAL AND DISSENTING VIEWS
OF COMMISSIONER STEPHEN KOPLAN
REGARDING IMPORTS FROM INDONESIA,
THAILAND, AND VENEZUELA**

I. Negligibility

As indicated in the Commission opinion, I join the discussion concerning the proper interpretation of the negligibility provisions of the statute. However, I dissent from the majority's determination that imports from Thailand are not likely to imminently exceed the four percent statutory threshold. I believe that the record demonstrates that imports from Thailand are likely to imminently exceed that threshold.

For the 12 month period examined for purposes of determining negligibility, imports from Thailand represented 3.4 percent of subject imports.³⁸ Thai Cold Rolled, which reportedly accounts for *** percent of production of cold-rolled steel in Thailand, began operations ***.³⁹ In 1998, it increased its capacity significantly as it ***⁴⁰ home market shipments *** of total shipments.⁴¹ At the same time it began exporting ***. Indeed, while Thai shipments to third country markets ***, Thai shipments to the U.S. *** of total shipments.⁴² In addition, inventories of Thai imports held by U.S. importers increased substantially in the most recent interim period.⁴³ Thus, these data indicate that the Thai producer was ***⁴⁴ Moreover, demand for subject merchandise is likely to be more robust in the U.S. than in Thailand in the imminent future.⁴⁵

Meanwhile, several other significant subject exporters reduced shipments to the U.S. from 1997 to 1998.⁴⁶ Thus, while it appears that the Thai producer was *** the trend for the other subject producers indicates that several are likely to represent a smaller portion of total subject imports in the near term. Consequently, I believe that the record indicates that imports from Thailand are likely to imminently increase by over six tenths of one percent relative to all other subject imports. Therefore, I find that imports from Thailand are likely to imminently exceed four percent of total imports and therefore are not negligible for purposes of the preliminary countervailing duty investigation.

I find, however, that imports from Indonesia and Venezuela are not likely to imminently exceed either four percent of subject imports individually or nine percent of subject imports collectively.⁴⁷ Those

³⁸ CR at IV-10, Table IV-3; PR at IV-9, Table IV-3.

³⁹ CR at VII-16; PR at VII-7-8.

⁴⁰ *Id.*

⁴¹ *Id.*, Table VII-9; PR at Table VII-9.

⁴² *Id.* One large importer of cold-rolled steel from Thailand imported in the first quarter of 1999 nearly as much product as it did in all of calendar year 1998. Questionnaire Response of *** at 6.

⁴³ CR at Table VII-12; PR at Table VII-12.

⁴⁴ I did not rely on information in the record of this preliminary investigation regarding the orders on the importers' books. The questionnaires did not request importers to identify the country of origin for the orders on their books. While many responding importers volunteered such information, a significant portion did not do so. Consequently, these data may not represent the actual pending orders for each respective country.

⁴⁵ See "Thai Industry Prepares for Restructuring," *Metals Bulletin Monthly* at 51 (May 1999), Petitioners' Postconference Brief at Exhibit 36.

⁴⁶ CR at Appendix C, Table C-1; PR at Appendix C, Table C-1. While capacity utilization for the Thai producer is high, the data discussed above indicate that much of that production is likely to be directed to the U.S. market and away from the declining home and third country markets.

⁴⁷ See 19 U.S.C. § 1677(24)(A)(iv); 19 U.S.C. § 1677(24)(B).

countries each represented 2.5 percent of subject imports during the 12 month period examined for purposes of determining negligibility.⁴⁸ In contrast to Thailand, the industries producing subject merchandise in both Indonesia and Venezuela are established and mature. Production capacity in both countries actually has been reduced significantly.⁴⁹

For both countries, third country markets are more significant than is the U.S. market.⁵⁰ In fact, the portion of total shipments destined for these third country markets increased from 1997 to 1998 for both Indonesia and Venezuela.⁵¹ Finally, inventories of imports from these countries held by U.S. importers in the first quarter of 1999 were ***.⁵² For these reasons, I find that imports from Indonesia and Venezuela are not likely to imminently exceed either four percent individually or nine percent collectively of total subject imports. I therefore find imports from these two countries to be negligible for the countervailing duty investigations concerning those countries.

II. Threat Of Material Injury From Allegedly Subsidized Imports From Thailand

On the basis of the information obtained in this preliminary investigation, I determine that there is a reasonable indication that the industry in the United States producing cold-rolled steel is threatened with material injury by reason of subject imports from Thailand that allegedly are subsidized. Therefore, I dissent from the Commission's determination with respect to subsidized imports from Thailand.

As stated in the Commission opinion, I have cumulated subject LTFV imports from Thailand with other subject imports in determining that there is a reasonable indication that subject LTFV imports from Thailand are a cause of present material injury to the domestic industry. Based on an analysis of the cumulation factors as stated in the Commission opinion, I exercised my discretion to cumulate these same allegedly subsidized imports from Thailand with other subject imports for the countervailing duty investigation. Based on the statutory threat factors, I find that there is a reasonable indication that cumulated subject imports will continue to be a cause of material injury in the imminent future.⁵³ Therefore, I find that there is a reasonable indication that the allegedly subsidized subject imports from Thailand threaten additional imminent injury to the domestic industry.

⁴⁸ CR at IV-10, Table IV-3; PR at IV-9, Table IV-3.

⁴⁹ CR at VII-6-7, VII-16-17, Tables VII-3 and VII-11; PR at VII-3-4, VII-7-8, Tables VII-3 and VII-11.

⁵⁰ *Id.* In 1998, the Venezuelan government reached a trade agreement with Mexico regarding cold-rolled steel products. CR at VII-19; PR at VII-9.

⁵¹ CR at VII-6-7, VII-16-17, Tables VII-3 and VII-11; PR at VII-3-4, VII-7-8, Tables VII-3 and VII-11.

⁵² CR at Table VII-12; PR at Table VII-12. ***.

⁵³ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).