

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN HOT-ROLLED STEEL FROM BRAZIL AND RUSSIA  
Investigations Nos. 701-TA-384 (Final) and 731-TA-806 and 808 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION  
(USITC Publication No. 3223, August 1999)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 701-TA-384 (Final) and  
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## CERTAIN HOT-ROLLED STEEL PRODUCTS FROM BRAZIL AND RUSSIA

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil of certain hot-rolled steel products, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Brazil. The Commission also determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of such imports from Brazil<sup>2</sup> and Russia<sup>3</sup> that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with regard to such imports from Russia.<sup>4</sup>

### BACKGROUND

The Commission instituted these investigations effective September 30, 1998, following receipt of petitions filed with the Commission and the Department of Commerce by Bethlehem Steel Corp., Bethlehem, PA; U.S. Steel Group, a unit of USX Corp., Pittsburgh, PA; Ispat Inland Steel, East Chicago, IN; LTV Steel Co., Inc., Cleveland, OH; National Steel Corp., Mishawaka, IN; California Steel Industries, Fontana, CA; Gallatin Steel Co., Ghent, KY; Geneva Steel, Vineyard, UT; Gulf States Steel, Inc., Gadsden, AL; IPSCO Steel, Inc., Muscatine, IA; Steel Dynamics, Butler, IN; Weirton Steel Corp., Weirton, WV; Independent Steelworkers Union, Weirton, WV; and the United Steelworkers of America, Pittsburgh, PA. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain hot-rolled steel products from Brazil were being subsidized by the Government of Brazil within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and that imports from Brazil and Russia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)).

Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the *Federal Register* of March 5, 1999 (64 FR 10722 and 10723). The hearing was held in Washington, DC, on May 4, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

<sup>2</sup> Commissioner Askey dissenting.

<sup>3</sup> Commissioner Askey determines that an industry in the United States is threatened with material injury.

<sup>4</sup> Chairman Bragg dissenting.

## VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that an industry in the United States is materially injured by reason of imports of certain hot-rolled steel products (“hot-rolled steel”) from Brazil that have been found by the Department of Commerce (“Commerce”) to be subsidized and by reason of hot-rolled steel from Brazil and Russia that have been found by Commerce to be sold at less than fair value (“LTFV”).<sup>1</sup> We further find that critical circumstances do not exist with respect to subject imports from Russia.<sup>2 3</sup>

### I. THE COMMISSION ADOPTS THE VIEWS STATED IN CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN

The instant investigations arose out of a group of simultaneously filed petitions that also included the petition for our recently completed investigation regarding hot-rolled steel from Japan. We were required to issue our determination in the investigation of hot-rolled steel from Japan<sup>4</sup> in June 1999 because Commerce issued its final determination in that investigation earlier than it did in the current investigations. Under section 771(7)(G)(iii) of the Tariff Act of 1930, as amended (“the Act”), we are required to make our determinations in the instant investigations on the same record as that of the determination regarding imports from Japan, except that the record in these investigations also includes Commerce’s final determinations in these investigations and the parties’ final comments concerning the significance of those determinations.<sup>5</sup> The record in these investigations is otherwise identical to that in the investigation regarding imports from Japan. Therefore, in these investigations, we adopt<sup>6</sup> the findings and analysis in our determination regarding imports from Japan for like product, domestic industry, cumulation,<sup>7</sup> material injury, and captive production.

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<sup>1</sup> Commissioner Askey finds that the domestic industry producing hot-rolled steel is threatened with material injury by reason of subject imports from Russia. She also determines that the domestic industry producing hot-rolled steel is not materially injured or threatened with material injury by reason of subject imports from Brazil. See Additional and Dissenting Views of Commissioner Askey.

<sup>2</sup> Chairman Bragg determines that critical circumstances exist with respect to subject imports from Russia. See infra at 8 n.26.

<sup>3</sup> Because Commissioner Askey finds that the domestic industry is threatened with material injury by reason of subject imports from Russia, she does not reach the issue of critical circumstances. See Additional and Dissenting Views of Commissioner Askey.

<sup>4</sup> Certain Hot-Rolled Steel Products From Japan, Inv. No. 731-TA-807 (Final), ITC Pub. 3202 (June 1999).

<sup>5</sup> 19 U.S.C. §1677(7)(G)(iii).

<sup>6</sup> Commissioner Crawford adopts her separate views in the determination regarding Japan. Commissioner Askey adopts parts I-III A of the determination regarding Japan, except where otherwise indicated.

<sup>7</sup> The fact that Commerce entered into suspension agreements with Russia and Brazil since the determination regarding Japan does not affect our cumulation analysis. The statute requires us to cumulatively assess the volume and effect of subject merchandise if the petitions were filed on the same day and if the imports compete with each other and the domestic like product, with only certain specific exceptions. Suspension agreements are not listed among the statutory exceptions to cumulation. See 19 U.S.C. §1677(7)(G). Therefore, despite respondents’ assertions to the contrary, the suspension agreements do not preclude us from cumulating, and we now cumulate all subject imports as we did in the determination regarding hot-rolled steel from Japan.

With respect to the material injury analysis, we note that Commerce modified the dumping margins somewhat from its preliminary determinations.<sup>8</sup> The changes to the margins do not alter our conclusion that the domestic industry producing hot-rolled steel is materially injured by reason of cumulated subject imports.<sup>9 10</sup>

In addition, since the determination regarding imports from Japan, Commerce has signed a suspension agreement with Russia under 19 U.S.C. § 1673c(l) and two suspension agreements with Brazil under 19 U.S.C. §§ 1671c(c) and 1673c(c).<sup>11</sup> These agreements do not affect our analysis. Under 19 U.S.C. §§ 1671c(j) and 1673c(j), we are required to consider all subject imports without regard to the effect of any suspension agreements under subsections (b) or (c) of those sections of the statute. The suspension agreements applicable to the investigations of subject imports from Brazil were entered pursuant to 19 U.S.C. §§ 1671c(c) and 1673c(c).

Individual Commissioners have disagreed as to whether the statutory directive to disregard the effects of suspension agreements also applies to suspension agreements issued under 19 U.S.C. § 1673c(l),<sup>12</sup> which is the type of suspension agreement applicable in the instant investigation of subject imports from Russia. However, the resolution of that issue does not affect the outcome in these investigations. None of the data considered in rendering our affirmative finding of present material injury by reason of subject imports from Russia could have been affected by the suspension agreement, which was not entered into until July 12, 1999, after the factual record closed in these investigations.<sup>13</sup> Accordingly, we determine that the domestic industry producing hot-rolled steel is materially injured by reason of the

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<sup>8</sup> Commerce's preliminary dumping margins for the Brazilian producers were as follows: 50.66 percent for CSN, 71.02 percent for Usiminas/Cosipa, and 58.76 percent for "All Others." 64 Fed. Reg. 8299, 8308 (Feb. 19, 1999). Commerce's final dumping margins for the Brazilian producers were as follows: 41.27 percent for CSN, 43.40 percent for Usiminas/Cosipa, and 42.12 percent for "All Others." 64 Fed. Reg. 38756, 38792 (July 19, 1999). Commerce's preliminary dumping margins for the Russian producers were as follows: 70.66 percent for Severstal, 217.67 percent for Novolipetsk, 149.54 percent for Magnitogorsk, and 156.58 percent for "All Others." 64 Fed. Reg. 9312, 9318 (Feb. 25, 1999). Commerce's final dumping margins for the Russian producers were as follows: 73.59 percent for JSC Severstal and 184.56 percent for the "Russia-Wide Rate." 64 Fed. Reg. 38626, 38641 (July 19, 1999). Novolipetsk and Magnitogorsk have withdrawn from participation in these investigations since Commerce's preliminary determination. 64 Fed. Reg. at 38627. Therefore, Commerce does not have a separate rate for these producers in its final determination.

<sup>9</sup> 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).

<sup>10</sup> Commissioner Crawford notes that Commerce altered the margins only slightly from its preliminary to its final determinations. The final margins determined by Commerce are large enough that, if the subject imports had been fairly traded, there would have been a significant increase in demand for the domestic like product, the same finding she made in the Japanese investigation. Thus, the price effects and impact of the subject imports in these determinations are the same as the price effects and impact in the determination regarding Japan. Therefore, Commissioner Crawford adopts the analysis and findings in her determination regarding Japan and incorporates them herein by reference.

<sup>11</sup> 64 Fed. Reg. 38642 (July 19, 1999); 64 Fed. Reg. 38792 (July 19, 1999); 64 Fed. Reg. 38797 (July 19, 1999).

<sup>12</sup> See Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), ITC Pub. 3213 (July 1999) at 17-20.

<sup>13</sup> As noted above, in circumstances such as this, the statute requires the record to be limited to data obtained before the record closed in the investigation regarding hot-rolled steel from Japan. See 19 U.S.C. § 1677(7)(G)(iii)

subsidized and LTFV imports from the subject countries for the same reasons indicated in the determination regarding imports from Japan.<sup>14</sup>

## II. CRITICAL CIRCUMSTANCES

Because Commerce made an affirmative critical circumstances determination with respect to subject imports from Russia and we determined that the domestic hot-rolled steel industry is materially injured by reason of subject imports from Russia, we must further determine “whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping order to be issued.”<sup>15 16</sup> The Uruguay Round Agreements Act Statement of Administrative Action indicates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of the relief, the importers have seriously undermined the remedial effect of the order.”<sup>17</sup>

In its final determination, Commerce made affirmative critical circumstances determinations with respect to all Russian producers.<sup>18</sup> Consistent with Commission practice, in considering the timing and volume of imports, we have compared import quantities prior to filing of the petition with those subsequent to the filing of the petition.<sup>19</sup> Although Commerce compared two periods that were both prior to the filing of the petition in making its critical circumstances determination, we are not required to analyze the same comparison periods that Commerce analyzed.<sup>20</sup>

In recent investigations, we typically have considered six to seven month periods before and after the petition for purposes of the critical circumstances analysis.<sup>21</sup> In this investigation, however, because of

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<sup>14</sup> Commissioner Askey dissenting. She does not join the remainder of this opinion.

<sup>15</sup> 19 U.S.C. § 1673d(b)(4)(A)(i). The statute further provides that in making this determination:

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

(I) the timing and volume of the imports,

(II) a rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

19 U.S.C. § 1673d(b)(4)(A)(ii).

<sup>16</sup> For Commissioner Crawford’s interpretation of this statutory requirement, see Certain Preserved Mushrooms from China, India, and Indonesia, Inv. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999) at 27-28 (Views of Chairman Bragg and Commissioners Crawford and Askey).

<sup>17</sup> SAA, H.R. Rep. No. 103-316, Vol. I, at 877 (1994).

<sup>18</sup> See 64 Fed. Reg. 38626, 38632-38633 (July 19, 1999).

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

<sup>20</sup> See Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

<sup>21</sup> See Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777-779

(continued...)

Commerce's accelerated schedule, we have considered shorter periods before and after the petition. We do not find that the imports subject to Commerce's affirmative critical circumstances determination would undermine seriously the remedial effect of the order.<sup>22</sup> Imports from the Russian producers actually declined from \*\*\* short tons in the five months before the petition to \*\*\* short tons in the five months after the petition. The subject imports did increase by \*\*\* percent from \*\*\* short tons in the three months before the petition to \*\*\* short tons in the three months after the petition.<sup>23</sup> This increase is not enough to warrant a finding that the subject imports would undermine seriously the remedial effect of the order.

The inventories of Russian subject imports held by U.S. importers increased over the period of investigation, but the volume of inventories held by Russian producers decreased.<sup>24</sup> We do not place much weight on the importers' inventory levels because they may not be limited to imports made after the petition was filed. We also took into account the pricing of the subject imports from Russia. Prices of the Russian product generally were lower in the fourth quarter of 1998 (i.e., the three months after the filing of the petition) than in the third quarter of 1998 (i.e., the three months before the filing of the petition).<sup>25</sup> However, we do not find this to be particularly significant, given our conclusion regarding the volume of imports from the Russian producers imported after the petition was filed.

In sum, we do not find that the record evidence indicates that the subject imports from Russia would undermine seriously the remedial effect of the order. Accordingly, we make a negative critical circumstances finding.<sup>26</sup>

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<sup>21</sup>(...continued)

(Final), USITC Pub. 3159 (Feb. 1999) at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplán) and at 28 (Views of Chairman Bragg and Commissioners Crawford and Askey); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 19 (April 1997); Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

<sup>22</sup> Chairman Bragg dissenting. Chairman Bragg finds that the subject imports would undermine seriously the remedial effect of the order. See infra at 8 n.26.

<sup>23</sup> INV-W-124 at Attachment 1. The subject imports also increased by \*\*\* percent from \*\*\* short tons in the two months before the petition to \*\*\* short tons in the two months after the petition. Id. However, we do not believe that this two-month period is an appropriate benchmark, because the period is too short in duration. In any event, we do not find that the volume of hot-rolled steel imported by the Russian producers in the two months after the petition would undermine seriously the remedial effect of the order.

<sup>24</sup> U.S. importers' 1998 inventories of subject imports from Russia were 309,062 short tons and Russian producers' 1998 inventories were 5,627 short tons. See CR & PR at Tables VII-3, VII-4.

<sup>25</sup> See generally CR & PR at Tables V-1 through V-6.

<sup>26</sup> Chairman Bragg finds that the most important period for rendering a critical circumstances determination in this investigation is the two months following the filing of the petition, which occurred on September 30, 1998. In this regard, Chairman Bragg notes that the Commission data for Russian imports to the U.S. were presented in the aggregate, thus the Commission cannot distinguish between Severstal and all other Russian producers. Notwithstanding the aggregate data, the Commission possesses enough information to render a determination.

Chairman Bragg acknowledges that the Commission does possess company-specific export data (to the U.S.) for the Russian producers. However, there are large disparities between the October-November import data and the October-November export data. These disparities can largely be attributed to a 30 to 180 day lag in the delivery of hot-rolled steel shipments from Russia. Therefore, Chairman Bragg places less weight on the export data because the export data represent volumes which would not enter the U.S. for another 30 to 180 days.

Thus, in evaluating the aggregated import data from the Russian producers, Chairman Bragg notes that in the two months after the filing of the petition, Russian imports increased by \*\*\*, from \*\*\* short tons in August and September of 1998, to \*\*\* short tons in October and November of 1998. Imports for just the two months of

(continued...)

## CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing hot-rolled steel is materially injured by reason of subsidized imports of hot-rolled steel from Brazil and LTFV imports of hot-rolled steel from Brazil and Russia. We also determine that critical circumstances do not exist with respect to subject imports from Russia.

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<sup>26</sup>(...continued)

October and November of 1998 accounted for \*\*\* of total imports from Russia in the U.S. in 1998 and \*\*\* of total reported exports from Russia in 1998.

Furthermore, average monthly imports of subject merchandise from Russia from December 1997 to September 1998 were \*\*\* short tons, while average monthly imports of subject merchandise from Russia from October to November of 1998 were \*\*\* short tons, a \*\*\* increase.

Lastly, Chairman Bragg notes that Russian prices (which include data for all Russian producers including Severstal) were generally lower in the fourth quarter of 1998, the period after the filing of the petition, than in the third quarter of 1998, the period before the filing of the petition. Thus, the downward trend in prices coupled with large increases in subject import volume would undermine the effect of the order.

Based upon the foregoing, Chairman Bragg finds that subject imports from the Russian producers would undermine seriously the remedial effect of the order. Accordingly, Chairman Bragg makes an affirmative critical circumstances determination in this investigation.



## **ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY**

I do not find that the record in this case supports a determination that the domestic hot-rolled steel industry is suffering material injury by reason of Brazilian and Russian imports sold in the United States at less than fair value (“LTFV”). I adopt the Additional and Dissenting Views I set forth in Hot-Rolled Steel from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 (June 1999), as well as those portions of the majority opinion in which I concurred, for purposes of my determination in these cases. Detailed reasons for my negative determination may be found in those Views.

To summarize, for purposes of the material injury determination, I cumulated imports from Japan, Russia, and Brazil.<sup>1</sup> I find that the volumes of the subject imports were not significant given the size of the domestic market and the dominant position of U.S. producers. Similarly, though prices fell at the end of the period of investigation, overall average unit values (AUVs) did not decline significantly, and subject imports had no discernible price suppressing or depressing effects during the period reviewed. I further find that the subject imports did not adversely affect the domestic industry during the period; the domestic industry’s financial indicators generally remained positive in 1998, though they had declined from 1997 levels.

I find, however, that the domestic industry is threatened with material injury by reason of the subject imports from Russia, but not from Brazil.<sup>2</sup> As is explained more fully in my Views in Hot-Rolled Steel from Japan, I exercised my statutory discretion to cumulate imports from Russia and Japan, but not from Brazil, for purposes of my threat of material injury determination. Brazilian imports enter the United States in much smaller volumes than steel from Japan and Russia and Brazilian import rates have increased at a considerably lower rate. In addition, Brazilian imports account for a much smaller share of U.S. domestic consumption. Therefore, for purposes of this threat determination, I cumulated Russian and Japanese imports and considered Brazilian imports separately.

### **A. Russian Subject Imports**

For the same reasons expressed in my Views in Hot-Rolled Steel from Japan, I determine that Russian subject imports threaten material injury to the U.S. industry. We are making this determination on exactly the same record we did in the Japanese case, and I cumulated Japanese and Russian subject imports for purposes of that determination. The signing of the suspension agreement in the period since we made our determination in Hot-Rolled Steel from Japan does not affect the record on which I am basing my threat decision. We have continued our investigation in this case effectively to explain what our decision would have been in the absence of any suspension agreement. Because the negotiation and approval of suspension agreements are entrusted to the Department of Commerce, it would be inappropriate for the Commission to consider the post-suspension agreement volumes for purposes of a threat determination, which would

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<sup>1</sup> I agree with the majority’s explanation of the effect of the suspension agreements with Brazil and Russia on the record we considered in this case, which means the record before us is identical to that in Hot-Rolled Steel from Japan, with the exception of final margins and final comments from the parties.

<sup>2</sup> I have not made a “critical circumstances” finding because I determined that the domestic injury was threatened with material injury. The Commission has determined that a critical circumstances finding is triggered by a finding of present material injury. In addition, a critical circumstances finding would have no practical utility in a threat case where duties are imposed only from the date of the final determination. See, Collated Roofing Nails from China and Taiwan, Invs. Nos. 731-TA-757 and 759 (Final), USITC Pub. 3070 at 24-25 (Nov. 1997).

effectively require the Commission to pass judgment on whether those volumes are low enough to prevent material injury to the domestic industry.<sup>3</sup>

## **B. Brazilian Subject Imports**

Brazilian imports do not threaten the industry in the United States with material injury. When determining whether the domestic industry is threatened with material injury by reason of the subject imports, the Commission will often examine the health of the industry to determine whether the industry is “vulnerable” to material injury from subject imports, although “vulnerability” is not itself a statutory threat factor. I do not find that the domestic industry is vulnerable in this case. The industry’s financial indicators have remained positive, though they are down from 1997 levels.

The Commission must consider whether there has been “a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports.”<sup>4</sup> Brazilian imports rose from 254,166 short tons in 1996 to 451,462 short tons in 1998, but the majority of the increase occurred between 1996 and 1997 -- imports from Brazil increased only 14,777 short tons between 1997 and 1998.<sup>5</sup> The domestic industry’s financial performance was at its strongest in 1997, which indicates no link between the industry’s position and increasing Brazilian imports. Further, the increase in Brazilian imports was not significant given the size of the domestic market. Brazilian imports accounted for only 0.6 percent of domestic consumption even after increasing 71.8 percent from 1996 to 1997.<sup>6</sup>

The statute also directs the Commission to consider whether there is “any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports.”<sup>7</sup> Brazilian producers operated at capacity utilization rates ranging from a low of 91.5 percent in 1998 to a high of 96.7 percent in 1997 during the period investigated.<sup>8</sup> In 1997, when capacity utilization was at its highest, Brazilian exports to the United States were slightly lower than in 1998. This correlation suggests that even an increase in capacity utilization would not result in increased exports to the United States.

The statute requires that the Commission consider “whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports.”<sup>9</sup> As was the case in determining whether subject imports were having price suppressive or depressive effects for the purpose of the present injury determination, attributing the decrease in prices to subject imports is somewhat difficult. Competition between domestic producers is keen, and domestic AUVs did not fall demonstrably in response to the lowering of foreign producers’ prices. The record reflects some underselling by Brazilian products (36

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<sup>3</sup> I applied this same rationale with respect to the Brazilian suspension agreement in making my negative threat determination as to Brazilian imports.

<sup>4</sup> 19 U.S.C. § 1677(F)(III).

<sup>5</sup> CR and PR at Table C-1.

<sup>6</sup> Id.

<sup>7</sup> 19 U.S.C. § 1677(F)(II).

<sup>8</sup> CR and PR at Table VII-1.

<sup>9</sup> 19 U.S.C. § 1677(F)(IV).

quarters of underselling and compared to 22 quarters of overselling) in quarters for which comparison were available.<sup>10</sup> Given the relatively small volume of Brazilian imports, and the limited underselling demonstrated in the record, I find that they are not likely to have a depressing or suppressing effect on domestic prices.

The statute also directs the Commission to consider “inventories of the subject merchandise.”<sup>11</sup> Brazilian inventories as a percentage of imports declined from 12.0 percent to 6.1 percent over the period examined.<sup>12</sup> Brazilian inventories also decreased slightly in absolute terms, falling from 24,870 short tons in 1996 to 24,017 short tons in 1998.<sup>13</sup> These inventories are too small, both in absolute and relative terms, to threaten injury to the domestic industry.

The Commission is to consider whether there is a “potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.”<sup>14</sup> The record indicates that Brazilian producers do not have that capacity.<sup>15</sup> The Commission is also to consider whether the subject imports are subject to antidumping findings in third-country markets.<sup>16</sup> Brazilian imports are subject to an antidumping finding in Mexico.<sup>17</sup> However, a dumping finding in one third-country market is unlikely to lead to an increase in exports to the United States at levels significant enough to harm the domestic industry.

In a countervailing duty case, the Commission considers the nature of the subsidies found, including whether there are any export subsidies that would encourage the increase in exports to the United States.<sup>18</sup> In this case, Commerce made affirmative subsidies findings as to Brazil, but did not find that any export subsidy programs were involved and calculated subsidies rates ranging from 6.35 to 9.67 percent.<sup>19</sup> These subsidies are unlikely to result in an increase of Brazilian exports to the United States.

Part of the Commission’s threat determination is considering “the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.”<sup>20</sup> In this case, the domestic industry’s level of aggregate capital investment has declined significantly from 1996 to 1998, falling from \$1.67 billion in 1996 to \$714.8 million in 1998.<sup>21</sup> Some of this decline may be explained by the significant capital improvements undertaken by the industry between 1996 and 1998, during which time the domestic

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<sup>10</sup> CR at V-18; PR at V-15.

<sup>11</sup> 19 U.S.C. § 1677(F)(V).

<sup>12</sup> CR and PR at Table VII-4.

<sup>13</sup> Id.

<sup>14</sup> 19 U.S.C. § 1677(F)(VI).

<sup>15</sup> CR at II-10-11, CR at VII-3-4; PR at II-3, PR at VII-2.

<sup>16</sup> 19 U.S.C. § 1677(F)(iii)(I).

<sup>17</sup> CR at VII-4; PR at VII-3.

<sup>18</sup> 19 U.S.C. § 1677(F)(I).

<sup>19</sup> 64 Fed. Reg. 38742, 38755 (July 19, 1999).

<sup>20</sup> 19 U.S.C. § 1677(F)(VIII).

<sup>21</sup> CR and PR at Table VI-7.

producers increased production capacity by 9.2 percent.<sup>22</sup> Moreover, investment at those levels is unlikely to occur every year.

The statute also requires the Commission to consider “any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).”<sup>23</sup> Here, the record evidence suggests no other adverse effects.

Analyzing the statutory threat factors results in a conclusion that the domestic industry is not threatened with material injury by subject imports from Brazil. Brazilian imports increased only minimally in the latter portion of the period examined, and other indicators do not suggest any imminent increase in those imports.<sup>24</sup>

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<sup>22</sup> CR and PR at Table C-1.

<sup>23</sup> 19 U.S.C. § 1677(7)(F)(IX).

<sup>24</sup> I would not have made an affirmative material injury determination but for the suspension of liquidation of entries of the subject merchandise. See, 19 U.S.C. § 1673d(b)(4)(B).