

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STRUCTURAL STEEL BEAMS FROM JAPAN
Investigation No. 731-TA-853 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3308, June 2000)

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CERTAIN STRUCTURAL STEEL BEAMS FROM JAPAN

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission 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 injured² or threatened with material injury³ by reason of imports from Japan of certain structural steel beams, provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective July 7, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Northwestern Steel & Wire Co., Sterling, IL; Nucor-Yamato Steel Co., Blytheville, AR; TXI-Chaparral Steel Co., Midlothian, TX; and The United Steelworkers of America AFL-CIO. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain structural steel beams from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of March 1, 2000 (65 FR 11092). The hearing was held in Washington, DC, on April 25, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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 Vice Chairman Miller and Commissioners Hillman and Okun determine that an industry in the United States is materially injured.

³ Chairman Bragg and Commissioners Askey and Koplan determine that an industry in the United States is threatened with material injury. Further, Chairman Bragg and Commissioners Askey and Koplan determine, under section 735(b)(4)(B) of the Act (19 U.S.C. 1673d(b)(4)(B)), that they would not have made affirmative material injury determinations but for the suspension of liquidation.

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that an industry in the United States is materially injured or threatened with material injury by reason of imports of structural steel beams from Japan that are sold in the United States at less than fair value (“LTFV”).⁴

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”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 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”)

⁴ Vice Chairman Miller, Commissioner Hillman, and Commissioner Okun find that an industry in the United States is materially injured by reason of LTFV imports of structural steel beams from Japan. Chairman Bragg, Commissioner Koplun, and Commissioner Askey find that an industry in the United States is threatened with material injury by reason of LTFV imports of structural steel beams from Japan.

⁵ 19 U.S.C. § 1677(4)(A).

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, 36 F. Supp. 2d 380, 383 (CIT 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (CIT 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 (CIT 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.”)

as to the scope of the imported merchandise that has been found to be 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 final determination with respect to Japan, Commerce described the merchandise within the scope of its investigation as follows:

doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products (“Structural Steel Beams”) include, but are not limited to, wide-flanged beams (“W” shapes), bearing piles (“HP” shapes), standard beams (“S” or “I” shapes), and M-shapes.¹²

Commerce also explained that:

The following products are outside and/or specifically excluded from the scope of the investigation: Structural steel beams greater than 400 pounds per linear foot or with a web section height (also known as depth) over 40 inches.¹³

Commerce identified the merchandise subject to investigation as classified in the Harmonized Tariff Schedules of the United States (“HTSUS”) at the following subheadings or statistical reporting numbers: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000.¹⁴

As noted above, the subject merchandise is doubly-symmetric shapes, with cross-sectional dimensions of 3.2 inches or greater. Structural steel beams have cross-sectional profiles that are in the form of an “H” or an “I,” consisting of two parallel “flanges” connected by a “web.” Depending on the web and flange dimensions, they are known as either “W” shapes (wide-flange shapes), “HP” shapes (bearings or H piles), “S” shapes (standard beams or I-beams), or “M” shapes (miscellaneous shapes).

None of the parties contested the Commission’s finding in the preliminary determinations of a single domestic like product, including all of these variants of doubly-symmetric structural shapes,

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).

¹² Structural Steel Beams from Japan (Final LTFV Deter.), 65 Fed. Reg. 24182, 24183 (April 25, 2000).

¹³ Id.

¹⁴ Id. Commerce noted that the written description of the scope, and not the HTSUS item numbers, was dispositive.

coextensive with the scope of the subject merchandise.¹⁵ No new information has emerged that would call into question our earlier finding. Accordingly, we find that there is one domestic like product consisting of all structural steel beams.

C. Domestic Industry

1. Generally

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . .”¹⁶ 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.¹⁷ We define the domestic industry in this investigation as all domestic producers of structural steel beams.

2. Related Parties

We also must 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 a producer that is related to an exporter or importer of subject merchandise, or which is itself an importer.¹⁸ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.¹⁹

Although no party has argued for exclusion of any domestic producer from the domestic industry, we have considered the potential “related party” status of Nucor-Yamato (purchaser of subject imports and *** owned by Yamato Kogyo, a producer of structural steel beams in Japan) and TXI-Chaparral (a purchaser of subject imports). In its preliminary determinations, the Commission declined to exclude these

¹⁵ Structural Steel Beams From Germany, Japan, Korea, and Spain, Invs. Nos. 701-TA-401 (Preliminary) and 731-TA-852-855 (Preliminary), USITC Pub. 3225 (September 1999).

¹⁶ 19 U.S.C. § 1677(4)(A).

¹⁷ 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).

¹⁸ 19 U.S.C. § 1677(4)(B).

¹⁹ 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 data for the rest of the industry. See, *e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, *e.g.*, Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14 n.81 (February 1997).

producers from the domestic industry.²⁰ The foreign ownership interest in Nucor-Yamato considered by the Commission in its preliminary determination is unchanged in this final phase investigation. Moreover, domestic producers *** purchases of subject imports *** considered in the preliminary determinations. Accordingly, we do not exclude any domestic producer from the domestic industry.

II. 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.²¹ In assessing whether subject imports compete with each other and with the domestic like product,²² 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;
- (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.²³

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.²⁴ Only a “reasonable overlap” of competition is required.²⁵

²⁰ USITC Pub. 3225 at 8-9.

²¹ 19 U.S.C. § 1677(7)(G)(I).

²² 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).

²³ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

²⁴ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

²⁵ See Goss Graphic System, Inc. v. United States, 33 F. Supp 2d 1082, 1087-88 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F.

(continued...)

B. Analysis

Petitioners support, and no party argues against, cumulation of the subject imports from Japan with those from Korea for purposes of the Commission's material injury analysis. For the reasons discussed below, 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

Imports of the subject merchandise from both countries are generally considered substitutable with domestic structural steel beams. Structural steel beams are a "commodity-type, load-bearing product" used in structures and available in a range of overlapping sizes and cross-sectional profiles. They are produced to ASTM (or equivalent) specifications regarding dimensions, flange shape, and metallurgic content.²⁶ Accordingly, U.S. purchasers listed price as an important aspect in their purchasing decisions.²⁷

The majority of U.S. producers and importers characterized domestic and subject beams as always or frequently interchangeable.²⁸ Purchasers generally reported overall interchangeability among structural steel beams.²⁹ Most U.S. producers considered non-price differences between domestically produced structural steel beams and subject imports not to be a significant factor in purchasing decisions.³⁰ Importers and purchasers were more likely to find non-price differences to be significant when purchasing decisions are made.³¹

2. Geographic Overlap

Structural steel beams produced in the United States, as well as the subject imports from Japan and Korea, are sold throughout the United States. U.S. importers of structural steel beams are primarily located in New York (6), New Jersey (4), California (3), Illinois (2), and Texas (2); other geographic locations include Connecticut, Georgia, Indiana, Oregon, and Pennsylvania.³²

(...continued)

Supp. at 52 ("Completely overlapping markets are not required").

²⁶ CR at I-10; PR at I-8.

²⁷ CR at II-12; PR at II-8. While non-price considerations such as "Buy American" provisions can influence substitutability, witnesses differed on how extensively such provisions are applied (15-20 percent in the Philadelphia area, one percent in the Midwest). Hearing transcript at 98, 99.

²⁸ CR at II-12-II-14; PR at II-8-II-9.

²⁹ CR at II-16; PR at II-11.

³⁰ CR at II-13; PR at II-8-II-9.

³¹ CR at II-13-II-14; PR at II-8-II-9.

³² CR & PR at IV-1.

3. Channels of Distribution

U.S producers ship structural steel beams both directly to end users (builders and original equipment manufacturers (“OEMs”)) and to distributors (service centers and fabricators).³³ U.S. importers of the subject merchandise ship virtually all structural steel beams to distributors.³⁴

4. Simultaneous Presence

Domestically produced structural steel beams were present in the U.S. market throughout the 1997-1999 period, as were U.S. imports of the subject merchandise from Japan. Although there were no reported U.S. imports of the subject merchandise from Korea in 1997, structural steel beams from Japan and Korea were simultaneously present in the U.S. market in 1998 and 1999.³⁵

5. Conclusion

We cumulate imports of structural steel beams from Japan and Korea for purposes of our present material injury analysis.³⁶ No party proposes a departure from the Commission’s preliminary finding that the requirements for cumulation are met. There is a significant degree of fungibility between the imports from subject countries and between imports and the domestic like product. Producers, importers, and purchasers agree that the domestic like product and subject imports are largely interchangeable. There also were sales or offers to sell in the same geographical markets of imports from the subject countries and the domestic like product, common or similar channels of distribution for imports from the subject countries and the domestic like product, and simultaneous presence of the subject imports and the domestic like product in the market.

III. CONDITIONS OF COMPETITION

The following conditions of competition are pertinent to our analysis in this investigation. As already noted, structural steel beams are used primarily in residential and non-residential construction, but are also used in bridges, towers, railroad rolling stock, ships, and various OEM applications.³⁷ The subject imported merchandise from Japan and Korea and the domestic like product generally conform to

³³ CR at I-10-I-11; PR at I-8.

³⁴ Id.

³⁵ CR & PR at Tables III-1, III-4, & IV-2.

³⁶ Chairman Bragg finds that the same analysis justifying cumulation of all subject imports for purposes of the Commission’s assessment of present material injury applies equally to an assessment of threat of material injury. In this regard, Chairman Bragg places particular importance on the significant degree of fungibility among imports for all subject countries and between subject imports and the domestic like product. Chairman Bragg adds that upon review of the entire period of investigation she found similar volume and pricing trends between both subject countries and that these trends further support cumulation. Accordingly, Chairman Bragg exercises her discretion to cumulate subject imports from Japan and Korea in analyzing threat of material injury.

³⁷ CR & PR at I-4.

common ASTM specifications,³⁸ and generally are considered substitutable with each other.³⁹ Virtually all shipments of the subject imports during the period of investigation were to service centers or distributors, as were a majority (nearly 60 percent in 1999) of shipments of the domestic like product; the remainder were to fabricators/end users.⁴⁰

Service centers may maintain significant inventories, depending on market conditions. Unlike service centers, fabricators, which process structural steel beams to order for builders, generally do not carry significant inventories, preferring to order structural steel beams for each project directly from their supplier(s).⁴¹ Structural steel beams can be purchased in cut-to-size lengths directly from the domestic mill, whereas products from service centers must be purchased in set lengths, which is less economical due to the “drop,” or wasted portion.⁴² Because of this and other non-price factors, such as more reliable delivery, the domestic product often can command a price premium vis-a-vis subject imports.⁴³

With respect to demand, information from the American Institute for Steel Construction indicates steady or increased overall construction activity, the primary use for structural steel beams, in each year of the period of investigation.⁴⁴ Apparent U.S. consumption of structural steel beams rose from 4.5 million short tons in 1997 to 5.6 million short tons in 1998, but then declined to 4.6 million short tons in 1999.⁴⁵ It appears that at least part of the apparent discrepancy between the large spike in apparent consumption in 1998, followed by a roughly equal drop in apparent consumption in 1999, versus the steady or increased construction activity, is attributable to a substantial increase in service center inventories acquired in 1998 and liquidated in 1999.⁴⁶

Demand for structural steel beams may have increased somewhat under provisions for bridge replacement and rehabilitation in The Transportation Equity Act For the 21st Century, which includes

³⁸ CR at I-7; PR at I-6.

³⁹ CR at II-15-II-17; PR at II-9-II-12. With regard to substitutability, the pricing information obtained in the investigation indicates that, while the subject imports in 1997 were mostly wide flange beams (products 1, 2, and 3), in 1998 and 1999 the subject imports increasingly included H-piles and M-beams as well. CR & PR at Tables V-1- V-14. Domestic producers manufacture each of these types of beams. CR & PR at Table III-2.

⁴⁰ CR at I-10-I-11; PR at II-8.

⁴¹ CR at I-11; PR at II-8.

⁴² Id.

⁴³ USITC Pub. 3225 at 16, n.97 (citing the asserted maximum for such premiums in distributors’ testimony as between 3 to 7 percent, and perhaps as much as \$20 to \$30 per short ton). See also *** purchaser questionnaire response, question IV-7.

⁴⁴ CR at II-7; PR at II-5. U.S. construction increased over the period from 1.54 billion square feet in 1997 to 1.81 billion square feet in 1998 and 1.87 billion square feet in 1999; steel (mainly beams) was the structural material (as opposed to concrete) in 52.0 percent of construction in 1997 and 48 percent in 1998 and 1999. Accord Petitioners’ posthearing brief, attachment 6-I at 3-4.

⁴⁵ CR & PR at Table IV-3.

⁴⁶ Sales of steel beams to service centers by domestic producers or importers are counted as consumption under the Commission’s traditional methodology, even if the service center places the product in inventory and the beam is not put to ultimate use until some later period. The information on service center inventories is from the Steel Service Center Institute. Although the information suffers from some drawbacks (e.g., it does not necessarily cover all service centers and the inventories referenced include some nonsubject product), we find that it is generally indicative of overall trends with respect to structural steel beams. See Petitioners’ prehearing brief at attachment 2-F; Japanese respondents’ posthearing brief at 6-7; Petitioners’ posthearing brief at Attachment 6-I at 4-5.

“Buy American” requirements, but the portion of the total annual disbursements under that Act (\$2.9 billion in 1998, \$3.4 billion in 1999, \$3.4 billion in 2000, \$3.5 billion in 2001, \$3.6 billion in 2002, and \$3.6 billion in 2003) accounted for by steel generally and beams specifically is not specified in the Act or elsewhere on the record.⁴⁷ Moreover, the percentage of steel used in bridge construction represented by structural steel beams as opposed to other types of steel is relatively small.⁴⁸

The record also indicates that concrete is a potential substitute for structural steel beams as a structural support element in construction projects. Whereas some projects specifically require either concrete or beams, many projects could use either or both products. The decision to use steel or concrete is made at the design phase of the project, before construction begins. In addition to the relative prices and availability of the two basic materials, the choice also depends on the requirements of the project and the skills, experience, and preference of the developers, architects, and engineers participating in the project, as well as upon other costs and the required speed of completion.⁴⁹

With respect to the supply of structural steel beams, the record also indicates that U.S. producers’ average production capacity increased by 14.1 percent and production declined by 3.1 percent from 1997 to 1999, resulting in a 15-percent decline in capacity utilization during the period.⁵⁰ On an annual basis, most of the drop in capacity utilization occurred between 1998 and 1999.⁵¹

Another important condition of competition is that, due to booming demand and some reduction in industry capacity, there was a shortage in the supply of structural steel beams in the U.S. market in the fourth quarter of 1997 and the first two quarters of 1998.⁵² This supply shortage resulted in some domestic producers’ placing customers on allocations (or “controlled order entry”) beginning in the fourth

⁴⁷ See CR at II-7-II-8; PR at II-5; Japanese respondents’ posthearing brief at appendix D.

⁴⁸ See Hearing Transcript at 26 (welded beams, nonsubject merchandise, account for the majority of steel used in bridge construction); Petitioners’ posthearing brief at attachment 5.

⁴⁹ CR at II-8-II-9; PR at II-6. *E.g.*, beams are used where seismic risks are an important consideration, building construction is generally faster with beams than concrete, and beam-based construction generally requires a greater proportion of skilled workers than concrete-based construction. CR at II-8, n.32; II-9; II-9, n.36; PR at II-6, n.32; II-6; II-6, n.36. With respect to costs considerations, we note that structural steel beams represent only about 5 percent of building costs and 3 percent of manufactured residential house frames. CR at II-10; PR at II-7.

⁵⁰ CR & PR at III-1 & Table III-3. Capacity and utilization trends were affected by various permanent and temporary factory closings and the bringing on line of new capacity. Northwestern closed its Houston plant in June 1997, which eliminated *** short tons of capacity and over *** short tons of U.S. production. ***’s production declined by nearly *** short tons in 1998 compared with 1997 when it ***. In August of 1999, TXI-Chaparral opened a new facility in Petersburg, VA, ***. ***. Nucor added *** short tons of capacity during December 1998 with its new Berkeley plant in South Carolina which became fully operational by the fourth quarter of 1999. Steel Dynamics, Inc. has built a new structural steel mill with a capacity of 900,000 short tons, but is spending \$40 million to redesign the mill to significantly divert production from structural steel beams to rails. CR at III-4 -III-5; PR at III-4.

⁵¹ CR & PR at III-1 & Table III-3.

⁵² CR at II-2; see also USITC Pub. 3225 at 15. Although the shortage may not have been severe, the statement of some domestic producers indicating that some import volume was necessary, and the importations by some domestic producers, indicates that a shortage likely existed. See Japanese respondents’ posthearing brief at exhibit 4. A significant majority of purchasers reported: (a) being placed on allocation; (b) being required, asked, or encouraged to accept shipments of quantities less than ordered; or (c) having their orders declined, or having acceptance or shipment of their orders delayed, in each of the years 1997 through 1999. CR at II-10-II-11; PR at II-8. The information available on the record does not identify the quarter or other specific period within the given year in which the event occurred, limiting the utility of those data.

quarter of 1997.⁵³ These supply constraints, however, apparent in late 1997 and early 1998, quickly reversed as subject imports escalated in March 1998 and surged thereafter through the first quarter of 1999.⁵⁴ The import surge far exceeded the prior shortfall in supply; the volume of domestic shipments fell in the third quarter of 1998 and continued to fall through the first quarter of 1999 as imports gained market share at the expense of the domestic industry. This was followed by some tightening of supply again in the middle of 1999 as the subject imports declined and Nucor and TXI-Chaparral remained on the threshold of ramping up production at their new facilities at Berkeley, SC and Petersburg, VA, respectively.⁵⁵ Nucor's Berkeley plant opened in December 1998 and became fully operational in the fourth quarter of 1999.⁵⁶ TXI-Chaparral's Petersburg plant, with structural steel beam capacity of *** short tons, was expected by company officials to reach ***.⁵⁷

Nonsubject imports increased from 428,532 short tons in 1997 to 699,954 short tons in 1998. In 1999, nonsubject imports declined below 1997 levels to 358,967 short tons.⁵⁸

Pacific Rim countries generally, and Japan and Korea in particular, have confronted crises in their financial and construction sectors in recent years. Although there have been improvements in the Pacific Rim economies, the Japanese home market is expected to recover more slowly than markets in Korea or other Asian countries. In addition, while steel beam demand is increasing in Korea, such demand is expected to remain far below pre-1997 volume levels.⁵⁹

IV. VIEWS OF VICE CHAIRMAN MILLER AND COMMISSIONERS HILLMAN AND OKUN THAT THE DOMESTIC STRUCTURAL STEEL BEAM INDUSTRY IS MATERIALLY INJURED BY REASON OF SUBJECT IMPORTS⁶⁰

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation. 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

⁵³ USITC Pub. 3225 at 15; CR at II-2; PR at II-1; Petitioners' posthearing brief at attachment 9.

⁵⁴ Memorandum INV-X-118 at Table B (volume of subject imports was 15,585 short tons in January 1998, 21,255 short tons in February 1998, 107,570 short tons in March 1998, and remained above 100,000 short tons per month through February 1999). We find that the substantial decline in U.S. shipments in the second half of 1998 and the first half of 1999 (*see, e.g.*, domestic shipment data CR and PR at Tables V-1-V-5) reflect a decline in sales and resulting unused available production capacity of U.S. producers. *See* CR & PR at Table III-3.

⁵⁵ CR at III-4-III-5; PR at III-4.

⁵⁶ *Id.* This mill subsequently exceeded its original projected capacity of *** short tons. Company officials now estimate that the annual capacity of this mill is *** short tons. CR at II-4, III-4 - III-5; PR II-3, at III-4.

⁵⁷ CR at III-5; PR at III-4.

⁵⁸ CR & PR at Table IV-2.

⁵⁹ Korean respondents' prehearing brief at exhibit 11 (Korean Ministry of Construction & Transportation: Construction Building Permits); petitioners' posthearing brief at 13 & attachment 5.

⁶⁰ For the opinions of Chairman Bragg and Commissioners Koplun and Askey regarding present material injury see their separate views.

only in the context of U.S. production operations.⁶¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁶² In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶³ 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.”⁶⁴

In the preliminary phase investigations, the Commission found a reasonable indication that the domestic industry was threatened with material injury by reason of the cumulated subject imports from Japan and Korea. Based on our expanded record in the final phase of this investigation, for the reasons discussed below, we determine that the domestic industry producing structural steel beams is materially injured by reason of subject imports from Japan.⁶⁵

A. 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.”⁶⁶

The volume of U.S. imports of subject structural steel beams increased from 54,704 short tons in 1997 to 1,241,108 short tons in 1998, then declined to 452,838 short tons in 1999.⁶⁷ Notwithstanding the decrease from 1998 levels, the 1999 volume of subject imports represents a 728-percent increase over the 1997 volume. Shipments of the subject imports grew from 1.2 percent of apparent U.S. consumption in 1997 to 22.0 percent in 1998 then declined to a level significantly above the 1997 share, at 9.7 percent of apparent U.S. consumption in 1999.⁶⁸ U.S. producers’ share of the U.S. structural beam market declined from 89.9 percent in 1997 to 65.4 percent in 1998 and remained below the 1997 share in 1999 at 83.2 percent.⁶⁹

Based on official import statistics, subject import volumes remained at extremely high levels between the second quarter of 1998 and the first quarter of 1999, and continued at significant levels in the second quarter of 1999, with the volumes remaining significant in individual months thereafter on a sporadic basis.⁷⁰

⁶¹ 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).

⁶² 19 U.S.C. § 1677(7)(A).

⁶³ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁴ Id.

⁶⁵ Based on our decision above, we have cumulatively assessed the volume and effect of subject imports from Japan and Korea.

⁶⁶ 19 U.S.C. § 1677(7)(C)(I).

⁶⁷ CR & PR at Table IV-3.

⁶⁸ CR & PR at Table IV-4.

⁶⁹ Id.

⁷⁰ Memorandum INV-X-118 (May 31, 2000) at Table B (monthly data are available only through the official

(continued...)

We have considered whether the filing of the petition on July 7, 1999, affected the volume or effects of imports starting in the second half of 1999 such that we should give less weight to post-petition information.⁷¹ We note, as argued by respondents, that the declining trend in subject imports began prior to the filing of the petition, at least in part in reaction to the domestic industry's significant price cuts, described below in the section on price effects. The vast majority of purchasers, however, indicated that the investigations affected the supply, availability, or prices of subject structural beams.⁷² Accordingly, we find that the investigation contributed to the change in volume of subject imports in the second half of 1999, and have thus given somewhat less weight to post-petition information in this investigation.

The volume of nonsubject imports increased from 428,532 short tons in 1997 to 699,954 short tons in 1998, then declined below 1997 levels to 358,967 short tons in 1999.⁷³ Nonsubject imports' share of the U.S. market (by quantity) increased from 8.9 percent in 1997 to 12.7 percent in 1998 then declined to 7.1 percent in 1999.⁷⁴ Thus, the subject imports increased in 1998 at a rate far in excess of the rate at which nonsubject imports increased that year and, unlike the nonsubject imports, the subject imports in 1999 remained at a level well in excess of the 1997 levels.

We find the volume of the subject imports, in absolute terms and relative to U.S. consumption, to be significant.

B. 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.

As noted above, there is a significant degree of substitutability between the domestic like product and the subject imports, and price is an important consideration for purchasers.⁷⁵ We note, however, that certain nonprice considerations favor the domestic like product and can result in the domestic product commanding a price premium. Estimates of such a premium have ranged from 3 to 7 percent and from \$20 to \$30 per short ton.⁷⁶

⁷⁰ (...continued)

statistics; although the subject import volumes reflected in official statistics differ somewhat from those reflected in the questionnaire responses that are otherwise relied upon in this investigation, the import trends reflected in each source are similar).

⁷¹ 19 U.S.C. § 1677(7)(C)(ii) (if the Commission finds that a change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition is related to the pendency of the investigation, the Commission may reduce the weight accorded to the data for the period after the filing of the petition).

⁷² See CR at II-4; PR at II-3; purchaser questionnaire responses to question III-32.

⁷³ CR & PR at Table IV-2.

⁷⁴ CR & PR at Table IV-4.

⁷⁵ CR at II-12, II-16-II-17; PR at II-8, II-11.

⁷⁶ See, e.g., *** purchaser questionnaire response, question IV-7; see also USITC Pub. 3225 at 16, n.97. Japanese respondents argue that actions of one domestic producer implied that Japanese imports without raised roll marks were inferior to beams having such marks (including domestic beams) and that this effectively increased the premium
(continued...)

The price comparisons for the five specific products identified in the Commission's questionnaires show that the increasing volumes of subject imports in 1998 were accompanied by low and falling prices, and that the subject imports undersold the domestic like product in a large majority of price comparisons, by amounts that greatly exceeded any price premium for domestic products. In response to the large influx of low-priced subject imports, domestic producers drastically reduced their prices in the fourth quarter of 1998 and the first quarter of 1999 at every level of trade at which they sold commercially significant quantities.⁷⁷ U.S. producers cut prices by more than \$100 per short ton from the third quarter of 1998 to the first quarter of 1999 on their highest volume, wide-flange beam products.⁷⁸ Prices on those wide-flange products and most others remained at low levels in the second and third quarters of 1999 and did not increase until the fourth quarter of 1999, by which time the volume of subject imports had substantially declined.⁷⁹

Based on the consistent underselling by subject imports and declining domestic prices, and in light of the relatively high degree of substitutability between the subject imports and the domestic like product, we find that underselling by the subject imports is significant and that the subject imports have depressed the prices for the domestic like product to a significant degree.

C. Impact

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry." These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁸⁰ ⁸¹ For the reasons discussed below, we conclude that the significant volume of subject

⁷⁶ (...continued)

on U.S. beams by \$50 vis-a-vis Japanese beams. Japanese respondents' posthearing brief at 10. We note, however, that no purchasers identified the absence of roll marks as a factor limiting the substitutability of Japanese and U.S. beams or affecting price competition. Moreover, any roll-mark issue could not explain why Japanese prices declined steadily from the fourth quarter of 1997 through the second quarter of 1999. See CR & PR at Tables V-1, V-2, V-3. Thus we do not find that the absence of roll marks explains the substantial underselling to a significant extent in this investigation.

⁷⁷ CR & PR at Tables V-1-V-11, V-13-V-14.

⁷⁸ CR & PR at Tables V-1 and V-2.

⁷⁹ CR & PR at Tables V-1 and V-2. As noted above in the volume section, the volume of subject imports was significant at least through the second quarter of 1999. Also contributing to the continued downward pressure on domestic prices during 1999 was the drawing down of the substantial inventories built up by service centers during 1998. Because nearly all subject imports are purchased by service centers, and because domestic shipments to service centers declined significantly in 1998 while subject imports skyrocketed, it is likely that a substantial portion of service centers' built-up inventories consisted of subject imports. These inventories were drawn down substantially during the course of 1999. Petitioners' posthearing brief at attachment 2-F.

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

⁸¹ As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider
(continued...)

imports at declining prices, and their consistent underselling of the domestic like product, have adversely affected the domestic industry producing structural steel beams.

We found above that the volume and price effects of the subject imports were significant, as the surge in subject imports that began in 1998 reduced the shipments and market share of domestic producers, and led to substantial price reductions at the end of 1998 and the beginning of 1999. These low prices persisted through most of 1999.

In 1998, the negative impact of these events on the performance of the domestic industry primarily took the form of significantly reduced shipments and market share. Domestic market share fell from 89.9 percent to 65.4 percent from 1997 to 1998, and the volume of domestic shipments fell by nearly 10 percent over that same period.⁸²

In 1999, the negative impact of subject imports primarily took the form of significantly reduced industry profitability as a result of lower prices and lower sales revenues. The unit value of domestic shipments fell from \$405.58 in 1998 to \$335.12 in 1999, and the value of net sales decreased by 11.4 percent, despite an increase in the volume of sales from 1998 to 1999.⁸³

As a result, domestic producers' operating income fell by more than \$160 million from 1998 to 1999.⁸⁴ As a percentage of net sales, operating income fell from 20.0 percent in 1998 to 10.1 percent in 1999.⁸⁵ Of the eight domestic producers reporting financial data, the number reporting an operating loss increased from one in 1998 to four in 1999.⁸⁶ The 1999 decline in operating income occurred notwithstanding a significant decrease in cost of goods sold per short ton from 1998 to 1999.⁸⁷

In addition, although domestic market share increased in 1999 from 65.4 percent to 83.2 percent, this level was below the 1997 level of 89.9 percent, as a result of the continued significant volume and market share of subject imports through the first half of 1999.⁸⁸ This continued significant import presence contributed to the inability of domestic producers to utilize fully their productive capacity, which increased in 1999, and helped depress domestic capacity utilization, which fell from 84.4 percent in 1998

⁸¹ (...continued)

“the magnitude of the margin of dumping” in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce’s final antidumping duty margins with respect to Japan ranged from 31.98 percent to 65.21 percent. 65 Fed. Reg. 24182, 24183 (April 25, 2000).

⁸² CR & PR at Tables III-4, IV-3, & IV-4.

⁸³ CR & PR at Tables IV-3, IV-1, & C-1.

⁸⁴ CR and PR at Table VI-1.

⁸⁵ CR & PR at Tables VI-1 & C-1. Even if certain TXI-Chaparral start-up costs are excluded, as urged by respondents, the industry’s operating ratio is *** percent in 1999, still well below the 1998 ratio. CR & PR at Table VI-1.

⁸⁶ CR & PR at Table VI-1.

⁸⁷ CR & PR at VI-3.

⁸⁸ CR & PR at Tables IV-3 & IV-4.

to 73.4 percent in 1999.⁸⁹ The numerous instances in which domestic producers lost sales or revenues as a result of the subject imports represent further evidence of the negative effects of subject imports.⁹⁰

Between 1997 and 1999, the domestic industry's overall performance was mixed. We note, consistent with increasing demand for beams, the domestic industry's significant recent capital investments and increases in capacity and employment. Based on the record as a whole, however, we find that, overall, the subject imports are having a significant adverse impact on the domestic industry.

For the foregoing reasons, we find that an industry in the United States producing structural steel beams is materially injured by reason of imports of structural steel beams from Japan that are sold in the United States at less than fair value.

V. VIEWS OF CHAIRMAN BRAGG AND COMMISSIONERS KOPLAN AND ASKEY THAT THE DOMESTIC STRUCTURAL STEEL BEAM INDUSTRY IS THREATENED WITH MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."⁹¹ The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."⁹² In making our determination, we have considered all factors that are relevant to this investigation.⁹³

Based on an evaluation of the relevant statutory factors, we find that an industry in the United States is threatened with material injury by reason of imports of structural steel beams from Japan that are sold in the United States at less than fair value.

A. Cumulation for Purposes of Threat Analysis

Cumulation for threat analysis is treated in Section 771(7)(H) of the Act.⁹⁴ This provision leaves to the Commission's discretion cumulation of imports in analyzing threat of material injury. In deciding whether to cumulate the subject imports for purposes of making threat determinations, the Commission

⁸⁹ CR & PR at Table III-3. We recognize that the lower capacity utilization figure in 1999 may also be related in part to a relatively slow ramp up in production at TXI-Chaparral's Petersburg facility that is unrelated to the effects of subject imports. The speed, however, at which Nucor's Berkeley facility increased its production levels was negatively affected at least in part by the subject imports. See Petitioners' posthearing brief at attachment 15.

⁹⁰ CR & PR at Tables V-15 & V-16.

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

⁹² 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

⁹³ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).

⁹⁴ 19 U.S.C. § 1677(7)(H).

has often considered whether the imports are increasing at similar rates, whether the imports have similar margins of underselling, and whether the imports have similar pricing patterns.⁹⁵

Based on an evaluation of the relevant criteria, we have exercised our discretion to cumulate the subject imports from Japan and Korea.⁹⁶ As discussed earlier, we find a reasonable overlap of competition between the imports from Japan and Korea and the domestic like product. Finding no significant differences in the conditions of competition or trends of the volume or prices of imports from Japan and Korea, we exercise our discretion to cumulate those subject imports for purposes of our analysis of threat of material injury.⁹⁷

B. Threat of Material Injury by Reason Of LTFV Imports from Japan

We find that several factors indicate that substantially increased volumes of subject imports from the subject countries are likely. First, the subject producers have demonstrated an ability to enter the U.S. market with substantial quantities in a short period of time. Shipments of subject imports from Japan and Korea rose by over 2,000 percent from 1997 to 1998, totaling 54,704 short tons in 1997 and 1,236,708 short tons in 1998.⁹⁸ Although shipments of subject imports declined thereafter to 452,356 short tons in 1999,⁹⁹ the 1997 to 1998 increase shows that Japanese and Korean exporters have the ability to increase the volume of exports to the United States enormously within a very short time frame.¹⁰⁰ U.S. shipments of the subject imports from Japan and Korea captured significant market share beginning in 1998, rising from only 1.2 percent of total U.S. consumption in 1997 to a 22.0 percent market share in 1998 before declining to a 9.7 percent share in 1999.¹⁰¹

Second, the subject producers currently have the capacity to ship a significant volume of subject merchandise to the United States. Excess production capacity in Japan and Korea (3.9 million short tons at the end of 1999)¹⁰² represents more than three times the cumulated volume of subject imports from the two countries in 1998, the year of the highest volume of subject imports into the U.S. market over the period of investigation. In addition, inventories in Japan and Korea at the end of 1999 totaled 388,090

⁹⁵ See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

⁹⁶ As noted earlier, Chairman Bragg finds that the same analysis justifying cumulation of all subject imports for purposes of the Commission's assessment of present material injury applies equally to an assessment of threat of material injury.

⁹⁷ CR & PR at Table IV-3.

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ We also note that the United States has been of varying importance as an export market for Japanese and Korean beams, accounting for 56 percent of their total beam exports in 1998 and 15 percent in 1999, and that expansion and contraction of their export volumes to the United States has occurred by increasing production without significantly affecting exports to other markets. CR & PR at Table VII-1.

¹⁰¹ CR & PR at Table IV-4.

¹⁰² CR & PR at Table VII-1.

short tons,¹⁰³ demonstrating an ability to increase exports to the United States significantly in the near term even without increasing production. We recognize that there has been some improvement in the home market demand for both Japan and Korea. Nevertheless, in neither country is substantial growth expected in the construction sector or other major segments of beam consumption.¹⁰⁴ Indeed, subject Korean producers currently ***.¹⁰⁵

Third, and most significantly, subject producers have a great incentive to ship significant quantities of subject merchandise to the United States. Prices in the U.S. market have recently recovered to 1997 levels.¹⁰⁶ This makes the United States once again an attractive market for the subject imports. While capacity utilization for the subject producers has improved since 1998, it is still low enough (and is projected to remain low enough) to provide an incentive for those producers to add significant production and then increase exports to the United States, especially given the capital intensive nature of the industry. Further, the subject merchandise is subject to antidumping duty orders in other countries.¹⁰⁷ Taiwan currently has an antidumping duty order in place on structural steel beams from Japan.¹⁰⁸ In addition, two of the three subject Korean producers are subject to an antidumping duty order in Thailand and one of the three is subject to an antidumping duty order in Taiwan.¹⁰⁹ In light of the significant unused production capacity and inventories in the subject countries, limitations on those countries' exports of subject merchandise to other countries, and the price recovery in the United States towards the end of the period of investigation, we find it likely that the subject imports will enter the United States in substantially increased volumes absent the issuance of an antidumping duty order.

The record also indicates that subject merchandise from Japan and Korea undersold the domestic like product in 61 of 62 price comparisons.¹¹⁰ In response to the high volumes of low-priced imports, the domestic producers lowered their prices significantly beginning in the last quarter of 1998 and the first quarter of 1999,¹¹¹ cutting prices of the most significant volume products by more than \$100 per short ton (more than 25 percent).¹¹² We note that for much of the time subject imports were present in the U.S. market, there was a shortage of structural steel beams in the market. Thus, subject imports were priced aggressively, even in a shortage period.¹¹³ We find it likely that exporters and importers of the Japanese and Korean subject merchandise would likely price just as aggressively as they did when capturing

¹⁰³ CR & PR at Table VII-1.

¹⁰⁴ *E.g.*, Petitioners' posthearing brief at 13 & Attachment 5; Korean respondents' prehearing brief at exhibit 11; Japanese respondents' posthearing brief at appendix C.

¹⁰⁵ Petitioners' posthearing brief at 14; see also Memorandum INV-X-118.

¹⁰⁶ Hearing transcript at 70-72.

¹⁰⁷ 19 U.S.C. § 1677(F)(iii). The petitioners also allege that prices for structural steel beams in Asia are lower than U.S. prices, which they indicate otherwise increases the attractiveness of the U.S. market compared with Asian markets. Petitioners' posthearing brief at 11.

¹⁰⁸ CR at VII-6; PR at VII-4.

¹⁰⁹ *Id.* Inchon is the Korean producer subject to an antidumping duty order on H-beams in Taiwan. Inchon and Kangwon are the Korean producers subject to the antidumping duty order in Thailand. A merger of Inchon and Kangwon was concluded in March 2000. *E.g.*, Korean respondent's prehearing brief at 26-27.

¹¹⁰ CR at V-19; PR at V-6.

¹¹¹ CR and PR at Tables V-1-V-14; see also Hearing transcript at 37, 202.

¹¹² See CR and PR at Table V-1 & V-2 (products 1 & 2).

¹¹³ Hearing transcript at 190-196.

market share in 1998 and are likely to cause significant suppression or depression of U.S. producers' prices. In particular, as discussed above, capacity utilization rates in the subject countries remain relatively low. Thus, while the conditions are not as dire as they were in 1998, the subject foreign producers continue to have ample incentive to aggressively price the LTFV imports as was done in 1998. Accordingly, on the basis of record evidence of the depressing effects of subject imports during a portion of the period examined, we find that a significant volume of subject imports will enter the United States at prices that will have a significant depressing or suppressing effect on domestic prices of structural steel beams.

We also find that the increased imports from Japan and Korea will have a significant adverse impact upon the performance of the United States industry. The profitability of the industry declined substantially during the period of investigation in absolute terms, on a per-unit basis, and as a percentage of sales.¹¹⁴ Additionally, end-of-period inventories of U.S. producers as a percentage of their total shipments increased in the period examined from 5.9 percent in 1997 to 8.6 percent in 1999.¹¹⁵ Moreover, the subject imports in the U.S. market went beyond supplying the shortage and cut into domestic producer shipments, significantly raising unit costs and lowering profitability.¹¹⁶ In light of these performance indicators, we conclude that significantly increasing imports of subject merchandise are likely to adversely impact the domestic industry's performance in the imminent future in the absence of an antidumping duty order.¹¹⁷ Although the industry is currently profitable, the increase in LTFV subject imports will have materially injurious effects in the imminent future in the absence of an antidumping duty order.

Therefore, we find that the U.S. industry producing structural steel beams is threatened with material injury by reason of subject imports of structural steel beams from Japan.¹¹⁸

CONCLUSION

For the reasons stated above, we determine that the domestic industry producing structural steel beams is materially injured or threatened with material injury by reason of imports of structural steel beams from Japan that are sold in the United States at less than fair value.

¹¹⁴ CR & PR at Table C-1.

¹¹⁵ Id.

¹¹⁶ CR & PR at Table III-6.

¹¹⁷ We have also examined the statutory criterion concerning the actual and potential negative effects on the existing development and production efforts of the domestic industry. 19 U.S.C. § 1677(7)(F)(I)(VIII). As indicated above, the domestic producers have made significant capital expenditures to increase and modernize production capacity. Much of this rationalization of productive capacity, which was undertaken without regard for subject imports, has already taken place.

¹¹⁸ We do not find that but for the suspension of liquidation, we would have found the domestic industry to be experiencing material injury. The record does not indicate that absent suspension of liquidation in February 2000, the domestic industry would have been materially injured by reason of subject imports. We also note that the record in this investigation does not indicate that subject producers are likely to shift from the production of other steel products to the production of subject merchandise. In addition, we find no other adverse demonstrable trends relevant to our analysis.

**SEPARATE VIEWS OF CHAIRMAN LYNN M. BRAGG
REGARDING NO PRESENT MATERIAL INJURY**

*Certain Structural Steel Beams from Japan
Inv. No. 731-TA-853 (Final)*

For the reasons set forth below, I determine that the domestic structural steel beams industry is not materially injured by reason of subject imports of structural steel beams from Japan.

I note that I join my colleagues Commissioners Koplán and Askey in our discussion of cumulation of subject imports from Japan and Korea and statement of reasons for determining that the domestic industry producing structural steel beams is threatened with material injury by reason of structural steel beams from Japan. I also join all of my colleagues with respect to the definitions of the domestic like product and domestic industry, as well as the discussion of conditions of competition that are distinctive to the domestic industry.

I. NO INDICATION OF PRESENT MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM JAPAN

A. VOLUME OF CUMULATED SUBJECT IMPORTS

As I noted in the Preliminary Determination, “although subject import volumes could be deemed significant when viewed in isolation, in the context of the instant preliminary investigations they are not significant in the analysis of present material injury.”¹¹⁹ In this final phase investigation, I again find that the volume of subject imports, viewed in the context of the entire period of investigation, was not significant.

Importantly, the record indicates that although subject import volumes surged in 1998, the volume of subject imports had receded considerably by early 1999. In addition, the record indicates that while 1998 subject imports continued to be sold out of inventories into 1999, importers’ inventories returned to historical levels by April of 1999, before the filing of the antidumping petition in this investigation.¹²⁰ Notably, the record indicates that subject imports were driven from the domestic market by domestic producers’ price reductions beginning in the last quarter of 1998 through the first quarter of 1999.¹²¹ Therefore, subject imports’ departure from the domestic market was more the result of market conditions rather than the filing of the petition.

Based upon the foregoing, I determine that the volume of subject imports, viewed in the context of the entire period of investigation, was not significant.

B. PRICE EFFECTS OF THE SUBJECT IMPORTS

¹¹⁹ Preliminary Determination at 16, n.94.

¹²⁰ Japanese Respondents’ Posthearing Brief, Exh. 8.

¹²¹ CR and PR at Tables V-1-V-14; see also Hearing Transcript at 37, 202.

Early in the period of investigation, the domestic industry performed exceedingly well, largely as a result of steadily increasing domestic steel beam prices.¹²² The record also indicates, however, that underselling by the subject imports resulted in a reduction of structural steel beam prices in the U.S. market beginning in the last quarter of 1998 through the first quarter of 1999, as domestic producers cut prices in an attempt to drive subject imports from the domestic market.¹²³ Having succeeded in their price reduction strategy, domestic producers experienced a recovery in the prices they received for their product by the middle of 1999.¹²⁴ Importantly, the recovery in domestic prices coincided with the departure of subject imports from the domestic market, both of which occurred well before the end of the period of investigation. It is therefore apparent that any negative price effects which may have been caused by subject imports were limited to only the middle portion of the period of investigation and were non-existent by the end of the period of investigation.

Based upon the foregoing, I determine that the volume of subject imports, which I found not to be significant when viewed in the context of the entire period of investigation, did not depress or suppress domestic prices to a significant degree.

C. IMPACT

The record indicates that the profitability of the domestic industry declined substantially during the period of investigation in absolute terms, on a per-unit basis, and as a percentage of sales.¹²⁵ The domestic industry's operating income as a percentage of net sales, however, remained high at 10.1 percent in 1999.¹²⁶ And while the record indicates that the increased volume of undersold subject imports forced domestic producers initially to reduce their structural steel beam prices, any negative price effects, and any resulting adverse impact, had subsided by the middle of 1999, well before the end of the period of the investigation.

In light of my findings that the volume and price effects of subject imports were not significant, I therefore conclude that subject imports did not have a significant adverse impact on the domestic industry when viewed in the context of the entire period of investigation. Importantly, I also note that although imports caused problems for this industry during the period of investigation, I do not find material injury to the domestic industry by reason of subject imports.

II. CONCLUSION

Based upon the foregoing analysis, I determine that an industry in the United States is not materially injured by reason of subject imports of structural steel beams from Japan found to be sold in the United States at less than fair value. I point out, however, that although the short-term trend of increased volumes of subject imports did not cause present material injury when viewed in the context of the entire period of investigation, subject imports did cause problems for the domestic industry. This demonstrated ability to enter quickly the U.S. market and cause immediate performance problems for the domestic

¹²² CR and PR at Table VI-1; CR and PR at Tables V-1-V-14.

¹²³ CR and PR at Tables V-1-V-14; see also Hearing Transcript at 37, 202.

¹²⁴ CR and PR at Tables V-1-V-14.

¹²⁵ CR and PR at Table C-1.

¹²⁶ CR and PR at Table VI-1.

industry is a basis for my finding that the domestic structural steel beams industry is threatened with material injury by reason of subject imports from Japan.

ADDITIONAL VIEWS OF COMMISSIONER STEPHEN KOPLAN

My views on the domestic like product and the domestic industry, my analysis regarding cumulation of imports from Japan and Korea for purposes of the present material injury determination, and my description of the relevant conditions of competition are contained in the *Views of the Commission*. I do not find that the record in this case supports a determination that the domestic structural steel beams industry presently is suffering material injury by reason of imports from Japan sold in the United States at less than fair value (“LTFV”). Rather, I find that the domestic industry is threatened with material injury by reason of the subject imports.

THE DOMESTIC INDUSTRY IS NOT MATERIALLY INJURED BY REASON OF SUBJECT IMPORTS FROM JAPAN

I do not disagree with the conclusion put forth by my colleagues that the domestic industry was materially injured by reason of the subject imports at the time those imports were present in the U.S. market. Indeed, my finding that the industry is threatened with material injury is based in large measure on the adverse impact that the imports had when they were present in the U.S. market. For several reasons, however, I depart from my colleagues in their conclusion that the industry presently is materially injured by reason of the subject imports.

To aid me in rendering a determination as to whether the domestic industry is presently materially injured by reason of the subject imports, I typically examine a three year period of investigation (POI) together with the most recent time period for which data are available. While data from the POI provide a useful context for my analysis, for purposes of present material injury I generally look to the most recent information on the record. Such a practice has been upheld by our reviewing courts. *See, Saarstahl, A.G. v. United States*, 858 F. Supp. 196, 200 (Ct. Int’l Trade 1994) (admonishing the Commission to use “information concerning the domestic industry in as contemporaneous a time frame as possible” in rendering present material injury determinations).

The evidence in this investigation indicates that beginning in September 1998, the domestic industry responded to the significant volume of dumped subject imports through a series of aggressive price discounts. *See, e.g.*, Hearing Tr. at 37. *See, also* Hearing Tr. at 202 (“the prices went lower than was attractive to the Japanese any more.”) This competition essentially drove the imports from the market and adversely affected the industry’s financial health. By the middle of 1999, however (and certainly by the time the Commission rendered its determination), the domestic industry was not currently experiencing material injury by reason of the subject imports. Indeed, the industry representatives testified that prices had recovered to 1997 levels by the second quarter of this year and profitability had been restored with subject imports absent from the market. Hearing Tr. at 70-72.

Of course, an issue is raised in this investigation as to whether the current state of the industry is related to the pendency of this investigation. *See* 19 U.S.C. § 1677(7)(I). I believe the current state of the industry is the result of the industry’s own actions in driving imports from the market beginning in late 1998. Given the typical three month lag between order and importation, imports began exiting the market by around October 1998 and were driven from the market completely by June 1999. The petition in this investigation was not filed until July 7, 1999. Thus, it appears that the competition from the domestic industry was successful in driving imports from the market.

I also do not believe that the pendency of this investigation has kept the imports from reentering the market until very recently. It was not until recently that prices rebounded to 1997 levels, making the U.S. market highly appealing as a destination for the subject imports. *See* Hearing Tr. at 177 (imports

were attracted to the U.S. market in late 1997 and 1998 in part because of “high domestic prices”). Now the domestic conditions are ripe for further significant volumes of subject imports. Consequently, for the reasons expressed in my views on threat, while I find that “further dumped . . . imports are imminent and . . . material injury would occur unless an order is issued,” I do not attribute the current condition of the industry to the pendency of this investigation. Accordingly, I do not find the domestic industry to be presently materially injured by reason of the subject imports.

ADDITIONAL VIEWS OF COMMISSIONER THELMA J. ASKEY

I find that the domestic structural steel beams industry presently is not suffering material injury by reason of imports from Japan sold in the United States at less than fair value (“LTFV”). Rather, I find that the domestic industry is threatened with material injury by reason of the subject imports. My views on the domestic like product and the domestic industry, my analysis regarding cumulation of imports from Japan and Korea for purposes of the present material injury determination, and my description of the relevant conditions of competition are contained in the *Views of the Commission*.

THE DOMESTIC INDUSTRY IS NOT MATERIALLY INJURED BY REASON OF SUBJECT IMPORTS FROM JAPAN

In considering whether the domestic industry is being injured by reason of the subject imports, the Commission is statutorily directed to consider the volume of the subject imports, their effect on prices in the United States for the domestic like product, and the impact of the imports on domestic producers of the domestic like product.¹²⁷

A. Volume

In considering the volume of the subject imports, the statute directs the Commission to consider whether the volume of the subject imports, or any increase in that volume (either in absolute terms or relative to production or consumption in the United States) is significant.¹²⁸

The volume of U.S. shipments of subject imports fluctuated over the period of investigation (“POI”) rising from 54,704 short tons in 1997 to 1,236,708 short tons in 1998, but then falling to 452,356 short tons in 1999.¹²⁹ Shipments of the subject imports also grew as a share of apparent U.S. consumption, from 1.2 percent in 1997 to 22.0 percent in 1998, but fell to 9.7 percent in 1999.¹³⁰ Although a substantial increase in subject import volume and market share occurred in 1998, subject product had virtually left the market by the end of 1999. Subject imports amounted to 452,356 short tons in 1999, but nearly 70 percent had entered the domestic market by the first quarter of 1999 and over 90 percent had entered by the second quarter of 1999.¹³¹ I note that 1998 was an unusual year that saw domestic capacity decline at the same time that apparent consumption was peaking. In fact, reported capacity of domestic producers in that year was approximately 4.6 million short tons, about 1 million short tons below

¹²⁷ 19 U.S.C. § 1677(7)(B).

¹²⁸ 19 U.S.C. § 1677(7)(C)(i).

¹²⁹ Confidential Staff Report (“CR”) and Public Staff Report (“PR”) at Table C-1

¹³⁰ CR and PR at Table IV-4.

¹³¹ See Office of Investigations Memorandum INV-X-118 (“INV-X-118”) at Table B. I note that monthly data are only available through official import statistics. The official statistics, however, correspond closely to imports reported in the questionnaire responses, which are otherwise relied upon in this investigation..

U.S. apparent consumption of 5.6 million short tons.¹³² The substantial increase in subject imports in 1998 corresponds to the domestic industry's reported inability to supply the U.S. market.¹³³

On the whole, I find that the volume of subject imports was not significant. Clearly, subject import volumes were substantially higher in 1999 than they were in 1997, and there was a sharp increase in their volume in 1998. As I discuss below, however, the increase in 1998 did not have a significant impact on the domestic industry. Moreover, subject volume increases appear to have resulted from the domestic producers' inability to supply the market. Consequently, I do not find that the volume of subject imports significantly impacted the domestic industry. On the other hand, subject producers have demonstrated the ability to sharply increase volumes in a short period of time, which is an essential element of my threat of material injury finding.

B. Price

In considering the price effects of the subject imports, the statute directs the Commission to consider: 1) whether there has been significant price underselling by the subject imports as compared with the price of domestic products; and 2) whether the subject imports otherwise depress prices to a significant degree or prevent price increases (that would otherwise have occurred) to a significant degree.¹³⁴

Prices for the domestic like product unquestionably fell over the POI. In addition, the majority of importers and purchasers found domestic and subject structural beams interchangeable.¹³⁵ Furthermore, price comparisons for the higher volume products, (*i.e.*, products 1 and 2) showed significant declines. Prices for products 1 and 2 fell by over *** percent from the beginning of the period as compared to mid-1999.¹³⁶ Similarly, products 3, 4 and 5 fell by approximately *** percent during that time.¹³⁷ Prices for the high-volume products (*i.e.*, 1, 2 and 3), however, had rebounded significantly by the fourth quarter of 1999.¹³⁸ I note that subject imports undersold domestic merchandise throughout the POI and in many instances by a greater amount than the expected domestic price premium of 3 to 7 percent.¹³⁹ Nevertheless, the record evidence in this investigation indicates that in late 1998, the domestic industry responded to the significant volume of LTFV subject imports through a series of aggressive price

¹³² CR and PR at Table C-1.

¹³³ This situation is corroborated by purchasers, who reported being placed on allocation throughout the period. *See* CR at II-10; PR at II-7.

¹³⁴ 19 U.S.C. § 1677(7)(C)(ii).

¹³⁵ CR at II-13-14; PR at II-8.

¹³⁶ *Compare* first quarter 1997 pricing data with second quarter 1999 pricing data; CR and PR at Tables V-1 through V-3.

¹³⁷ *Id.* CR and PR at Tables V-4 and V-5.

¹³⁸ CR and PR at Tables V-1 through V-3.

¹³⁹ *See* USITC Pub. 3225 at 16, n. 97 (citing the asserted maximum for such premiums in distributors' testimony as between 3 to 7 percent).

discounts.¹⁴⁰ This competition made the U.S. market unattractive to subject producers and adversely affected the industry's financial health.¹⁴¹

Thus, looking at the record as a whole, imports do appear to have had at least some price suppressing or depressing effects during the three-year period the Commission has examined in making its material injury determination. I find, however, that the prices of subject imports have not currently had a material impact on the domestic industry, for the reasons I set forth below.

C. Impact

For purposes of assessing the impact of the subject imports on the domestic industry, the statute directs the Commission to consider several factors, including: 1) declines in the industry's output (i.e., production), sales, market share, profits, productivity, return on investments and capacity utilization; 2) factors affecting domestic prices; 3) negative effects on the industry's cash flow, inventories, wages, growth, and ability to raise capital and investment; 4) negative effects on their existing development and production efforts; and 5) the size of the margin.¹⁴²

The domestic industry's production only declined slightly (by 3.1 percent) over the POI.¹⁴³ The industry's market share remained very high in 1997 (89.9 percent) and 1999 (83.2 percent).¹⁴⁴ In contrast, the domestic industry's market share fell to 65.4 percent in 1998, the same time at which apparent consumption peaked and the domestic industry's production capacity fell by 3.2 percent.¹⁴⁵ The number of production and related workers employed by the domestic industry rose by 5.8 percent over the POI, although productivity during the same period decreased by 7.3 percent.¹⁴⁶ In addition, the industry has increased capacity by 17.9 percent from 1998 to 1999, and has managed to maintain generally high levels of capacity utilization, ranging from a high of 86.4 percent in 1997, to a still-high 73.4 percent in 1999.¹⁴⁷ Moreover, the industry's capital expenditures rose significantly over the POI, from \$89.6 million in 1997 to \$440.4 million in 1999.¹⁴⁸ Consequently, the domestic industry's profits remained strong throughout the POI, although falling somewhat in 1999. Operating income remained above \$300 million in 1997 and 1998, but then fell to \$136 million in 1999.¹⁴⁹ Operating margins were quite high in 1997 and 1998, 19.2 and 20.0 percent respectively, before falling to 10.1 percent in 1999.¹⁵⁰

Overall, the record evidence indicates that the domestic industry is not currently experiencing material injury by reason of the subject imports. Certainly the industry's financial indicators were worse

¹⁴⁰ See, e.g., Tr. at 37. See, also Tr. at 202.

¹⁴¹ This impact is somewhat mitigated by the significant decline in input costs for producers (raw material costs fell by 19.4 percent). CR at VI-3; PR at VI-1.

¹⁴² 19 U.S.C. § 1677(7)(C)(iii). I note that Commerce has found dumping margins ranging from 31.98 percent to 65.21 percent for Japanese producers. 65 Fed. Reg. 24183 (April 25, 2000).

¹⁴³ CR and PR at Table C-1.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ CR and PR at Table VI-1.

¹⁵⁰ *Id.*

in 1999 than they had been in 1997 and 1998, but the industry remained reasonably profitable in 1999. Subject import volumes rose and those imports captured market share by supplying sharply increased demand, albeit at prices that undersold the product. Yet, I note that import volumes did not cause the domestic industry to significantly decrease production, although they may have limited the industry's ability to gain market share in a period characterized by increased demand. Further, the record indicates that subject import volume increases may be attributed to the inability of the domestic industry to supply the domestic market as demand peaked. Moreover, industry representatives testified that by the second quarter of this year prices had recovered to 1997 levels and profitability had been restored with subject imports absent from the market.¹⁵¹

D. Pendency of This Investigation

There is a question in this investigation of whether the current state of the domestic industry is related to the pendency of the investigation.¹⁵² I believe the current state of the industry is the result of the industry's own actions in late 1998, which prompted subject imports to begin exiting the U.S. market by late 1998, and were essentially out of the market by June 1999.¹⁵³ The petition in this investigation was not filed until July 7, 1999. Thus, it appears that the competition from the domestic industry (and not the filing of the petition) was the principal reason for the exit of subject imports from the domestic market.

In addition, I do not believe that the pendency of this investigation has until recently kept the imports from reentering the market. It was not until recently that prices rebounded to 1997 levels, thus making the U.S. market highly appealing as a destination for the subject imports.¹⁵⁴ Now the conditions are ripe for further significant volumes of subject imports. Consequently, I do not attribute the current condition of the industry to the pendency of this investigation.

CONCLUSION

The record evidence in this investigation indicates that the domestic industry is not currently experiencing material injury by reason of the subject imports. Accordingly, I do not find the domestic industry to be presently materially injured by reason of the subject imports.

¹⁵¹ Tr. at 70-72.

¹⁵² 19 U.S.C. § 1677(7)(I).

¹⁵³ See INV-X-118.

¹⁵⁴ See Tr. at 177 (imports were attracted to the U.S. market in late 1997 and 1998 in part because of "high domestic prices").