

UNITED STATES INTERNATIONAL TRADE COMMISSION

**CERTAIN CARBON STEEL PRODUCTS FROM
AUSTRALIA, BELGIUM, BRAZIL, CANADA, FINLAND, FRANCE, GERMANY,
JAPAN, KOREA, MEXICO, THE NETHERLANDS, POLAND, ROMANIA, SPAIN,
SWEDEN, TAIWAN, AND THE UNITED KINGDOM**

Investigations Nos. AA1921-197 (Review),
701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review),
731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3364, November 2000)

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DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the countervailing duty orders and antidumping duty orders on the following certain carbon steel products from the specified countries would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time:

Country	Cut-to-length plate	Corrosion-resistant
Australia		731-TA-612
Belgium	701-TA-319 731-TA-573	
Brazil	701-TA-320 731-TA-574	
Canada		731-TA-614
Finland	731-TA-576	
France		701-TA-348 731-TA-615
Germany	701-TA-322 731-TA-578	701-TA-349 ² 731-TA-616 ²
Japan		731-TA-617
Korea		701-TA-350 731-TA-618
Mexico	701-TA-325 731-TA-582	
Poland	731-TA-583	
Romania	731-TA-584	
Spain	701-TA-326 731-TA-585	
Sweden	701-TA-327 731-TA-586	
Taiwan	AA1921-197 ²	
United Kingdom	701-TA-328 ³ 731-TA-587 ³	

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

² Commissioner Askey dissenting.

³ Chairman Koplan and Commissioner Askey dissenting.

The Commission determines that revocation of the countervailing duty orders and antidumping duty orders on the following certain carbon steel products from the specified countries would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time:

Country	Cut-to-length plate	Cold-rolled
Canada	731-TA-575	
Germany		701-TA-340 ⁴ 731-TA-604 ⁴
Korea		701-TA-342 ⁴ 731-TA-607 ⁴
Netherlands		731-TA-608 ⁴
Sweden		701-TA-231

BACKGROUND

The Commission instituted these reviews on September 1, 1999 (64 F.R. 47862) and determined on December 3, 1999, that it would conduct full reviews (64 F.R. 71494, December 21, 1999). Notice of the scheduling of the Commission's reviews and of public hearings 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* on April 18, 2000 (65 F.R. 20833). The hearings were held in Washington, DC, on September 12, 13, and 15, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 21, 2000. The views of the Commission are contained in USITC Publication 3364 (November 2000), entitled *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom: Investigations Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review)*.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

⁴ Commissioners Bragg and Miller dissenting.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping and countervailing duty orders on cut-to-length steel plate (also “plate”) from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time; and that revocation of the antidumping duty order on plate from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹

Based on the record in these reviews, we also determine under Section 751(c) of the Act that revocation of the antidumping and countervailing duty orders on cold-rolled carbon steel flat products (“cold-rolled steel”) from Germany, Korea, the Netherlands, and Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

Based on the record in these reviews, we further determine under section 751(c) of the Act that revocation of the antidumping and countervailing duty orders on corrosion-resistant carbon steel flat products (“corrosion-resistant steel”) from Australia, Canada, France, Germany, Japan, and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³

I. BACKGROUND

A. The Original Investigations

On May 12, 1979, the Commission found that a regional industry in the United States consisting of California, Washington, and Oregon was injured or likely to be injured by imports of plate from Taiwan. Subsequently, on June 13, 1979, the Department of Treasury issued an antidumping finding with respect to Taiwan.

In September 1985, the Commission found that an industry in the United States was being injured by reason of subsidized imports of cold-rolled steel from Sweden. On October 11, 1985, the Department of Commerce (“Commerce”) published a countervailing duty order with respect to Sweden.

In August 1993, the Commission found that an industry in the United States was materially injured by reason of subsidized imports of plate from Belgium, Brazil, Germany, Mexico, Spain, Sweden, and the United Kingdom. The Commission further found that an industry in the United States was injured or threatened with material injury by reason of imports sold at less than fair value (“LTFV”) of plate from Belgium, Brazil, Canada, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom.

¹ Chairman Koplan and Commissioner Askey dissenting with respect to the United Kingdom. *See* Dissenting Views of Chairman Stephen Koplan and Commissioner Thelma J. Askey. Commissioner Askey dissenting with respect to Taiwan.

² Commissioners Bragg and Miller dissenting with respect to Germany, Korea, and the Netherlands. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg and Separate Views of Commissioner Marcia E. Miller.

³ Commissioner Askey dissenting with respect to Germany. *See* Concurring and Dissenting Views of Commissioner Thelma J. Askey.

Also in August 1993, the Commission found that an industry in the United States was materially injured or threatened with material injury by reason of subsidized imports of cold-rolled steel from Germany and Korea. The Commission further found that an industry in the United States was materially injured or threatened with material injury by reason of LTFV imports of cold-rolled steel from Germany, Korea, and the Netherlands.

Also in August 1993, the Commission found that an industry in the United States was materially injured or threatened with material injury by reason of subsidized imports of corrosion-resistant steel from France, Germany, and Korea. The Commission further found that an industry in the United States was materially injured or threatened with material injury by reasons of LTFV imports of corrosion-resistant steel from Australia, Canada, France, Germany, Japan, and Korea.

Commerce published the countervailing duty orders on August 17, 1993 and the antidumping duty orders on August 19, 1993.

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁴ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

B. The Five-Year Reviews

On September 1, 1999, the Commission instituted reviews pursuant to section 751(c) of the Act, to determine whether revocation of the countervailing and antidumping duty orders on imports of plate, cold-rolled steel and corrosion-resistant steel from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, the Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom would likely lead to continuation or recurrence of material injury.⁵ The Commission received responses to the notice of institution from companies that produce a substantial proportion of domestic production of plate, cold-rolled, and corrosion-resistant steel. The Commission also received responses from respondent interested parties who are importers, producers, and/or exporters of the subject merchandise with respect to each subject country, with the exception of plate from Poland, Sweden, or Taiwan; cold-rolled steel from Sweden; and corrosion-resistant steel from Australia.

On December 3, 1999, the Commission determined that all individual interested party responses to its notice of institution were adequate, that the domestic interested party group responses were adequate for each of the three types of steel, and that the respondent interested party group responses were adequate for each type of steel and each country, with the exception of plate from Poland, Sweden, or Taiwan; cold-rolled steel from Sweden; and corrosion-resistant steel from Australia. The Commission determined to

⁴ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁵ 64 Fed. Reg. 15783 (Apr. 1, 1999).

conduct full reviews for all orders in these grouped reviews to promote administrative efficiency.⁶

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Products

1. Background

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”⁷ 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 under this subtitle.”⁸ In a section 751(c) review, the Commission must also take into account “its prior injury determinations.”⁹

2. Like Product Arguments

Domestic producers argue that the definition for each of the domestic like products should be expanded beyond the scope of subject merchandise to include microalloy steels, consisting of steel products containing levels of alloying elements above those defined by the Harmonized Tariff Schedules of the United States (“HTS”) as “nonalloy steel.”¹⁰ In the years since the HTS definitions were set out, advances in technology and metallurgy have given rise to new steel compositions such as high strength low alloy, cold-rolled motor lamination, and interstitial-free steels. These products are created through the inclusion of alloy elements in excess of the HTS levels, yet domestic producers assert that the products are recognized by both producers and consumers as carbon steel.¹¹ Domestic producers note that members of the American Iron and Steel Institute (“AISI”) consistently report microalloy products as carbon steel products.¹² Recent carbon steel cases have included microalloy products in both the scope of subject merchandise and in the domestic like products.¹³ Domestic producers claim that microalloy steels are so closely intertwined with conventional carbon steels that domestic producers are unable to segregate data on microalloy steels from data on carbon steels, and have included data on microalloy steels in their responses

⁶ See Explanation of Commission Determinations on Adequacy, Staff Report, Confidential Version (“CR”) at Appendix A, Staff Report, Public Version (“PR”) at Appendix A.

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, slip op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 Ct. Int’l Trade 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

⁹ 19 U.S.C. § 1675a(a)(1)(a).

¹⁰ Domestic producers have also argued that the records of the 1993 investigations are “ambiguous” as to whether microalloy products were in fact treated as part of the like product in those investigations. Domestic Producers’ Common Issues Prehearing Brief at 9 and n.6. We find the domestic producers’ proffered evidence that these microalloy products were included in any of the domestic like products of those investigations unconvincing.

¹¹ Domestic Producers’ Common Issues Prehearing Brief at 10-11.

¹² Domestic Producers’ Common Issues Prehearing Brief at 11.

¹³ Domestic Producers’ Common Issues Prehearing Brief at 12.

to questionnaires in these investigations.¹⁴ Respondent parties in favor of revocation have varied in their response to the suggested expanded like product. Some respondent parties have accepted the expanded definition,¹⁵ some have opposed it,¹⁶ and others have noted that “microalloy steel” is not a term of art in the industry.¹⁷

3. Whether Microalloy Steels Should Be Included in the Domestic Like Products

In five-year reviews, our starting point for any like product analysis is the Commission’s determination in the original investigations.¹⁸ In the 1993 original determinations the Commission found domestic like products corresponding to the respective scopes, and each scope included the term “carbon steel.” Those 1993 determinations included no discussion of microalloy steels. The Commission made similar determinations regarding domestic like products in the earlier determinations also currently under review. Upon reviewing the Commission’s earlier determinations, we find that the microalloy products at issue were not specifically included in any domestic like product defined by the Commission.

A review of the six-factor test typically relied upon by the Commission provides some evidence that microalloy products could be included in each of the three domestic like products at issue. Both domestic producers and subject respondents acknowledge that microalloy and carbon steels are produced in the same facilities, using the same employees and the same equipment, that both types of steel move in similar channels of distribution, and that prices for microalloy steels are closely related to prices for carbon steels.¹⁹ Respondents suggest that sufficient differences in physical characteristics and end uses exist to limit interchangeability and to ensure that customers requiring the performance of microalloy steels will not be satisfied with conventional carbon products.²⁰

Microalloy products were not included in the domestic like products in the original determinations and remain outside the scope of these reviews.²¹ In the instant reviews, we have not seen sufficient record evidence to indicate that changes in the marketplace have been sufficiently dramatic to support modification

¹⁴ See Producers’ Questionnaire Responses of Bethlehem, Ispat/Inland, LTV, National, and U.S. Steel at Part II.

¹⁵ German Group Prehearing Cold-Rolled Brief at 6.

¹⁶ German Plate Respondents’ Posthearing Responses to Questions at 26; Swedish Plate Respondent Posthearing Responses to Questions at Attachment 10.

¹⁷ Dutch Prehearing Cold-Rolled Brief at I-2.

¹⁸ In the like product analysis for an investigation, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price. See The Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-49.

¹⁹ Domestic Producers’ Prehearing Corrosion Resistant Brief at 10-10; German Group Cold-Rolled Posthearing Question Responses at 6-7.

²⁰ German Group Cold-Rolled Posthearing Question Responses at 6-7.

²¹ For the scope of the subject imports subject to these reviews, see CR at PLATE-I-25-I-26, PR at PLATE-I-23-I-25 (plate); CR at COLD-I-13, PR at COLD-I-12 (cold-rolled); and CR at CORROSION-I-15-I-17, PR at CORROSION-I-14-I-16 (corrosion-resistant).

of the domestic like product determinations made in the original investigations, or to warrant a like product that is broader than the scope of the imported products subject to the reviews.

In reaching this conclusion, we also note that the issue of expanding the domestic like products was raised relatively late in the review process. Domestic producers failed to raise the issue in the response to the Notice of Institution, in their Comments on Adequacy, or in their written comments on the draft questionnaires, but raised the issue in their prehearing briefs. Moreover, there is no standard definition of microalloy steels,²² and the domestic producers did not present their proposed definition, applicable to all three carbon steel flat products in these reviews, until the submission of their posthearing briefs, at which time the Commission's ability to collect additional data or comments on the proposed definition was severely limited.

We therefore do not include microalloys in the domestic like products and find three like products consisting of cut-to-length plate, cold-rolled steel, and corrosion-resistant steel (excluding clad plate), consistent with the Commission's 1993 determinations.^{23 24}

B. Domestic Industries

²² We note in this regard that there are variations among the definitions of microalloy steels included in both the scope of subject merchandise and in the domestic like products in the recent investigations of plate, hot-rolled steel, and cold-rolled steel. Compare Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia, Invs. Nos. 701-TA-384 and 731-TA-806-808 (Preliminary), USITC Pub. No. 3142 at I-2-I-3 (Nov. 1998); Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. No. 3181 at I-1 (Apr. 1999); Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, Inv. Nos. 701-TA-393-396 and 731-TA-829-840 (Preliminary), USITC Pub. No. 3214 at 5 (July 1999). The domestic producers in these reviews proposed, without explanation, that the microalloy definition from the most recent cold-rolled investigation be applied in the instant reviews to all three products. Domestic Producers' Posthearing Question Responses at Attachment A, pp. 1-2.

²³ Grade X-70 plate was specifically excluded from the scope of the 1993 plate investigations of all countries, and it does not appear that it was included in the 1979 investigation on Taiwan. Therefore it is not included in the domestic like product.

²⁴ An additional domestic like product issue has been raised by respondent Kern-Liebers, who argues that seat belt retractor steel, or texture rolled carbon steel, should be treated as a domestic like product separate from cold-rolled steel. Kern-Liebers Prehearing Brief at 3-9. Kern-Liebers argued for the same domestic like product breakout in the course of the 1993 investigations. Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, the Republic of Korea (Korea), Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Invs. Nos. 701-319-332, 334, 336-42, 344, 347-353, 731-TA-573-579, 581-592, 594-597, 599-609, 612-619 (Final), USITC Pub. No. 2664 at 93-94 (Aug. 1993). We find, however, that respondent has not shown sufficient changes in the product itself or in the market to warrant reconsidering our original like product determination. Even had we been persuaded that sufficient changes had occurred to warrant such a reconsideration, application of the traditional six-factor test would have led us to the same conclusion we made in 1993, namely, that seat belt retractor steel, while in some ways differing from other cold-rolled steel products, is properly included in the one domestic like product consisting of all cold-rolled steel products.

Section 771(4)(A) of the Act defines the relevant industry as the domestic “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.”²⁵

1. Cut-to-Length Plate

Two issues were raised in these reviews of the orders covering cut-to-length plate: (1) whether certain processors should be included in the domestic industry; and (2) whether a regional industry analysis is appropriate for Taiwan.

a. Processors

The plate industry is composed of reversing mills (or “sheared plate mills”), Steckel mills, and continuous hot-strip mills. In addition, some steel service centers, which traditionally have served as distributors of plate, also perform a wide range of value-added processing of many steel products, such as uncoiling, flattening, and cutting plate products to length, or flame/plasma cutting plate into non-rectangular shapes. Service centers that flatten and cut coiled plate may purchase the coiled plate from U.S. or foreign mills. The process of producing cut plate from coiled plate is the same whether performed at the steel mill or by a service center.²⁶

Respondents from Germany and the United Kingdom requested in their responses to the Commission’s notice of institution that the Commission include processors, such as steel service centers, in the definition of the domestic industry, as the Commission did in recent determinations.²⁷ Domestic producers acknowledge that for the purposes of the most recent plate investigations, the Commission deemed processors to be domestic producers, although it did not do so in the 1993 investigations that form the basis of most of these reviews.²⁸ They maintain, however, that processors do not actually produce plate, but “simply cut coils to length.”²⁹ They argue that the most significant difference between the operations of processors and those of traditional mills is the level of investment involved, in that processors can purchase adequate equipment for as little as \$4 million to \$10 million, whereas minimills and integrated mills producing plate require capital investments amounting to hundreds of millions of dollars.³⁰

The Commission did not address the issue of processors in the 1993 investigations.³¹ The Commission did find the domestic plate industry to include processors in its January 2000 plate investigations, and no party has urged the Commission to find that the facts as they existed in the January 2000 plate investigations have changed.³² More importantly, no party has challenged the central issue that the processing performed by service centers transforms a hot-rolled steel product (coiled plate) into the domestic like product. Domestic producers simply argue that the technical expertise and the investment involved in cutting the coils to length are not adequate to consider the processors to be plate producers.

²⁵ 19 U.S.C. § 1677(4)(A).

²⁶ CR at PLATE-I-29, PR at PLATE-I-26.

²⁷ CR at PLATE-I-29, PR at PLATE-I-26.

²⁸ Domestic Producers’ Posthearing Plate Brief, Exh.1.

²⁹ Domestic Producers’ Posthearing Plate Brief, Exh.1; Domestic Producers’ Posthearing Question Responses, Att. G at 75.

³⁰ IPSCO’s and Weirton’s Posthearing Question Responses at CTLP-13.

³¹ See USITC Pub. 2664 at 216.

³² See USITC Pub. 3273 at 8-10.

The Commission did not find these arguments to be persuasive in the January 2000 plate case, and, for the reasons stated therein, we include processors within the definition of the domestic industry.³³ Accordingly, we define the domestic industry as the domestic producers of the domestic like product, including processors.

b. Regional Industry

In the 1979 investigation, the Commission determined that a regional plate industry comprised of California, Washington, and Oregon existed and was materially injured by subject imports from Taiwan.³⁴ In these reviews, the domestic producers maintain that, with respect to the finding on Taiwan, the Commission should not utilize a regional industry analysis, but should determine that a national industry exists. Taiwan has not participated in these reviews. No respondent party argues against a national industry analysis.³⁵

Section 771(4)(C) of the Tariff Act of 1930, as amended by the URAA, provides that:

In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if--

(i) the producers within such market sell all or almost all of their production of the like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of dumped imports or imports of merchandise benefitting from a countervailable subsidy into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the dumped imports or imports of merchandise benefitting from a countervailable subsidy. The term "regional industry" means the domestic producers within a region who are treated as a separate industry under this subparagraph.³⁶

³³ See *Acciai Speciali Terni S.p.A. v. United States*, slip op. 00-125 at 12 (Ct. Int'l Trade Oct. 2, 2000) ("[w]here . . . the ITC has addressed similar or identical facts, no statute or case authority prohibits it from drawing upon its previous work in addressing the issue at hand").

³⁴ USITC Pub. 970 at 4.

³⁵ Tr. at 261 (Mr. Waite).

³⁶ 19 U.S.C. § 1677(4)(C). The definition of "regional industry" in the last sentence was added and technical language changes were made by the URAA. The URAA also amended the statute to require that Commerce "to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned

The Commission has considered the regional industry analysis to be discretionary, based on the language "appropriate circumstances" and "may be treated" found in the statute.³⁷ The Commission has defined appropriate circumstances on several occasions, focusing on whether "[i]solated or separate geographic markets" exist.³⁸ The Federal Circuit has reaffirmed that "the ITC's case-by-case approach represents a 'legitimate policy choice [] made by the agency in interpreting and applying the statute.'"³⁹ Importantly, the Act provides that in five-year reviews, the Commission may revisit its original regional industry determination and base its likelihood of injury determination on the original regional industry, another regional industry, or the United States industry as a whole.⁴⁰

As stated above, Taiwan has not participated in these reviews and the participating respondents present no argument on this issue. The domestic producers opine that a regional industry analysis is inappropriate. Further, no party requested that the Commission questionnaires obtain data for a regional industry analysis and the Commission has collected no such data. The plate producers that responded to the Commission's questionnaires have production facilities in Indiana, Maryland, Pennsylvania, California, Minnesota, Delaware, Texas, Arkansas, Utah, Iowa, Michigan, Illinois, Kentucky, Oregon, and Connecticut.⁴¹ Producers as a whole reported nationwide sales.⁴² There is no indication that imports from Taiwan, which are currently small, would be concentrated in a particular region. In the other, subsequent original plate investigations now under review, the Commission based its analysis on a national plate industry.⁴³ Based on this information, a regional industry analysis for Taiwan would not be appropriate. Accordingly, as with all the countries subject to the 1993 orders, we determine to utilize a national industry analysis with respect to Taiwan.

2. Cold-Rolled Steel

during the period of investigation." 19 U.S.C. § 1673e(d). Therefore, Commerce will "exclude from the [antidumping duty] order, to the 'maximum extent possible,' those exporters or producers that did not export for sale in the region during the period of investigation." SAA at 189 and 190. Prior to the URAA, the Commission expressed concern that the regional industry analysis only be applied in appropriate circumstances in order to avoid imposing duties on imports sold in the entire national market in cases in which the detrimental impact of the imports was limited to a small segment of that market. *See Texas Crushed Stone Co. v. United States*, 35 F.3d 1535, 1542 (Fed. Cir. 1994), *aff'g* 822 F. Supp.773 (Ct. Int'l Trade 1993).

³⁷ 19 U.S.C. § 1677(4)(C). *See, e.g., Gray Portland Cement and Cement Clinker from Mexico*, Inv. No. 731-TA-451 (Final), USITC Pub. No. 2305 at 15 (August 1990) ("Mexico Cement"), *aff'd*, Cemex, S.A. v. United States, 790 F. Supp. 290 (Ct. Int'l Trade 1992), *aff'd*, 989 F.2d 1202 (Fed. Cir. 1993); Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. No. 1798 at 5 (Jan. 1986).

³⁸ S. Rep. No. 249, 96th Cong., 1st Sess. 82 (1979). *See, e.g., Rock Salt*, USITC Pub. No. 1798 at 5 (January 1986); Cut-to-Length Carbon Steel Plate from the Federal Republic of Germany, Inv. No. 731-TA-147 (Preliminary Remand), USITC Pub. No. 1550 at 8 (July 1984)("The overriding concern of regional industry analysis is to determine whether a market is isolated and insular.").

³⁹ Texas Crushed Stone, 35 F.3rd at 1542 (Fed. Cir. 1994), *aff'g* 822 F. Supp. 773 (Ct. Int'l Trade 1993).

⁴⁰ 19 U.S.C. § 1675a(a)(8); *see* SAA at 887-88.

⁴¹ CR/PR at Table PLATE-I-3.

⁴² CR at PLATE-II-1, PR at PLATE-II-1.

⁴³ USITC Pub. 2664 at 216.

In accordance with our like product definition, we define the domestic industry as the domestic producers of the domestic like product of all cold-rolled steel.

3. Corrosion-Resistant Steel

In accordance with our like product definition, we define the domestic industry as the domestic producers of the domestic like product of all corrosion-resistant steel excluding clad plate.

C. Related Parties

Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁴⁴

In the 1993 investigations, a number of domestic producers had "some financial relationship with foreign steel companies, either through equity ownership or joint ventures, and to a much lesser extent through importation of subject products."⁴⁵ However, the Commission determined not to exclude any of the related parties from any of the industries because it would skew the data in view of the fact that the parties comprised a large portion of the industries and because most of the related producers were actively seeking to impose antidumping or countervailing duties on the very parties to which they were related.⁴⁶

1. Cut-to-Length Plate

In these reviews, two domestic mills are owned by subject foreign producers. CVRD-Rio Doce of Brazil owns 50 percent of California Steel Industries ("California"), while Corus of the United Kingdom

⁴⁴ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
- (3) the position of the related producer vis-à-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

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

⁴⁵ USITC Pub. 2664 at 98.

⁴⁶ USITC Pub. 2664 at 98-99.

owns 100 percent of Tuscaloosa Steel Corporation (“Tuscaloosa”).⁴⁷ In these reviews, no party argues for exclusion of any related parties, and we find that appropriate circumstances do not exist to exclude either of these producers from the domestic industry.

California accounted for *** percent of domestic production of plate in 1999.⁴⁸ In that year, its operating income as a ratio to net sales was *** percent, which is the *** highest of all the producers.⁴⁹ However, California *** of the orders and does not import any plate.⁵⁰ Based on the small percentage of plate it shipped and the fact that it supports continuation of the orders, we find that appropriate circumstances do not exist to exclude California from the domestic industry.

In 1999, Tuscaloosa accounted for *** percent of domestic production of plate⁵¹ and its operating income as a ratio to net sales was *** percent, which was *** the industry average.⁵² Tuscaloosa *** of the orders, ***, and does not import any plate.⁵³ Tuscaloosa does not seem to have benefitted from, or to be shielded from the effects of subject imports by, its relationship with Corus such that its financial performance *** than that of other domestic producers. The investments in Tuscaloosa’s facilities since the orders were imposed indicate a commitment to U.S. production. Thus, we find that appropriate circumstances do not exist to exclude Tuscaloosa from the domestic industry.

Also, given the likely conditions of competition in the domestic industry, we do not find that the related parties have been or are likely to be significantly insulated from import competition if the orders are revoked. Accordingly, inclusion of the related parties would not present a distorted picture of the effects of revocation on the domestic industry as a whole.

2. Cold-Rolled Steel

This Precision Steel Corp. (“Theis”), with one production facility in Bristol, Connecticut, is wholly owned by Theis of America, which is wholly owned by Theis Gmbh of Germany.⁵⁴ Kern-Liebers, an importer of subject cold-rolled steel from Germany, has argued that Theis should be excluded from the domestic industry on related party grounds, as well as on the grounds that Theis is not truly a domestic producer.⁵⁵

In the original investigations, the Commission did not exclude any related parties.⁵⁶ This is a producer of cold-rolled steel and does not import any cold-rolled steel from its German parent.⁵⁷ In the years 1997-99, This produced *** short tons per year, accounting for *** of total domestic production.⁵⁸ While This ***,⁵⁹ we find that This’s primary interest lies in domestic production and that This is not

⁴⁷ CR/PR at Overview Table 2, Table PLATE-I-3.

⁴⁸ See Domestic Producer Questionnaire Responses.

⁴⁹ CR/PR at Table PLATE-III-6.

⁵⁰ CR/PR at Table PLATE-I-3.

⁵¹ See Domestic Producer Questionnaire Responses.

⁵² CR/PR at Table PLATE-III-6.

⁵³ CR/PR at Table PLATE-I-3.

⁵⁴ CR/PR at Table COLD-I-3; Theis Prehearing Cold-Rolled Brief at 4.

⁵⁵ Kern-Liebers Prehearing Cold-Rolled Brief at 19-20.

⁵⁶ Certain Carbon Steel Products from Austria and Sweden, Invs. Nos. 701-TA-225, 227, 228, 230, and 231 (Final), USITC Pub. No. 1759 at 5 (September 1985); USITC Pub. 2664 at 98-99.

⁵⁷ Theis Prehearing Cold-Rolled Brief at 4.

⁵⁸ INV Table 10/18/2000.

⁵⁹ CR/PR at Table COLD-III-8.

shielded from the effects of subject imports by reason of its relation with its German parent. We therefore find that appropriate circumstances do not exist to exclude any related party from the domestic industries in these reviews.

Also, given the likely conditions of competition in the domestic industry, we do not find that the related party has been or is likely to be significantly insulated from import competition if the orders are revoked. Accordingly, inclusion of the related party would not present a distorted picture of the effects of revocation on the domestic industry as a whole.

3. Corrosion-Resistant Steel

Four U.S. producers of corrosion steel are related parties because they are owned by, or are affiliated with, subject country producers/exporters of the subject merchandise: California Steel Industries (“California”) is *** percent owned by Kawasaki, USA, a subsidiary of Kawasaki, Japan; Pro Tec is *** percent owned by Kobe, USA, a subsidiary of Kobe, Japan; National Manufacturing is *** percent owned by NKK USA Corporation, a subsidiary of NKK, Japan; and Wheeling-Nisshin is *** percent owned by Nisshin Holding, a subsidiary of Nisshin, Japan.⁶⁰ In addition to being affiliated with a subject producer, ***.⁶¹ All of these companies appear to be related parties under Section 771(4)(B)(ii)(II) or (III) of the related parties provision.

California accounted for approximately *** percent of the value of U.S. corrosion-resistant steel shipments in 1999. ***. California reported that ***.⁶² According to Kawasaki, California’s Japanese affiliate, California ***.⁶³

Pro Tec accounted for approximately *** percent of the value of U.S. corrosion-resistant steel shipments in 1999. ***. According to its Japanese affiliate, Kobe, ***.⁶⁴

Wheeling-Nisshin accounted for approximately *** percent of the value of U.S. corrosion-resistant steel shipments in 1999. During the period of review, ***.

National Steel accounted for approximately *** percent of the value of U.S. corrosion-resistant steel shipments in 1999. National Steel reported that it imported *** short tons of corrosion-resistant steel from NKK in 1999. National also exports cold-rolled steel to its joint venture DNN in Canada, which in turn galvanizes the substrate. National, ***.⁶⁵ Since imposition of the orders, National has added a \$150 million facility that will produce an additional 450,000 tons of exposed galvanized and galvaneal steel products for the auto industry and operates a Triple G line at National’s Granite City Division.⁶⁶

In the original 1993 investigations of corrosion-resistant steel, the Commission did not exclude UPI, which was owned by POSCO, a subject producer, because UPI accounted for a relatively small percentage of total U.S. shipments and its performance indicators were consistent with those of the industry as a whole. The Commission therefore found that including UPI within the domestic industry would not significantly distort the economic data or fail to provide an accurate picture of the domestic industry as a

⁶⁰ CR/PR at Table CORROSION-1-3.

⁶¹ CR/PR at Table CORROSION-III-3.

⁶² Japanese Respondents’ Corrosion Prehearing Brief Vol. 2, Exh. 13.

⁶³ Japanese Respondents’ Corrosion Prehearing Brief Vol. 2, Exh. 14.

⁶⁴ Japanese Respondents’ Corrosion Prehearing Brief Vol. 2, Exh. 16.

⁶⁵ CR at CORROSION-III-3, PR at CORROSION-III-1.

⁶⁶ Japanese Respondents’ Corrosion Prehearing Brief Vol. 2, Exh. 21.

whole.⁶⁷ The Commission also determined not to exclude “other related parties” in the 1993 investigations of corrosion-resistant steel.

No party has argued for exclusion of any related parties from the domestic corrosion-resistant steel industry. ***.⁶⁸ The related parties’ investments in their U.S. facilities since the orders were imposed indicate a commitment to their U.S. production. Moreover, these related parties account for a significant share of U.S. production -- approximately *** percent of the value of U.S. corrosion-resistant shipments in 1999. *** continuation of the orders. It does not appear that the U.S. operations of the related parties are shielded from the effects of subject imports.⁶⁹ The foregoing considerations indicate that appropriate circumstances do not exist to exclude any related parties from the corrosion-resistant steel industry.

Also, given the likely conditions of competition in the domestic industry, we do not find that the related parties have been or are likely to be significantly insulated from import competition if the orders are revoked. Accordingly, inclusion of the related parties would not present a distorted picture of the effects of revocation on the domestic industry as a whole.

III. LEGAL STANDARDS

The legal standards discussed below apply to our determinations with respect to the three domestic industries in this proceeding: the plate industry, the cold-rolled steel industry, and the corrosion-resistant steel industry. Our determinations for each industry are found in Sections IV through VI.

A. Cumulation

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.⁷⁰

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.⁷¹ We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no

⁶⁷ USITC Pub. 2664 at 97-98. UPI submitted its questionnaire too late in this proceeding to be included in the industry data in these reviews.

⁶⁸ CR at CORROSION-III-3, PR at CORROSION-III-1.

⁶⁹ Operating income for Pro Tec, National, and Wheeling-Nisshin were ***. CR/PR at Table CORROSION-III-7.

⁷⁰ 19 U.S.C. § 1675a(a)(7).

⁷¹ 19 U.S.C. § 1675a(a)(7).

discernible adverse impact” on the domestic industry.⁷² With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.^{73 74 75}

The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.⁷⁶ Only a “reasonable overlap” of competition is required.⁷⁷ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are

⁷² SAA, H.R. Rep. No. 103-316, vol. I (1994).

⁷³ For a discussion of the analytical framework of Chairman Koplan and Commissioners Miller and Hillman regarding the application of the “no discernible adverse impact” provision, *see* Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Chairman Koplan’s analytical framework, *see* Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplan Regarding Cumulation).

⁷⁴ For a discussion of the analytical framework employed by Commissioner Bragg to assess cumulation in the context of grouped sunset reviews, *see* Potassium Permanganate from China and Spain, Separate and Dissenting Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. No. 3245 at 27-30 (Oct. 1999); *see also* Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, Invs. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. No. 3290, at 27-32 (Apr. 2000).

⁷⁵ Commissioner Askey notes that the Act clearly states that the Commission is precluded from exercising its discretion to cumulate if the imports from a country subject to review are likely to have “no discernible adverse impact on the domestic industry” upon revocation of the order. 19 U.S.C. § 1675a(a)(7). Thus, the Commission must focus on whether the imports will impact the condition of the industry discernibly as a result of revocation, and not solely on whether there will be a small volume of imports after revocation, *i.e.*, by assessing their negligibility after revocation of the order. For a full discussion of her views on this issue, *see* Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. No. 3245 (Oct. 1999).

⁷⁶ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. *See, e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁷⁷ *See* Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996)).

revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.⁷⁸

B. Likelihood of Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time If the Orders Are Revoked

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur; and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁷⁹ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁸⁰ Thus, the likelihood standard is prospective in nature.⁸¹ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”⁸² According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{83 84}

⁷⁸ See, e.g., 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); Metallwerken 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).

⁷⁹ 19 U.S.C. § 1675a(a).

⁸⁰ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

⁸¹ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁸² 19 U.S.C. § 1675a(a)(5).

⁸³ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” Id.

⁸⁴ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to:

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”⁸⁵ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, whether the industry is vulnerable to material injury if the order is revoked, and any findings by Commerce regarding duty absorption under section 1675(a)(4) of the Act.⁸⁶

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”⁸⁷ In this case, a number of respondent interested parties did not provide questionnaire responses and/or participate in these reviews. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the evidence in the record from the Commission’s original investigations, the information collected by the Commission since the institution of these reviews, and information submitted by the domestic producers and other parties in these reviews.

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States.⁸⁸ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the 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.⁸⁹

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is

lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

⁸⁵ 19 U.S.C. § 1675a(a)(1).

⁸⁶ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

⁸⁷ SAA at 869.

⁸⁸ 19 U.S.C. § 1675a(a)(2).

⁸⁹ 19 U.S.C. § 1675(a)(2)(A)-(D).

directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.⁹⁰

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁹¹ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry. As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping or countervailing duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.⁹²

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁹³

⁹⁰ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

⁹¹ 19 U.S.C. § 1675a(a)(4).

⁹² The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁹³ 19 U.S.C. § 1675a(a)(4).

IV. CUT-TO-LENGTH PLATE

A. Cumulation^{94 95}

The legal standards for considering cumulation are discussed in Section III above.

In these reviews, the statutory requirement for cumulation that all of the cut-to-length plate reviews be initiated on the same day is satisfied. Based on the record, we find that subject imports from each of the 12 countries would be likely to have a discernible adverse impact on the domestic industry if the orders were revoked. We also find that a reasonable overlap of competition between the subject imports and the domestic like product is likely to exist if the orders were revoked. We do not find any significant differences in the conditions of competition among imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, but do find significant differences with respect to imports from Canada. We therefore exercise our discretion to cumulate the likely volume and price effects of subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, but do not cumulate the likely volume and price effects of subject imports from Canada.⁹⁶

1. Likelihood of No Discernible Adverse Impact

Because of the conditions of competition and the current condition of the domestic industry, exports from each of the subject countries likely would have a discernible adverse impact on the domestic industry.⁹⁷

⁹⁴ See Separate and Concurring Views of Chairman Stephen Koplán and Commissioner Thelma J. Askey for their discussion of cumulation as it applies to the United Kingdom.

⁹⁵ Commissioner Bragg does not join section IV.A of these Views. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg.

⁹⁶ Commissioner Askey dissents with respect to the United Kingdom and Taiwan.

⁹⁷ Commissioner Askey dissents concerning imports from Canada and Taiwan. With respect to Canada, she finds that imports of CTL plate from Canada are likely to have no discernible adverse impact on the domestic industry, and, therefore, she is precluded from cumulating imports from Canada with those from the other subject countries. Section IV.D below describes in greater detail the facts upon which she bases this conclusion: only one of the three producers originally subject to the order remains subject to the order and that producer is operating at a high capacity utilization rate; Canadian capacity has declined substantially since the original period of investigation; and Canada is a net importer of CTL plate and its exports are currently very small. Moreover, Stelco's current margin is zero, CR at PLATE-I-19, PR at PLATE-I-18, so the order has not served as a substantial impediment to its imports in recent years.

With respect to Taiwan, she likewise finds that imports of CTL plate from Taiwan are likely to have no discernible adverse impact on the domestic industry and, therefore, she is precluded from cumulating imports from Taiwan with those from the other subject countries. The record from the original investigation contains very little information concerning the industry in Taiwan. There are currently two plate producers in Taiwan, neither of which participated in these reviews, so available current data is also limited. As discussed previously in Section II.B.1.b, that investigation was a regional one, encompassing California, Oregon, and Washington. Accordingly, this review is of an investigation that made an injury finding with respect to only three of the 50 states. Taiwanese producer plate capacity for 1978 is unknown and was reportedly 1.2 million short tons in 1999. The home market accounted for an unknown percentage

Relative to the U.S. market, the size of the industry in each of these countries is significant.⁹⁸ Each has substantial capacity to produce all types of plate products,⁹⁹ and its actual production of subject plate as well as other plate is significant.¹⁰⁰ The majority of the countries export a substantial percentage of their production.¹⁰¹

In terms of product mix, the types of plate products manufactured in the subject countries do not differ dramatically from those produced in the United States.¹⁰² Imports from each of the subject countries are likely to be substitutable for, and competitive with, domestically produced plate. Such competition is likely to be on the basis of price, in light of the central importance of price in purchasing decisions.¹⁰³ Accordingly, and in light of the weakened condition of the U.S. industry, as discussed below, the likely imports of plate from each of the subject countries would have an adverse impact on the domestic industry.

2. Reasonable Overlap of Competition

In the 1993 investigations, the Commission found that subject imports from each of the subject

of shipments in 1978 and for 88.1 percent in 1999. CR/PR at Table PLATE-IV-12. Subject plate imports from Taiwan accounted for only 1.1 of the U.S. market prior to the order in 1978 and 0.0 percent in 1999. CR/PR at Table PLATE-I-1. Record data show Taiwanese producer capacity as being relatively high in recent years, at *** short tons, but that the industry's capacity utilization rates were greater than 100 percent during each year of the review period. CR/PR at Table PLATE-IV-12. Exports represented *** percent of production in 1997, *** percent in 1998 and *** percent in 1999. CR/PR at Table PLATE-IV-12. Because the margins on imports from Taiwan have been zero since 1982, CR at PLATE-I-22, PR at PLATE-I-21, there has been relatively little impediment to Taiwan imports since that time. Together, these factors indicate that in the event of revocation, it would be unlikely that there would be sufficient import volume increases from Taiwan such as to have volume and price effects in the market, and, therefore, to have a discernible adverse impact on the domestic industry.

⁹⁸ In 1999, the capacity in each subject country was equivalent to over five percent of U.S. consumption, except with regard to Canada. *See* CR/PR at Tables PLATE-IV-3 - 13. Canadian capacity is projected to grow from 2000 to 2002. Canadian Respondent's Posthearing Question Responses, Responses to Commissioner Hillman at 4.

⁹⁹ *See* CR/PR at Tables CTL-SUPP-1 - 12.

¹⁰⁰ *See* CR/PR at Tables CTL-SUPP-1 - 12.

¹⁰¹ *See* CR/PR at Tables PLATE-IV-3 (Belgium), PLATE-IV-4 (Brazil), PLATE-IV-6 (Finland), PLATE-IV-7 (Germany), PLATE-IV-9 (Romania), PLATE-IV-10 (Spain), PLATE-IV-11 (Sweden), PLATE-IV-12 (Taiwan), PLATE-IV-13 (United Kingdom). The record contains no information regarding exports from Poland. Although it appears that Canada and Mexico do not export substantial quantities of subject plate, *see* CR/PR at Tables PLATE-IV-5 (Canada), PLATE-IV-8 (Mexico), subject imports from these countries are likely to have a discernible adverse impact on the domestic industry because of their geographic proximity to the United States, as well as, in the case of Canada, expanding capacity, and in the case of Mexico, the fact that AHMSA is currently under bankruptcy protection, *see* CR at PLATE-IV-7, PR at PLATE-IV-8 an indication that it would have an incentive to maximize plate production and sales.

¹⁰² *See* CR/PR at Tables CTL-SUPP-13 - 24; Domestic Producer Questionnaire Responses.

¹⁰³ CR/PR at Table PLATE-II-3. In making this determination as to the subject imports from the United Kingdom, Chairman Koplan and Commissioner Askey do not find that such imports would compete principally on the basis of price.

countries competed with each other and with the domestic like product and cumulated the volume and price effects of those subject imports.¹⁰⁴ The Commission collected data in the 1993 investigations regarding specialized plate products and found that: each of the countries sold at least some of the same commercial grade and/or niche products as all other countries; imports of commercial grade and/or niche products from each country were present in the market with comparable domestic product; and niche products for which there was no comparable domestic production constituted a very small percentage of imports from any one country.¹⁰⁵ The record in these reviews likewise reveals a reasonable overlap in the types of subject plate produced in each subject country and in the United States.¹⁰⁶

Both U.S. producers and importers generally reported that domestically produced plate products were interchangeable with imported plate products.¹⁰⁷ They also generally reported that imports from subject countries were used interchangeably.¹⁰⁸ Purchasers were asked to compare domestic and subject plate products on the basis of 14 ranking factors and found that the U.S. product was generally comparable to, and sometimes superior to, the subject imports.¹⁰⁹ When asked to list the three most important factors considered when choosing a supplier, purchasers most often ranked price first and quality second.¹¹⁰

Both domestic producers and importers ship plate to end users, distributors, and service centers/processors.¹¹¹

The record is mixed regarding current market presence and geographic overlap with the orders in place. However, in light of the importance of sales to steel service centers, which are dispersed throughout the United States and hold sizeable plate inventories, we find it likely that subject imports from each subject country would be simultaneously present in the U.S. market as a whole and in the same geographical markets as other subject imports and the domestic like product.¹¹²

We therefore find that there likely would be a reasonable overlap of competition between the

¹⁰⁴ USITC Pub. 2664 at 219. We note that the 1979 investigation only involved Taiwan, which was not involved in the 1993 investigations. However, there is no evidence in the record indicating that the subject plate product produced in Taiwan differs from that which is produced in the other subject countries. *See* State Department Telegram Taipei 003117 (Sept. 29, 2000).

¹⁰⁵ USITC Pub. 2664 at 220.

¹⁰⁶ CR/PR at Tables D-4, CTL-SUPP-13 - 24, Domestic Producers' Questionnaire Responses.

¹⁰⁷ CR/PR at Table PLATE-II-5.

¹⁰⁸ CR/PR at Table PLATE-II-5. With respect to numerous respondents' arguments that their production practices emphasize specialty plate products, we note that they continue to produce commodity plate in significant quantities such that there is a reasonable overlap of competition with the domestic like product. *See* Tables D-4, CTL-SUPP-1 - 12. The Belgian producer Duferco Clabecq, S.A., argues that its imports of *** do not compete with the vast majority of domestic plate production. *See, e.g.,* Duferco Clabecq's Prehearing Plate Brief at 33. However, the fact that Duferco is exporting only niche products while subject to the antidumping and countervailing duty orders is not necessarily indicative of its behavior in the event of revocation of those orders. We note that a significant percentage of the plate products that Duferco manufactures are standard products that likely would compete closely with domestic plate. CR/PR at Table CTL-SUPP-1.

¹⁰⁹ *See* CR/PR at Table PLATE-II-8. Purchasers reported no comparisons of the subject imports to each other.

¹¹⁰ CR/PR at Table PLATE-II-3.

¹¹¹ CR at PLATE-II-1, PR at PLATE-II-I.

¹¹² *See* CR/PR at Table PLATE-IV-1; *see* CR at PLATE-II-1, PR at PLATE-II-I (producers and importers reported nationwide sales).

subject imports from Belgium, Brazil, Canada, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom and the domestic like product, and among the subject imports from those countries themselves, if the orders were revoked.¹¹³

3. Other Considerations

As noted above, we do not find any significant differences in the conditions of competition among subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, but do find such significant differences as pertains to Canada.¹¹⁴ In addition, the antidumping duty order originally applied to three significant producers of plate in Canada. However, only one major plate mill, Stelco, remains subject to the order.¹¹⁵ It has rarely exported significant quantities of subject plate to any country, including the United States.¹¹⁶ In addition, virtually all the *** plate that Stelco produces is used in its home market.¹¹⁷ Stelco accounted for a minority of subject imports from Canada during the original investigations,¹¹⁸ and its capacity is significantly below aggregate Canadian capacity during the original investigations.¹¹⁹

Canada is a net importer of plate, with much of its imports originating in the United States.¹²⁰ On an absolute tonnage basis, imports of U.S. plate into Canada are double the level of imports of Canadian plate into the United States, even including imports from the non-subject Canadian producers. On a market percentage basis, imports of U.S. plate into Canada are more than 15 times the level of Canadian plate imported into the United States.¹²¹ The record also indicates that demand for plate in Canada is strong and that Canada has antidumping duty orders in place against several countries.¹²²

Thus, based on the record in these reviews, we determine not to exercise our discretion to cumulate

¹¹³ Chairman Koplan and Commissioner Askey dissenting with respect to the United Kingdom.

¹¹⁴ Chairman Koplan and Commissioner Askey also find significant differences as pertains to the United Kingdom. *See* Separate and Concurring Views of Chairman Stephen Koplan and Commissioner Thelma J. Askey.

¹¹⁵ CR at PLATE-IV-3 - 4, PR at PLATE-IV- 6.

¹¹⁶ Canadian Respondent's Posthearing Question Responses, Responses to Commissioner Askey at 1; *see* Canadian Respondent's Posthearing Question Responses, Responses to Staff at 8; Canadian Respondent's Prehearing Plate Brief at 4. An anomalous year was 1992, in which Stelco exported *** short tons to the United States. Canadian Respondent's Posthearing Question Responses, Responses to Staff at 11.

¹¹⁷ CR/PR at Table CTL-SUPP-3.

¹¹⁸ Canadian Respondent's Posthearing Question Responses, Responses to Staff at 11.

¹¹⁹ 1993 CR at I-160; *compare* 1993 CR/PR at Table 59 *with* CR/PR at Table PLATE-IV-5.

¹²⁰ Canadian Respondent's Prehearing Plate Brief at 16, Table 2; *see* Canadian Respondent's Posthearing Plate Brief at 6. There is evidence in the record that plate prices are slightly higher in Canada than in the United States. Canadian Respondent's Posthearing Question Responses, Responses to Staff at 12; *see also* Canadian Respondent's Posthearing Question Responses, Exh. 1 (Stelco's total shipments exceeding production in 1997, January-March 1999 and January-March 2000); Canadian Respondent's Prehearing Plate Brief at 14.

¹²¹ Canadian Respondent's Posthearing Plate Brief at 6.

¹²² Canadian Respondent's Prehearing Plate Brief at 14; Canadian Respondent's Posthearing Plate Brief at 6-8; CR at PLATE-IV-4, PR at PLATE-IV-6.

subject imports from Canada with other subject imports.^{123 124}

B. Conditions of Competition^{125 126}

Domestic demand for plate generally parallels the U.S. economy. Demand for plate has increased since the 1993 investigations. Plate products are used in industrial and agricultural equipment, construction, and transportation.¹²⁷ Apparent U.S. consumption was 8.6 million short tons in 1978, but declined to 5.0 million short tons in 1992. It climbed from 6.6 million short tons in 1997 to its near-1978 high of 8.2 million short tons in 1998, then fell to 6.0 million short tons in 1999. In January-March 1999

¹²³ With respect to the United Kingdom, although Corus is the only subject producer to own a U.S. plate manufacturing facility – Tuscaloosa – we do not find that this fact sufficiently distinguishes the United Kingdom from the other subject countries such that cumulation would not be warranted. Corus (then British Steel) acquired full ownership and control of Tuscaloosa in 1991, prior to the original investigations. United Kingdom Producer’s Prehearing Plate Brief at 5. Although Corus has expanded Tuscaloosa’s operations since the time of the original investigations, Tuscaloosa’s 1999 share of domestic plate production (***) percent), *see* Domestic Producer Questionnaire Responses, was roughly the same as its share of domestic plate production during 1992 (***) percent), 1993 CR at Table 12, the last full year of the original investigations. In the original investigations, imports from the United Kingdom, cumulated with other subject imports, were found to have caused material injury. USITC Pub. 2664 at 219-20. Moreover, Corus has experienced difficulties with high sterling-euro exchange rates, such that it has posted recent losses on its hot-rolled steel operations. *See* Corus Group plc Interim Report for the Six Months to 1 April 2000. This, together with significant excess capacity, indicates that Corus is not substantially different than the other subject countries in having the ability and incentive to increase shipments to the U.S. market in the event of revocation.

¹²⁴ Chairman Koplman and Commissioner Askey also exercise their discretion not to cumulate the United Kingdom and do not join the preceding footnote.

¹²⁵ Commissioner Bragg joins the remainder of section IV.

¹²⁶ We note that data on the cut-to-length plate industry that do not include microalloys are not available. We requested such data through our questionnaires. Certain domestic producers indicated that they were unable to supply segregated data in their questionnaire responses. We must therefore rely on the industry data provided, keeping in mind that the industry does not correspond precisely to the one producing the domestic like product that we have found. We are also mindful that the comparisons between the data on the industry in the original determinations and the data gathered in these reviews may be somewhat distorted, as a result of the certain domestic producers’ inability to segregate microalloy products from the domestic like product in their questionnaire responses in these reviews. Given the domestic producers’ own uncertainty as to the inclusion of microalloy products in the questionnaire responses in the 1993 investigations, we are satisfied that the comparisons are sufficiently valid to indicate the magnitude of the changes in the industry, including apparent consumption. Domestic Producers’ Common Issues Prehearing Brief at Exh. 1. We note further that the domestic industry data in these reviews include processors, which were not included in the 1979 or 1993 investigations, although coverage of processors is less than that of the mills.

¹²⁷ CR at PLATE-II-1, PR at PLATE-II-1. More specifically, subject plate is used in the production of ships and barges, storage tanks, heavy machinery, bridges, railcars, machine parts, pressure vessels, and offshore drilling platforms. CR at PLATE-II-18, PR at PLATE-II-13.

apparent U.S. consumption was 1.6 million short tons, as it was in January-March 2000.¹²⁸

There have been closures of domestic mills and additional capacity added since the 1993 investigations. Overall industry capacity has increased from 7.0 million short tons in 1992¹²⁹ to 8.3 million short tons in 1999.¹³⁰ Inland Steel closed its plate mill in 1995. Bethlehem Steel absorbed Lukens in June 1998 to consolidate its position as the largest U.S. plate producer, but has had to reduce capacity (closing the Sparrows Point plate mill in October 1998 and idling one of its Burns Harbor plate mills in September 2000). U.S. Denro revived a shuttered U.S. Steel plate mill in Texas in 1997, and IPSCO commissioned a new Steckel plate mill in 1998. Several producers have replaced conventional reversing mills with Steckel or Steckel-like mills (e.g., Geneva, pre-merger Lukens, and Oregon Steel).¹³¹ In addition, Gulf States' mill closed.¹³² New IPSCO and Nucor plate mills with a combined capacity of 2.3 million tons are scheduled to come on line by early 2001.¹³³ Some of the additional capacity utilizes new Steckel-mill technology. Steckel mills are similar to reversing mills, except that they have heated coilers at both ends of the mill, permitting them to produce long pieces of coiled plate, as well as cut-to-length plate.¹³⁴ The domestic industry has a high ratio of fixed to total costs such that it must produce large volumes of plate to operate profitably.¹³⁵

Cut-to-length plate is a commodity product that is sold primarily on the basis of price.¹³⁶ Service centers handle over 50 percent of the plate sold in the U.S. market.¹³⁷ The number of service centers has decreased in the 1990s. These consolidated service centers are more sophisticated than their smaller predecessors, with greater control over buying patterns and increased ability to purchase cut-to-length plate

¹²⁸ CR/PR at Table PLATE-I-1. We note that the consumption figures are somewhat understated. All of the major mill producers are represented, *see* CR at PLATE-I-30, PR at PLATE-I-27, CR/PR at Table PLATE-I-3; CR at PLATE-III-1, PR at PLATE-III-1, as are many of the largest processors. While the response rate for processors is somewhat less than the rate in the January 2000 plate investigations, *see* CR at PLATE-I-30 n.45, PR at PLATE-I-27 n.45, we find that the data are adequate to permit us to evaluate the likely effect of revocation of the orders.

We also note that the volatile trend in demand during the current period of review appears to reflect in part the buildup and subsequent sale from inventories during 1998 and 1999. *See* Domestic Producers' Prehearing Plate Brief at 64-66.

¹²⁹ 1993 CR/PR at Table 15.

¹³⁰ CR/PR at Table PLATE-III-1.

¹³¹ CR at OVERVIEW-12-15, PR at OVERVIEW-26; *Certain Cut-to-Length Plate from France, India, Indonesia, Italy, Japan, and Korea*, Investigations Nos. 701-TA-387-391 (Final) and 731-TA-816-821 (Final), USITC Pub. 3273 (Jan. 2000) at III-1; Final Comments of the Domestic Interested Parties (Plate) at 2.

¹³² CR at PLATE-II-3, PR at PLATE-II-2; <http://www.bethsteel.com/pubaffairs/may29nr98.html>.

¹³³ CR at PLATE-II-2, PR at PLATE-II-2; Domestic Producers' Prehearing Plate Brief, Exhs. 35-36.

¹³⁴ CR at PLATE-I-28, PR at PLATE-I-26. Respondents argue that the use of Steckel mills strengthens the domestic industry's position because it enables it to produce non-plate products. *See* Joint Respondents' Prehearing Plate Brief at 34. The domestic industry argues that it is inefficient to produce non-plate products on Steckel mills. *See* Domestic Producers' Posthearing Question Responses, Exh. 3.

¹³⁵ *See* CR at PLATE-II-38, PR at PLATE-II-32.

¹³⁶ *See* CR/PR at Table PLATE-II-3 (purchasers generally ranked price as the most important factor considered when choosing a supplier).

¹³⁷ Domestic Producers' Prehearing Plate Brief at 27, *citing* Domestic Producers' Questionnaire Responses and Importers' Questionnaire Responses.

from non-U.S. sources.¹³⁸ The consolidation of service centers has increased their pricing leverage and increased the potential for large import buys, thus increasing price competition in the U.S. market.¹³⁹

The domestic industry producing cut-to-length plate has also been materially injured or threatened with material injury by recent waves of imports from a number of suppliers throughout the world. As a result, in 1997, while suspension agreements were signed with China, Russia, South Africa, and Ukraine. In January 2000, antidumping and countervailing duty orders were issued against France, India, Indonesia, Italy, Japan, and Korea.¹⁴⁰

Based on the record evidence, we find that these conditions of competition in the U.S. cut-to-length plate market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions of competition in the domestic cut-to-length plate market provide us with a basis upon which to assess the likely effects of revocation of the antidumping and countervailing duty orders within the reasonably foreseeable future.

C. Revocation of the Orders on Subject Plate Imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time^{141 142 143}

1. Likely Volume of Subject Imports

The legal standards for considering the likely volume of subject imports are discussed in Section III above.

In the 1979 determination regarding plate from Taiwan, the Commission found the volume of subject imports from Taiwan increased rapidly from the first shipment of approximately 1,000 tons in December 1977 to a total of 91,000 tons in 1978, with a commensurate increase in market penetration.¹⁴⁴ In the 1993 determinations, the Commission found that the cumulated volume of plate was significant in

¹³⁸ See Domestic Producers' Posthearing Plate Brief at 28 & Exhs. 3, 12; Domestic Producers' Prehearing Plate Brief at 131-34.

¹³⁹ See CR at PLATE-II-1, PR at PLATE-II-1 (the consolidation of service centers increased the potential for large import buys and rapid import expansion because many service centers have a corporate relationship with foreign steel mills).

¹⁴⁰ See Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine, Inv. Nos. 731-TA-753-756 (Final), USITC Pub. 3076 (Dec. 1997); Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Invs. Nos. 701-TA-387-391 (Final) & 731-TA-816-821 (Final), USITC Pub. 3273 (Jan. 2000).

¹⁴¹ Chairman Koplán joins in this discussion with respect to Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and Taiwan, but not with respect to the United Kingdom. See Dissenting Views of Chairman Stephen Koplán and Commissioner Thelma J. Askey.

¹⁴² Commissioner Askey joins in this discussion with respect to Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, and Sweden, but not with respect to Taiwan or the United Kingdom. See Dissenting Views of Chairman Stephen Koplán and Commissioner Thelma J. Askey for her analysis with respect to the United Kingdom.

¹⁴³ Because the interim data for 1999 and 2000 cover only limited three-month periods, we have placed less emphasis on interim period comparisons.

¹⁴⁴ CR/PR at Table PLATE-I-1, USITC Pub. 970 at 5.

terms of both absolute volume and market share. Although the four Commissioners joining in the majority opinion used different combinations of cumulated countries in their analyses, the volume of cumulated imports as a percentage of domestic consumption considered by each Commissioner was relatively high, reaching its peak in 1992. The absolute volumes of cumulated imports considered by each Commissioner decreased between 1990 and 1991, before increasing again in 1992.¹⁴⁵ Cumulated subject import levels declined significantly in 1993 and have fluctuated since that time at levels well below those present in 1992.^{146 147 148}

The record shows that, on a cumulative basis in these reviews, the excess capacity of the subject countries greatly exceeds the volume of total subject imports in the 1993 investigations.¹⁴⁹ Cumulated capacity to produce subject plate in ten of the subject countries (excluding Poland) was 11.5 million short tons for 1999. Excess subject capacity in that year was 1.8 million short tons.¹⁵⁰ Cumulated capacity to produce both subject and non-subject plate was 13.4 million short tons. Excess total capacity was 1.9

¹⁴⁵ USITC Pub. 2664 at 237.

¹⁴⁶ CR/PR at Table S-1.

¹⁴⁷ Chairman Koplan does not include the United Kingdom in his analysis of the volume effects of the cumulated imports, but the conclusions discussed apply to the volume effects of the other 10 cumulated countries.

¹⁴⁸ Commissioner Askey does not include Taiwan and the United Kingdom in her volume analysis, but she notes that the discussion and conclusions set forth in this section apply to the other nine cumulated countries.

¹⁴⁹ The cumulated volume of all subject imports was 787,626 short tons in 1992. CR/PR at Table PLATE-I-1.

¹⁵⁰ See CR/PR at Tables PLATE-II-1, PLATE-IV-3 - 4, PLATE-IV-6 - 13. We note that the data reported show Sweden reported the same figures for its capacity as its production, see CR/PR at Table PLATE-IV-11, and that Spain's production exceeded its capacity in 1999, CR/PR at Table PLATE-IV-10, as did Taiwan's in 1997 and 1999. CR/PR at Table PLATE-IV-12.

With respect to Taiwan, we evaluated its capacity to produce subject plate based upon its highest production level during the period of review, which significantly exceeded reported capacity. See CR/PR at Table PLATE-IV-12. Based on this production level, Taiwan had over *** short tons of excess capacity in 1999. CR/PR at Table PLATE-IV-12. As pertains to Poland, we note there was substantial excess capacity in the 1993 investigations. See 1993 CR/PR at Table 86 (capacity in 1992 was *** short tons while production was only *** short tons). In view of the fact that current data regarding Poland's capacity to produce subject plate appear to be incomplete, see CR at PLATE-IV-8, PR at PLATE-IV-9, we rely upon data from the original investigations regarding Poland. Accordingly, we find that Polish subject producers are likely operating at approximately 50 percent capacity. We therefore find that significantly more tonnage from Poland would be added to the cumulated total. We also note that although Poland had planned a reduction in capacity to between 10 and 100 million metric tons in the 1993 investigations, 1993 CR at I-210, there is no evidence in the record to indicate that such a reduction has occurred or, if so, to what extent.

million short tons.^{151 152} Shifting between the production of non-subject and subject plate is not difficult.¹⁵³
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With the exception of Mexico, all cumulated countries export substantial quantities of their production.¹⁵⁶ Moreover, there are also a number of barriers to importation of subject plate in other countries.^{157 158 159} Brazilian plate is currently subject to antidumping findings in Canada and Mexico and a

¹⁵¹ See CR/PR at Tables PLATE-IV-3 - 4, PLATE-IV-6 - 13, CTL-SUPP-1 - 2, CTL-SUPP-4 - 12. In response to questions from several Commissioners, the Brazilian respondents reported 1999 capacity to produce both subject and nonsubject plate that was actually lower than subject capacity alone as reported in their questionnaire responses. We were unable to resolve this apparent discrepancy and have relied on the questionnaire responses.

¹⁵² Commissioner Bragg relies on the figure reported in the response to the Commissioners' questions with respect to Brazilian capacity to produce subject and nonsubject plate.

¹⁵³ CR at PLATE-II-4, PR at PLATE-II-3 (firms producing plate on hot strip mills or Steckel mills have the option of producing hot-rolled coils in sheet thicknesses); Tr. at 255-56 (Mr. Heller). Moreover, altering the chemical composition of the subject plate enables production of non-subject microalloy steels or non-subject grade X-70 plate. See also CR at PLATE-IV-2, PR at PLATE-IV-2 (Belgium ***); CR at PLATE-IV-3, PR at PLATE-IV-2-3 (Brazil ***); CR at PLATE-IV-6, PR at PLATE-IV-6 (Germany ***); CR at PLATE-IV-7, PR at PLATE-IV-7 (Mexico ***); CR at PLATE-IV-10, PR at PLATE-IV-8 (Romania ***); CR at PLATE-IV-11, PR at PLATE-IV-11 (Sweden ***); CR at PLATE-IV-14, PR at PLATE-IV-12 (United Kingdom ***).

¹⁵⁴ While importers reported no inventories of subject plate, CR/PR at Table PLATE-IV-2 n.1, the cumulated subject foreign producers have reported significant end-of-period inventories. Excluding Poland, there were 1,097,642 short tons in subject foreign producers' inventories in 1997, 1,009,785 short tons in 1998, and 949,568 short tons in 1999. CR/PR at Tables PLATE-IV-3 - 4, 6 - 13.

¹⁵⁵ Several European respondents argue that the EU is effectively their home market and that strengthened integration in the EU means that they are increasingly focused on the European market, making them less likely to export to the United States upon revocation. The European Community was in existence for some time prior to the original investigations, although further steps at integration and expansion have taken place since the original investigations. While these steps could have the potential to reduce to some degree exports of EU countries to the United States compared to the original investigation, we are not convinced that there has been a shift of such a fundamental nature as to make significant exports to the United States unlikely. With respect to the adoption of a common currency, we believe it is too early to judge its likely effects on trade outside the EU.

¹⁵⁶ See CR/PR at Tables PLATE-IV-3 - 4, 6 - 13.

¹⁵⁷ We note that we have considered domestic producers' arguments regarding global cartels. However, we did not rely upon any alleged global cartel activity in reaching our determinations.

¹⁵⁸ Vice Chairman Okun does not join in the preceding footnote. See Additional Views of Vice Chairman Deanna Tanner Okun.

¹⁵⁹ Commissioner Hillman does not join in footnote 157. She notes that the Commission's administrative record includes the recent publication *GLOBAL STEEL TRADE: Structural Problems and Future Solutions* (U.S. Department of Commerce, Washington, DC, July 2000), which seeks to identify causes of the so-called "Steel Import Crisis" and offers possible solutions. Among other things, the publication reviews and elaborates upon long-standing allegations by U.S. steel producers and others that there exist trade-limiting arrangements between Japanese, EU, and Korean steel producers. These allegations are routinely denied by the foreign steelmakers and governments. Commissioner Hillman has

countervailing finding in Mexico.¹⁶⁰ Plate from Finland is currently subject to an ongoing antidumping investigation in Canada.¹⁶¹ Plate from Romania is subject to an antidumping finding in the European Union (“EU”).¹⁶² Plate from Spain is subject to antidumping and countervailing findings in Canada.¹⁶³

In addition, all subject producers providing information to the Commission indicated that they produce a range of subject plate products that would be likely to compete with each other’s products and the domestic product in the U.S. market.¹⁶⁴

The recent imposition in the United States of antidumping and countervailing duty orders on cut-to-length plate from other countries makes it likely that the former purchasers of those products will seek new sources of low-priced plate. This demand for low-priced plate likely would be satisfied by the subject countries if the orders were revoked.

As argued by respondents, improved demand conditions in a number of the subject countries may suggest a decreased level of cumulated imports upon revocation compared to the levels from the original investigations.¹⁶⁵ Nevertheless, the combination of factors described above – significant capacity, and excess capacity, to produce both subject and non-subject plate products, foreign plate inventories, significant exports by most subject producers (indicating that exporting is an important part of these producers’ businesses), and barriers to exporting to third countries – as well as the incentive for steel producers to increase sales to maximize the use of available capacity and the role of the increasingly consolidated service centers in seeking out sources of low-cost supplies, indicates that the cumulated volume of subject imports likely will be significant upon revocation. In addition, as a result of the price-sensitive nature of the plate market,¹⁶⁶ and the weakened condition of the domestic industry (described below), even a relatively modest amount of subject imports would have a significant effect on U.S. prices and the U.S. industry.

Accordingly, we find that the volume of cumulated subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom likely would be significant within a reasonably foreseeable time if the orders are revoked.

2. Likely Price Effects of Subject Imports

The legal standards for considering the likely price effects of subject imports are discussed in Section III above.

In the 1979 investigation of Taiwan, the Commission found that there was substantial underselling

carefully considered this information, but finds that she is not in a position to reach a conclusion on the existence or effect of the alleged trade-limiting agreements.

¹⁶⁰ CR at PLATE-IV-3, PR at PLATE-IV-8-9

¹⁶¹ CR at PLATE-IV-5, PR at PLATE-IV-7.

¹⁶² CR at PLATE-IV-10, PR at PLATE-IV-11.

¹⁶³ CR at PLATE-IV-11, PR at PLATE-IV- 11.

¹⁶⁴ CR/PR at Tables D-4, CTL-SUPP-13 - 14, 16 - 24.

¹⁶⁵ We do not find convincing respondents’ claims that privatization of some subject country companies since the original investigations lessens the likelihood of significant exports to the United States. As with state-owned companies, profit-maximizing privately-owned firms may likely find it in their interests to seek additional sales in export markets.

¹⁶⁶ *See, e.g.*, CR at PLATE-II-21, PR at PLATE-II-15; Tr. at 76 (Mr. Dunham) (“plate is an extremely price sensitive commodity product”); 100 (Mr. Tulloch) (“a modest surge of dumped plate will cause severe price disruptions”).

as well as price suppression by the subject imports from that country.¹⁶⁷ In the 1993 investigations, the Commission found that there had been significant price underselling by the cumulated subject imports, noting that there was underselling in commercial grade plate products as well as declining unit values in twelve niche products. The Commission also found significant price depression or suppression and evidence of adverse price effects, in that unit production costs had risen steadily while market prices had been declining, resulting in a cost/price squeeze.¹⁶⁸

In these reviews, the available pricing data indicate that domestic prices are falling or, at best, have stabilized at low levels.¹⁶⁹ While the domestic industry was able to effect some price increases in early 2000, it was not able to collect more recent announced increases.¹⁷⁰ Because of the minimal levels of subject imports during the period of review, we have little data with which to compare the current U.S. prices of subject imported and domestically-produced plate.

As we observed above, however, domestic and subject imported plate are generally interchangeable and purchases are based largely on price competition. It follows, therefore, that highly competitive prices are essential to obtain sales and increase market share. Moreover, both producers and importers tend to sell on a spot basis, frequently negotiated transaction by transaction. Even to the extent that contracts are employed, many are for less than three months.¹⁷¹ Given these facts, and in view of the findings in the original investigations, we find that the significant increased volumes of subject plate imports likely would undersell domestic plate products to a significant degree and have significant price suppressing and depressing effects within a reasonably foreseeable time.^{172 173 174}

¹⁶⁷ USITC Pub. 970 at 6.

¹⁶⁸ USITC Pub. 2664 at 240-41.

¹⁶⁹ See CR/PR at Tables PLATE-IV-1 - 4.

¹⁷⁰ See Tr. at 78 (Mr. Dunham); see also Tr. at 147 (Mr. Navetta), 153 (Mr. Tulloch).

¹⁷¹ CR at PLATE-V-3 - 4, PR at PLATE-V-3.

¹⁷² In reaching our conclusion on likely price effects, we have weighed all the pertinent evidence on price and taken into account Commerce's duty absorption findings on Belgium, 63 Fed. Reg. 2959, 2964 (June 20, 1998) and Sweden, 62 Fed. Reg. 46947 (Sept. 5, 1997), although we note that a CIT decision (SKF USA Inc., et al. v. United States, No. 99-08-00473, slip op. 00-28 (Ct. Int'l Trade Mar. 22, 2000)) calls into question the validity of Commerce's duty absorption findings with respect to transition orders. However, we do not rely on the duty absorption findings in making our determination that significant price effects are likely upon revocation of the orders.

¹⁷³ Vice Chairman Okun does not join in the conclusion in the preceding footnote. Notwithstanding the referenced CIT decision, she finds that the statute requires her to take into account Commerce's duty absorption findings in making her determination. Nonetheless, she notes that her findings with respect to likely price effects upon revocation of the orders would be the same with or without consideration of Commerce's findings.

¹⁷⁴ Section 752(a)(6) of the Act states that the Commission may consider the magnitude of the margin of dumping in making its determination in a five-year review investigation. 19 U.S.C. § 1675(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year review investigations as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce found the following dumping margins: Belgium, 6.75 to 27.50 percent; Brazil, 42.08 to 75.54 percent; Canada, 0 to 68.70 percent; Finland, 40.36 percent; Germany, 36.00 percent; Mexico, 49.25 percent; Poland, 61.98 percent; Romania, 75.04 percent; Spain, 105.61 percent; Sweden, 24.23 percent; Taiwan, 34.00 percent; and the United Kingdom, 109.22 percent. See Commerce's Decision Memorandum, unpublished, found at

3. Likely Impact of Subject Imports¹⁷⁵

The legal standards for considering the likely impact of subject imports are discussed in Section III above.

In the 1979 investigation of plate from Taiwan, the Commission found that the dumped plate had resulted in lost sales by the domestic industry.¹⁷⁶ In the 1993 investigations of plate from the remaining subject countries, the Commission found that domestic capacity utilization had decreased, profitability had fallen, and that the cumulated subject imports increased their share of a declining domestic market while the domestic industry's market share decreased.¹⁷⁷

The record indicates that the state of the domestic industry improved somewhat following the imposition of the subject orders, but began to decline following multiple rounds of unfairly traded plate imports.¹⁷⁸ In these reviews, a number of indicators of the condition of the domestic industry were positive

<http://ia.ita.doc.gov/frn/summary/belgium/00-8693-1.txt>; 65 Fed. Reg. 18052 (Apr. 6, 2000); 65 Fed. Reg. 47383 (Aug. 2, 2000); 65 Fed. Reg. 18054 (Apr. 6, 2000); 65 Fed. Reg. 18056 (Apr. 6, 2000).

Although the statute does not expressly define the “magnitude of the net countervailable subsidy” to be used by the Commission in five-year reviews, it states that “[t]he administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated.” 19 U.S.C. § 1675a(b)(3). In its final five-year review determinations, Commerce determined the magnitude of the following subsidies that are likely to prevail if the countervailing duty order is revoked as: Belgium, 1.05 to 23.15 percent; Brazil, 5.44 to 48.64 percent; Germany, 0.51 to 14.84 percent; Mexico, 20.25 to 25.87 percent; Spain, 36.86 percent; Sweden, 4.27 percent; and the United Kingdom, 1.05 to 23.15 percent. *See* 65 Fed. Reg. 18066 (Apr. 6, 2000); 65 Fed. Reg. 18065 (Apr. 6, 2000); 65 Fed. Reg. 47407 (Aug. 2, 2000); 65 Fed. Reg. 18067 (Apr. 6, 2000); 65 Fed. Reg. 18307 (Apr. 7, 2000); 65 Fed. Reg. 18309 (Apr. 7, 2000).

In five-year reviews concerning countervailing duty orders, the Commission is required to consider “information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(b)(6). In its final five-year review determination, Commerce found that Brazil’s countervailable program falls within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, 65 Fed. Reg. at 18066 (Apr. 6, 2000); that benefits provided by Mexico’s Bancomext Export Loans and PITEX Duty-Free Imports for Companies That Export programs fall within the purview of Article 3.1(a) and that the remaining Mexican programs fall within the definition of “direct forgiveness of debt” for purposes of Article 6.1(d), 65 Fed. Reg. at 18069 (Apr. 6, 2000); and that the programs at issue in the reviews of Belgium, Germany, Spain, Sweden, and the United Kingdom do not fall within the definition of an export subsidy under Article 3.1(a). 65 Fed. Reg. at 18067 (Apr. 6, 2000), 18307 (Apr. 7, 2000), 18308 (Apr. 7, 2000), 18310 (Apr. 7, 2000), 47409 (Aug. 2, 2000).

¹⁷⁵ We note that data for certain domestic plate producers may reflect the production and sales of products outside the scope of these reviews. These producers indicated that they were unable to supply data that did not also include microalloy plate. We must therefore rely on the industry data provided, keeping in mind that the industry does not correspond precisely to the one producing the domestic like product that we have found.

¹⁷⁶ USITC Pub. 970 at 6-7.

¹⁷⁷ USITC Pub. 2664 at 243-44.

¹⁷⁸ *See, e.g.*, Domestic Interested Parties Prehearing Brief, Vol. IV-A, Exhibit 24.

even at the beginning of the period of review. Production increased between 1997 and 1998,¹⁷⁹ U.S. shipments increased during the same period,¹⁸⁰ as did gross profits¹⁸¹ and operating income.¹⁸² Petitioners suggested that capacity has increased by approximately the rate demand has increased.¹⁸³

However, these indicators declined noticeably toward the end of the review period, and the domestic industry remains in a weakened state, due at least in part to the effects of dumped and subsidized imports from non-subject countries that resulted in the imposition of orders during the period of review.¹⁸⁴
¹⁸⁵ ¹⁸⁶ Operating income is falling, capacity utilization is low, production is down, inventories are higher,¹⁸⁷ and production and related workers have decreased, as have their hours worked.¹⁸⁸ Capital expenditures

¹⁷⁹ Production increased from 5.8 million short tons in 1997 to 6.8 million short tons in 1998, then fell to 5.5 million short tons in 1999. It was 1.2 million short tons in January-March 1999 and 1.6 million short tons in January-March 2000. CR/PR at Table PLATE-III-1.

¹⁸⁰ U.S. shipments increased from 5.5 million short tons in 1997 to 6.5 million short tons in 1998, then fell to 5.4 million short tons in 1999. U.S. shipments were 1.3 million in January-March 1999 and 1.5 million in January-March 2000. CR/PR at Table PLATE-III-2.

¹⁸¹ Gross profits increased from \$163.0 million in 1997 to \$227.1 million in 1998, then fell to a loss of \$95.8 million in 1999. It was a loss of \$25.2 million in January-March 1999 and was \$317,000 in January-March 2000. CR/PR at Table PLATE-III-5.

¹⁸² Operating income rose from \$89.7 million in 1997 to \$134.3 million in 1998, then fell to an operating loss of \$177.1 million in 1999. There were operating losses of \$46.0 million in January-March 1999 and \$17.1 million in January-March 2000. CR/PR at Table PLATE-III-5.

¹⁸³ Tr. at 131-32 (Mr. Schagrin). However, capacity utilization declined from 78.5 percent in 1997 to 75.1 percent in 1998, then further to 66.1 percent in 1999. It was 59.2 percent in January-March 1999 and 72.3 percent in January-March 2000. CR/PR at Table PLATE-III-1.

¹⁸⁴ In reaching our determination that the industry is vulnerable, we have considered, but have not relied upon, the industry analysis presented by the domestic producers, which relies on indicators pertaining to the overall steel industry and not to this particular industry. We realize that in certain practical matters it is difficult to separate an industry from the larger commercial entity to which it belongs; yet our statutory mandate is clear, and we must reach our determination based on the state of the industry as defined in 19 U.S.C. § 1677(4)(A). Furthermore, we find that the analysis does not adequately represent the attenuated relationship between this industry and certain larger indicators, such as stock prices.

¹⁸⁵ Vice Chairman Okun and Commissioner Hillman do not join the preceding footnote. While they also did not rely on Professor Kothari's analysis in finding the domestic industry vulnerable, they note that there may be instances where particular indicia that are not severable from the industry as defined in 19 U.S.C. § 1677(4)(A) may nonetheless be relevant in assessing vulnerability. However, they do not find Professor Kothari's reliance on the stock market performance probative of the vulnerability of the domestic industry, inasmuch as factors other than the current condition of the industry may impact any individual company's or sector's stock performance.

¹⁸⁶ Commissioner Bragg does not join footnote 184. Although Commissioner Bragg did not rely upon Professor Kothari's analysis in finding the domestic industry vulnerable, she notes that his analysis does corroborate a finding of vulnerability.

¹⁸⁷ Inventories were 390,001 short tons in 1997, 467,710 short tons in 1998, and 403,893 short tons in 1999. They numbered 363,296 in January-March 1999 and 381,134 in January-March 2000. CR/PR at Table PLATE-III-3.

¹⁸⁸ Production and related workers increased from 8,021 in 1997 to 8,337 in 1998 then decreased to 6,558 in 1999. They numbered 6,535 in January-March 1999 and 6,746 in January-March 2000. Their

have also steadily declined.¹⁸⁹ Although the imposition of duties on imports from six countries in 2000 should help to ameliorate the industry's condition to some degree, we nevertheless conclude that the domestic industry, having faced successive waves of unfairly traded imports in recent years, is in a "weakened state" as contemplated by the statute's vulnerability criterion.¹⁹⁰

As discussed above, revocation of the antidumping and countervailing duty orders at issue likely would lead to significant increases in the volume of cumulated subject imports at prices that would undersell the domestic like product and significantly suppress or depress U.S. prices. In addition, the volume and price effects of the cumulated subject imports likely would have a significant adverse impact on the domestic industry and likely would cause the domestic industry to lose market share.

The price and volume declines likely would have a significant adverse impact on the production, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the orders will result in commensurate employment declines for domestic firms.

Accordingly, based on the record in these reviews, we conclude that, if the antidumping and countervailing duty orders are revoked, subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom would be likely to enter the U.S. market in sufficient quantities and at prices below those of the domestic product so as to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.¹⁹¹

D. Revocation of the Order on Subject Imports from Canada Is Not Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

As explained above, two of the three major Canadian producers to which the antidumping duty order applied – IPSCO and Algoma – are no longer subject to the order, leaving only Stelco as a major producer subject to the order.¹⁹² As a result, overall subject Canadian capacity is significantly lower than its level as reported in the 1993 investigations.¹⁹³ While Stelco has plans to expand capacity by 2002, the

hours worked increased from 17.1 million in 1997 to 17.8 million in 1998, then declined to 13.4 million in 1999. Hours worked numbered 3.3 million in January-March 1999 and 3.6 million in January-March 2000. CR/PR at Table PLATE-III-4.

¹⁸⁹ Capital expenditures fell from \$97.3 million in 1997 to \$94.0 million in 1998, then fell further to \$82.9 million in 1999. They were \$16.5 million in January-March 1999 and \$9.0 million in January-March 2000. CR/PR at Table PLATE-III-9.

¹⁹⁰ 19 U.S.C. § 1675a(1)(C). See SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury. . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.").

¹⁹¹ In making this determination, we have considered, but have not relied upon, the probabilistic model presented by respondent producers. We find the model's usefulness to be limited by its time frame (*i.e.* while the orders were in place) such that it is not particularly probative in light of the analysis of the likely future conditions in the market required by statute.

¹⁹² See IV.A.3 *supra*.

¹⁹³ See 1993 CR/PR at Table 59 (Canadian capacity was *** short tons in 1992).

expanded capacity will still be well below 1992 subject capacity.¹⁹⁴

In general, Stelco has not historically been a significant exporter of plate to the United States (or to other markets).¹⁹⁵ Stelco accounted for a small percentage of subject imports from Canada in 1990 and 1991, and approximately *** percent in 1992.¹⁹⁶ Nearly all (*** percent) of its shipments of subject plate went to the home market in 1999 and the remaining *** percent was consumed internally.¹⁹⁷ Since the antidumping duty order went into effect in 1993, Stelco has exported a total of only *** tons to the United States, for an average annual export of fewer than *** tons.¹⁹⁸

As discussed above, the amount of plate demanded in Canada exceeds the supply of Canadian-produced plate. This deficit likely will increase because Canada has recently imposed antidumping duty orders on a number of countries¹⁹⁹ that accounted for a significant amount of consumption in Canada.²⁰⁰ This indicates that Stelco is likely to remain focused on supplying its home market.

In view of the above facts, we find that likely future levels of subject imports from Canada will not be significant. The probable volumes will likely be too small to affect domestic prices significantly. In the absence of significant volume or price effects, we find that the likely impact on the domestic plate industry from subject imports from Canada, in the event of revocation, will not be significant. We therefore find that subject imports from Canada would not lead to continuation or recurrence of material injury within a reasonably foreseeable time if the order were revoked.

E. Conclusion

For the foregoing reasons, we determine that revocation of the antidumping and countervailing duty orders on imports of cut-to-length plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to the domestic cut-to-length plate industry within a reasonably foreseeable

¹⁹⁴ Stelco's capacity for subject plate is projected to be a little over *** tons in 2001, with total capacity to produce both subject and non-subject plate of *** tons. *See* Canadian Respondent's Posthearing Question Responses, Responses to Commissioner Hillman at 4; CR/PR at Table CTL-SUPP-3. We are mindful of the fact that there is some potential that the other *** tons of capacity could be shifted to produce the subject merchandise. Even if this occurred, volumes imported into the United States are not likely to be significant in view of the fact that Stelco, as explained above, has not historically been a large exporter of plate to the United States.

¹⁹⁵ Canadian Respondent's Prehearing Plate Brief at 5.

¹⁹⁶ Canadian Respondent's Posthearing Question Responses, Responses to Staff at 11; Canadian Respondent's Posthearing Plate Brief, Exh. 1 at 8.

¹⁹⁷ CR/PR at Table PLATE-IV-5. We note further that although Stelco produces non-subject, microalloyed plate, it has shipped virtually none to the United States during the review period. *See* CR/PR at Table CTL-SUPP-3 (Canada shipped *** short tons of microalloyed plate to the United States in 1998 and *** short tons in 1999).

¹⁹⁸ Canadian Respondent's Prehearing Plate Brief at 6; CR/PR at Table PLATE-IV-5. We note that official import data likely include data of non-subject Canadian producers.

¹⁹⁹ Canada currently has antidumping duty orders on imports of plate from Brazil, China, Finland, India, Indonesia, Italy, Korea, Mexico, Russia, South Africa, Spain, Thailand, and Ukraine. CR at PLATE-IV-4, PR at PLATE-IV-6; Canadian Respondent's Prehearing Plate Brief at 15.

²⁰⁰ The subject countries exported 137,000 tons of plate into Canada in 1998 and 71,000 tons in 1999. Canadian Respondent's Prehearing Plate Brief at 16.

time.²⁰¹ We also determine that revocation of the antidumping duty order on imports of cut-to-length plate from Canada would not be likely to lead to continuation or recurrence of material injury to the domestic cut-to-length plate industry within a reasonably foreseeable time.

²⁰¹ Chairman Koplun and Commissioner Askey dissenting with respect to the United Kingdom. Commissioner Askey dissenting with respect to Taiwan.

V. COLD-ROLLED FLAT CARBON STEEL PRODUCTS^{202 203}

A. Cumulation

The legal standards for considering cumulation are discussed in Section III above.

In these reviews, the statutory requirement that all cold-rolled steel reviews be initiated on the same day is satisfied. Based on the available information regarding the capacity and exports of the industries in Germany, Korea, the Netherlands, and Sweden and their current exports to the United States, we find that subject imports from all four countries would be likely to have a discernible adverse impact on the domestic industry if the orders were revoked. We also find that a reasonable overlap of competition between the subject imports and the domestic like product is likely to exist if the orders were revoked. We do not find any significant differences in the conditions of competition among the subject countries. Therefore, we have exercised our discretion to cumulate subject imports from Germany, Korea, the Netherlands, and Sweden.

1. Likelihood of No Discernible Adverse Impact

Subject imports from German, Korea, the Netherlands, and Sweden have remained in the U.S. market in the years since the orders were imposed.²⁰⁴ The continuing presence of these subject imports in the domestic market indicates that subject foreign producers continue to have the contacts and channels of distribution necessary to compete in the U.S. market.

The cold-rolled steel industries in each of the four subject countries devote considerable resources to export markets. In 1999, the percentage of total shipments exported ranged from *** percent in Germany to *** percent in Sweden.²⁰⁵ While capacity utilization rates have topped *** percent in each of the subject countries during the period of review, there appears to be some available excess capacity in each country. As recently as 1999, for example, there were *** million short tons of available excess capacity in Korea alone.²⁰⁶

We are mindful that the volume of subject imports was small even during the original investigations, and that volume has fallen further still. Yet in the context of this particular industry, and given the conditions noted above, we find that the current level of subject imports from each country is nonetheless high enough so that a likelihood exists that even a small post-revocation increase would have a discernible adverse impact on the domestic industry.²⁰⁷

²⁰² Commissioner Bragg does not join Section V of this opinion. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg.

²⁰³ Commissioner Miller does not join Section V of this opinion. *See* Separate Views of Commissioner Marcia E. Miller.

²⁰⁴ CR/PR at Table COLD-I-1.

²⁰⁵ CR/PR at Tables COLD-IV-3 through COLD-IV-6.

²⁰⁶ CR/PR at Tables COLD-IV-3 through COLD-IV-6. Furthermore, some subject German producers have close ties to domestic importers or to major service centers. Domestic Producers' Posthearing Cold-Rolled brief at Exh. 13.

²⁰⁷ Commissioner Askey notes that these small volume increases are likely to result in discernible adverse effects on domestic prices, such that subject imports would have a discernible adverse impact on the domestic industry.

2. Reasonable Overlap of Competition

In the original investigation in 1985 involving Sweden, the Commission majority cumulated subject imports of subsidized cold-rolled steel products from Sweden with subsidized cold-rolled steel imports from Austria and with dumped imports from Korea already subject to a dumping order.²⁰⁸ In the original 1993 investigations involving Germany, Korea, and the Netherlands, Chairman Newquist cumulated subject imports from Germany, Korea, and the Netherlands along with subject imports from Belgium, Brazil, Canada, France, and Japan to reach a determination that cumulated imports threatened the domestic industry.²⁰⁹ Vice Chairman Watson did not cumulate subject imports from Germany with any other subject imports in reaching a determination that subject imports from Germany threatened the domestic industry.²¹⁰ Commissioner Rohr did not cumulate subject imports from Korea, the Netherlands, or Germany when determining that subject imports from each of those countries threatened the domestic industry.²¹¹ Commissioner Nuzum cumulated subject imports from Germany, Korea, and the Netherlands with subject imports from Belgium, Brazil, France, Italy, and Spain in determining that the cumulated subject imports threatened the U.S. industry.²¹²

With limited exceptions, domestic producers overwhelmingly find domestically-produced cold-rolled steel to be interchangeable with subject imports from each of the four countries and similarly find subject imports to be interchangeable with each other.²¹³ Importers also generally find the subject imports to be interchangeable with the domestic like product and with each other.²¹⁴ Purchasers frequently found domestic cold-rolled steel to be comparable to imported cold-rolled steel from each of the subject countries with respect to a number of product characteristics.²¹⁵

Domestic producers sell cold-rolled steel throughout the United States.²¹⁶ A majority of subject imports from Germany entered the United States through the Great Lakes region, while a majority of subject imports from Korea entered the United States through the Gulf Cost region. Subject imports from Sweden entered primarily through the East and Great Lakes region. Over ninety percent of subject imports from the Netherlands entered through the West region. While the primary regions of entry varied, subject imports from each of the four countries entered each of the four regions during the period of review.²¹⁷

In 1999, 63 percent of domestically-produced cold-rolled steel was sold directly to end users, with the remaining 37 percent sold to distributors and service centers.²¹⁸ Subject imports from the Netherlands were also generally sold directly to end users in 1999, while sales to distributors and service centers accounted for *** percent of all shipments from the Netherlands.²¹⁹ Only *** percent of subject imports

²⁰⁸ USITC Pub. 1759 at 11.

²⁰⁹ USITC Pub. 2664 at 269, 302 (Additional and Dissenting Views of Chairman Newquist).

²¹⁰ USITC Pub. 2664 at 83 n.1 and 133-135.

²¹¹ USITC Pub. 2664 at 83 n.1, 133-135, 135 n.389, and 156-159 (Additional and Dissenting Views of Commissioner David B. Rohr).

²¹² USITC Pub. 2664 at 352 (Additional and Dissenting Views of Commissioner Janet A. Nuzum).

²¹³ CR/PR at Table COLD-II-4.

²¹⁴ CR/PR at Table COLD-II-4.

²¹⁵ CR/PR at Table COLD-II-7.

²¹⁶ CR at COLD-II-1, PR at COLD-II-1.

²¹⁷ Official Commerce statistics.

²¹⁸ INV Table X-4, 10/04/2000.

²¹⁹ INV Table X-6, 10/04/2000.

from Germany were sold to distributors or service centers in 1999, while the share of subject imports from Korea sold to that market was *** percent in 1999.²²⁰

Subject imports from each of the four countries were present in the market throughout the entire period of review. Subject imports from Korea were present in the U.S. market in 38 of 39 quarters in the period of review. Subject imports from the other three countries were present in every quarter.²²¹

Parties in favor of revocation have pointed out several notable differences in product type and channel of distribution between recent subject imports. Subject imports from the Netherlands have consisted primarily of full-hard steel, a semi-finished product, while Korea is the only other subject country which exports full-hard to the U.S., and Korean imports of full-hard are modest.²²² Subject imports from Germany and the Netherlands are largely sold by contract to a few major customers, while the Korean product is sold mainly to distributors.²²³

We note the existence of these stated differences, but do not find them sufficiently significant to prevent us from concluding that there is likely to be a reasonable overlap of competition. In a five-year review, the proper focus is on likely post-revocation behavior, and the composition of current imports, affected by the discipline of an antidumping or countervailing duty order, is not necessarily indicative of likely post-revocation competition. While current subject imports may be specialized or limited to a particular market, subject producers in each of the four countries possess the ability to produce, and do in fact produce, a broad range of subject cold-rolled products. For example, while the Dutch producer sells primarily full-hard cold-rolled steel in the United States, it produces and exports other products to a variety of *** in third countries.²²⁴ German group producers sell primarily by contract to original equipment manufacturer (“OEM”) customers,²²⁵ but have ties to major U.S. service centers, indicating they could be active in sales to service centers and distributors as well as OEMs.²²⁶ Subject imports from Korea currently are considerably less likely to be sold directly to end users, but subject Korean producers service OEM clients in other markets and presumably could do so in the United States as well.²²⁷ Therefore, we find that there would likely be a reasonable overlap of competition between the subject imports and the domestic like product, and among the subject imports themselves, if the orders were revoked.

3. Other Considerations

The volume and price trends varied for subject imports from all four countries. The volume of subject imports from each country was significantly lower in the years 1997-1999 than during the high points of the original investigations.²²⁸ We note that three of the four subject countries are members of the European Union, and, according to Dutch and German respondents, are essentially integrated into one large European market. Producers in each of the subject countries are technologically advanced, capable of producing a wide variety of products and capable of competing for even high-end customers such as original equipment manufacturers. We note that widely varying projections for growth in Europe and Asia

²²⁰ INV Table X-6, 10/04/2000.

²²¹ Official Commerce statistics.

²²² Dutch Prehearing Cold-Rolled Brief at 15-16.

²²³ Dutch Prehearing Cold-Rolled Brief at 18, German Group Prehearing Cold-Rolled Brief at 25-26.

²²⁴ Dutch Posthearing Cold-Rolled Brief at A-3.

²²⁵ German Group Prehearing Cold-Rolled Brief at 25.

²²⁶ Domestic Producers' Posthearing Cold-Rolled Brief at Exhibit 13.

²²⁷ *See, e.g.*, Korean Group Prehearing Cold-Rolled Brief at 10 (sales to automotive manufacturers).

²²⁸ CR/PR at Table COLD-I-1.

have been presented by both sides, but in general the forecasts agree that some modest rate of growth in both markets is likely.

We therefore find that subject imports from these countries would compete in the U.S. market under similar conditions of competition. Based on the foregoing, we therefore exercise our discretion to cumulate subject imports from Germany, Korea, the Netherlands, and Sweden in these reviews.

B. Conditions of Competition

The legal standards for considering the conditions of competition are discussed in Section III above.

We find that these conditions are likely to prevail in the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future.

Cold-rolled steel is used in a variety of applications, primarily automotive, appliance, construction, and container.²²⁹ Demand for cold-rolled steel is closely tied to demand in the general economy.²³⁰ In general, there are no potential substitute products for cold-rolled steel, although thin-gauge hot-rolled steel has been suggested as a possible substitute in limited applications.²³¹

Domestic demand for cold-rolled steel products has increased significantly since the original investigations. In 1984, the final year of the investigation regarding subject imports from Sweden, total apparent domestic consumption was 16.3 million tons. By 1992, the final year of the investigations regarding Germany, Korea, and the Netherlands, total apparent domestic consumption neared 28.5 million tons. By 1999, total apparent domestic consumption reached 37.8 million tons. Total apparent domestic consumption increased 6.6 percent in the first quarter of 2000 over the same time period in 1999.²³²

In the years since the original determinations a fundamental change in demand has affected the level of demand for cold-rolled steel and the end uses for which it is produced. Improvements in galvanizing technology and subsequent drops in cost have combined to significantly increase demand for corrosion-resistant steel, a downstream product requiring cold-rolled steel as its major input. The shift has been most notable in the automotive market. In 1989, approximately 52 percent of the steel consumed in an automobile's fabrication was cold-rolled steel, while 20 percent was galvanized. By 2000, only 14 percent is typically cold-rolled steel, while galvanized products account for 58 percent of all steel.²³³ While overall demand for cold-rolled steel has grown, a significant portion of the increase has been for the substrate for more profitable downstream products.²³⁴

Significant consolidation has occurred among major purchasers of cold-rolled steel, and the

²²⁹ CR at COLD-I-14, PR at COLD-I-13.

²³⁰ CR at COLD-II-1, PR at COLD-II-1.

²³¹ CR at COLD-II-12, PR at COLD-II-8.

²³² CR/PR at Table COLD-I-1. We are mindful that the comparisons between the data on the industry in the original determinations and the industry data gathered in these reviews may be somewhat distorted, as a result of the domestic producers' inability to segregate microalloy products from the domestic like product in their questionnaire responses in these reviews. Given the domestic producers' own uncertainty as to the inclusion of microalloy products in the questionnaire responses in the 1993 investigations, we find it likely that the comparisons are sufficiently valid to indicate the magnitude of the change in the industry, including apparent consumption. Domestic Producers' Common Issues Prehearing Brief at Exh. 1.

²³³ Dutch Posthearing Cold-Rolled Brief at A-4.

²³⁴ Joint Respondents' Prehearing Economic Cold-Rolled Brief at 6-7. ***. *Id.*

consolidation has occurred among both end users and distributors. The 1990s have seen a number of high-profile automobile mergers, resulting in fewer, larger nameplates by the end of the decade. Furthermore, these merged firms are increasingly centralizing their purchasing and favor the increased use of international standards.²³⁵ A similar trend has occurred among appliance manufacturers, another major consumer of cold-rolled steel.²³⁶

Similarly, the number of service centers has dropped in the 1990s, from approximately 7,000 in 1993 to 3,000 today.²³⁷ These consolidated service centers are more sophisticated than their smaller predecessors, with greater control over buying patterns and increased ability to purchase cold-rolled steel from non-U.S. sources.²³⁸

Purchasers report that their purchasing patterns have not changed significantly in recent years. Prior to purchasing, most buyers contact a limited number of suppliers. A large majority of responding purchasers indicate that they change suppliers only infrequently, and when they do change it is prompted by a variety of factors, including price, quality, availability, delivery, and a desire to rationalize supplier base. A majority of responding purchasers do not rely on multiple suppliers.²³⁹ So far, e-commerce appears to have had little effect on the market for cold-rolled steel.²⁴⁰

When choosing a supplier, a majority of buyers named quality as the most important factor in the selection process. Quality was cited as the second most important factor more often than any other named factor, while availability and delivery time were also important considerations.²⁴¹ All responding purchasers considered quality to be a very important factor in the purchase decision, while a large majority also named availability, consistency, and reliability of supply as very important factors.²⁴² Purchasers most often named price as the third most important factor.²⁴³

As domestic demand has increased, the capacity of domestic producers has similarly increased. In 1992, the last full year under investigation in the 1993 determinations, total domestic cold-rolled production capacity was 34.4 million tons.²⁴⁴ By 1997 total domestic cold-rolled production capacity was 38.6 million tons, up 12 percent in five years. Production capacity continued to increase in the period of review, increasing 6.4 percent between 1997 and 1999. Production capacity was 10.5 million short tons in the first quarter of 2000, compared to 10.1 million tons in the first quarter of 1999.²⁴⁵

Domestic production also has increased. In 1992, the domestic industry produced 26.6 million tons, utilizing 77.2 percent of its capacity.²⁴⁶ In 1997, production was 31.6 million tons and capacity utilization was 81.7 percent. Both overall production and the capacity utilization rate rose faster than production capacity in the period of investigation. By 1999, total production was 35.4 million tons and capacity utilization reached 86.0 percent.²⁴⁷ Both production and capacity utilization were greater in the

²³⁵ Domestic Producers' Posthearing Cold-Rolled Brief at 14.

²³⁶ Domestic Producers' Posthearing Cold-Rolled Brief at 15.

²³⁷ Domestic Producers' Posthearing Cold-Rolled Brief at 15.

²³⁸ Domestic Producers' Posthearing Cold-Rolled Brief at 15.

²³⁹ CR at COLD-II-13, PR at COLD-II-8.

²⁴⁰ CR at COLD-II-13, PR at COLD-II-8-II-9.

²⁴¹ CR/PR at Table COLD-II-2.

²⁴² CR/PR at Table COLD-II-2.

²⁴³ CR PR at Table COLD-II-2.

²⁴⁴ USITC Pub. 2664 at Table 15.

²⁴⁵ CR/PR at Table COLD-III-1.

²⁴⁶ USITC Pub. 2664 at Table 15.

²⁴⁷ CR/PR at Table COLD-III-1.

first quarter of 2000 than in the same time period in 1999.²⁴⁸

Domestic producers dominate the domestic market for cold-rolled steel. In 1984, the domestic industry's share of total consumption was 78.9 percent. In the years 1990-1992, covering the investigations on Germany, Korea, and the Netherlands, the domestic producers' share of the U.S. market never fell below 92.9 percent. In more recent years, the share remained high, increasing from 90.1 percent in 1997 to 92.3 percent in 1999. Domestic producers' share of total domestic consumption was 95.6 percent in the first quarter of 2000, compared to 92.1 percent in the same period in 1999.²⁴⁹

Most domestic production is captively consumed by domestic producers or related parties in the production of downstream products.²⁵⁰ Domestic producers of cold-rolled steel are also significant producers of galvanized steel. In recent years, as the demand for cold-rolled steel in the merchant market has been steady, demand for galvanizing substrate has increased steadily. The amount of domestically-produced cold-rolled steel consumed captively or by related-party galvanizers increased by nearly 20 percent between 1997 and 1999, rising from 18.5 million tons to 22.2 million.²⁵¹ Production for internal consumption or transfer to related parties increased 6.4 percent between the first quarter of 1999 and the first quarter of 2000.²⁵² The percentage of total cold-rolled shipments that were consumed captively or by related-party galvanizers increased from 51.8 percent in 1992 to 58.9 percent in 1997, to 63.0 percent in 1999.²⁵³

While a growing majority of domestically produced cold-rolled steel is captively consumed or transferred to related parties, commercial sales account for over one-third of all production.²⁵⁴ Sixty-three percent of all commercial sales are to end users, such as OEMs, and the remaining 36.8 percent is sold to distributors or service centers.²⁵⁵

A majority of domestic producers sell their cold-rolled steel by contract.²⁵⁶ These contracts tend to cover a time period between six months and one year.²⁵⁷ A majority of producers indicate that these sales contracts fix both price and quantity for the duration of the contract.²⁵⁸ Domestic producers have indicated that these contracts may in fact give little protection to producers, and that purchasers do not hesitate to request price concessions when spot market prices fall.²⁵⁹ Several respondents claim that purchasers do not

²⁴⁸ CR/PR at Table COLD-III-1.

²⁴⁹ CR/PR at Table COLD-I-1.

²⁵⁰ The captive production provision, 19 U.S.C. § 1677(7)(c)(iv), does not apply to five-year reviews, but we consider the fact that there is a significant degree of captive production as a condition of competition. *See, e.g., Magnesium from Canada*, USITC Pub. 3324 at 11, n.72; *Electrolytic Manganese Dioxide from Greece and Japan*, Invs. Nos. 731-TA-406-08 (Review), USITC Pub. 3296 at 15, n.90 (May 2000); *Sebacic Acid from China*, Inv. No. 731-TA-653 (Review), USITC Pub. 3189 at 7, n.26 (May 1999).

²⁵¹ CR/PR at Table COLD-III-2.

²⁵² CR/PR at Table COLD-III-11.

²⁵³ USITC Pub. 2664 at Table 9; CR/PR at Table COLD-III-2.

²⁵⁴ CR/PR at Table COLD-III-11.

²⁵⁵ INV Table X-4, 10/04/2000.

²⁵⁶ CR at COLD-V-3, PR at COLD-V-2.

²⁵⁷ CR at COLD-V-3, PR at COLD-V-2-V-3.

²⁵⁸ CR at COLD-V-3, PR at COLD-V-3.

²⁵⁹ Domestic Producers' Posthearing Response to Questions at Exhibits 17-20.

routinely renege on contracts.²⁶⁰

C. Revocation of the Orders on Subject Cold-Rolled Imports from Germany, Korea, the Netherlands, and Sweden Is Not Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time²⁶¹

1. Likely Volume of Subject Imports

The legal standards for considering the likely volume of subject imports are discussed in Section III above.

In its original determination regarding Sweden, the Commission based its determination in part on increased market penetration.²⁶² In its original determinations that a threat of material injury existed from subject imports from Germany, Korea, and the Netherlands, the Commission did not find then-current significant volume effects, but found that imports threatened such effects.²⁶³ Recent volumes of subject imports have been well below the levels found in 1992 to not be significant.²⁶⁴

We find it likely that the volume of subject imports will in fact increase to some extent upon revocation. Nonetheless, we do not find that the likely increased volume of subject imports will be significant.

Cumulated foreign capacity to produce subject cold-rolled steel was approximately 24.7 million tons in 1999, and excess capacity was approximately 2.4 million tons.²⁶⁵ Capacity in 1999 to produce all cold-rolled steel, both subject and non-subject, was approximately 28.2 million tons, with approximately 2.6 million tons excess.²⁶⁶ Although standing alone these figures may appear relatively large, the figures are less significant when considered in the context of the relatively larger size of overall U.S. cold-rolled consumption of nearly 38 million tons in 1999. These figures also indicate that the subject foreign producers' capacity utilization was relatively high, around 90 percent.²⁶⁷ Foreign inventories of cold-rolled steel were relatively low.²⁶⁸ Further, we find that important conditions of competition will likely act to restrain the likely increase in subject imports upon revocation and to mute the effects of those increases on the domestic industry.

²⁶⁰ See, e.g., General Motors Prehearing Brief at 4; Theis Posthearing Brief at 2; German Group Response to Posthearing Questions at 17.

²⁶¹ Because the interim data for 1999 and 2000 cover only limited three-month periods, we have relied principally on data covering full-year periods, and have placed particular weight on 1999 data, the most recent full-year period for which data were available.

²⁶² USITC Pub. 1759 at 19.

²⁶³ USITC Pub. 2664 at 119.

²⁶⁴ CR/PR at Table COLD-I-1.

²⁶⁵ CR/PR at Tables COLD-IV-3 through COLD-IV-6.

²⁶⁶ Tables CRS-SUPP-1 through CRS-SUPP-3.

²⁶⁷ True capacity in the subject countries has been a contested issue in these investigations, but it still appears that capacity utilization rates in the subject countries are relatively high. Domestic producers have pointed out several potential discrepancies in the reported capacity data. In general, we do not believe we have the basis to reject respondents' reported capacity. However, we do not necessarily accept that ***, as suggested by the questionnaire response of the subject Swedish producer. See, e.g., CR/PR at Table COLD-IV-6.

²⁶⁸ CR/PR at Tables COLD-IV-2 through COLD-IV-6.

World-wide economic conditions likely to exist in the reasonably foreseeable future are significantly better than those existing at the time of the original determinations. In the early 1990s the world economy was still recovering from recession, and demand was weak in most markets. Now, although the variety of economic forecasts presented to us in the course of this investigation agree on little, it seems likely that subject producers will have at least modest growth in their local markets to absorb some excess capacity.²⁶⁹ Overall these subject producers have tended to concentrate on their home markets rather than exports, and we find that this is likely to continue.²⁷⁰

The shift in demand, away from cold-rolled steel and to corrosion-resistant steel, has not occurred solely in the U.S. market. Non-U.S. customers of subject producers are likewise demanding more corrosion-resistant steel.²⁷¹ Subject foreign producers, like domestic producers, have a strong incentive to produce for this more profitable downstream market whenever possible. Subject producers are already devoting considerable resources to such downstream production and the trend is likely to continue in the reasonably foreseeable future.²⁷² This will decrease the availability of cold-rolled steel for export.

There are few barriers to subject imports in other countries.^{273 274 275} Mexico maintains an antidumping order on cold-rolled imports from Germany, but the order does not restrict imports for automotive applications, and cold-rolled steel for automotive applications is the only subject German product imported into Mexico.²⁷⁶ Three of the four subject countries are members of the EU and claim that the overall EU market is in fact their home market.²⁷⁷ Home-market inventories are ***.²⁷⁸ The level of

²⁶⁹ See, e.g., Respondents' Joint Prehearing Cold-Rolled Economic Brief at 18-20 (***).

²⁷⁰ CR/PR at Tables COLD-IV-3 through COLD-IV-6. See also Dutch Prehearing Cold-Rolled Brief at 34.

²⁷¹ Dutch Posthearing Cold-Rolled Brief at 12; German Group Prehearing Cold-Rolled Brief at 17.

²⁷² In 1999, *** percent of total shipments in Germany were for captive production or internal transfers, up from *** percent in 1992. In the Netherlands in 1999, *** percent of total shipments were for captive production or internal transfers. In Korea, captive production accounted for *** percent of all shipments. CR/PR at Tables COLD-IV-3 through COLD-IV-5.

²⁷³ We note that we have considered domestic producers' arguments regarding global cartels. However, we did not rely upon any alleged global cartel activity in reaching our determinations.

²⁷⁴ Vice Chairman Okun does not join in the preceding footnote. See Additional Views of Vice Chairman Deanna Tanner Okun.

²⁷⁵ Commissioner Hillman does not join in footnote 273. She notes that the Commission's administrative record includes the recent publication *GLOBAL STEEL TRADE: Structural Problems and Future Solutions* (U.S. Department of Commerce, Washington, DC, July 2000), which seeks to identify causes of the so-called "Steel Import Crisis" and offers possible solutions. Among other things, the publication reviews and elaborates upon long-standing allegations by U.S. steel producers and others that there exist trade-limiting arrangements between Japanese, EU, and Korean steel producers. These allegations are routinely denied by the foreign steelmakers and governments. Commissioner Hillman has carefully considered this information, but finds that she is not in a position to reach a conclusion on the existence or effect of the alleged trade-limiting agreements.

²⁷⁶ German Group Prehearing Cold-Rolled Brief at 36-37.

²⁷⁷ See, e.g., Dutch Prehearing Cold-Rolled Brief at 12; German Group Prehearing Cold-Rolled Brief at 21. These respondents argue that the EU is effectively their home market and that strengthened integration in the EU means that they are increasingly focused on the European market, making them less likely to export to the United States upon revocation. The European Community was in existence for some time prior to the original investigations, although further steps at integration and expansion have taken

subject import end-of-period inventories held by U.S. importers in both 1999 and in the first quarter of 2000 were *** relative to the U.S. market.²⁷⁹

Subject imports have never captured significant portions of the U.S. market, even before the imposition of the instant antidumping and countervailing duty orders.²⁸⁰ In the original period of investigation, cumulated subject imports never accounted for more than 2.4 percent of total domestic consumption.²⁸¹ In the recent period of review cumulated subject imports have never accounted for more than 1.2 percent of total domestic consumption or 2.6 percent of total commercial sales. The original and current levels of subject imports are low, domestic producers dominate the U.S. market, the amount of excess capacity in the subject countries is relatively small, and the available capacity most likely in large part will be devoted to production of downstream products.

Therefore, we find that the volume of subject imports upon revocation of the orders is not likely to be significant in the context of the particular conditions of competition in this industry.

2. Likely Price Effects of Subject Imports

The legal standards for considering the likely price effects of subject imports are discussed in Section III above.

In its original determination regarding Sweden, the Commission relied on the existence of underselling by subject imports.²⁸² In its original threat determinations regarding Germany, Korea, and the Netherlands, the Commission majority found that cumulated subject imports did not have then-current significant price suppressing or depressing effects on the industry, but found that imports threatened such effects.²⁸³

Pricing data collected in the course of these five-year reviews yields a mixed picture on pricing. Forty-one of the quarterly pricing comparisons showed underselling by subject imports, while 46 showed overselling.²⁸⁴ The recent period has shown a fairly persistent decline in domestic prices during the period of investigation, with an increase in the first quarter of 2000.

Subject imports are currently sold via contracts and spot market sales, and we find it likely that this would continue upon revocation. As noted in the description of the conditions of competition for this industry, we have taken note of the domestic industry's claims about the scant protection provided even by long-term contracts with sophisticated purchasers. Most of the domestic industry's commercial sales are

place since the original investigations. While these steps could have the potential to reduce to some degree exports of EU countries to the United States compared to the original investigation, we are not convinced that there has been a shift of such a fundamental nature as to make significant exports to the United States unlikely. With respect to the adoption of a common currency, we believe it is too early to judge its likely effects on trade outside the EU.

²⁷⁸ CR/PR at Tables COLD-IV-3 through COLD-IV-6.

²⁷⁹ CR/PR at Table COLD-IV-2.

²⁸⁰ Indeed, even at the height of the Asian economic crisis, with the won substantially devalued relative to the U.S. dollar, Korean imports never exceeded *** percent of total domestic apparent consumption in the United States. Korean Prehearing Cold-Rolled Brief at 7.

²⁸¹ CR/PR at Table COLD-I-1.

²⁸² USITC Pub. 1759 at 19.

²⁸³ USITC Pub. 2664 at 126.

²⁸⁴ CR/PR at Tables COLD-V-4 and COLD-V-5.

by contract, and most contracts fix both price and quantity.²⁸⁵ While the domestic producers provided some examples of the effects of prices in the open market on contract negotiations and renegotiations, the full extent of those contractual problems in the context of the overall market was not quantified.²⁸⁶ On balance, we find it possible that spot prices, including import prices, could have price effects even on the domestic industry's contract business, but also that contracts do provide some measure of insulation from spot market price fluctuations.

Additionally, purchasers consistently rank price as the third most important factor, well behind quality, and they also put significant weight on delivery reliability and service and change suppliers infrequently.²⁸⁷ Given the likely modest increase in subject imports upon revocation, it is unlikely that subject imports will compete successfully for significant shares of the domestic industry's contract business.

Therefore, we find that the modest additional volumes of subject imports would not be likely to have significant price suppressing and depressing effects within a reasonably foreseeable time.^{288 289}

3. Likely Impact of Subject Imports

The legal standards for considering the likely impact of subject imports are discussed in Section III above.

In its original determination regarding Sweden, the Commission found that subject imports had materially injured the domestic industry.²⁹⁰ In the original threat determinations regarding Germany, Korea, and the Netherlands, the Commission majority did not find that the subject imports had yet caused any discernible adverse impact on the domestic industry, but also found that imports threatened to have a negative impact.²⁹¹

²⁸⁵ CR at COLD-V-3, PR at COLD-V-2-V-3.

²⁸⁶ In the recent cold-rolled investigation, the Commission found that only 18 percent of contracts were renegotiated during their term. USITC Pub. 3283 at V-8.

²⁸⁷ CR/PR at Table COLD-II-2 and CR at COLD-II-13, PR at COLD-II-

²⁸⁸ In reaching our conclusion on likely price effects, we have considered the likely dumping and countervailing duty margins, as well as the nature of the subsidies. Commerce has found the following antidumping margins likely to prevail upon revocation: Germany, 20.64 to 23.54 percent; Korea, 14.40 percent; and the Netherlands, 19.32 percent. Commerce has found the following countervailing duty margins likely to prevail upon revocation: Germany, 0.55 percent; Korea, 3.95 percent; and Sweden, 8.77 percent. CR at COLD-I-1 through COLD-I-6; PR at COLD-I-1 through COLD-I-8.

²⁸⁹ In reaching our conclusion on likely price effects, we have weighed all the pertinent evidence on price and taken into account Commerce's duty absorption findings on Korea (65 Fed. Reg. 24,180 (Apr. 25, 2000)), although we note that a CIT decision (*SKF USA Inc., et al. v. United States*, CIT No. 99-08-00473, Slip Op. 00-28 (Mar. 22, 2000)) calls into question the validity of Commerce's duty absorption findings with respect to transition orders. We also note that, in the course of an administrative review for the 8/1/95-7/31/96 period, Commerce made duty absorption findings on the sole Dutch producer, finding that the producer absorbed duties in 84.3 percent of its transactions. 63 Fed. Reg. 20574, 20575 (Apr. 27, 1998) (Netherlands). However, this finding was not reported as part of its final sunset review order. 65 Fed. Reg. 47377 (Aug. 2, 2000). Commerce's findings would not, in any event, outweigh other evidence indicating the unlikelihood of significant effects on price.

²⁹⁰ USITC Pub. 1759 at 19.

²⁹¹ USITC Pub. 2664 at 131.

The position of the domestic industry has improved markedly since the most recent original determinations.²⁹² In 1992, a majority of domestic producers reported operating losses on total cold-rolled operations, and operating income was negative.²⁹³ In light of the industry's then-current state, Commissioners found subject imports to represent a threat to the industry's ability to undertake much-needed investments.²⁹⁴

From that perspective, the domestic industry appears to have benefitted from the imposition of the orders. Since 1993, the industry has both modernized existing capacity and added needed additional capacity as well.²⁹⁵ Other indicators also improved. Even as the industry was adding new capacity, production was increasing significantly, and capacity utilization rose steadily through 1997-1999 and in the first quarter of 2000 relative to the same time period in 1999.²⁹⁶ Impressive productivity gains were made in this period as well.²⁹⁷ The domestic industry had positive operating income in the years 1997-1999, and the slowdown in operating income in 1999 appeared to have been reversed by early 2000.²⁹⁸ The drop in operating income on commercial sales alone was more significant, and the industry as a whole had negative operating income on commercial sales alone in 1999, although operating income on commercial sales was positive in the first quarter of 2000.²⁹⁹

While the state of the domestic industry apparently improved between the imposition of the most recent orders and the current period of investigation, the domestic industry's position is weaker at the end of the period of investigation than it was at the beginning. Prices and AUVs for cold-rolled steel have fallen throughout the period, even as demand has risen.³⁰⁰ Improvements in productivity and falling costs of production have not been sufficient to offset the drop in price. As income has fallen, the domestic industry's capital expenditures have fallen in each recent year.³⁰¹ In light of these facts, we find that the domestic industry is in a "weakened state" as contemplated by the statute's vulnerability criterion.^{302 303 304}

²⁹² We note that segregated data on the cold-rolled steel industry (excluding microalloys) is not available. Producers' Questionnaire Responses of Bethlehem, Ispat/Inland, LTV, National, and U.S. Steel at Part II. We requested such data through our questionnaires. Domestic producers indicated that they were unable to supply segregated data and instead supplied data that included microalloy products outside the domestic like product. Domestic Producers' Posthearing Responses to Questions at Attachment G, p.65. We therefore rely on the industry data provided, but note that the industry does not correspond precisely to the one producing the domestic like product cold-rolled steel.

²⁹³ USITC Pub. 2664 at Table 35.

²⁹⁴ USITC Pub. 2664 at 135.

²⁹⁵ Domestic Producers' Prehearing Cold-Rolled Brief at 49-50.

²⁹⁶ CR/PR at Table COLD-III-1.

²⁹⁷ CR/PR at Table COLD-III-6.

²⁹⁸ CR/PR at Table COLD-III-12.

²⁹⁹ CR/PR at Table COLD-III-8.

³⁰⁰ CR/PR at Tables COLD-III-11 and COLD-III-7.

³⁰¹ CR/PR at Table COLD-III-14.

³⁰² 19 U.S.C. § 1675a(1)(C). *See* SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.").

³⁰³ In reaching our determination that the industry is vulnerable, we have considered, but have not relied upon, the industry analyses prepared by Professor Kothari and presented by the domestic producers, which rely on indicators pertaining to the overall steel industry and not to this particular industry. We realize that

Nonetheless, we do not find a likelihood of recurrence or continuation of material injury by these subject imports.³⁰⁵ As we have noted above, neither the likely volume nor the likely price effects upon revocation are likely to be significant. A significant and growing majority of domestic production is consumed for captive production and does not face import competition. Even in recent years, with some weakening of prices and profits, the domestic industry has still had adequate access to capital and has continued to undertake improvements and expansions.³⁰⁶

D. Conclusion

Therefore, we find that the revocation of the antidumping and countervailing duty orders on cold-rolled steel imports from Germany, Korea, the Netherlands, and Sweden is not likely to lead to continuation or recurrence of material injury to the U.S. cold-rolled steel industry within a reasonably foreseeable time.³⁰⁷

in certain practical matters it is difficult to separate an industry from the larger commercial entity to which it belongs. Yet our statutory mandate is clear, and we must reach our determination based on the state of the industry as defined in 19 U.S.C. § 1677(4)(A). Furthermore, we find that the analyses do not adequately represent the attenuated relationship between this industry and certain larger indicators, such as stock prices.

³⁰⁴ Vice Chairman Okun and Commissioner Hillman do not join the preceding footnote. While they also did not rely on Professor Kothari's analysis in finding the domestic industry vulnerable, they note that there may be instances where particular indicia that are not severable from the industry as defined in 19 U.S.C. § 1677(4)(A) may nonetheless be relevant in assessing vulnerability. However, they do not find Professor Kothari's reliance on the stock market performance probative of the vulnerability of the domestic industry, inasmuch as factors other than the current condition of the industry may impact any individual company's or sector's stock performance.

³⁰⁵ In making this determination, we have considered, but have not relied upon, the econometric model prepared by Professor Prusa and presented by respondent producers. We find the model's usefulness to be limited by its time frame (i.e., while the orders were in place) such that it is not particularly probative in light of the analyses of the market required by statute.

³⁰⁶ Domestic Producers' Prehearing Cold-Rolled Brief at 50.

³⁰⁷ Commissioners Bragg and Miller dissenting with respect to Germany, Korea, and the Netherlands. *See Separate and Dissenting Views of Commissioner Lynn M. Bragg and Separate and Concurring Views of Commissioner Marcia E. Miller.*

VI. CORROSION-RESISTANT STEEL

A. Cumulation³⁰⁸

The legal standards for cumulation are discussed in Section III above.

In these reviews, the statutory requirement that all corrosion-resistant steel reviews be initiated on the same day is satisfied. Based on the available information regarding the capacity and exports of the industries in Australia, Canada, France, Germany, Japan, and Korea as well as their current exports to the United States, we find that subject imports from all six countries would be likely to have a discernible adverse impact on the domestic industry if the orders were revoked. The volume and price trends varied for subject imports from all six countries but none was distinct from all others. We also find that a reasonable overlap of competition between the subject imports and the domestic like product is likely to exist if the orders were revoked. We do not find any significant differences in the conditions of competition among the subject countries. We, therefore, have exercised our discretion to cumulate subject imports from Australia, Canada, France, Germany, Japan, and Korea.³⁰⁹

1. Likelihood of No Discernible Adverse Impact

Subject imports from Australia, Canada, France, Germany, Japan, and Italy have remained in the U.S. market in the years since the orders were imposed.³¹⁰ The continuing presence of these subject imports in the domestic market indicates that subject foreign producers continue to have the contacts and channels of distribution necessary to compete in the U.S. market.

The corrosion-resistant steel industries in the subject countries devote considerable resources to export markets.³¹¹ While capacity utilization rates have topped *** percent in each of the subject countries during the period of review, there appears to be available excess capacity in each country.³¹²

We are mindful that the volume of subject imports has decreased from the time the orders were imposed. Yet in the context of this particular industry, including its weakened condition, we find that a likelihood exists that even a small post-revocation increase would have a discernible adverse impact on the domestic industry.

2. Reasonable Overlap of Competition^{313 314}

In the original investigations, the majority of the Commission cumulated all subject imports, based on a reasonable overlap of competition. The record in these reviews provides no reason to depart from the prior overlap of competition findings concerning subject imports of corrosion-resistant steel from Australia,

³⁰⁸ Commissioner Bragg does not join section VI.A of these Views. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg.

³⁰⁹ Commissioner Askey dissenting with respect to Germany. *See* Concurring and Dissenting Views of Commissioner Thelma J. Askey.

³¹⁰ CR/PR at Table CORROSION-I-1.

³¹¹ CR/PR at Tables CORROSION-IV-2, 3, 4, 5, 6, and 7.

³¹² CR/PR at Table CORROSION-IV-6.

³¹³ For Commissioner Askey's analysis of reasonable overlap of competition, see her concurring and dissenting views.

³¹⁴ Commissioner Askey joins this section except as it pertains to Germany.

Canada, France, Germany, Japan, and Korea.

In these reviews, the record indicates that domestically produced and imported corrosion-resistant steel are essentially fungible products. Both share the same essential chemical and physical properties.³¹⁵ U.S. mills producing and selling corrosion-resistant steel reported that domestically produced and imported products are used interchangeably.³¹⁶ Additionally, a majority of importers also reported that domestically produced and imported corrosion-resistant steel are broadly interchangeable.³¹⁷ Purchasers frequently reported that domestic corrosion-resistant steel and imports from each subject country were comparable with respect to a number of product and sales characteristics.³¹⁸

The record also indicates that the channels of distribution for domestic and imported corrosion-resistant steel are similar. The vast majority of U.S. produced and imported corrosion-resistant steel was sold to distributors, service centers/converters, and manufacturers/end users. Both the domestic and imported product are used in the automotive, industrial and construction industries, with about 40 percent of corrosion-resistant steel being used by the automotive industry.³¹⁹

The issue of whether subject imports and the domestic product are sold in the same geographic markets is less easy to evaluate, given that U.S. imports of the subject corrosion-resistant steel from Australia and France have been in very small quantities recently. However, as just noted, most imported and domestic corrosion-resistant steel is used in the same sectors. In the original investigations, the Commission found that the subject imports competed directly with each other and the domestic like product throughout most of the United States.³²⁰ Imports from each of the subject countries have been simultaneously present in the U.S. market since the imposition of the orders.

We, therefore, find that there would likely be a reasonable overlap of competition between the subject imports and the domestic like product, and among the subject imports themselves, if the orders are revoked.

We have taken into account other significant conditions of competition that are likely to prevail if the orders were revoked in evaluating whether to cumulate imports. We find that subject imports from each of these countries would compete in the U.S. market under similar conditions of competition.³²¹ Therefore, based on the foregoing, we exercise our discretion to cumulate subject imports from Australia, Canada, France, Germany, Japan, and Korea in these reviews.

³¹⁵ CR at CORROSION-I-16-17, PR at CORROSION-I-17.

³¹⁶ CR at CORROSION-II-18, PR at CORROSION-II-13 .

³¹⁷ CR at CORROSION-II-18-19, PR at CORROSION-II-13.

³¹⁸ CR/PR at Table CORROSION -II-8.

³¹⁹ CR/PR at CORROSION-II-1.

³²⁰ USITC Pub. 2664 at 173.

³²¹ We do not agree with the Japanese respondents' claim that their significant investments in U.S. affiliate corrosion-resistant steel producers sufficiently distinguishes them from the producers in other subject countries. Significant Japanese affiliate presence existed prior to the original investigations, but this did not cause the Japanese companies to participate in the U.S. market in a significantly different way than the other subject producers. We do not believe that the situation is fundamentally different today. While some of the affiliate firms have expanded their operations since the original investigations, nearly all of the Japanese investment cited in Table 7 of the Japanese respondents' corrosion-resistant prehearing brief occurred prior to the original investigations. *See* Japanese Respondents' Prehearing Corrosion-Resistant Brief at Table 7 and pp. 35-51.

B. Conditions of Competition^{322 323}

The legal standards for conditions of competition are discussed in Section III above.

In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for corrosion-resistant steel.

Corrosion-resistant steel is used to prolong the useful life of end products where the product is visible or exposed to weather or other corroding agents.³²⁴ Corrosion-resistant steel is used principally in motor vehicle body panels, construction products for buildings and roads, contractors' products and appliances.³²⁵ Most corrosion-resistant steel products are made by (1) hot-dipping and (2) electrolytic galvanizing processes.³²⁶

Demand for corrosion-resistant steel depends mainly on the level of demand in the automotive and construction industries which use most of it.³²⁷ Since the original investigations, demand for hot-dipped corrosion-resistant steel has grown significantly faster than demand for electrogalvanized corrosion-resistant steel. The higher demand for hot-dipped corrosion-resistant steel is due in part to new technologies that allow manufacturers to combine the cost advantages of hot-dipped steel with the aesthetic advantages of electrogalvanized steel.³²⁸ Although parties indicated that a shift to microalloy steels was occurring, the record does not contain any information that indicates the extent to which any such shift has occurred for corrosion-resistant steel.

Because imported corrosion-resistant steel and the domestic product are broadly interchangeable,³²⁹ price is an important factor in purchasing decisions. Although purchasers most often listed quality as the most important purchase factor, both price and quality were listed most often as the second most important purchase factor.³³⁰ Moreover, price competition has increased with the consolidation of purchasing power in the automobile industry, the reduced number of service centers, and the adoption and application of international standards, all of which increase the ease with which imports compete with the domestic like product.³³¹

Purchasers report that their purchasing patterns have not changed significantly in recent years. Prior to purchasing, most buyers contact a limited number of suppliers. A large majority of responding

³²² Commissioner Bragg joins the remainder of section VI.

³²³ We note that data on the corrosion-resistant steel industry that excludes microalloy is not available. Domestic producers indicated that they were unable to supply segregated data.

We are also mindful that the comparisons between the data on the industry in the original determinations and the data gathered in these reviews may be somewhat distorted, as a result of the domestic producers' inability to segregate microalloy products from the domestic like product in their questionnaire responses in these reviews. Given the domestic producers' own uncertainty as to the inclusion of microalloy products in the questionnaire responses in the 1993 investigations, we are satisfied that the comparisons are sufficiently valid to indicate the magnitude of the changes in the industry, including apparent consumption. Domestic Producers' Common Issues Prehearing Brief at Exh. 1.

³²⁴ CR at CORROSION-I-18, PR at CORROSION-I-17.

³²⁵ CR at CORROSION-I-19, PR at CORROSION-I-17.

³²⁶ CR at CORROSION-I-19, PR at CORROSION-I-17.

³²⁷ CR at CORROSION-II-14, PR at CORROSION-II-10.

³²⁸ CR at CORROSION-II-14-15, PR at CORROSION-II-10.

³²⁹ CR at CORROSION-II-18-19, PR at CORROSION-II-13.

³³⁰ CR/PR at Table CORROSION-II-7.

³³¹ CR/PR at CORROSION-II-1.

purchasers indicate that they change suppliers only infrequently, and when they do change it is prompted by a variety of factors, including price, quality, availability, delivery, and a desire to rationalize supplier base.³³² So far, e-commerce appears to have had little effect on the market for the corrosion-resistant steel industry.³³³

A majority of domestic producers sell their corrosion-resistant steel mainly by contract, but also on the spot market.³³⁴ A majority of producers indicate that these sales contracts fix both price and quantity for the duration of the contract.³³⁵ Domestic producers use contracts of varying durations, ranging from three months to one year.³³⁶ Domestic producers have indicated that these contracts in fact give little protection to producers, and that purchasers do not hesitate to request price concessions when spot market prices fall.³³⁷ Several purchasers claim that they do not reopen the terms of the contract.³³⁸

Since the original investigations and during the period of review, apparent consumption of corrosion-resistant steel has increased.³³⁹ In 1992, apparent U.S. consumption of corrosion-resistant steel was 13.6 million tons.³⁴⁰ In 1997-1999, apparent consumption of corrosion-resistant steel increased by 12.1 percent, from 17.8 million tons to 19.9 million tons.³⁴¹

Domestic producers dominate the market for corrosion-resistant steel. In 1992, U.S. producers' share of apparent consumption was 82.7 percent.³⁴² Although greater than it was in 1992, U.S. producers' share of apparent consumption decreased slightly during the period of review, from 91.2 percent in 1997 to 90.2 percent in 1999. The subject imports' market share in 1992 was 14.4 percent.³⁴³ During the period of review, subject imports' market share was 3.0 percent in 1997, and 3.8 percent in 1999.³⁴⁴

During the time of the original investigation, twenty-two domestic firms produced corrosion-resistant steel. During the period of review, twenty domestic firms reported producing corrosion-resistant steel.³⁴⁵ Since the original investigations, these producers have made significant investments to add capacity and improve existing capacity. As a result, U.S. capacity increased from 15.0 million tons in 1992 to 21.7 million tons in 1999.³⁴⁶

Corrosion-resistant steel production is technologically complex and capital intensive. As a result, the high costs associated with operating and maintaining a corrosion-resistant steel plant require

³³² CR/PR at CORROSION-I.

³³³ CR at CORROSION-II-16, PR at CORROSION-II-11.

³³⁴ CR at CORROSION-V- 4., PR at CORROSION-V-2

³³⁵ CR at CORROSION-V- 3, 4, PR at CORROSION-V-2, 3.

³³⁶ CR at CORROSION-V- 4, PR at CORROSION-V-3.

³³⁷ Domestic Producers' Posthearing Response to Questions at Exhibits 17-20.

³³⁸ CR at CORROSION-V-3, PR at CORROSION-V-2-3.

³³⁹ CR at CORROSION-II-14, Table CORROSION-I-5, PR at CORROSION-II-10, Table CORROSION-I-5.

³⁴⁰ CR at CORROSION-II-13, PR at CORROSION-II-10.

³⁴¹ CR at CORROSION-II-14, Table CORROSION-I-5, PR at CORROSION-II-10, Table CORROSION-I-5.

³⁴² USITC Pub. 2664 at 170.

³⁴³ USITC Pub. 2664 at 188.

³⁴⁴ CR/PR at Table CORROSION-I-5. Subject imports market share was 4.2 percent in interim 1999 compared with 3.7 in interim 2000. CR/PR at Table CORROSION-I-5.

³⁴⁵ CR at CORROSION-II-14, Table CORROSION-I-5, PR at CORROSION-II-10, Table CORROSION-I-5.

³⁴⁶ CR/PR at CORROSION-II-2.

manufacturers to sustain high capacity utilization rates to stay profitable.³⁴⁷ During the original investigations, U.S. capacity utilization dropped from 82.1 percent in 1990 to 69.7 percent in 1991, and then increased in 1992 to 76.4 percent.³⁴⁸ During the period of review, U.S. capacity utilization fell from 91.6 percent in 1997 to 87.3 percent in 1999, but increased to 90.8 percent in interim 2000 compared to 84.1 percent in interim 1999.³⁴⁹

At present, each of the six major Japanese producers owns or is affiliated with a domestic producer. Those affiliates represented *** percent of U.S. capacity in 1999.³⁵⁰

Based on the record evidence, we find that these conditions of competition in the U.S. corrosion-resistant-steel market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the domestic corrosion-resistant market provide us with a basis upon which to assess the likely effects of revocation of the antidumping and countervailing duty orders within the reasonably foreseeable future.

C. Revocation of the Orders On Subject Imports of Corrosion-Resistant Steel is Likely to Lead to the Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time.^{351 352}

1. Likely Volume of Subject Imports³⁵³

The legal standards for likely volume of subject imports are discussed in Section III above.

During the period examined in the original investigations, cumulated volumes from Australia, Canada, France, Germany, Japan, and Korea decreased slightly from 1.5 million short tons in 1990 to 1.4 million short tons in 1991, and then increased sharply to 1.9 million tons in 1992.³⁵⁴ The increase in cumulated subject imports corresponded to a significant increase in market share for the subject imports. Cumulated imports increased in market share from 11.7 percent in 1990 to 12.3 percent in 1991, and increased further to 14.4 percent in 1992.³⁵⁵ Upon issuance of the orders, subject imports fell substantially and have been at levels significantly below the pre-order level during the period of review.³⁵⁶

Several factors support the conclusion that subject import volume is likely to be significant if the orders are revoked. First, there is considerable capacity to produce corrosion-resistant steel in the subject countries. In 1999 estimated corrosion-resistant steel production capacity for the subject countries was

³⁴⁷ USITC Pub. 2664 at 19, Petitioners' Posthearing Br. at 9.

³⁴⁸ USITC Pub. 2664 at 170.

³⁴⁹ CR at CORROSION-II-3, PR at CORROSION-II-2.

³⁵⁰ *Compare* Japanese Respondents' Corrosion-Resistant Hearing Br. at 6 *with* CR/PR Table C-3.

³⁵¹ Because the interim data for 1999 and 2000 cover only limited 3-month periods, we have relied principally on data covering full-year periods, and have placed particular weight on 1999 data, which is the most recent full-year period for which data were available.

³⁵² Commissioner Askey dissenting with respect to Germany. *See* Concurring and Dissenting Views of Commissioner Thelma J. Askey.

³⁵³ Commissioner Askey joins this section although she dissents with respect to imports from Germany. She notes that while some of the figures in the section change slightly if German imports are subtracted, that overall trends remain the same.

³⁵⁴ USITC Pub. 2664 at 188 n.223.

³⁵⁵ USITC Pub. 2664 at 188 n.224.

³⁵⁶ CR/PR at Table CORROSION-IV-1; Supplementary Memorandum INV-X-225, Table S-3.

*** million short tons.³⁵⁷ Total production capacity in the subject countries was greater than U.S. apparent consumption for 1999 of *** short tons, a total even more significant considering that additional capacity of 5.1 million tons currently used to produce non-subject corrosion-resistant steel (such as microalloy) can also be used to produce the subject merchandise.³⁵⁸

Although all responding subject producers reported relatively high capacity utilization rates, there is still substantial excess capacity in the subject countries.³⁵⁹ Moreover, given the high fixed costs associated with corrosion-resistant steel production, there is an incentive to maximize and sustain the utilization of available capacity.³⁶⁰ Furthermore, in 1999, subject producers' inventories of the subject merchandise were fairly substantial at ***.³⁶¹ There is a particular incentive to produce and sell more corrosion-resistant steel because it is among the highest value-added carbon steel products and therefore can earn higher returns than many other carbon steel products.^{362 363}

At the time of the original investigations, producers in the cumulated subject countries exported a substantial portion of their corrosion-resistant steel production. Likewise, as of 1999, producers in all subject countries continued to rely heavily on their export markets. Indeed, this is reflected in the increasing share of the U.S. market captured during the period of review, notwithstanding imposition of the

³⁵⁷ CR/PR at Table CORROSION-II-1. This figure includes the 1992 production capacity figures for Australia since Australian subject producers failed to provide any information concerning their production of corrosion-resistant steel in this review. However, even without including the earlier production capacity figures for Australia, the production capacity for the other subject countries would be *** short tons. CR/PR at Table CORROSION-II-1.

³⁵⁸ CR at CORROSION-IV-5, 6; Supplemental Memorandum INV-X 1999 at Tables CORROSION IV-4, 5, 6, and 7; Supplemental Memorandum INV-X-229 at Tables RES-SUPP 2, 3, 4, 5, and 6.

³⁵⁹ CR/PR at Table CORROSION-IV-1, 2, 3, 4, 5, and 6. In 1999, excess capacity to produce subject product was *** tons, and excess capacity to produce all corrosion-resistant product was 3.0 million tons. *Id.*

³⁶⁰ USITC Pub. 2664 at 19, Petitioners' Posthearing Br. at 9.

³⁶¹ CR/PR at Tables CORROSION-IV-1, 2, 3, 4, 5, 6.

³⁶² Japanese subject producers argue that they would not have an incentive to export large volumes of low-priced imports to the United States because to do so would harm their U.S. affiliates. However, since corrosion-resistant steel is produced in several grades and is generally formulated to customer specifications, Japanese producers could readily ship grades of subject merchandise that supplement, rather than compete with, corrosion-resistant steel produced by their U.S. affiliates. Indeed, Japanese subject producers concede that they already do. Japanese Respondents' Corrosion-Resistant Posthearing Br. at 9. We note that the significant presence of U.S. affiliates of Japanese producers during the original investigation did not prevent imports from Japan from capturing between 6 and 7 percent of the U.S. market and, together with the other subject imports, causing injury to the domestic industry. 1993 Staff Report at Table 107.

³⁶³ Commissioner Bragg notes that each of the subject Japanese producers has a relationship with an affiliated producer of corrosion-resistant steel in the United States. CR and PR at CORROSION-IV-6. She recognizes that an individual Japanese producer with an established physical presence in the United States is unlikely to engage in export behavior to the detriment of its affiliated U.S. production operations. In her view, however, such rationalization of production within a family of affiliated companies, in and of itself, says nothing about the likely behavior of Japanese imports as a whole in the event of revocation, nor does it provide an indication of the likely impact of Japanese imports on unaffiliated producers (whether U.S. or foreign-owned) within the domestic industry.

orders.³⁶⁴

Subject producers' demonstrated export capability and their substantial excess capacity, together with the incentive to utilize production capacity due to high fixed production costs, indicate that they are likely to commence significant exports to the United States upon revocation of the antidumping and countervailing duty orders.^{365 366 367 368} Consequently, we conclude that cumulated subject imports would likely increase to a significant level and would regain significant U.S. market share if the orders are revoked.³⁶⁹

³⁶⁴ In 1999, the percentages of total production of corrosion-resistant steel exported by the subject countries were: Canada, 12.3 percent; France, 42.8 percent; Germany, 33.2 percent; Japan 26.8 percent; and Korea, 37.4 percent. CR/PR at Table CORROSION-II-1. Although there are no current percentages available for Australia, in 1992, Australia exported *** percent of its total production of corrosion-resistant steel. CR at CORROSION-II-7.

³⁶⁵ We note that we have considered domestic producers' arguments regarding global cartels. However, we did not rely upon any alleged global cartel activity in reaching our determinations.

³⁶⁶ Vice Chairman Okun does not join in the preceding footnote. *See* Additional Views of Vice Chairman Deanna Tanner Okun.

³⁶⁷ Commissioner Hillman does not join in footnote 365. She notes that the Commission's administrative record includes the recent publication *GLOBAL STEEL TRADE: Structural Problems and Future Solutions* (U.S. Department of Commerce, Washington, DC, July 2000), which seeks to identify causes of the so-called "Steel Import Crisis" and offers possible solutions. Among other things, the publication reviews and elaborates upon long-standing allegations by U.S. steel producers and others that there exist trade-limiting arrangements between Japanese, EU, and Korean steel producers. These allegations are routinely denied by the foreign steelmakers and governments. Commissioner Hillman has carefully considered this information, but finds that she is not in a position to reach a conclusion on the existence or effect of the alleged trade-limiting agreements.

³⁶⁸ Several European respondents argue that the EU is effectively their home market and that strengthened integration in the EU means that they are increasingly focused on the European market, making them less likely to export to the United States upon revocation. The European Community was in existence for some time prior to the original investigations, although further steps at integration and expansion have taken place since the original investigations. While these steps could have the potential to reduce to some degree exports of EU countries to the United States compared to the original investigation, we are not convinced that there has been a shift of such a fundamental nature as to make significant exports to the United States unlikely. With respect to the adoption of a common currency, we believe it is too early to judge its likely effects on trade outside the EU.

³⁶⁹ Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the magnitude of dumping" to be used by the Commission in the five year review investigations as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). Commerce expedited its reviews of the antidumping order on corrosion-resistant from all subject countries. It assigned sunset margins as follows: Australia, 24.96 percent; Canada, 11.71 to 22.70 percent; France, 29.41 percent; Germany, 10.02 percent; Japan, 36.41 percent; and Korea, 17.70. 65 FR 18063, 18604 (Aug. 2, 2000). Although the statute does not expressly define the "magnitude of the net countervailable subsidy" to be used by the Commission in five-year reviews, it states that "[t]he administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the

2. Likely Price Effects of Cumulated Subject Imports

The legal standard for likely price effects of subject imports is discussed in Section III. In the original investigations, the Commission found that the market was relatively insensitive to price, but also indicated that price was an important factor for purchasers. The Commission found price suppression and/or price depression based on import prices which were falling at a greater rate than domestic prices, together with increasing import volumes and confirmed lost sales and revenue allegations.³⁷⁰

Pricing trends over the current review period differ among the several products, although in general prices were somewhat lower in 1999 than in 1997. The pricing data show a mixture of under- and over-selling by subject imports even with the orders in place.³⁷¹

Subject imports are currently sold via contracts and spot market sales, and we find it likely that this would continue upon revocation. In both the contract and spot markets, given the general interchangeability of the subject imports with the domestic like product, price is an important factor in purchasing decisions.³⁷² We further find that prices in the spot market could affect prices in the domestic industry's contract business, but that contracts do provide some measure of insulation from spot market price fluctuations.³⁷³ On balance, the increased sales of subject imports that we have found above would likely be achieved by means of aggressive pricing, which would result in significant effects on domestic prices, as occurred before the imposition of the orders.^{374 375}

suspended investigation is terminated." 19 U.S.C. § 1675a(b)(3). In its final five-year review determinations, Commerce found likely subsidy rates as follows: France, 15.13 percent, Germany, 0.54 percent, and Korea, 0.54 percent. 65 FR 18063, 18604 (Aug. 2, 2000).

In five-year reviews concerning countervailing duty orders the Commission is required to consider "information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement." 19 U.S.C. § 1675a(b)(6). In its final determinations, Commerce identified nine programs which provided countervailable subsidies to French subject producers, some of which fall within the definition of an export subsidy under Article 6.1 of the Subsidies Agreement, 65 FR 18063, 18604 (Aug. 2, 2000), and 10 programs which provided countervailable subsidies to Korean subject producers, some of which fall within the definition of an exports subsidy under Article 3.1(a) of the Subsidies Agreement. 65 FR 18973, 18975 (Apr. 10, 2000).

³⁷⁰ USITC Pub. 2664 at 190-191.

³⁷¹ CR at CORROSION-V-7, PR at CORROSION-V-7.

³⁷² According to purchaser questionnaires, price (along with quality) was the second most important factor in purchasing decisions. CR/PR at Table CORROSION-II-2.

³⁷³ Commissioner Bragg finds that spot market prices may impact contract prices for the domestic industry, both during contract renegotiations as well as during the life of the contract at the purchaser's request.

³⁷⁴ In reaching our conclusion on likely price effects, we have weighed all the pertinent evidence on price and taken into account Commerce's duty absorption findings on France (65 FR 18604 (Aug. 2, 2000)), Germany (65 FR 47407, 47409 (Aug. 2, 2000)), and Korea (65 FR 18973, 18975 (Apr. 10, 2000)), although we note that a CIT decision (*SKF USA Inc., et al. v. United States*, CIT No. 99-08-00473, Slip Op. 00-28 (March 22, 2000)) calls into question the validity of Commerce's duty absorption findings with respect to transition orders. However, we do not rely on the duty absorption findings in making our determination that significant price effects are likely upon revocation of the orders.

³⁷⁵ Vice Chairman Okun does not join in the conclusion in the preceding footnote. Notwithstanding the referenced CIT decision, she finds that the statute requires her to take into account Commerce's duty

For the foregoing reasons, we find that revocation of the antidumping and countervailing duty orders would likely lead to significant underselling by the cumulated subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

3. Likely Impact of Cumulated Subject Imports

The legal standards for likely impact of subject imports are discussed in Section III above.

In the 1993 determinations, the Commission found that the increasing volume of the lower-priced subject imports, and the significant market share accounted for by those imports, depressed prices and caused the U.S. industry to suffer lost market share,³⁷⁶ reduced capacity utilization,³⁷⁷ and growing financial losses despite increasing apparent consumption.^{378 379} The domestic industry's capital expenditures and research and development expenses also declined, particularly during the latter part of the period examined, undermining the industry's attempts to respond to the demands of the market place.³⁸⁰

The imposition of the orders had a positive effect on the domestic industry's performance. The domestic industry had an operating *** margin of *** percent in 1992.³⁸¹ By 1997, four years after imposition of the orders, with a dramatic decrease in subject imports in the U.S. market, the domestic industry had an operating *** margin of *** percent.³⁸² At the same time, the domestic industry was able to increase capital expenditures as well as its research and development expenses.³⁸³

Nonetheless, based on the most recent data available, we find that the domestic industry is currently vulnerable to material injury if the orders are revoked. While net sales volumes and values increased from 1997 through 1999, operating income decreased continuously from 1997 to 1999, by a total of ***.³⁸⁴ Capacity utilization levels *** percent in 1997 to *** percent in 1999.³⁸⁵ Per-short-ton sales

absorption findings in making her determination. Nonetheless, she notes that her findings with respect to likely price effects upon revocation of the orders would be the same with or without consideration of Commerce's findings.

³⁷⁶ U.S. producers' share of domestic consumption fell throughout the period of investigation, declining from 85.6 percent in 1990 to 85.0 percent in 1991 and to 82.7 percent in 1992. USITC Pub. 2664 at 170.

³⁷⁷ From 1990-1991, domestic capacity utilization for corrosion-resistant steel products fell from 82.1 percent to 69.7 percent, and then increased in 1992 to 76.4 percent. USITC Pub. 2664 at 170.

³⁷⁸ USITC Pub. 2664 at 191.

³⁷⁹ During the original investigations, U.S. consumption of corrosion-resistant steel experienced an overall increase, increasing from 12.8 million tons in 1990 to 13.6 million tons in 1992. USITC Pub. 2664 at 169.

³⁸⁰ Research and development expenditures declined during the period, from \$26.38 million in 1990 to \$22.16 million in 1991, and \$20.23 million in 1992. Capital expenditures for the corrosion-resistant steel industry also experienced a decline, dropping from \$557 million in 1990 to \$541 million in 1991, to \$246 million in 1992. USITC Pub. 2664 at 171.

³⁸¹ 1993 Staff Report at Table 31.

³⁸² CR/PR at Table CORROSION-III-7.

³⁸³ In 1997, the domestic industry's capital expenditures was to *** compared to \$246 million in 1992. Research and development expenditures was \$24.0 million in 1997 compared with \$20.23 million in 1992. CR/PR at Table CORROSION-III-10, USITC Pub. 2664 at 171.

³⁸⁴ CR at CORROSION-III-6, CORROSION-III-13, Table CORROSION-III-6, PR at CORROSION-III-4, Table CORROSION-III-6.

³⁸⁵ CR/PR at Table CORROSION-III-1.

values and COGS for the combined domestic producers decreased for the same period but unit sales values decreased more than the decline in total unit costs.³⁸⁶ Operating *** margins dropped from *** percent to *** percent.³⁸⁷ While this level of operating income might not generally suggest vulnerability, corrosion-resistant products are an important profit center for the domestic industry because they are among the highest value-added carbon steel products. The level of profits earned on this product therefore may have a particularly important impact on the ability of firms to remain in operation and to make necessary investments. Based on the foregoing, we conclude that the domestic industry is in a “weakened state” as contemplated by the statute’s vulnerability criterion.^{388 389 390 391 392}

As discussed above, revocation of the antidumping and countervailing duty orders would likely lead to significant increases in the volume of cumulated subject imports at prices that would undersell the domestic like product and significantly suppress or depress U.S. prices. In addition, the volume and price effects of the cumulated subject imports would have a significant adverse impact on the domestic industry and would likely cause the domestic industry to lose market share.

The price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry’s production, sales, and revenue levels would have a direct adverse impact on the industry’s profitability as well as its

³⁸⁶ CR at CORROSION-III-6, CORROSION-III-13, Table CORROSION-III-6, Table CORROSION-III-7, PR at CORROSION-III-4, Table CORROSION-III-6.

³⁸⁷ CR at CORROSION-III-6, Table CORROSION-III-7, PR at CORROSION-III-4, Table CORROSION-III-7. Both net sales values and volume increased from interim 1999 to interim 2000. *Id.*

³⁸⁸ 19 U.S.C. § 1675a(1)(C). See SAA at 885 (“The term “vulnerable” relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.”).

³⁸⁹ In reaching our determination that the industry is vulnerable, we have considered, but have not relied upon, the industry analysis presented by the domestic producers, which relies on indicators pertaining to the overall steel industry and not to this particular industry. We realize that in certain practical matters it is difficult to separate an industry from the larger commercial entity to which it belongs. Yet our statutory mandate is clear, and we must reach our determination based on the state of the industry as defined in 19 U.S.C. § 1677(4)(A). Furthermore, we find that the analysis does not adequately represent the attenuated relationship between this industry and certain larger indicators, such as stock prices.

³⁹⁰ Vice Chairman Okun and Commissioner Hillman do not join the preceding footnote. While they also did not rely on Professor Kothari’s analysis in finding the domestic industry vulnerable, they note that there may be instances where particular indicia that are not severable from the industry as defined in 19 U.S.C. § 1677(4)(A) may nonetheless be relevant in assessing vulnerability. However, they do not find Professor Kothari’s reliance on the stock market performance probative of the vulnerability of the domestic industry, inasmuch as factors other than the current condition of the industry may impact any individual company’s or sector’s stock performance.

³⁹¹ Commissioner Bragg does not join footnote 389. Although Commissioner Bragg did not rely upon Professor Kothari’s analysis in finding the domestic industry vulnerable, she noted that his analysis does corroborate a finding of vulnerability.

³⁹² In making this determination, we have considered, but have not relied upon, the econometric model presented by respondent producers. We find the model’s usefulness to be limited by its time frame (*i.e.* while the orders were in place) such that it is not particularly probative in light of the analysis of the likely future conditions in the market required by statute.

ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the orders will result in commensurate employment declines for domestic firms.

Accordingly, based on the record in these reviews, we conclude that, if the antidumping and countervailing duty orders are revoked, subject imports from Australia, Canada, France, Germany, Japan, and Korea would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.³⁹³

D. Conclusion

For the foregoing reasons, we determine that revocation of the antidumping and countervailing duty orders on imports of corrosion-resistant flat-rolled steel products from Australia, Canada, France, Germany, Japan, and Korea would be likely to lead to continuation or recurrence of material injury to the domestic corrosion-resistant steel industry within a reasonably foreseeable time.³⁹⁴

³⁹³ Commissioner Askey dissenting with respect to Germany.

³⁹⁴ Commissioner Askey dissenting with respect to Germany.

VII. CONCLUSION

For the foregoing reasons, we conclude:

with respect to cut-to-length plate, that revocation of the antidumping and countervailing duty orders on cut-to-length plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time; and that revocation of the antidumping duty order on Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time;³⁹⁵

with respect to cold-rolled steel, that revocation of the antidumping and countervailing duty orders on cold-rolled carbon steel flat products from Germany, Korea, the Netherlands, and Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time;³⁹⁶

with respect to corrosion-resistant steel, that revocation of the antidumping and countervailing duty orders on corrosion-resistant carbon steel flat products from Australia, Canada, France, Germany, Japan, and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³⁹⁷

³⁹⁵ Chairman Koplán and Commissioner Askey dissenting with respect to the United Kingdom. *See* Dissenting Views of Chairman Stephen Koplán and Commissioner Thelma J. Askey. Commissioner Askey dissenting with respect to Taiwan.

³⁹⁶ Commissioners Bragg and Miller dissenting with respect to Germany, the Netherlands and Korea. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg and Separate Views of Commissioner Marcia E. Miller.

³⁹⁷ Commissioner Askey dissenting with respect to Germany. *See* Concurring and Dissenting Views of Commissioner Thelma J. Askey.

CONCURRING AND DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Section 751(d) of the Tariff Act of 1930, as amended, requires the Department of Commerce to revoke an antidumping duty or countervailing duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹ Based on the record in these five-year reviews, I determine that revocation of the antidumping duty and countervailing duty orders covering certain corrosion-resistant carbon steel flat products (“corrosion-resistant steel”) from Germany would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I write separately to explain my determination for Germany in this proceeding. However, I concur with my colleagues with respect to their findings concerning the domestic like product, the domestic industry and related parties, conditions of competition, and the finding that revocation of the orders on subject imports from Australia, Canada, France, Japan, and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Accordingly, I join the Commission’s views on these issues, as well their discussion of the legal standards governing the Commission’s cumulation and causation analysis in sunset reviews.

I. Cumulation

A. General

In sunset reviews, the Commission has the discretion to cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews were initiated on the same day if those imports would be likely to compete with each other and with the domestic like product within a reasonably foreseeable time if the orders are revoked.² Thus, in five-year reviews, the relevant inquiry is whether there would likely be competition among the domestic and subject merchandise within the reasonably foreseeable future, even if none currently exists. Because of the prospective nature of five-year reviews and the discretionary nature of the cumulation decision, the Commission has also examined other conditions of competition that are likely to prevail upon revocation when deciding whether to cumulate in sunset reviews.

Although cumulation is discretionary in sunset reviews, the statute unambiguously states that the Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise if those imports are “likely to have no discernible adverse impact on the domestic industry” upon revocation of the order covering those imports.³ As can be seen, the statute does not direct the Commission to focus its discernibility analysis solely on the likely volume levels of the imports; instead, the statute expressly directs the Commission to assess whether the subject imports will have a discernible adverse “impact” on the industry upon revocation. Accordingly, when I assess whether I am permitted to cumulate the subject imports in sunset reviews, I first focus on whether the imports will impact the condition of the industry in a discernible way as a result of revocation, and not simply on whether there will be a small (i.e., negligible) volume of imports after revocation.⁴

¹ 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1).

² 19 U.S.C. § 1675a(a)(7).

³ Section 752(a)(7) of the Act, 19 U.S.C. § 1675a(a)(7).

⁴ I discussed the rationale for my approach in more detail in my Additional Views in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245, at 31 (Oct. 1999). I also further
(continued...)

In this case, the reviews of the orders covering corrosion-resistant steel from Australia, Canada, France, Germany, Japan, and Korea were initiated on the same day. Accordingly, I must first assess whether subject imports from these countries are likely to have a “discernible adverse impact” on the domestic industry upon revocation of the orders. If I find that imports from any of these countries are not likely to have a discernible adverse impact on the domestic industry upon revocation of the order, then I am precluded from cumulating the imports from that country with those of the other subject countries. If I find that they are likely to have a discernible adverse impact on the industry upon revocation of the order, I must then consider whether it is appropriate to exercise my discretion to cumulate the subject countries.

B. Discernible Adverse Impact

In accordance with the statute, I have considered whether imports from each of the subject countries, Australia, Canada, France, Germany, Japan, and Korea, would be likely to have a discernible adverse impact on the industry upon revocation of the orders. I concur with my colleagues in finding that subject imports from each of the subject countries are likely to have a discernible adverse impact on the domestic industry if the orders are revoked, as discussed in Section VI.A.1 of the Views of the Commission.

C. Reasonable Overlap of Competition

1. Australia, Canada, France, Japan, and Korea

I find that the record evidence indicates that the subject imports from Australia, Canada, France, Japan, and Korea are likely to compete with one another and the domestic merchandise upon revocation of the orders. In these reviews, the record indicates that domestically produced and imported corrosion-resistant steel from these subject countries are generally substitutable products. Each shares the same essential chemical and physical properties.⁵ U.S. mills producing and selling corrosion-resistant steel reported that domestically produced and imported products are used interchangeably.⁶ Additionally, a majority of importers also reported that domestically produced and imported corrosion-resistant steel are broadly interchangeable.⁷ The record also indicates that the channels of distribution for domestic and imported corrosion-resistant steel are the same. The vast majority of both U.S. produced and imported corrosion-resistant steel was sold to distributors, service centers/converters, and manufacturers/end users in a nationwide market with competition occurring on a national basis. Both the domestic and imported product are used in the automotive, industrial and construction industries.⁸ With respect to simultaneous presence, imports from the subject countries have been present in the U.S. market since the imposition of the orders.

Accordingly, I find that there is likely to be a reasonable overlap of competition among the subject imports from Australia, Canada, France, Japan, and Korea, and the domestic like product if the orders

⁴ (...continued)

explained my views in Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Invs. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 & 379-380 (Review), USITC Pub. 3290, at 36-37 (Apr. 2000).

⁵ CR at CORROSION-I-16, PR at CORROSION-I-15.

⁶ CR at CORROSION-II-18, PR at CORROSION-II-12.

⁷ CR at CORROSION-II-18-19, PR at CORROSION-II-12-13.

⁸ CR and PR at CORROSION-II-1.

covering these orders were revoked.⁹ I therefore cumulate the subject imports from these countries for purposes of my analysis in these reviews.

2. Germany

However, I exercise my discretion not to cumulate German imports in this review due to a variety of factors that together indicate that subject imports from Germany are or would be in a different competitive position in the market than imports from the other subject countries. These factors include the following:

First, German imports are largely directed at the automotive original equipment manufacturers (“OEMs”) market,¹⁰ while the majority of other imports are directed at a variety of corrosion-resistant steel markets, such as the industrial and construction markets.¹¹ Also, the relatively low current margins in place against German imports relative to those of the majority of other countries and producers within each country further distinguish these imports since the lower current margins function as less of a deterrent to current imports, making a change in German import behavior in the event of revocation less likely than for other countries.¹² Moreover, German producers have high capacity utilization rates and are focused on their domestic market and on other EU countries. While some of these factors are true of certain other subject countries as well, taken together in comparing German current and likely imports with those of the other subject countries, I find these differences to be significant.

Based on the foregoing, I exercise my discretion with respect to subject imports from Germany and do not cumulate them with the subject imports from Australia, Canada, France, Japan and Korea.

II. REVOCATION OF THE ANTIDUMPING DUTY AND COUNTERVAILING DUTY ORDERS COVERING CERTAIN CORROSION-RESISTANT CARBON STEEL FLAT PRODUCTS FROM GERMANY ARE NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of the Subject Imports from Germany

In evaluating the likely volume of imports of subject merchandise if an antidumping duty or countervailing duty order is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.¹³ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign

⁹ I do not find that there are any other conditions of competition that would support my exercising my discretion not to cumulate these countries in this review.

¹⁰ CR at CORROSION-IV-4-5, PR at CORROSION-IV-5-6. See also Appendix G (showing corrosion price comparisons with the vast majority of German pricing data appearing in Table G-11, which represents sales to automotive end users). Automotive industry purchasers make up 40 percent of domestic consumption. CR and PR at CORROSION-II-1.

¹¹ See, e.g., CR at CORROSION-IV-2, PR at CORROSION-IV-1; Appendix G (available pricing data shows Japanese and Korean producers selling overwhelmingly to distributors and to end users other than automotive end users).

¹² See CR at CORROSION-I-10-13, PR at CORROSION-I-9-12

¹³ 19 U.S.C. § 1675a(a)(2).

country, which can be used to produce the subject merchandise, are currently being used to produce other products.¹⁴

As directed by the statute, I have considered the Commission's previous findings and record concerning the volume of subject imports. During the original period of investigation, cumulated subject imports shares' of domestic apparent consumption were 11.7 percent in 1990, 12.3 percent in 1991, and 14.4 percent in 1992.¹⁵ In its original determination, the Commission found that "the volume effect of LTFV and subsidized cumulated imports of corrosion-resistant products was significant."¹⁶ Subject import volumes from Germany were 161,712 short tons in 1990, 137,767 in 1991 and 189,192 in 1992, which corresponded, respectively, to shares of domestic apparent consumption of 1.3 percent, 1.2 percent and 1.4 percent.¹⁷

During the period reviewed, German subject import volumes were 54,869 short tons in 1997, 21,557 short tons in 1998 and 34,434 short tons in 1999, which corresponded, respectively, to shares of domestic apparent consumption of 0.3 percent, 0.1 percent and 0.2 percent.¹⁸ The record indicates that German producers are currently operating at high rates of capacity utilization, leaving relatively little unused capacity available.¹⁹ While some German producers indicate their intention to *** corrosion capacity in the coming years, the record indicates that German producers are devoting an increasing share of their capacity to producing nonsubject microalloy corrosion-resistant steel, limiting the likely effects of capacity increases on the domestic industry.²⁰

Moreover, inventories as a percentage of production ranged between *** and *** percent during the period reviewed and the record contains no indication that inventories are likely to increase.²¹ In addition, although German producers face an antidumping order on corrosion-resistant plate in Canada, the orders' likely effects are limited because the order exempts shipments to the automotive industry.²² Further, EU corrosion-resistant steel producers currently benefit from quantitative import restrictions on corrosion-resistant steel from Russia, Ukraine and Kazakhstan.²³ Finally, with respect to product shifting, as indicated above, it appears that German producers are increasingly shifting their subject corrosion-resistant production to nonsubject microalloy production. Consistent with these factors, I note that German subject import volumes were similar during the original investigation and current review periods. In other words, even with the orders in place, there has not been a significant change in German import patterns, further suggesting that it is unlikely that German import volumes would be significant if the orders were removed.

Accordingly, based on the record in this review, I conclude that the volume of German subject imports would not be likely to be significant within a reasonably foreseeable time if the orders are revoked.

¹⁴ 19 U.S.C. § 1675a(a)(2)(A)-(D).

¹⁵ CR and PR at Table CORROSION-I-1.

¹⁶ Certain Flat-Rolled Carbon Steel Products From Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan the Republic of Korea (Korea), Mexico, The Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Inv. Nos. 701-319-332, 334, 336-342, 344, 347-353, 731-TA-573-579, 581-592, 594-597, 599-609 and 612-619 (Final) USITC Pub. 2664 (July, 1993) at 188 ("Original Determination - Corrosion"). In its opinion, the Commission noted that while various Commissioners cumulated different combinations of countries, their conclusions were the same with respect to volume. *Id.*

¹⁷ CR and PR at Table CORROSION-I-1.

¹⁸ CR and PR at Table CORROSION-I-1.

¹⁹ CR and PR at Table CORROSION-IV-5. Capacity utilization rates were between *** and *** percent in 1997-98 and increased to *** percent in the interim period. *Id.*

²⁰ CR at CORROSION-IV-4-5, PR at CORROSION-IV-5-6.

²¹ CR and PR at Table CORROSION-IV-5.

²² CR at CORROSION-IV-5, PR at CORROSION-IV-6.

²³ CR at CORROSION-IV-5, PR at CORROSION-IV-6.

B. Likely Price of the Subject Imports from Germany

In evaluating the likely price effects of subject imports if the antidumping duty or countervailing duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.²⁴

As directed by the statute, I have considered the Commission's previous findings and record concerning price competition. In the original determination, the Commission found that the industry was relatively insensitive to price and that it placed greater weight on volume effects than on price effects for its impact analysis, although the Commission noted that this did not mean that the prices of the dumped and subsidized imports were having no effect on the industry.²⁵

I find that revocation of the orders on Germany would not be likely to have significant adverse effects on domestic prices. As previously stated, the record indicates that German subject producers are only likely to import relatively small volumes of corrosion-resistant steel to the United States upon revocation of the orders because German producers, in response to customer demand, are shifting to microalloy products, which are outside the scope of these reviews.²⁶ Additionally, the vast majority of subject merchandise from Germany is sold primarily to a limited segment of the market, to automotive OEMs.²⁷ Moreover, the record indicates that for product 15, the only product for which complete price comparisons to domestic merchandise are available, the subject imports oversold the domestic product in every quarterly comparison, with margins ranging from *** to *** percent.²⁸ Given the limited segment of the market to which most German subject merchandise is presently sold and the current high overselling margins, it is unlikely that revocation would lead to significant price effects in the market, particularly since that record evidence suggests that price may not be the primary consideration for automotive OEM purchasers.²⁹

In sum, I find that revocation of the orders on imports from Germany likely would not have significant depressing or suppressing effects on the prices of the domestic like product within a reasonably foreseeable time.

C. Likely Impact of the Subject Imports from Germany

In evaluating the likely impact of imports of subject merchandise if the antidumping duty or countervailing duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the

²⁴ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

²⁵ Original Determination - Corrosion at 189.

²⁶ CR at CORROSION-IV-5, PR at CORROSION-IV-5.

²⁷ CR at CORROSION-IV-5, PR at CORROSION-IV-5.

²⁸ CR and PR at Table G-11.

²⁹ See German Mills' Prehearing Brief at 46-47.

domestic like product.³⁰ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.³¹

As directed by the statute, I have considered the Commission's previous findings and record. In its original determination, the Commission found the significant and increasing volume and the price suppressing effects of the cumulated imports to have had an adverse impact on the domestic industry.³²

I find that revocation of the orders covering Germany are not likely to have a significant adverse impact on the domestic industry. While the domestic industry's financial indicators have been declining during the period reviewed,³³ I conclude that because the record of these reviews indicates that the subject imports from Germany are not likely to have significant adverse volume and price effects on the domestic industry within the reasonably foreseeable future if the orders were revoked, revocation is unlikely to have a significant negative impact on the industry. Specifically, I find that the subject imports would not be likely to have a significant impact on the industry's cash flow, inventories, employment, wages, growth, ability to raise capital, investment or development efforts within a reasonably foreseeable time if the orders were revoked. Further, I find that revocation of the orders would not be likely to lead to a significant reduction in domestic producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.

In sum, I conclude that revocation of the orders on the subject imports from Germany would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

CONCLUSION

Therefore, I find that revocation of the antidumping and countervailing duty orders covering the subject imports from Germany would not be likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time.

³⁰ 19 U.S.C. § 1675a(a)(4).

³¹ 19 U.S.C. § 1675a(a)(4).

³² Original Determination - Corrosion at 191.

³³ For example, between 1997 and 1999, the domestic industry's operating margins declined from \$1.1 million to \$0.6 million, its gross profits declined from \$1.4 million to \$1.0 million, its capacity utilization declined from 91.9 percent to 87.3 percent and its operating margins declined from 10.5 percent to 5.9 percent. CR and PR at Table C-3.

SEPARATE AND DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG

Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom
Inv. Nos. AA-1921-197 (Review); 701-TA-231, 319-320, 322, 325-328, 340, 342, 348-350 (Review);
and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, 614-618 (Review)

I join in the majority's discussion of the background (section I), domestic like product and industry (section II), and legal standards (section III), in these grouped reviews. Except as otherwise noted, I also join in the majority's discussion of the orders on cut-to length plate (section IV) and the orders on corrosion-resistant steel (section VI). I do not, however, join in the majority's discussion of the orders on cold-rolled steel (section V).

Because my analysis of cumulation with respect to the orders on cut-to-length plate and corrosion-resistant steel differs from that of the majority, and because I render affirmative determinations with respect to the orders on cold-rolled steel from Germany, Korea, and the Netherlands, I provide my separate and dissenting views below.

CUT-TO-LENGTH PLATE: Cumulation

To begin, I note that based upon the record in these reviews, I join the Commission majority in finding that, under section 751(c) of the Tariff Act of 1930, as amended, revocation of the antidumping and countervailing duty orders on certain carbon steel cut-to-length plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, the United Kingdom, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time; and that revocation of the antidumping duty order on cut-to-length plate from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I provide the following separate views to detail my cumulation analysis for these grouped sunset reviews.

Cumulation—

As an initial matter, I note that a majority of the Commission cumulated subject imports from Belgium, Brazil, Canada, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom, in the original (1993) investigations. The antidumping finding on subject imports from Taiwan, however, resulted from an affirmative determination rendered by the Commission in 1979 (following an investigation of subject imports from Taiwan alone).

I further note that no respondent party has participated in these reviews with respect to the order on Poland or with respect to the finding on Taiwan. Finally, I note that I have joined the Commission majority in finding the domestic cut-to-length plate industry to be in a vulnerable condition (*see* section IV.C.3). I have considered the domestic industry's vulnerability in my assessment of the likelihood of no discernible adverse impact (discussed below).

1. Analytical Framework

As set forth in previous views,¹ in considering whether to cumulate subject imports in a sunset review, I first assess: (1) whether the reviews were initiated on the same day; and (2) the likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product, in the event the orders are revoked.

If, as a result of the foregoing assessment, I determine that subject imports are amenable to cumulation, I then proceed to examine whether the statutory exception precludes cumulation of such imports that are otherwise amenable to cumulation—*i.e.* I examine whether such imports, when considered individually, are likely to have no discernible adverse impact on the domestic industry.²

2. Likelihood of a Reasonable Overlap of Competition

I first note that many of the respondents in these grouped reviews contend that there is no reasonable overlap of competition among subject imports and between subject imports and the domestic like product because certain subject producers allegedly focus their cut-to-length plate production on either non-subject or “specialty” cut-to-length plate products. Upon review of the record, I find these arguments unpersuasive; rather, I am satisfied that producers in each of the subject countries focus their cut-to-length plate production on commodity-grade, subject plate products.³ In addition, I find that most of the cut-to-length plate products classified by respondents as “specialty” products are actually commodity-grade products.⁴

Turning to the specific factors for assessing the likelihood of a reasonable overlap of competition, the record indicates a relatively high degree of substitutability between U.S.-produced cut-to-length plate and imported cut-to-length plate from the various subject countries.⁵ The record also indicates that, in general, domestically-produced and imported cut-to-length plate continue to be sold in similar channels of distribution and similar geographical markets (*i.e.* throughout the United States).⁶ In addition, although subject imports from some of the subject countries were not present in the U.S. market throughout the period reviewed, it is likely that imports from each of the subject countries would be present in the U.S. market in the event of revocation.⁷

In sum, I find that in the event of revocation, there is likely to be a reasonable overlap of competition among subject imports from each of the subject countries and between subject imports and the domestic like product.

¹ See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 at 27-30 (October 1999); Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269 and 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 at 27-32 (April 2000).

² In instances where I find that subject imports from more than one subject country are likely to have no discernible adverse impact, I then consider whether these individual countries for which I have made a likely no discernible adverse impact finding are, in the aggregate, likely to have no discernible adverse impact on the domestic industry.

³ Confidential Report (“CR”) and Public Report (“PR”) at Tables CTL-SUPP-13 through CTL-SUPP-24.

⁴ CR and PR at Tables CTL-SUPP-13 through CTL-SUPP-24.

⁵ CR and PR at Table PLATE-II-5.

⁶ CR and PR at PLATE-II-1.

⁷ CR and PR at Table PLATE-I-1 and Table PLATE-IV-1.

3. Likelihood of No Discernible Adverse Impact

There are several important, distinctive conditions of competition in these grouped reviews for this product which influence the analysis of whether imports from any individual subject country are likely to have no discernible adverse impact on the domestic industry. The record indicates that: (1) the domestic industry is currently particularly vulnerable; (2) subject imports and the domestic like product are generally substitutable, commodity products which compete, in large part, on the basis of price; (3) most cut-to-length plate producers have some ability to shift production resources between subject and non-subject products, so that total available capacity is an important element for this industry; (4) each of the subject producers, with the exception of the sole subject Canadian producer, exports a significant portion of its cut-to-length plate production (thus indicating an ability to readily shift sales of production from third country markets to the United States; in addition, most subject countries currently possess considerable inventories of subject merchandise); and (5) the orders had a significant restraining effect on the volume of subject imports from the subject countries. In this context, even a relatively small volume of subject imports would be likely to have a discernible adverse impact on the domestic industry. I set forth my country-specific analyses below.

Belgium: In 1999, Belgium possessed approximately *** tons of excess capacity for subject merchandise and *** tons of excess capacity for all cut-to-length plate production (subject and nonsubject).⁸ In addition, Belgian producers' inventories of subject merchandise were *** tons at the end of the interim period (January-March 2000).⁹ Together, total unused capacity plus end-of-period inventories are equivalent to roughly *** percent of U.S. production during 1999, as well as *** percent of apparent U.S. consumption that year.¹⁰ Finally, I note that Commerce has determined that revocation of the CVD order on Belgium would likely result in a subsidization rate of 23.15 percent for Cockerill; 1.05 percent for Industeel (formerly Fabrique de Fer); and 5.92 percent for all others.¹¹

Although the Belgian producers claim that they focus their production on nonsubject specialty plate products, the record indicates that most of their production focuses on subject commodity-grade plate products.¹² The record also indicates that the Belgian producers are highly export-oriented.¹³ Thus, in the event of revocation, Belgian producers would have the ability and incentive to increase capacity utilization for the export of subject commodity-grade plate to the United States, as well as to ship from existing inventories to the U.S. market. Based upon the foregoing, I find that in the event of revocation, likely import volumes from Belgium will have a discernible adverse impact on the domestic cut-to-length plate industry.

Brazil: In 1999, Brazil had approximately *** tons of excess capacity for all cut-to-length plate production (subject and nonsubject).¹⁴ In addition, Brazilian producers' inventories of subject merchandise

⁸ CR and PR at Table PLATE-IV-3 and Table CTL-SUPP-1.

⁹ CR and PR at Table PLATE-IV-3.

¹⁰ See CR and PR at Table CTL-SUPP-1, Table PLATE-IV-3, and Table C-1.

¹¹ CR and PR at Table PLATE-I-1.

¹² CR and PR at Table CTL-SUPP-13 (I infer that the shipment data are sufficiently indicative of production trends).

¹³ CR and PR at Table PLATE-IV-3.

¹⁴ CR and PR at Table CTL-SUPP-2. Importantly, during 1999, subject merchandise represented *** percent of the Brazilian producers' total cut-to-length plate production. *Id.*

were *** tons at the end of interim 2000.¹⁵ Together, these sums are equivalent to *** percent of U.S. production during 1999, as well as *** percent of apparent U.S. consumption that year.¹⁶ Finally, I note that Commerce has determined that revocation of the CVD order on Brazil would likely result in a subsidization rate of 5.44 percent for Usiminas; 48.64 percent for Cosipa; and 23.10 percent for all others.¹⁷ Based upon the foregoing, I find that in the event of revocation, likely import volumes from Brazil will have a discernible adverse impact on the domestic cut-to-length plate industry.

Canada: In 1999, Canada had approximately *** tons of excess capacity for subject merchandise and *** tons of excess capacity for all cut-to-length plate production (subject and nonsubject).¹⁸ Canadian producers' inventories of subject merchandise were *** tons at the end of interim 2000.¹⁹ The record indicates, however, that plate demand in Canada currently exceeds home market supply and that Canada has recently imposed antidumping duties on a number of countries that accounted for a significant volume of plate imports into Canada.²⁰ The record therefore indicates that the sole subject Canadian producer has no incentive to increase the volume of its subject exports to the United States.

I also note that Commerce import statistics indicate that Canada exported *** tons of cut-to-length plate into the United States in 1999.²¹ However, the sole Canadian subject producer reported having exported only *** tons of subject imports into the United States 1999.²² Upon review, it appears that most of the imports reported by Commerce are attributable to imports into the United States by nonsubject Canadian producers. In addition, Commerce's statistics include nonsubject X-70 plate, and thus overstate the volume of subject Canadian imports into the United States.²³ Based upon the foregoing, I find that in the event of revocation, likely import volumes from Canada will not have a discernible adverse impact on the domestic cut-to-length plate industry.

Finland: In 1999, Finland had *** tons of excess capacity for all cut-to-length plate production (subject and nonsubject).²⁴ The Finnish producer's inventories of subject merchandise were *** tons at the end of interim 2000.²⁵ Together, these sums are equivalent to *** percent of U.S. production during 1999, as well as *** percent of apparent U.S. consumption that year.²⁶ The record also indicates that the Finnish producer exports the overwhelming majority of its cut-to-length plate production.²⁷ The Finnish producer therefore has the ability and incentive to increase its capacity utilization for export to the United States, as

¹⁵ CR and PR at Table PLATE-IV-4.

¹⁶ See CR and PR at Table CTL-SUPP-2, Table PLATE-IV-4, and Table C-1.

¹⁷ CR and PR at PLATE-I-8.

¹⁸ CR and PR at Table PLATE-IV-5 and Table CTL-SUPP-3. Importantly, in 1999, subject merchandise represented only *** percent of the Canadian producer's total cut-to-length plate production. CR and PR at Table CTL-SUPP-3.

¹⁹ CR and PR at Table PLATE-IV-5.

²⁰ CR at PLATE-IV-4, PR at PLATE-IV-6; Canadian Respondents' Prehearing Brief at 16.

²¹ CR and PR at Table C-1.

²² CR and PR at Table PLATE-IV-5.

²³ CR and PR at Table C-1.

²⁴ CR and PR at Table CTL-SUPP-4. Importantly, in 1999, subject merchandise represented *** percent of the Finnish producer's total cut-to-length plate production. *Id.*

²⁵ CR and PR at Table PLATE-IV-6.

²⁶ See CR and PR at Table CTL-SUPP-4, Table PLATE-IV-6, and Table C-1.

²⁷ CR and PR at Table PLATE-IV-6.

well as to ship from existing inventories to the U.S. market. Based upon the foregoing, I find that in the event of revocation, likely import volumes from Finland will have a discernible adverse impact on the domestic cut-to-length plate industry.

Germany: In 1999, Germany had *** tons of excess capacity for subject merchandise and *** tons of excess capacity for all cut-to-length plate production (subject and nonsubject).²⁸ German producers' inventories of subject merchandise were *** tons at the end of interim 2000.²⁹ Together, total unused capacity plus end-of-period inventories are equivalent to roughly *** percent of U.S. production during 1999, as well as *** percent of apparent U.S. consumption that year.³⁰ Finally, I note that Commerce has determined that revocation of the CVD order on Germany would likely result in a subsidization rate of 0.80 percent for Ilseburg; 0.77 percent for Preussag; 0.51 percent for Thyssen; and 14.84 percent for all others.³¹ Based upon the foregoing, I find that in the event of revocation, likely import volumes from Germany will have a discernible adverse impact on the domestic cut-to-length plate industry.

Mexico: In 1999, Mexico had *** tons of excess capacity for subject merchandise.³² Mexican producers' inventories of subject merchandise were *** tons at the end of interim 2000.³³ Together, these sums are equivalent to roughly *** percent of U.S. production during 1999, as well as *** percent of apparent U.S. consumption that year.³⁴ I also note that Commerce import statistics indicate that Mexico exported *** tons of cut-to-length plate into the United States in 1999.³⁵ However, the sole Mexican producer reported having exported only *** tons of subject imports into the United States 1999.³⁶ Finally, I note that Commerce has determined that revocation of the CVD order on Mexico would likely result in a subsidization rate of 25.87 percent for AHMSA and 20.25 percent for all others.³⁷

Arguably, because Commerce's import statistics include nonsubject plate, the volume of Mexican subject imports into the United States may be overstated.³⁸ However, this explanation is contradicted by the fact that over the course of the period reviewed Mexico produced only *** tons of nonsubject plate.³⁹ In any event, based upon my review of the record, I am satisfied that in the event of revocation, likely import volumes from Mexico will have a discernible adverse impact on the domestic cut-to-length plate industry.⁴⁰

Poland: I again note that the Commission did not receive any questionnaire response from any

²⁸ CR and PR at Table PLATE-IV-7 and Table CTL-SUPP-5.

²⁹ CR and PR at Table PLATE-IV-7.

³⁰ See CR and PR at Table CTL-SUPP-5, Table PLATE-IV-7, and Table C-1.

³¹ CR and PR at PLATE-I-8.

³² CR and PR at Table PLATE-IV-8 and Table CTL-SUPP-6.

³³ CR and PR at Table PLATE-IV-8.

³⁴ See CR and PR at Table CTL-SUPP-6, Table PLATE-IV-8, and Table C-1.

³⁵ CR and PR at Table C-1.

³⁶ CR and PR at Table PLATE-IV-8.

³⁷ CR and PR at PLATE-I-9.

³⁸ CR and PR at Table C-1.

³⁹ CR and PR at Table CTL-SUPP-6.

⁴⁰ I note that I would have reached the same conclusion even if the record had clearly indicated that the entire volume of cut-to-length plate imports into the United States from Mexico in 1999, as reported by Commerce, was comprised of nonsubject merchandise.

Polish subject producer. However, the publication *Iron and Steel Works of the World* indicates that, in 1998, Poland produced 1,774,720 tons of cut-to-length plate.⁴¹ During the period reviewed, Poland exported 4,312 tons of subject cut-to-length plate to the United States in 1997; 477 tons in 1998; and 71 tons in 1999.⁴² At the time of the original investigations, Poland's peak exports of subject merchandise to the U.S. market were 24,605 tons.⁴³ Based upon all of the foregoing, I infer that likely import volumes from Poland will have a discernible adverse impact on the domestic cut-to-length plate industry if the order were revoked.

Romania: In 1999, Romania had approximately *** tons of excess capacity for all cut-to-length plate production (subject and nonsubject).⁴⁴ The Romanian producer's inventories of subject merchandise were *** tons at the end of interim 2000.⁴⁵ Together, these sums are equivalent to roughly *** percent of U.S. production during 1999, as well as *** percent of apparent U.S. consumption that year.⁴⁶ Based upon all of the foregoing, I find that in the event of revocation, likely import volumes from Romania will have a discernible adverse impact on the domestic cut-to-length plate industry.

Spain: In 1999, Spain had no excess production capacity for subject merchandise and *** tons of excess capacity for all cut-to-length plate production (subject and nonsubject).⁴⁷ Although this amounts to only a small percentage of 1999 apparent U.S. consumption and 1999 U.S. production, the record indicates that the Spanish producer's inventories of subject merchandise were *** tons at the end of interim 2000.⁴⁸ Together, total unused capacity plus end-of-period inventories are equivalent to roughly *** percent of U.S. production during 1999, as well as *** percent of apparent U.S. consumption that year.⁴⁹ The record also indicates that the Spanish producer exports a substantial portion of its production (as much as *** percent during the period reviewed).⁵⁰ The Spanish producer therefore has the ability and incentive to ship from inventories to the U.S. market, should the orders be revoked. Finally, I note that Commerce has determined that revocation of the CVD order on Spain would likely result in a subsidization rate of 36.86 percent for all producers/exporters.⁵¹ Based upon my review of the record, I am satisfied that in the event of revocation, likely import volumes from Spain will have a discernible adverse impact on the domestic cut-to-length plate industry.

Sweden: In 1999, Sweden had no excess capacity for any cut-to-length plate production.⁵² In addition, the Swedish producer held no inventories of subject merchandise at the end of interim 2000.⁵³

⁴¹ CR and PR at PLATE-IV-8.

⁴² CR and PR at Table C-1.

⁴³ CR and PR at Table PLATE-I-1.

⁴⁴ CR and PR at Table CTL-SUPP-8.

⁴⁵ CR and PR at Table PLATE IV-9. Importantly, in 1999, subject merchandise represented *** percent of the Romanian producer's total cut-to-length plate production. CR and PR at Table CTL-SUPP-8.

⁴⁶ See CR and PR at Table CTL-SUPP-8, Table PLATE-IV-9, and Table C-1.

⁴⁷ CR and PR at Table PLATE IV-10 and Table CTL-SUPP-9.

⁴⁸ CR and PR at Table PLATE IV-10.

⁴⁹ See CR and PR at Table CTL-SUPP-5, Table PLATE-IV-7, and Table C-1.

⁵⁰ CR and PR at Table PLATE IV-10.

⁵¹ CR and PR at PLATE-I-9.

⁵² CR and PR at Table PLATE IV-11 and Table CTL-SUPP-10.

⁵³ CR and PR at Table PLATE IV-11.

However, the record also indicates that the Swedish producer exports the overwhelming majority of its production.⁵⁴ I also note that at the time of the original investigations, Sweden exported to the United States as much as *** tons of subject merchandise.⁵⁵ This is equivalent to roughly *** percent of U.S. production during 1999, as well as *** percent of apparent U.S. consumption that year.⁵⁶ In contrast, Sweden exported only a very small volume of cut-to-length plate into the United States during the period reviewed.⁵⁷

It thus appears that the orders on subject imports from Sweden have had a significant restraining effect. Finally, I note that Commerce has determined that revocation of the CVD order on Sweden would likely result in a subsidization rate of 4.27 percent for all producers/exporters.⁵⁸ Based upon all of the foregoing, I find that in the event of revocation, import volumes from Sweden will likely revert to pre-order levels (given the marked export orientation of the Swedish producer), and that this will have a discernible adverse impact on the domestic cut-to-length plate industry.

Taiwan: I again note that the Commission did not receive any questionnaire response from any subject producer in Taiwan. During 1999, Taiwan had approximately *** tons of excess capacity for subject merchandise.⁵⁹ Taiwan producers' inventories of subject merchandise were *** tons at the end of interim 2000.⁶⁰ Together, these sums are equivalent to roughly *** percent of U.S. production during 1999, as well as *** percent of apparent U.S. consumption that year.⁶¹ The record also indicates that Taiwan exports a substantial portion of its total shipments (as much as *** percent during the period reviewed).⁶² Based upon all of the foregoing, I find that in the event of revocation, likely import volumes from Taiwan will have a discernible adverse impact on the domestic cut-to-length plate industry.

United Kingdom: In 1999, the United Kingdom had approximately *** tons of excess capacity for all cut-to-length plate production (subject and nonsubject).⁶³ The U.K. producer's inventories of subject merchandise were *** tons at the end of interim 2000.⁶⁴ Together, these sums are equivalent to roughly *** percent of U.S. production during 1999, as well as *** percent of apparent U.S. consumption that year.⁶⁵ Finally, I note that Commerce has determined that revocation of the CVD order on the United Kingdom would likely result in a subsidization rate of 23.15 percent for Glynwed Steels and 1.05 percent for all others.⁶⁶ Based upon all of the foregoing, I find that in the event of revocation, likely import volumes from

⁵⁴ CR and PR at Table PLATE IV-11

⁵⁵ CR and PR at Table PLATE-I-1.

⁵⁶ See CR and PR at Table PLATE-I-1 and Table C-1.

⁵⁷ CR and PR at Table C-1.

⁵⁸ CR and PR at PLATE-I-10.

⁵⁹ CR and PR at Table PLATE IV-12. In 1999, Taiwan was operating at *** percent capacity utilization. *Id.* However, in 1998, Taiwan's capacity utilization was as high as ***. *Id.* Consequently, I rely upon the 1998 figure as Taiwan's peak capacity utilization rate for purposes of my analysis.

⁶⁰ CR and PR at Table PLATE IV-12.

⁶¹ See CR and PR at Table PLATE-IV-12 and Table C-1.

⁶² CR and PR at Table PLATE IV-12.

⁶³ CR and PR at Table PLATE IV-13 and Table CTL-SUPP-12. Importantly, in 1999, subject merchandise represented *** percent of the U.K. producer's total cut-to-length plate production.

⁶⁴ CR and PR at Table PLATE IV-13.

⁶⁵ See CR and PR at Table CTL-SUPP-12, Table PLATE-IV-13, and Table C-1.

⁶⁶ CR and PR at PLATE-I-10.

the United Kingdom will have a discernible adverse impact on the domestic cut-to-length plate industry.⁶⁷

4. Conclusion

Based upon the foregoing analysis, I find that revocation of the orders on subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, considered individually, would be likely to have a discernible adverse impact on the domestic cut-to-length plate industry. I also find that revocation of the order on subject imports from Canada would be likely to have no discernible adverse impact on the domestic cut-to-length plate industry. I therefore join my colleagues in a cumulative analysis of the likely volume and price effects of subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, as well as an individual country analysis with respect to likely imports from Canada (*see* section IV.C).

CORROSION-RESISTANT STEEL: Cumulation

To begin, I note that based upon the record in these reviews, I join the Commission majority in finding that, under section 751(c) of the Tariff Act of 1930, as amended, revocation of the antidumping and countervailing duty orders on certain corrosion-resistant carbon steel products from Australia, Canada, France, Germany, Japan, and Korea, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I provide the following separate views to detail my cumulation analysis for these grouped sunset reviews.

Cumulation—

As an initial matter, I note that a majority of the Commission cumulated subject imports from Australia, Canada, France, Germany, Japan, and Korea, in the original (1993) investigations. I further note that no respondent party has participated in these reviews with respect to the order on Australia. Finally, I note that I have joined the Commission majority in finding the domestic corrosion-resistant steel industry to be in a vulnerable condition (*see* section VI.C.3). I have considered the domestic industry's vulnerability in my assessment of the likelihood of no discernible adverse impact (discussed below).

1. Analytical Framework

I refer to the discussion of my analytical framework set forth above in the context of the grouped sunset reviews of the orders covering cut-to-length plate.

2. Likelihood of a Reasonable Overlap of Competition

The record in these reviews indicates that domestically produced and imported corrosion-resistant

⁶⁷ I note that the sole subject U.K. producer has a relationship with an affiliated producer of cut-to-length plate in the United States. CR and PR at PLATE-IV-6. I recognize that an individual U.K. producer with an established physical presence in the United States is unlikely to engage in export behavior to the detriment of its affiliated U.S. production operations. In my view, however, such rationalization of production within a family of affiliated companies, in and of itself, says nothing about the likely behavior of U.K. imports as a whole in the event of revocation, nor does it provide an indication of the likely impact of U.K. imports on unaffiliated producers within the domestic industry.

steel products are fungible. U.S. producers and importers alike reported that subject imports are broadly interchangeable with the domestic like product,⁶⁸ and both share the same essential chemical and physical properties.⁶⁹ The record also indicates that the channels of distribution for domestic and imported corrosion-resistant steels are similar.⁷⁰ Finally, nothing in the record suggests that if the orders are revoked, subject imports would not again compete with each other and with domestic corrosion-resistant steel, both simultaneously and in the same geographic markets.

Based upon the foregoing, I find that there is likely to be a reasonable overlap of competition among subject imports from each of the subject countries, and between subject imports and the domestic like product, if the orders were revoked.

3. Likelihood of No Discernible Adverse Impact

Australia: Again, I note that no respondent party has participated in these reviews with respect to the order on Australia (notwithstanding the Commission's requests for information); as a result, the Commission has only limited information with respect to the corrosion-resistant steel industry in Australia. Upon review of the record, I infer that producers in Australia will, at a minimum, revert to pre-order export behaviors resulting in a discernible adverse impact on the domestic industry if the order is revoked. I note in this regard that during 1992, the last full year prior to imposition of the orders, subject imports from Australia totaled *** short tons, which is the equivalent of roughly *** percent of U.S. production in 1999, as well as almost *** percent of U.S. consumption that year.⁷¹

Canada: In 1999, unused subject capacity coupled with reported end-of-period inventories for Canadian producers amounted to *** short tons, which was equivalent to roughly *** percent of U.S. production and almost *** percent of U.S. consumption that year.⁷² During 1992, the last year prior to imposition of the orders, subject imports from Canada totaled *** short tons; in comparison, during 1999 Canada exported *** short tons of corrosion-resistant steel to the United States.⁷³ Finally, I note that based upon the pricing data collected in these reviews, quarterly pricing comparisons indicate a 100 percent incidence of underselling by subject imports from Canada, even with the order in place.⁷⁴ In light of the foregoing, I find that likely import volumes from Canada will have a discernible adverse impact on the domestic industry in the event of revocation.

France: In 1999, unused subject capacity coupled with reported end-of-period inventories for French producers amounted to *** short tons, which was equivalent to roughly *** percent of U.S. production and *** percent of U.S. consumption that year.⁷⁵ During 1992, the last year prior to imposition of the orders, subject imports from France totaled *** short tons; in comparison, during 1999 France

⁶⁸ CR at CORROSION-II-18 and CORROSION-II-19; PR at CORROSION-II-12 and CORROSION-II-13.

⁶⁹ CR at CORROSION-I-16, PR at CORROSION-I-15.

⁷⁰ See CR and PR at CORROSION-II-1.

⁷¹ CR and PR at Table CORROSION-I-1 and Table C-3.

⁷² CR and PR at Table CORROSION-IV-3 (as amended, see INV-X-232 (Nov. 1, 2000)) and Table C-3.

⁷³ CR and PR at Table CORROSION-I-1 and Table CORROSION-IV-3 (as amended, see INV-X-232 (Nov. 1, 2000)).

⁷⁴ CR and PR at Table CORROSION-V-6.

⁷⁵ CR and PR at Table CORROSION-IV-4 and Table C-3.

exported *** short tons of corrosion-resistant steel to the United States.⁷⁶ Total exports to all countries accounted for between *** percent and *** percent of French production during the period of review.⁷⁷ Finally, I note that Commerce has determined that revocation of the CVD order on France would likely result in a subsidization rate of 15.13 percent.⁷⁸ Based upon the foregoing, I find that likely import volumes from France will have a discernible adverse impact on the domestic industry in the event of revocation.

Germany: In 1999, unused subject capacity coupled with reported end-of-period inventories for German producers amounted to *** short tons, which was equivalent to roughly *** percent of U.S. production and *** percent of U.S. consumption that year.⁷⁹ During 1992, the last year prior to imposition of the orders, subject imports from Germany totaled *** short tons; in comparison, during 1999 Germany exported *** short tons of corrosion-resistant steel to the United States.⁸⁰ Total exports to all countries accounted for between *** percent and *** percent of German production during the period of review.⁸¹ Finally, I note that Commerce has determined that revocation of the CVD order on Germany would likely result in a subsidization rate of 0.54 percent.⁸² Based upon the foregoing, I find that likely import volumes from Germany will have a discernible adverse impact on the domestic industry in the event of revocation.

Japan: In 1999, unused subject capacity coupled with reported end-of-period inventories for Japanese producers amounted to *** short tons, which was equivalent to roughly *** percent of U.S. production and *** percent of U.S. consumption that year.⁸³ During 1992, the last year prior to imposition of the orders, subject imports from Japan totaled *** short tons; in comparison, during 1999, Japan exported *** short tons of corrosion-resistant steel to the United States.⁸⁴ Total exports to all countries accounted for between *** percent and *** percent of Japanese production during the period of review.⁸⁵ Based upon the foregoing, I find that likely import volumes from Japan will have a discernible adverse impact on the domestic industry in the event of revocation.⁸⁶

Korea: In 1999, unused subject capacity coupled with reported end-of-period inventories for Korean producers amounted to *** short tons, which was equivalent to *** percent of U.S. production and

⁷⁶ CR and PR at Table CORROSION-I-1 and Table C-3.

⁷⁷ CR and PR at Table CORROSION-IV-4.

⁷⁸ CR and PR at CORROSION-I-1.

⁷⁹ CR and PR at Table CORROSION-IV-5 and Table C-3.

⁸⁰ CR and PR at Table CORROSION-I-1 and Table C-3.

⁸¹ CR and PR at Table CORROSION-IV-5.

⁸² CR at CORROSION-I-6, PR at CORROSION-I-1.

⁸³ CR and PR at Table CORROSION-IV-6 and Table C-3.

⁸⁴ CR and PR at Table CORROSION-I-1 and Table C-3.

⁸⁵ CR and PR at Table CORROSION-IV-6.

⁸⁶ I note that each of the subject Japanese producers has a relationship with an affiliated producer of corrosion-resistant steel in the United States. CR and PR at CORROSION-IV-6. I recognize that an individual Japanese producer with an established physical presence in the United States is unlikely to engage in export behavior to the detriment of its affiliated U.S. production operations. In my view, however, such rationalization of production within a family of affiliated companies, in and of itself, says nothing about the likely behavior of Japanese imports as a whole in the event of revocation, nor does it provide an indication of the likely impact of Japanese imports on unaffiliated producers (whether U.S. or foreign-owned) within the domestic industry.

*** percent of U.S. consumption that year.⁸⁷ During 1992, the last year prior to imposition of the orders, subject imports from Korea totaled *** short tons; in comparison, during 1999, Korea exported *** short tons of corrosion-resistant steel to the United States.⁸⁸ Total exports to all countries accounted for between *** percent and *** percent of Korean production during the period of review.⁸⁹ Finally, I note that Commerce has determined that revocation of the CVD order on Korea would likely result in a subsidization rate of 0.54 percent.⁹⁰ Based upon the foregoing, I find that likely import volumes from Korea will have a discernible adverse impact on the domestic industry in the event of revocation.

4. Conclusion

Based upon the foregoing analysis, I find that revocation of the orders on subject imports from Australia, Canada, France, Germany, Japan, and Korea, considered individually, would be likely to have a discernible adverse impact on the domestic corrosion-resistant steel industry. I therefore join my colleagues in a cumulative analysis of the likely volume and price effects of subject imports from all six subject countries in these grouped reviews (*see* section VI.C).

COLD-ROLLED STEEL:

Definitions of the Domestic Like Product and Industry—

I join in the majority's discussion of the domestic like product (section II.A), wherein we define a single domestic like product (*i.e.* cold-rolled steel) commensurate with the scopes and consistent with the original determinations. I therefore exclude from this definition microalloy products that lie outside the scopes, and I include seat belt retractor steel. I further join in the majority's discussion of the domestic industry (section II.B), wherein we define the domestic industry as all domestic producers of cold-rolled steel.

With regard to related parties, I also join in the majority's discussion finding that appropriate circumstances do not exist to exclude Theis Precision Steel Corporation from the definition of the domestic industry (section II.C.2). In addition, I note that UPI is a related party by virtue of its partial ownership by Pohang, a Korean steelmaker subject to this review.⁹¹ Two other firms, ***, are potentially related parties because they imported subject merchandise from ***.⁹² However, the Commission did not timely receive data from any of these producers, and none of these firms is included in the industry data compiled in these reviews. The issue is thus moot with respect to whether these firms are included or excluded from the domestic industry. Finally, I note that the Commission did not exclude any domestic producer as a related party in the original investigations.⁹³ Based on the record developed in these reviews, I determine that

⁸⁷ CR and PR at Table CORROSION-IV-7 (as amended, *see* INV-X-232 (Nov. 1, 2000)) and Table C-3.

⁸⁸ CR and PR at Table CORROSION-I-1 and CORROSION-IV-7 (as amended, *see* INV-X-232 (Nov. 1, 2000)).

⁸⁹ CR and PR at Table CORROSION-IV-7 (as amended, *see* INV-X-232 (Nov. 1, 2000)).

⁹⁰ CR and PR at CORROSION-I-6.

⁹¹ CR and PR at Table COLD-I-3.

⁹² CR and PR at Table III-4.

⁹³ Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Inv. Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353 (Final) and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 at 98 (August 1993) ("Original

appropriate circumstances do not exist to exclude any U.S. producer from the domestic industry; accordingly, I define the domestic industry as all U.S. producers of the domestic like product.

Cumulation—

To begin, I note that a majority of the Commission cumulated subject imports from Germany, Korea, and the Netherlands, in the original (1993) investigations. The countervailing duty order on subject imports from Sweden, however, resulted from an affirmative determination rendered by the Commission in 1985 (following an investigation of subject imports from Sweden and Austria).

In addition, as I discuss later in these views, I find the domestic cold-rolled steel industry to be in a vulnerable condition. I note that I have considered the domestic industry's vulnerability in my assessment of the likelihood of no discernible adverse impact (discussed below).

1. Analytical Framework

I refer to the discussion of my analytical framework set forth above in the context of the grouped sunset reviews of the orders covering cut-to-length plate.

2. Likelihood of a Reasonable Overlap of Competition

The Dutch respondents argue that because subject imports from the Netherlands are comprised largely of full-hard steel, the Commission should find there is not likely to be a reasonable overlap of competition as there are *** imports of full-hard steel from either Germany or Sweden, and *** are in much smaller volumes. In addition, the Dutch product is sold only to ***, while imports from ***.

Significantly, however, subject imports from the Netherlands are comprised of more than just full-hard steel; moreover, the relevant inquiry is what the likely import mix will be in the event of revocation, and not how export behaviors in the subject countries may have adjusted to the existence of the orders.

According to the Dutch respondents, imports of full-hard steel from the Netherlands accounted for between *** percent of total Dutch imports in 1997 and 1998, declining to *** percent in 1999 and increasing to *** percent during the first three months of 2000; more importantly, in 1992, prior to imposition of the order, imports of full-hard steel from the Netherlands accounted for only *** percent of total Dutch imports.⁹⁴ Finally, I note that producers and importers overwhelmingly indicated that subject imports are interchangeable with each other and with the domestic like product.⁹⁵

Based upon my review of the record, I am satisfied that subject imports from each of the four countries are interchangeable with each other and with the domestic like product, and that if the orders are revoked subject imports will again simultaneously compete with each other and with the domestic like product, in the same geographic markets and channels of distribution. Consequently, I find there is likely to be a reasonable overlap of competition among subject imports and between subject imports and the domestic like product in the event of revocation.

3. Likelihood of No Discernible Adverse Impact

With respect to Sweden, the record indicates that the sole Swedish producer of cold-rolled steel operated at *** percent capacity utilization throughout the period of review; in addition, the Swedish

Determination”).

⁹⁴ Post-Hearing Brief of Hoogovens Staal BV and Hoogovens Steel USA at A-30.

⁹⁵ CR and PR at Table COLD-II-4.

producer's end-of-period inventories remained below *** of U.S. production throughout the period of review.⁹⁶ Moreover, in the extreme and unlikely event the Swedish producer exported 100 percent of its production to the U.S. market, this volume would be equivalent to only *** percent of U.S. production in 1999, as well as *** percent of U.S. commercial shipments that year.⁹⁷ Finally, I note that Commerce has determined that the likely rate of subsidization in the event the CVD order on Sweden is revoked is 8.77 percent.⁹⁸

Although roughly *** percent of Swedish production of cold-rolled steel is exported,⁹⁹ I find that the foregoing data indicate that revocation of the CVD order on Sweden would be likely to have no discernible adverse impact on the domestic industry. My negative determination with respect to Sweden stems naturally from this finding.

With respect to Germany, Korea, and the Netherlands, however, I find that revocation of each of these orders would likely result in a discernible adverse impact on the domestic industry. First, I note that unused subject capacity in each country during 1999 was equivalent to significant shares of U.S. production that year; specifically: unused subject capacity in Germany during 1999 was equivalent to *** percent of U.S. production that year; unused subject capacity in Korea during 1999 was equivalent to *** percent of U.S. production that year; and, unused subject capacity in the Netherlands during 1999 was equivalent to *** percent of U.S. production that year.¹⁰⁰

The foregoing comparisons are with respect to total U.S. production, and not merely merchant market shipments by domestic producers. If comparisons are made solely to U.S. commercial shipments, the percentages would be as follows: total unused cold-rolled capacity in Germany during 1999 was equivalent to *** percent of U.S. commercial shipments that year; total unused cold-rolled capacity in Korea during 1999 was equivalent to *** percent of U.S. commercial shipments that year; and, total unused cold-rolled capacity in the Netherlands during 1999 was equivalent to *** percent of U.S. commercial shipments that year.¹⁰¹

Finally, if end-of-period inventories in these three countries are also considered as being available for export to the United States, the foregoing percentages would be higher still for each of the three countries.¹⁰² Based upon all the foregoing, I find that if the orders are revoked, likely import volumes from each of these three countries, considered individually, would be likely to have a discernible adverse impact on the domestic industry.

4. Conclusion

As a result of the foregoing findings, I have engaged in a separate analysis of likely imports from Sweden, and a cumulative analysis with respect to likely imports from Germany, Korea, and the Netherlands, in the event the orders are revoked.

Conditions of Competition—

1. Captive Production

⁹⁶ See CR and PR at Table COLD-IV-6 and Table C-2.

⁹⁷ See CR and PR at Table COLD-III-2, Table COLD-IV-6 and Table C-2.

⁹⁸ CR and PR at COLD-I-6.

⁹⁹ CR and PR at Table COLD-IV-6.

¹⁰⁰ See CR and PR at Tables COLD-IV-3 through COLD-IV-5, and Table C-2.

¹⁰¹ See CR and PR at Tables COLD-IV-3 through COLD-IV-5, and Table COLD-III-11.

¹⁰² See CR and PR at Tables COLD-IV-3 through COLD-IV-5.

Although the domestic industry internally transfers a significant portion of its production of cold-rolled steel for the production of downstream articles, I note that I have previously determined that the captive production provision of the statute does not apply in the context of sunset reviews.¹⁰³ Nevertheless, I have considered captive production as a condition of competition in assessing whether revocation of the orders under review would be likely to result in continuation or recurrence of material injury.

2. Other Conditions of Competition

Demand for cold-rolled steel depends largely on the level of demand in the automotive, appliance, construction, and container industries, and has increased substantially since imposition of the orders in 1985 and 1993, with apparent U.S. consumption increasing by roughly *** percent between 1992 and 1999 alone.¹⁰⁴ Total production capacity for the domestic industry similarly has increased substantially,¹⁰⁵ as new capacity has been added and the efficiency of existing capacity has been improved in order to remain competitive.¹⁰⁶ Notwithstanding these increases in capacity, the rate of capacity utilization by the domestic industry increased steadily since 1992.¹⁰⁷

With regard to supply, subject import volumes from each of the four countries declined following imposition of the respective orders. The share of the U.S. market supplied by domestic producers increased since the orders were imposed in 1985 and 1993, reaching a high of *** percent in interim 2000.¹⁰⁸ The share of the U.S. market captured by subject and nonsubject imports alike declined during the period of review.¹⁰⁹

Domestic producers and importers usually reported subject imports and the domestic like product to be broadly interchangeable, and differences other than price usually are not a significant factor in their sales of cold-rolled steel.¹¹⁰ More than half of responding purchasers reported purchasing on either a daily or weekly basis, and most contact multiple suppliers before making a purchase.¹¹¹ It is likely that the importance of price to purchasing decisions will only magnify with the development and more widespread acceptance of e-commerce as a vehicle for consummating sales within this industry.¹¹²

The use of published price lists is rare, with the majority of responding producers and importers indicating that prices are determined on a transaction-by-transaction basis.¹¹³ Contracts for domestic producers are typically of six to twelve months in duration, with some as short as three months.¹¹⁴ Even where price terms may be specified, contracts may not shield producers from negative pricing pressures in the market.¹¹⁵ In addition, the increasing use of life-of-the-part contracts and partnering agreements,

¹⁰³ See, e.g., Sebacic Acid from China, Inv. No. 731-TA-653 (Review), USITC Pub. 3189, at 7 n.26 (May 1999).

¹⁰⁴ See CR at COLD-II-10 and Table COLD-I-1; PR at COLD-II-7 and Table COLD-I-1.

¹⁰⁵ See CR and PR at Table COLD-I-1.

¹⁰⁶ See, e.g., Hearing Transcript at 68-69 (Sept. 12, 2000) (Wilhelm).

¹⁰⁷ CR and PR at COLD-II-2.

¹⁰⁸ CR and PR at Table COLD-I-1.

¹⁰⁹ CR and PR at Table COLD-I-1.

¹¹⁰ CR at COLD-II-15 and COLD-II-16; PR at COLD-II-10 and COLD-II-11.

¹¹¹ CR COLD-II-13; PR at COLD-II-9.

¹¹² See CR at COLD-II-12; PR at COLD-II-8 to COLD-II-9.

¹¹³ CR and PR at COLD-V-2.

¹¹⁴ CR at COLD-V-3; PR at COLD-V-2 to COLD-V-3.

¹¹⁵ Hearing Transcript at 79 (Sept. 12, 2000) (Eckstein).

wherein price terms may be downwardly flexible, exposes producers to negative pricing pressures in the market.¹¹⁶

Likelihood of Continuation or Recurrence of Material Injury—

Before turning to my analysis of the likely volume, price effects, and impact, if the orders under review are revoked, there are several preliminary matters to address. First, I note that segregated data on the domestic cold-rolled steel industry (as defined above) are not available, as some domestic producers have indicated they were unable to supply segregated data. As a result, I must rely on the industry data provided, keeping in mind that the data do not correspond precisely to the industry producing the domestic like product in these reviews. I am also mindful of the fact that comparisons between the data for the domestic industry in the original determinations and the data gathered in these reviews may be somewhat distorted, as a result of the domestic producers' inability to segregate microalloy products from the domestic like product in their questionnaire responses in these reviews. Nevertheless, I am satisfied that such comparisons are sufficiently valid to indicate the magnitude of changes in the industry, including apparent consumption.

Second, I note that Commerce reported that it had made an affirmative duty absorption finding with regard to one Korean producer of cold-rolled steel.¹¹⁷ In addition, during the course of an administrative review, Commerce made an affirmative duty absorption finding with regard to the sole Dutch producer of cold-rolled steel;¹¹⁸ however, this latter finding was not reported by Commerce as part of its final sunset review order.¹¹⁹ In any event, I have not relied on any duty absorption findings in reaching my determinations, particularly with respect to likely price effects in the event of revocation.

Third, because the interim data for 1999 and 2000 cover only limited three-month periods, I have relied principally on data covering full-year periods, and have placed particular weight on 1999 data, which is the most recent full-year period for which data are available in these reviews.

Fourth, I note that I have considered the arguments presented by domestic producers regarding global cartels. I further note, however, that I did not rely upon any alleged global cartel activity in reaching my determinations.

Finally, I note that in March 2000, I determined that the domestic cold-rolled steel industry was materially injured by reason of cumulated subject imports from twelve countries.¹²⁰ Unfortunately, though not surprisingly, the record in these reviews indicates that there has not been a significant improvement in the condition of domestic cold-rolled steel producers since I rendered my affirmative determinations; indeed, there is some indication that conditions have worsened since the Commission majority rendered its

¹¹⁶ CR at COLD-V-4; PR at COLD-V-3.

¹¹⁷ 65 Fed. Reg. 24180 (Apr. 25, 2000) (Korea).

¹¹⁸ 63 Fed. Reg. 20574, 20575 (Apr. 27, 1998) (Netherlands).

¹¹⁹ 65 Fed. Reg. 47377 (Aug. 2, 2000).

¹²⁰ See *Dissenting Views of Chairman Lynn M. Bragg in Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand*, Inv. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838, USITC Pub. 3283 at 29-40 (Final) (March 2000). The Commission rendered staggered determinations with respect to the six remaining countries subject to those investigations. See *Dissenting Views of Chairman Lynn M. Bragg in Certain Cold-Rolled Steel Products from Turkey and Venezuela*, Inv. Nos. 731-TA-839-840, USITC Pub. 3297 at 13-14 (Final) (May 2000); and *Dissenting Views of Commissioner Lynn M. Bragg in Certain Cold-Rolled Steel Products from China, Indonesia, Slovakia, and Taiwan*, Inv. Nos. 731-TA-831-832, 835, and 837, USITC Pub. 3320 at 13-14 (Final) (July 2000).

negative determinations earlier this year.¹²¹ In any event, based on the record in these reviews I find the domestic cold-rolled steel industry to be vulnerable to material injury. In this regard, I note the significant decline in the industry's operating performance between 1997 and 1999, as well as the fact that the number of domestic producers posting operating losses increased from *** in 1997 to *** in 1999.¹²² I also note that the pricing data collected in these reviews indicate uniformly declining price levels for U.S. producers during the period of review; moreover, eight out of ten comparisons indicate a price decline of about *** percent or greater.¹²³

In finding the domestic industry to be vulnerable, I have considered the analysis prepared by Professor Kothari and presented by the domestic producers; however, I have not relied upon this analysis because it is based upon indicators pertaining to the overall steel industry and thus is not specific to the cold-rolled steel industry as defined above. Still, I do consider Professor Kothari's analysis to afford corroborative value to my finding of vulnerability, given the close relationship between the cold-rolled steel industry as defined in these reviews and the U.S. steel industry as a whole.

1. Sweden

Likely Volume: As noted in the discussion of no discernible adverse impact, the sole producer of subject cold-rolled steel in Sweden operated at *** percent capacity utilization throughout the period of review; in addition, this producer's end-of-period inventories remained *** throughout the period of review. Consequently, the *** by which the Swedish producer could increase exports to the U.S. market would be to redirect exports from other markets. Swedish cold-rolled exports are not subject to any penalty tariff or nontariff barriers in any third country markets,¹²⁴ and there is no indication on the record of any incentive for the Swedish producer to attempt to redirect its exports to the United States in the event of revocation. Thus, notwithstanding the fact that roughly *** percent of Swedish production of cold-rolled steel is exported,¹²⁵ I find that the record in these reviews indicates that revocation of the CVD order on Sweden would not be likely to result in a significant volume of imports into the U.S. market.

Likely Price Effects: The pricing data collected in these reviews indicate that subject imports from Sweden undersold the domestic like product in 5 out of 6 quarterly pricing comparisons.¹²⁶ This data, however, accounted for 4.1 percent of U.S. commercial shipments and 8.0 percent of subject imports from Sweden in 1999. The average unit value of subject imports from Sweden far exceeded that of both imports from any other source (whether subject or nonsubject) in 1997, 1998, 1999, and interim 2000, as well as the AUV of U.S. commercial shipments during each of those periods.¹²⁷ Perhaps this is a function of the relatively small volume of imports from Sweden, compared to imports from any other source (whether subject or nonsubject) during each of those periods. In any event, I have determined that revocation of the CVD order on Sweden would not result in a significant volume of imports, and I further determine based on the record that any imports from Sweden that do enter the United States following revocation are not likely to cause significant negative price effects in the U.S. market.

¹²¹ See, e.g., Exhibit 38 to Domestic Producers' Submission of New Information (October 24, 2000) (indicating that Midwest prices for cold-rolled steel sheet have declined roughly 16 percent in the past six months).

¹²² CR and PR at Table COLD-III-7 and Table C-2.

¹²³ CR and PR Tables COLD-V-2 and COLD-V-3.

¹²⁴ CR at COLD-IV-4, PR at COLD-IV-5.

¹²⁵ CR and PR at Table COLD-IV-6.

¹²⁶ CR and PR at Table COLD-V-4.

¹²⁷ CR and PR at Table C-2.

Likely Impact: As noted, I have found that revocation of the CVD order on Sweden would be likely to result in no discernible adverse impact on the domestic industry. I therefore find that if the order on Sweden were revoked, any volume of imports from Sweden, either in absolute terms or relative to U.S. production or consumption, would not result in a significant adverse impact on the domestic industry.

2. Germany, Korea, and the Netherlands

Likely Volume: Standing alone, cumulative unused capacity in Germany, Korea, and the Netherlands, during 1999, was equivalent to *** percent of U.S. production and *** percent of U.S. commercial shipments that year.¹²⁸ If the end-of-period inventories of subject producers in these three countries are also considered available for export to the United States and therefore included in the 1999 comparisons, these percentages would increase to *** percent of U.S. production and *** percent of U.S. commercial shipments that year.¹²⁹ In addition, I note that almost all of the subject producers in these three countries are sophisticated market participants who are long-established exporters of cold-rolled steel products.¹³⁰ Based upon the foregoing, I find that absent the restraining effects of the orders, subject producers in Germany, Korea, and the Netherlands, would direct significant volumes of exports to the U.S. market within a reasonably foreseeable time.

Likely Price Effects: First, I note that with regard to the CVD orders on Germany and Korea, Commerce has indicated that the likely rate of subsidization in the event of revocation is 0.55 percent for Germany, and 3.95 percent for Korea.¹³¹

Second, the pricing data collected in these reviews indicate that subject imports from Germany, Korea, and the Netherlands, undersold the domestic like product in 37 out of 81 quarterly pricing comparisons, for an incidence of underselling of 45.7 percent.¹³² The collected data account for 4.1 percent of U.S. commercial shipments in 1999; 9.5 percent of subject imports from Germany; 48.2 percent of subject imports from Korea; and 12.9 percent of subject imports from the Netherlands.¹³³ With regard to Korea and the Netherlands, I find significant the fact that subject imports evidenced a preponderance of underselling even with the orders in place.¹³⁴

With regard to Germany, the *** prices reflected in the data may be due to the *** volumes exported to the United States during the period of review.¹³⁵ In its original threat determination, the Commission found that imports of cold-rolled steel from Germany were likely to enter the U.S. market at prices that would have a suppressing or depressing effect on U.S. price levels; the Commission based this conclusion on record evidence of a preponderance of underselling by subject German imports, as well as a declining trend in average price levels for German imports.¹³⁶ Although actual pricing data for German imports does not evidence a preponderance of underselling during the period of review, the record does indicate that the average unit value of subject imports from Germany declined by roughly *** percent between 1997 and 1999, exceeding the *** percent decline in the average unit value of U.S. shipments

¹²⁸ See CR and PR at Tables COLD-III-1, COLD-III-2, and COLD-IV-3 through COLD-IV-5.

¹²⁹ See CR and PR at Tables COLD-III-1, COLD-III-2, and COLD-IV-3 through COLD-IV-5.

¹³⁰ See CR at COLD-IV-1 to COLD-IV-4, PR at COLD-IV-1 to COLD-IV-5.

¹³¹ CR and PR at COLD-I-1 and COLD-I-6.

¹³² CR and PR at Tables COLD-V-4 and COLD-V-5.

¹³³ CR at COLD-V-5; PR at COLD-V-4.

¹³⁴ See CR and PR at Tables COLD-V-4 and COLD-V-5.

¹³⁵ CR at COLD-V-6; PR at COLD-V-5.

¹³⁶ Original Determination, USITC Pub. 2664 at 134 (August 1993).

during the same period.¹³⁷

As I noted in discussing the relevant conditions of competition, sales contracts in this industry tend not to shield domestic producers from downward pricing pressures. The availability of low-priced imports may impact a producer either at the time of a contract renegotiation (which for many producers occurs within one year of entering into the underlying contract), or during the life of the contract at the request of the purchaser (notwithstanding the absence of a meet-or-release provision); indeed, this latter phenomenon may be expressly provided for, as in a life-of-the-part contract. Against this backdrop, and in light of the general decline in U.S. price levels as well as the pricing behavior evidenced by subject imports during the period of review and the original investigations, I find that revocation of the orders on Germany, Korea, and the Netherlands, would likely result in significant price suppression or depression in the U.S. market within a reasonably foreseeable time.

Finally, I note that the respondent parties introduced an econometric study conducted by Professor Prusa which purports to demonstrate that there is no evidence of a causal connection between subject imports and domestic prices for cold-rolled steel in these reviews.¹³⁸ During the public hearing, I identified three broad concerns regarding the probative value of Professor Prusa's study.¹³⁹ Despite an assurance by Professor Prusa that he would respond to my concerns in writing,¹⁴⁰ none of the respondents' post-hearing submissions contains a direct response by Professor Prusa to my questions. In my view, this failure to respond directly to my questions is unfortunate.¹⁴¹ I continue to harbor the concerns I expressed during the hearing; indeed, based upon these concerns I find that Professor Prusa's study holds neither probative nor persuasive value for assisting me in answering the question posed by the statute—*i.e.* whether revocation of the orders under review would be likely to result in continuation or recurrence of material injury to the domestic cold-rolled steel industry. Consequently, I have disregarded Professor Prusa's study in reaching my determinations in these reviews.

Likely Impact: First, as discussed above, I find the domestic cold-rolled steel industry to be in a vulnerable condition. Between 1997 and 1999, even as the domestic industry's per-unit cost of goods sold

¹³⁷ See CR and PR at Table C-2.

¹³⁸ Hearing Transcript at 225 (Sept. 12, 2000) (Prusa).

¹³⁹ Hearing Transcript at 265-267 (Sept. 12, 2000). Specifically, I asked the following three questions: (1) why is modeling that is based upon data that are drawn from a period during which the orders are in effect probative of the likely effects of revocation; (2) why is it reasonable to extrapolate a finding regarding nonsubject imports to subject imports, and to what extent does such an analysis fail to account for differences among producers in subject and nonsubject countries; and (3) by attributing price declines for cold-rolled steel in part to conditions in the corrosion-resistant steel industry, and by also attributing price declines for corrosion-resistant steel in part to prices for cold-rolled steel, does the analysis constitute an example of circular reasoning.

¹⁴⁰ Hearing Transcript at 267 (Sept. 12, 2000) (Prusa).

¹⁴¹ I note that in response to a written question posed by Commission staff, Professor Prusa did address the representativeness of the three-year time period encompassed by his data set. Response of Joint Respondents to Commission Written Questions at III-1 to III-6 (Sept. 29, 2000) (submitted by *Sharretts, Paley, Carter & Blauvelt* on behalf of the Joint Respondents). Professor Prusa's response does not, however, address my concerns. I continue to question why his conclusion that subject imports are not significant in setting U.S. price levels during a period in which the orders are in place provides any guidance as to the likely effect of subject imports in the event the orders are revoked. Furthermore, to the extent Professor Prusa concludes that nonsubject imports (which are not subject to additional duties) similarly are not significant in setting U.S. price levels, and that therefore revocation of the orders will not result in significant negative price effects, I find that Professor Prusa has failed to address the extent to which potential differences among producers in subject and nonsubject countries may render such an extrapolation invalid. I note in this regard that during the hearing I suggested to Professor Prusa specific examples of such potential differences among producers. Hearing Transcript at 266 (Sept. 12, 2000).

declined from *** to ***, the industry's operating margin declined from *** percent to *** percent (a function of declining price levels). The number of firms posting operating losses increased from *** in 1997 to *** in 1999, and the number of production and related workers in this industry declined *** percent during this period.

Against this backdrop, I note that I have determined that revocation of the orders on Germany, Korea, and the Netherlands, would likely result in an influx of significant import volumes at prices that would likely have significant negative price effects in the U.S. market. I further determine that these imports would have a significant adverse impact on the domestic industry's production, shipments, sales, market share, and revenues. These reductions in production, shipments, sales, market share, and revenues, would further result in a significant decline in the domestic industry's profitability and ability to raise capital and maintain necessary capital investments.

Conclusion–

For the foregoing reasons, I determine that revocation of the CVD order on Sweden would not be likely to result in material injury to the domestic cold-rolled steel industry within a reasonably foreseeable time. I further determine that revocation of the orders on Germany, Korea, and the Netherlands, would be likely to result in continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

**SEPARATE VIEWS OF COMMISSIONER MARCIA E. MILLER
ON COLD-ROLLED CARBON STEEL FLAT PRODUCTS**

Based on the record in these five year reviews, I determine under section 751(c) of the Tariff Act of 1930, as amended, that revocation of the antidumping duty orders on cold-rolled carbon steel flat products from Germany, Korea, and the Netherlands, and the countervailing duty orders on Germany and Korea, would lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I find that revocation of the countervailing duty order with respect to Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. Cumulation

A. No Discernible Adverse Impact from Sweden

I find that subject imports from Sweden are likely to have no discernible adverse impact on the domestic industry if the order is revoked, and therefore, do not cumulate likely subject cold-rolled steel from Sweden with likely subject cold-rolled steel from Germany, Korea, and the Netherlands. During the original investigation period, 1982-1984, subject imports from Sweden accounted for only 0.4 percent of the U.S. market.¹ Subject imports remained low during the review period, and in 1999 were 1.0 percent of total imports and 0.1 percent of the U.S. market.² Production capacity in Sweden, at *** short tons, is small relative to the production of any other subject country.³ Capacity has declined considerably since the original investigation, when Sweden's total capacity was *** short tons.⁴ SSTP, the only known Swedish producer of cold-rolled steel, reports operating at *** capacity. SSTP has exported about *** percent of its production in recent years, with about *** remaining in the European Union.⁵ The small capacity of the Swedish industry, combined with its emphasis on Europe as an export market, suggests that cold-rolled steel from Sweden would not represent more than a small fraction of total U.S. consumption. Thus, I find that subject imports from Sweden are likely to have no discernible adverse impact on the domestic producers of cold-rolled steel in the reasonably foreseeable future.

I do not find that subject imports from Germany, Korea, and the Netherlands are likely to have no discernible adverse impact on the domestic industry if the orders are revoked. All three countries individually maintain significant levels of cold-rolled steel production capacity. The subject cold-rolled steel is a fungible product, and all three countries are known to produce a full range of cold-rolled products. However, for the reasons discussed below, I exercise my discretion to cumulate the subject imports from Germany, Korea, and the Netherlands.

¹ CR/PR at Table COLD-I-1.

² CR/PR at Table COLD-I-1 and Table COLD-IV-6.

³ *Compare*, CR/PR at Tables COLD-IV-6 and COLD-IV-5.

⁴ CR/PR at Table COLD-II-1.

⁵ CR/PR at Table COLD-IV-6; CR at p. COLD-IV-4, PR at p. COLD-IV-5.

B. Cumulation of Imports from Germany, Korea, and the Netherlands

The threshold criterion for cumulation in these reviews is satisfied because all were initiated on the same day. In the original investigations, there was no consistent approach to cumulation.⁶

In these current reviews, producers found the subject imports to be interchangeable with U.S. cold-rolled steel as well as the other subject imports. Importers and purchasers noted some limitations among the subject imports and compared to the U.S. product, although most agreed that there is general interchangeability among all cold-rolled steel from all sources.⁷ Although U.S. ports of entry show little overlap between Germany, Korea, and the Netherlands, cold-rolled steel from each entered at least in some volume in each of four marketing regions during 1997-1999. During the original investigations, a similar geographic overlap was found.⁸ Further, subject imports from all three countries were present throughout the review period as well as during the original investigation period.

The record suggests some differences in the type of cold-rolled steel sold and the channels of distribution, when comparing the subject countries and U.S. product. Cold-rolled steel from Germany and the Netherlands is sold in the contract market, while that from Korea has been sold in the spot market. U.S. producers sell in both markets.⁹ Cold-rolled steel from the Netherlands has been composed largely of full-hard steel, which also enters from Korea, but at more limited volumes.¹⁰ Production capacity in the three countries also varies, but all countries are technologically advanced, have similar capabilities to produce a full-range of products, and sell to OEM customers throughout the world.

Taking into account these factors, I find that, if the orders are revoked, subject imports from Germany, Korea, and the Netherlands would likely compete under similar conditions of competition, given the general fungibility of cold-rolled steel and the known ability of each of these countries to produce and export a full range of cold-rolled steel products. Therefore, I exercise my discretion to cumulate subject imports in these reviews.

II. Conditions of Competition

In evaluating the impact of subject imports on the domestic industry if an antidumping or countervailing duty order is revoked, the statute directs the Commission to evaluate all of the relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹¹ Discussed below are the conditions of competition that weigh significantly in my determination that revocation of the orders is likely to lead to continuation or recurrence of material injury to the cold-rolled steel industry within a reasonably foreseeable time.

Domestic demand for cold-rolled steel products, which is tied to demand in the general economy, has increased significantly since the original investigations. In 1992, total apparent domestic consumption neared 28.5 million tons. By 1999, total apparent domestic consumption reached 37.8 million tons.¹²

⁶ USITC Pub. No. 2664.

⁷ CR/PR at Tables COLD-II-4 and COLD-II-7.

⁸ USITC Pub. No. 2664 at pp. 103-104.

⁹ CR at p. COLD-V-3, PR at p. COLD-V-2. Dutch Prehearing Cold-Rolled Brief at 18; German Group Prehearing Cold-Rolled Brief at 25-26.

¹⁰ Dutch Prehearing Cold-Rolled Brief at 15-16.

¹¹ 19 U.S.C. § 1675a(a)(4)

¹² CR/PR at Table COLD-I-1. I am mindful that the comparisons between the industry evidence in the original determinations and the industry evidence gathered in these reviews may be somewhat distorted, as a result

As domestic demand has increased, the capacity of domestic producers has similarly increased. In 1992, total domestic cold-rolled production capacity was 34.4 million tons.¹³ By 1997, domestic cold-rolled capacity was 38.6 million tons, a 12 percent increase in five years. Production capacity continued to be added during the period of review, increasing 6.4 percent between 1997 and 1999.¹⁴

While there are few potential substitute products for cold-rolled steel in its primary end uses,¹⁵ improvements in galvanizing technology and cost declines since the original determinations have significantly increased demand for corrosion-resistant steel, a downstream product requiring cold-rolled steel as its major input. The shift has been most notable in the automotive market. In 1989, approximately 52 percent of the steel consumed in an automobile's fabrication was cold-rolled steel, while 20 percent was galvanized. By 2000, only 14 percent of such steel is typically cold-rolled steel, while galvanized products account for 58 percent.¹⁶

Most domestic production of cold-rolled steel is captively consumed by domestic producers or related parties in the production of downstream products, including corrosion-resistant steel.¹⁷ The amount of domestically-produced cold-rolled steel consumed captively or by related-party galvanizers increased by nearly 20 percent between 1997 and 1999, rising from 18.6 million tons to 22.2 million.¹⁸ The percentage of total cold-rolled shipments that were consumed captively or by related-party galvanizers increased from 51.8 percent in 1992 to 63.0 percent in 1999.¹⁹

While a growing volume of domestically produced cold-rolled steel is captively consumed, commercial sales remain an important market for the domestic industry, accounting for over one-third of all production.²⁰ More importantly, in considering competition with the three subject countries, 63 percent of all domestic commercial sales are to end users, such as OEMs, and the remaining 37 percent is sold to distributors or service centers.²¹ Subject cold-rolled steel from Germany, Korea, and the Netherlands either already competes in the U.S. OEM market, or competes in this market in the home market and third countries.

In recent years, major purchasers have undergone significant consolidation, most notably in the automotive and appliance industries.^{22 23} Similarly, steel service centers have also merged, with the total number of establishments falling from about 7,000 in 1993 to 3,000 today.²⁴ These consolidated service centers exercise greater control over buying patterns and an increased ability to purchase cold-rolled steel

of the domestic producers' inability to segregate microalloy products from the domestic like product in their questionnaire responses in these reviews. Given the domestic producers' own uncertainty as to the inclusion of microalloy products in the questionnaire responses in the 1993 investigations, I find it likely that the comparisons are sufficiently valid to indicate the magnitude of the change in the industry, including apparent consumption. Domestic Producers' Common Issues Prehearing Brief at Exh. 1.

¹³ USITC Pub. No. 2664 at Table 15.

¹⁴ CR/PR at Table COLD-III-1.

¹⁵ CR at p. COLD-II-12, PR at p. COLD-II-8.

¹⁶ Dutch Posthearing Cold-Rolled Brief at A-4.

¹⁷ I do not find that the captive production provision, 19 U.S.C. § 1677(7)(c)(iv), applies to five-year reviews.

¹⁸ CR/PR at Table COLD-III-11.

¹⁹ USITC Pub. 2664 at Table 9; CR at Table COLD-III-2, PR at Table COLD-III-2.

²⁰ CR/PR at Table COLD-III-11.

²¹ OINV Table COLD-X-4, 10/04/2000.

²² Domestic Producers' Posthearing Cold-Rolled Brief at 14.

²³ Domestic Producers' Posthearing Cold-Rolled Brief at 15.

²⁴ Domestic Producers' Posthearing Cold-Rolled Brief at 15.

from a wider range of non-U.S. sources.²⁵

Most domestic producers sell their cold-rolled steel by contract, which generally fix both price and quantity.²⁶ These contracts generally are from six months to one year in duration.²⁷ Producers contend that despite the contracts, they have little protection from requests for price concessions when spot market prices fall.²⁸ Domestic producers have submitted contracts which suggest that sales contracts with some of the largest purchasers may be somewhat one-sided, granting purchasers the ability to terminate contracts with little cause.²⁹ Several respondents disagree with the petitioners' claims, arguing that purchasers do not routinely request changes to contracts.³⁰

III. Whether Revocation of the Orders on Subject Cold-Rolled Steel from Germany, Korea, and the Netherlands is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

A. Germany, Korea, and the Netherlands

I determine that revocation of the antidumping and countervailing duty orders on cold-rolled steel from Germany, Korea, and the Netherlands would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

The subject countries in these reviews have argued that the size of their home markets and other export markets will limit the likely volumes that would enter the U.S. market if the orders are revoked. Further, they have argued that they do not compete with the U.S. producers, primarily given the volume of U.S. internal consumption by the domestic industry. However, even with the orders in place, imports from these three countries have accounted for seven percent of total imports.³¹ Further, Germany, Korea, and the Netherlands compete in the U.S. market in a manner distinct from many other third country sources that export mostly commodity-grade cold-rolled steel. Germany and the Netherlands compete in the automotive sector in the European Union, and Germany is active in the automotive sector in the United States, as well. Producers in the Netherlands also sell in a manner similar to much of the commercial market sales of the U.S. producers, that is, through long-term purchasing patterns and contract sales. While Korea has competed in the spot market during the review period, it sells to OEMs in third countries and in its home market, where it also ships a substantial portion of its cold-rolled steel to automotive and other OEM customers. Finally, I note that at least one major U.S. purchaser of cold-rolled steel, General Motors, has indicated that it will consider subject imports as viable sources if the orders are revoked.

The record in these reviews shows relatively high capacity in each of the three countries, although all reported capacity utilization rates for all cold-rolled steel in 1999 that were well below rates in 1997.³² Cumulated inventories have increased, finishing the period higher in 1999 than in 1997.³³ Producers in all

²⁵ Domestic Producers' Posthearing Cold-Rolled Brief at 15.

²⁶ CR at p. COLD-V-3, PR at p. COLD-V-3.

²⁷ CR at p. COLD-V-3, PR at p. COLD-V-3.

²⁸ Domestic Producers' Posthearing Response to Questions at Exhibits 17-20.

²⁹ Domestic Producers' Posthearing Response to Questions at Attachment B, p.2.

³⁰ *See, e.g.*, General Motors Prehearing Brief at 4; Their Posthearing Brief at 2; German Group Response to Posthearing Questions at 17.

³¹ Derived from CR/PR at Table COLD-I-1.

³² CR/PR at Tables COLD CRS-SUPP-1, -2, and -3.

³³ CR/PR at Table COLD-IV-2.

three countries have established distribution systems in the U.S. market, through affiliated companies, and have the ability to increase exports through these networks. Given the nature of competition in this market and the fungibility of cold-rolled steel, a relatively small increase in the volume of cumulated subject imports would be significant. Based on these facts, I find that subject import volumes are likely to be significant if the orders are revoked.

In the original investigations, subject imports from Germany, Korea, and the Netherlands were found to threaten the domestic industry with price suppressing or depressing effects.³⁴ Pricing comparisons for the review period were limited, but showed mixed under- and overselling. As discussed in the Conditions of Competition section, even long-term contracts, which typically set price and volume, may not prevent purchasers from requesting price adjustments based on changes in prices in the spot market.³⁵ The domestic industry argued that prices in the U.S. market have fallen this year, continuing a trend that is seen in price data throughout the review period.³⁶ Given the history of price suppression and depression and some underselling by subject imports even with the orders in place, I conclude that the cumulated subject imports would likely undersell the domestic cold-rolled steel and significantly suppress or depress prices if the orders are revoked.³⁷

In the original threat determinations regarding Germany, Korea, and the Netherlands, the Commission majority found that the subject imports presented an imminent threat of material injury to the domestic industry. The condition of the domestic industry has improved in several respects since the 1993 investigations. In 1992, a majority of domestic producers reported operating losses on total cold-rolled operations, and operating income was negative, which the Commission found threatened the domestic industry's ability to undertake much-needed investments.³⁸ Since 1993, the industry has both modernized existing capacity and added new capacity.³⁹ Production increased significantly, productivity improved, and capacity utilization rose steadily throughout the review period.⁴⁰ Productivity improvements, however, occurred concurrent with declines in production and related workers and hours worked.⁴¹ Although the domestic industry reported positive operating income in 1997-1999, operating income margins trended downward, with the industry showing operating profit of only 0.4 percent for total sales, and a loss of 0.6 percent for commercial sales, in 1999.⁴² Domestic prices and average unit values also fell during the period, and a decrease in cost of goods sold was not enough for the industry to offset the declining prices.⁴³

³⁴ USTIC Pub. No. 2664 at pp. 134, 159, 301, and 388.

³⁵ Posthearing Brief of the Domestic Producers, Exhibits 17-20.

³⁶ CR/PR at Tables COLD F-1 - F-10; CR at p. COLD-V-6, PR at p. COLD-V-4-5.

³⁷ In reaching my conclusion on likely price effects, I have taken into account Commerce's duty absorption findings on Korea (65 *Fed. Reg.* 24,180 (Apr. 25, 2000)), although I note that a CIT decision (*SKF USA Inc., et al. v. United States*, CIT No. 99-08-00473, Slip Op. 00-28 (Mar. 22, 2000)) calls into question the validity of Commerce's duty absorption findings with respect to transition orders.

³⁸ USITC Pub. No. 2664 at p. 135.

³⁹ Domestic Producers' Prehearing Cold-Rolled Brief at 49-50.

⁴⁰ CR/PR at Tables COLD-III-1 and COLD III-6. In 1992, the domestic industry produced 26.6 million tons of cold-rolled steel, utilizing 77.2 percent of its capacity. In 1997, production was 31.6 million tons and capacity utilization was 81.7 percent. By 1999, total production was 35.4 million tons and capacity utilization reached 86.0 percent.

⁴¹ CR/PR at Table COLD-III-6.

⁴² CR/PR at Tables COLD-III-7 and COLD-III-11.

⁴³ CR/PR at Table COLD-III-7 and Tables F-1-F-10.

As income fell, the domestic industry reduced its capital expenditures in each year of the review period.⁴⁴ Based on these facts, I find that the domestic industry is in a vulnerable state.

I find that revocation of the orders is likely to lead to significant volumes of cumulated subject imports and to significant price effects, and therefore, that the subject imports are likely to have a significant adverse impact on the domestic industry's production, sales, market share, and profitability. I conclude that revocation of the orders on cold-rolled steel from Germany, Korea, and the Netherlands would be likely to lead to continuation or recurrence of material injury to the domestic cold-rolled steel industry within a reasonably foreseeable time.

B. Sweden

In 1984, the final year of the original investigation period, subject imports from Sweden totaled 67,000 short tons, and accounted for 0.4 percent of the U.S. market. During the review period, such imports were well below that level, ranging from 15,826 short tons to 27,853 short tons.⁴⁵ Sweden's current capacity to produce cold-rolled steel is *** short tons, a 25 percent decline from the level during the original investigation. Further, the sole Swedish producer reports operating at *** capacity.⁴⁶ I find that the likely volume of subject imports from Sweden should the countervailing duty order be revoked will not be significant in light of the low capacity levels and the *** capacity utilization rates. I further find that the small volume of likely subject imports from Sweden would not be likely to have significant price effects in the domestic market. Thus, I find that the subject imports from Sweden would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time if the order is revoked.

⁴⁴ CR/PR at Table COLD-III-14.

⁴⁵ CR/PR at Table COLD-I-1.

⁴⁶ CR/PR at Table COLD-IV-6.

ADDITIONAL VIEWS OF VICE CHAIRMAN DEANNA TANNER OKUN

I join in the Views of the Commission in all of these reviews. I write separately to discuss several aspects where my analysis differs from the majority. Specifically, I set forth my views on the assessment of generalized information relating to the domestic industry, and of my analysis of the significance of the allegations of cartel-like or anti-competitive behavior made in these reviews.

As a general matter, I believe that it would be contrary to the intent of Congress in drafting the statute for the Commission to ignore more generalized information that affects the domestic industry merely because it includes, but is not necessarily exclusive to, the particular industry that corresponds to our domestic like product definition. This issue has arisen in these reviews, including in the assessment of Professor Kothari's analysis of the vulnerability of the domestic industries. As noted earlier, I disagree with the view that the statute mandates a rejection of Professor Kothari's analysis because it includes information on the overall flat-rolled steel industry.¹ I am mindful that the statute requires a determination based on the state of the industry as defined in 19 U.S.C. § 1677(4)(A). However, I do not believe that the statute precludes assessment of evidence relating to the impact of imports on the domestic industry merely because the evidence relates to overall operations of any particular company. I can envision situations where it may be impossible to separate information with respect to an industry as defined in 19 U.S.C. § 1677(4)(A) from the larger commercial entity to which it belongs. For example, it would not be unusual for evidence to be presented with respect to a company's (as opposed to an industry as defined in 19 U.S.C. § 1677(4)(A)) inability to raise capital or investment. Yet, the statute directs me to assess the impact of imports on an industry's ability to raise capital and its investment. I do not believe that the statute requires, or even permits me to ignore evidence of a company's inability to raise capital to expand or continue operations or attract investment merely because it happens to produce other products. Instead, I would attempt to ascertain that the evidence also relates to the industry in question.

I have also considered the record evidence of cartel-like or anti-competitive behavior in my analysis. In an industry where both the domestic and the foreign producers often produce numerous steel products in addition to the subject products, the evidence presented regarding global overcapacity to produce steel products should be given weight in evaluating whether subject producers have the incentive to export to the United States market and how capacity utilization projections are reported.

Moreover, the statute directs me, in evaluating the likely volume of imports if the existing orders are revoked, to consider, *inter alia*, the existence of barriers to the importation into countries other than the United States.² Significantly, the statute does not distinguish between tariff and non-tariff barriers to trade. Credible evidence of cartel-like or anti-competitive behavior is an important consideration in these reviews because the industries in many of the subject countries remain export-oriented.

In support of their arguments, the Domestic Interested Parties presented detailed examples of anti-competitive behavior by steel manufacturers in the subject countries (both individually and collectively) as well as anti-competitive behavior among and within both subject and nonsubject countries. For example, *RESTRAINED TRADE: Cartels in Japan's Basic Materials Industry* discusses the role of Japanese steel industry "cohesion" in maintaining relatively high domestic prices while resisting price-based competition

¹ While I did not rely on Professor Kothari's analysis in making my determination, I did not do so because of his reliance on indicators pertaining to the overall steel industry, but rather because I disagreed with his reliance on stock prices in assessing the vulnerability of the industry. As I stated in the majority opinion, I believe that factors other than the current condition of the domestic industry may impact any individual company or sector's stock price.

² Section 752 (a)(2)(C); 19 U.S.C. §1675a(2)(C).

from imports.³ This information is placed in the context of recent global steel trends in *Japan's Steel Cartel and the 1998 Steel Export Surge*.⁴ Domestic Interested Parties also provide a historical -- if dated -- overview of market controls in Western Europe and their implications for international trade in *Steel and the State: Government Intervention and the Steel's Structural Crisis*,⁵ which they update somewhat through press articles and decisions by the Commission of the European Communities.⁶ They also provide examples of home market dominance in Brazil and Korea⁷ and trade barriers in China and India.⁸

The Domestic Interested Parties also submitted for the record a recent report prepared by the Department of Commerce,⁹ identifying a number of market forces that contributed to the so-called "Steel Import Crisis," including weak Asian demand; currency depreciation; strong U.S. demand; and external shocks (such as the GM strike). Importantly, the report also identifies a more fundamental, long-term problem: global overcapacity. It contends that market-distorting practices, whether government-mandated, government-encouraged, or simply government-tolerated, hinder adjustments to market forces such as those noted above. It distinguishes four principal market-distorting practices: direct government assistance; apparent coordination among steel producers; unsound banking practices; and import barriers.¹⁰ Importantly, it examines in depth the national and international markets of several of the industries subject to these reviews.¹¹

GLOBAL STEEL TRADE bluntly asserts that Japan's major structural problem is its noncompetitive steel market. It cites as evidence the static nature of relative production by the top five Japanese manufacturers (production shares have remained virtually unchanged for 25 years); high and stable domestic prices; and a history of international price discrimination. Thus, the Japanese market is portrayed as a high-priced domestic profit sanctuary, wherein Japanese manufacturers garner revenue to

³ *RESTRAINED TRADE: Cartels in Japan's Basic Materials Industries* by Mark Tilton (Cornell University Press, Ithaca and London, publication date not provided), pp. 177, 180-183. Exhibit 9 of Volume I of the Prehearing Brief of Domestic Interested Parties.

⁴ *Japan's Steel Cartel and the 1998 Steel Export Surge* by Mark Tilton (Japan Information Access Program, Washington, DC, Oct. 23, 1998), pp. 9-12. Exhibit 11 of Volume I of the Prehearing Brief of Domestic Interested Parties. Other recent descriptions of the state of the Japanese steel industry appear in a selective presentation of Japanese press articles in Exhibits 12 and 13 of Volume I of the Prehearing Brief of Domestic Interested Parties.

⁵ *Steel and the State: Government Intervention and the Steel's Structural Crisis* by Thomas Howell, William Noellert, Jesse Kreier, and Alan Wolff (Westview Press, Boulder and London, publication date not provided), pp. 77, 95-108. Exhibit 18 of Volume I of the Prehearing Brief of Domestic Interested Parties.

⁶ See generally Exhibits 16-22 of Volume I of the Prehearing Brief of Domestic Interested Parties.

⁷ See generally Exhibits 23-26 of Volume I of the Prehearing Brief of Domestic Interested Parties, citing the June 17, 1999, Securities and Exchange Commission filing of Pohang Iron & Steel Co., Ltd., of Korea, as well as press articles from *Seoul Yonhap* and *Metal Bulletin*.

⁸ See generally Exhibits 27-41 of Volume I of the Prehearing Brief of Domestic Interested Parties, citing national, regional, and international press commentary describing, *inter alia*, price floors, import duty increases, cartelization, and import substitution.

⁹ *GLOBAL STEEL TRADE: Structural Problems and Future Solutions* (U.S. Department of Commerce, Washington, DC, July 2000).

¹⁰ *GLOBAL STEEL TRADE* at 37.

¹¹ See also testimony by Robert S. LaRussa, Undersecretary for International Trade, U.S. Department of Commerce. Plate transcript at 31-47.

fund R&D (thus maintaining global competitiveness) or to sustain low-priced exports (thus maintaining efficient production practices).¹²

In addition to the cooperative practices, *GLOBAL STEEL TRADE* identifies import barriers that allow the maintenance of a high-priced domestic profit sanctuary. Purportedly, these barriers contribute to the very small import penetration of the Japanese steel market (less than 10 percent). These barriers include a distribution system that is dominated by trading companies related to the Big Five integrated producers; implied or stated “refusal to deal” with customers that seek to diversify their supply arrangements; onerous product certification; and international agreements with EU producers (the so-called “East of Burma” agreement) and the dominant Korean producer, POSCO.¹³

GLOBAL STEEL TRADE focuses on two primary distortions in the Korean market: purportedly unsound bank lending practices and the dominance of a single domestic producer, POSCO. Unsound lending practices, according to the analysis provided, led to overinvestment and excess capacity among the Korean *chaebol*. The report notes that integrated producer POSCO originally achieved its dominant position (accounting for 50-70 percent of Korean steel production) through government support. However, because of its strong position it did not require excessive lending, and so avoided many of the difficulties faced by other Korean producers.¹⁴

GLOBAL STEEL TRADE identifies several potential distortions in the Brazilian steel market. The report characterizes the Brazilian steel industry as “oligopolistic” and cites determinations by CADE that the steel industry has engaged in cartel-like behavior. It also notes apparent market segmentation as well as a substantial degree of cross-ownership.¹⁵ *GLOBAL STEEL TRADE* contends that certain market factors make it difficult to export to Brazil, and identifies as import barriers certain taxes and tariffs, the import licensing system, and the “captive” nature of the distribution network.¹⁶

At the hearing, I asked Respondent Interested Parties to respond to these allegations.¹⁷ Respondent Interested Parties presented some arguments at the hearing, noting the age of many of the allegations,

¹² *GLOBAL STEEL TRADE* at 65-72.

¹³ *GLOBAL STEEL TRADE* at 73-75; 80-84.

¹⁴ *GLOBAL STEEL TRADE* at 87-93.

¹⁵ *GLOBAL STEEL TRADE* at 98-101.

¹⁶ *GLOBAL STEEL TRADE* at 102-103.

¹⁷ Cold-rolled transcript at 299; Corrosion-resistant transcript at 297; Plate transcript at 304.

challenging the reliability of the assertions, and questioning the conclusions drawn by the Domestic Interested Parties.^{18 19 20} Some Respondent Interested Parties supplemented their arguments

with written submissions, contesting the validity of the characterizations of certain national,²¹ regional,²² or international steel markets, explaining observed trade patterns,²³ or questioning potential market distorting practices in the United States.²⁴

Although numerous papers have been written over the years about anti-competitive practices in the steel industry and global overcapacity, the Department of Commerce study was one of the most comprehensive U.S. Government reports on the subject of which I am aware. Therefore, I do not discount the report simply as "an election year political document."²⁵

In conclusion, I have taken into consideration the information on the record that I find responsive to the Commission's statutory factors. I have carefully appraised the details provided in the record and the extent to which certain broader characterizations regarding the flat-rolled steel industry may reflect market conditions for the subject merchandise. I am aware of the disputed nature of some of the characterizations contained in the record, and that some of the information may portray historical, rather than current or likely, market conditions. I have also analyzed the competing incentives that certain anti-competitive

¹⁸ See, e.g., testimony of Peter Ammon, economic minister of the German Embassy: "We take issue with the assertions made by the U.S. producers that there is an illegal steel cartel in the European Union. The EU and German competition authorities are quite conscientious in performing their duty to ensure that the market in European remain free and competitive. Indeed, we are not aware of any evidence that the German producers of the products subject to these five-year-review proceedings are engaged in any anti-competitive conduct." Cold-rolled transcript at 212.

¹⁹ See, e.g. testimony of Robert Litan, Vice President and Director of Economic Studies at Brookings Institute: "We, of course, vigorously deny there's any cartel, but let's suppose hypothetically that there is a cartel. It would imply that prices abroad are higher than they are here. Well, if you took off the orders, what incentive would there be for the producers who are now at capacity to sell at lower prices in the United States? So the cartel allegation doesn't make any sense and doesn't justify or doesn't explain why they'd sell here." Corrosion-resistant transcript at 205.

²⁰ See, e.g. testimony of Richard O. Cunningham, Esquire, Steptoe & Johnson, L.L.P.: "This cartel stuff has a -- particularly this east of Burma and all of that stuff has a 25-year history. I started doing international trade work in steel in 1975. Shortly thereafter these exact same allegations were raised in at trade case by the U.S. specialty steel industry, and were investigated by the Office of the U.S. Trade Representative, and found no trade diversion." Plate transcript at 307.

²¹ The Brazilian Plate Respondents, for instance, report that the CADE finding of cartel-like violations of Brazilian antitrust laws has been suspended pending judicial review, argue that there is no artificial market segmentation or other barriers to importation, and state that Brazil has not contributed to any overcapacity in plate production. Response of USIMINAS and COSIPA at exhibit 9.

²² The Finnish Plate Respondents, for instance, noted that the European Commission has implemented an "activist antitrust policy against illegal cartels" in the steel sector; that the EU is reducing customs duties on steel imports; and that the EU only maintains quantitative restrictions on steel imports from Russia, Ukraine, and Kazakhstan. Response of Rautaruukki Oyj at 20-22.

²³ The Swedish Plate Respondents, for instance, attribute any decline in plate exports to Japan following EU membership to the size and openness of the European market, the distance between Japan and Europe, and changing product mix. Posthearing Brief of SSAB at Attachment 1.

²⁴ *Subsidies to the U.S. Steel Industry* (The American Institute for International Steel, Washington, DC, Nov. 1999) pp. 1-6, appears in the Posthearing Brief of German Plate Respondents at Appendix 2.

²⁵ Korean Cold-Rolled Respondents's Posthearing Brief at 12.

practices might have, i.e., simultaneously making the home or regional market more attractive in terms of market prices (assuming that imports into the market in question can be limited) and encouraging the retention or expansion of capacity that might otherwise be considered redundant. Accordingly, when analyzing such issues as the availability of export markets other than the United States, I have based my conclusions on the record as a whole, considering carefully the information and arguments provided by all parties.

**DISSENTING VIEWS OF CHAIRMAN STEPHEN KOPLAN AND
COMMISSIONER THELMA J. ASKEY IN CUT-TO-LENGTH
CARBON STEEL PLATE FROM THE UNITED KINGDOM
INV. NOS. 701-TA-328 & 731-TA-587 (REVIEW)**

We concur with our colleagues' findings with respect to the domestic like product and the domestic industry. However, for the reasons discussed below, we determine that revocation of the antidumping duty order on cut-to-length carbon steel plate ("plate") from the United Kingdom would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. CUMULATION

In sunset reviews, the statute states that the Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise if those imports are "likely to have no discernible adverse impact on the domestic industry" upon revocation of the order covering those imports.¹ The Commission does have the discretion to cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews were initiated on the same day if those imports would be likely to compete with each other and with the domestic like product within a reasonably foreseeable time if the orders are revoked.²

We have considered whether the subject imports from the subject countries are likely to have a "discernible adverse impact" on the domestic industry upon revocation of the orders. For the reasons set forth in the *Views of the Commission*, we find that the likely imports from the United Kingdom will have a discernible adverse impact on the domestic industry.

In this case, the reviews of the orders covering plate from all subject countries were initiated on the same day. The relevant inquiry then is whether there would likely be competition among the domestic and subject merchandise within the reasonably foreseeable future, even if none currently exists. We find, for the reasons discussed in the *Views of the Commission*, that there is likely to be a reasonable overlap of competition among the subject imports from the United Kingdom and between those subject imports and the domestic merchandise upon revocation of the order.

However, our cumulation analysis in a five-year review encompasses more than an examination of whether there would likely be a reasonable overlap of competition. We also have examined the overall similarities and differences in the conditions of competition that likely would prevail if the orders under review are revoked in assessing whether it is appropriate for us to exercise our discretion to cumulate subject imports from each country.

There is currently one producer of plate in the United Kingdom, Corus.³ In 1999, British Steel merged with Hoogovens to form Corus Group. The operations of the former British Steel are now conducted by Corus UK, a wholly-owned subsidiary of Corus Group.⁴ Corus UK, in turn, fully owns

¹ Section 752(a)(7) of the Act, 19 U.S.C. § 1675a(a)(7).

² 19 U.S.C. § 1675a(a)(7).

³ CR at PLATE-IV-14, PR at PLATE-IV-13. The only other UK producer of plate, Spartan Redheugh, ceased production in 2000 and is in liquidation. *Id.* at n. 37.

⁴ CR at PLATE-IV-14, PR at PLATE-IV-13.

Tuscaloosa Steel, a significant U.S. domestic plate producer.⁵ Corus, then known as British Steel, acquired full ownership and control of Tuscaloosa Steel around the middle of the original period of investigation (January, 1991). Whereas during the original period of investigation, Tuscaloosa Steel was somewhat limited in the range of products it produced, British Steel spent over 250 million dollars expanding and upgrading Tuscaloosa Steel's production facilities, making it a fully integrated domestic plate producer.⁶ In addition, any imports from the United Kingdom by Corus, the sole U.K. producer, likely would enter the East Coast or the Gulf Coast, both of which are key markets for Tuscaloosa Steel. These conditions of competition position Corus very differently from all other subject producers given that no other subject producer in any subject country has such a relationship with a domestic producer.⁷ Corus' participation in the domestic market is likely to be altered by its relationship with -- and significant investment in -- Tuscaloosa Steel. Based on the foregoing, we have not exercised our discretion to cumulate subject imports from the United Kingdom with subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden and Taiwan.

II. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING IMPORTS OF CARBON STEEL PLATE FROM THE UNITED KINGDOM IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

The record in this sunset review indicates that the volume of subject imports from the United Kingdom in the reasonably foreseeable future is not likely to be significant if the order is revoked. Subject plate imports from the United Kingdom were not significant during the original period of investigation, accounting for a mere 0.4 percent of the U.S. market in 1992.⁸ Current conditions in the markets in both the United States and the United Kingdom do not suggest that the likely volume of subject imports from the United Kingdom would be significantly greater than it was in 1992 if the order was revoked.⁹ First, as mentioned above, Corus' subsidiary, Tuscaloosa Steel, is now a fully integrated domestic plate producer. Tuscaloosa Steel has ***, which suggest that any increased sales in the U.S. by the Corus Group would come first from Tuscaloosa's domestic production, not subject imports.¹⁰

Moreover, Corus currently is operating at a relatively high capacity utilization rate.¹¹ Historically, *** percent of Corus' plate is sold in the United Kingdom and Europe; the remaining ***.¹² A Canadian

⁵ CR and PR at Table PLATE-I-3.

⁶ CR at PLATE-II-16, PR at PLATE-II-12.

⁷ See CR and PR at Table PLATE-I-3.

⁸ CR and PR at Table PLATE-I-1.

⁹ In 1999, there were no subject imports from the United Kingdom. CR and PR at Table PLATE-I-1.

¹⁰ See CR and PR at Table PLATE-III-6; Corus' Foreign Producer Questionnaire. Products available from Corus' operations in the United Kingdom but not produced at Tuscaloosa Steel are high-strength structural steels at extreme widths and thicknesses, and are produced only in response to an order. Orders are not made on the basis of price, but rather quality performance, delivery performance, and reliability. CR at PLATE-II-17, PR at PLATE-II-12.

¹¹ ***. CR at PLATE-IV-14, PR at PLATE-IV-13; CR/PR at TABLE IV-13.

¹² CR and PR at Table PLATE-IV-14. We note that the decline in the value of the euro relative to the pound sterling has not significantly altered this fact. Corus provided its export data for 1997 through 1999

antidumping order against plate exports from the United Kingdom was revoked following the conclusion of a five-year sunset review in 1999.¹³ Corus pointed out that its exports to Canada did not increase significantly following the revocation of the Canadian plate dumping order on the U.K.¹⁴ This reflects the fact that Corus is currently operating at a relatively high rate of capacity utilization and is focused on its home market and the European market.¹⁵ For these reasons, we do not believe it is likely that Corus will ship a significant volume of subject plate to the United States if the order is revoked.

The anticipated likely level of subject imports are not likely to cause significant price effects in the domestic market. Indeed, in importing plate, Corus is not likely to establish prices to undermine the competitive situation of Tuscaloosa Steel in its sales of plate products.¹⁶ Moreover, with its relatively high capacity utilization, Corus does not have an incentive to price aggressively to increase its sales to the United States.

Finally, the likely low level of subject imports and the absence of a significant effect on domestic prices are not likely to materially contribute to any injury experienced by the domestic plate industry.

For the foregoing reasons, we determine that revocation of the antidumping duty order on cut-to-length carbon steel plate from the United Kingdom would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

broken out by country of destination. Those data show that, in 1999, Corus shipped about *** of its exports to the EU. Corus' Response to September 18, 2000 questions from the ITC (Sept. 29, 2000), at 9.

¹³ CR at PLATE-IV-14, PR at PLATE-IV-14.

¹⁴ CR at PLATE-II-17, PR at PLATE-II-12.

¹⁵ See CR and PR at Table PLATE-IV-13.

¹⁶ See Prehearing brief of Bethlehem Steel Corp., LTV Steel Company, Inc., Ispat Inland Inc., U.S. Steel Group, and AK Steel Corporation at Exhibit 25 (*World Steel Dynamics*, October 28, 1999 article stating "plate producers, led by Tuscaloosa Steel, have tried to implement a price increase for late November 1999 shipments.")