

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**HOT-ROLLED STEEL PRODUCTS FROM ARGENTINA, CHINA, INDIA,  
INDONESIA, KAZAKHSTAN, NETHERLANDS, ROMANIA,  
SOUTH AFRICA, TAIWAN, THAILAND, AND UKRAINE**

**Investigations Nos. 701-TA-404-408 (Preliminary) and 731-TA-898-908 (Preliminary)**

**DETERMINATIONS AND VIEWS OF THE COMMISSION  
(USITC Publication No. 3381, January 2001)**

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### **HOT-ROLLED STEEL PRODUCTS FROM ARGENTINA, CHINA, INDIA, INDONESIA, KAZAKHSTAN, NETHERLANDS, ROMANIA, SOUTH AFRICA, TAIWAN, THAILAND, AND UKRAINE**

#### **DETERMINATIONS**

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina, India, Indonesia, South Africa, and Thailand of hot-rolled steel products that are alleged to be subsidized by the Governments of Argentina, India, Indonesia, South Africa, and Thailand. The Commission also determines, pursuant to section 733(a) of the Act (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina, China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine of hot-rolled steel products that are alleged to be sold in the United States at less than fair value (LTFV).

#### **COMMENCEMENT OF FINAL PHASE INVESTIGATIONS**

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

#### **BACKGROUND**

On November 13, 2000, petitions were filed with the Commission and the Department of Commerce on behalf of Bethlehem; Gallatin; IPSCO; LTV; National; Nucor; SDI; USX; Weirton;<sup>2</sup> and the labor union representing the organized workers at Weirton Steel Corp. known as the Independent Steelworkers Union, alleging that an industry in the United States is materially injured, and is threatened

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

<sup>2</sup> Weirton is not a petitioner in the investigation involving the Netherlands.

with material injury, by reason of subsidized imports of hot-rolled steel products from Argentina, India, Indonesia, South Africa, and Thailand and by reason of LTFV imports of the same from Argentina, China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine. Accordingly, effective November 13, 2000, the Commission instituted countervailing duty investigations Nos. 701-TA-404-408 (Preliminary) and antidumping duty investigations Nos. 731-TA-898-908 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 22, 2000 (65 FR 70364). The conference was held in Washington, DC, on December 4, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

## IEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of hot-rolled steel products from Argentina, India, Indonesia, South Africa, and Thailand that are allegedly subsidized and by reason of imports of hot-rolled steel products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine that are allegedly sold in the United States at less than fair value (“LTFV”).

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

### II. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>3</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>4</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . .”<sup>5</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>6</sup> No single factor is dispositive, and the Commission

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<sup>1</sup> 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int’l Trade 1999).

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

<sup>3</sup> 19 U.S.C. § 1677(4)(A).

<sup>4</sup> 19 U.S.C. § 1677(4)(A).

<sup>5</sup> 19 U.S.C. § 1677(10).

<sup>6</sup> See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.<sup>7</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>8</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>9</sup>

## **B. Domestic Like Product<sup>10</sup>**

Petitioners argue that there is a single domestic like product consisting of all domestically-produced hot-rolled steel, including those steels with slightly elevated levels of microalloying elements (“microalloy steels”).<sup>11</sup> No respondent party has argued differently. Based on the record in the preliminary phase of these investigations, we determine that there is one domestic like product consisting of all hot-rolled steel products corresponding to the scope.

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<sup>6</sup> (...continued)

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

<sup>7</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>8</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>9</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

<sup>10</sup> For the scope of the subject merchandise as defined by Commerce, see the confidential version of the Staff Report (hereinafter “CR”) at I-1 n.3, public version of the Staff Report (hereinafter “PR”) at I-1, n.3.

<sup>11</sup> Postconference Brief of Bethlehem Steel Corporation, LTV Steel Corporation, Inc., National Steel Corporation, and U.S. Steel Group (hereinafter “Petitioners’ postconference Brief”) at 5. Petitioners’ proposed scope of subject merchandise includes microalloy steels, although the proposed scope differs slightly from that in the 1999 hot-rolled steel cases. These variations include an increase in the permissible level of silicon from 1.50 percent to 2.25 percent and the removal of boron and titanium from the list of limited alloying elements. Compare Certain Hot-Rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at I-3-I-6 (June 1999) (hereinafter “Hot-Rolled Steel”) with CR-I-1 n.3, PR-I-1, n.3. Petitioners contend that the Commission should find one like product consisting of hot-rolled steel products (including microalloy steel) coextensive with the scope, as the Commission did in the 1999 Hot-Rolled determination. Petition at 2-4; Petitioners’ postconference Brief at 4-12. According to petitioners, the slight variations to the definition of hot-rolled carbon steel in these investigations compared to the scope for the 1999 hot-rolled cases were made to “fully comport with the general industry practice as to what constituted ‘carbon’ as opposed to ‘alloy’ steel.” Petitioners’ postconference Brief at 6.

### C. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . . .”<sup>12</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>13</sup>

Based on our like product determination, we determine that there is a single domestic industry consisting of all domestic producers of hot-rolled steel products.

#### Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.<sup>14</sup> Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.<sup>15</sup>

The record indicates that a number of domestic producers have imported subject merchandise and/or are related to subject foreign producers. \*\*\*.<sup>16</sup> \*\*\*.<sup>17</sup> There is also limited evidence on the record that subject merchandise was imported from the Netherlands by a joint venture between \*\*\*.<sup>18</sup> U.S. producer Tuscaloosa Steel is \*\*\* by the British firm Corus Group, plc, which also owns Dutch producer Corus Staal BV.<sup>19</sup> Corus Group, plc, also owns \*\*\* of U.S. producer Trico Steel.<sup>20</sup> \*\*\*, being \*\*\*, fall within the related parties provision. The \*\*\* ownership of \*\*\* by a third party that also owns \*\*\* raises

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<sup>12</sup> 19 U.S.C. § 1677(4)(A).

<sup>13</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir.1996).

<sup>14</sup> 19 U.S.C. § 1677(4)(B).

<sup>15</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14, n.81 (Feb. 1997).

<sup>16</sup> CR/PR at IV-1; Petitioners’ postconference Brief at 13-14.

<sup>17</sup> CR/PR at IV-1 and Table III-1; Kazakh Respondent’s Postconference Brief at 2-6 and n.2; Petitioners’ postconference Brief at 13-14.

<sup>18</sup> Dutch Respondent’s Postconference Brief at 31.

<sup>19</sup> CR/PR at Table III-1; Petitioners’ postconference Brief at 12-13.

<sup>20</sup> CR/PR at Table III-1; Petitioners’ postconference Brief at 12-13.

issues regarding control and whether the relationship causes the U.S. producer to act differently than nonrelated producers; the record in the preliminary phase of these investigations does not contain sufficient information, however, to resolve these issues.<sup>21</sup>

We next consider whether appropriate circumstances exist to exclude any of the related party producers from the domestic industry.

\*\*\* accounted for \*\*\* of domestic production in 1999.<sup>22</sup> It \*\*\* the petition.<sup>23</sup> Its financial performance has been \*\*\*.<sup>24</sup> \*\*\* claims it \*\*\* of subject hot-rolled steel from \*\*\* to cover a \*\*\*.<sup>25</sup> \*\*\* purchased \*\*\* of hot-rolled steel from \*\*\* and intends to sell any further subject imports from \*\*\* in market segments not currently served effectively by its domestic production.<sup>26</sup> \*\*\* accounted for \*\*\* percent of U.S. production in 1999, \*\*\* the petition, and has generally \*\*\*.<sup>27</sup>

\*\*\* accounted for a \*\*\* of domestic production in 1999, \*\*\* the petition, and its financial performance \*\*\*.<sup>28</sup> \*\*\* also accounted for a \*\*\* of domestic production in 1999, \*\*\* the petition, and its financial performance \*\*\*.<sup>29</sup>

Petitioners acknowledge the existence of related parties but argue that appropriate circumstances do not exist to exclude any related party producer from the domestic industry.<sup>30</sup> The only respondent to address the issue, Ispat Karmet JSC, also maintains that appropriate circumstances do not exist to exclude any producers on related party grounds.<sup>31</sup> Based on the evidence available to us in these preliminary investigations, we determine that appropriate circumstances do not exist to exclude any producer from the domestic industry as a related party.

### III. NEGLIGENCE

#### A. In General

The statute provides that imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.<sup>32</sup> However, if the aggregate volume from all countries whose imports individually are below three percent exceeds seven percent, imports from those countries shall not be deemed negligible.<sup>33</sup> By

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<sup>21</sup> However, as discussed below, appropriate circumstances do not exist to exclude \*\*\* from the domestic industry even if it is in fact a related party. We intend to seek further information regarding ownership and control of \*\*\* in any final phase of these investigations.

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

<sup>23</sup> CR/PR at III-1.

<sup>24</sup> CR/PR at Tables III-1 and VI-6.

<sup>25</sup> Petitioners' postconference Brief at 13.

<sup>26</sup> Tr. at 120 (Mr. Smith); Kazakh Respondent's Postconference Brief at 5.

<sup>27</sup> CR/PR at III-1 and Tables III-1 and VI-6.

<sup>28</sup> CR/PR at III-1 and Tables III-1 and VI-6.

<sup>29</sup> CR/PR at III-1 and Tables III-1 and VI-6.

<sup>30</sup> Petitioners' postconference Brief at 12-14.

<sup>31</sup> Kazakh Respondent's Postconference Brief at 5, n.5.

<sup>32</sup> 19 U.S.C. § 1677(24)(A)(i)(I).

<sup>33</sup> 19 U.S.C. § 1677(24)(A)(ii).

operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.<sup>34</sup> The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.<sup>35</sup>

The statute also provides that different standards are to be used when determining negligibility in countervailing duty investigations of subject imports from countries designated by the United States Trade Representative ("USTR") as "developing countries."<sup>36</sup> Allegedly subsidized imports from developing countries shall not be deemed negligible if they exceed 4 percent of total imports, or if the aggregate volume from the several developing countries with individually negligible imports exceed 9 percent of total imports.<sup>37</sup>

## **B. The Antidumping Duty Investigations**

Of the eleven countries subject to antidumping duty investigations, five are individually at negligible levels as determined by their respective shares of total imports: Argentina, 1.74 percent; Kazakhstan, 2.92 percent; South Africa, 2.19 percent; Thailand, 2.26 percent; and Ukraine, 2.69 percent.<sup>38</sup> However, the sum of the shares of these countries, at 11.8 percent, exceeds the seven percent aggregate share for negligibility set by statute.<sup>39</sup> Therefore, we find subject imports from none of these countries to be negligible for purposes of the antidumping duty investigations.

## **C. The Countervailing Duty Investigations**

Of the five countries subject to countervailing duty investigations, four are individually at negligible levels as determined by their respective shares of total imports: Argentina, 1.74 percent; Indonesia, \*\*\* percent; South Africa, 2.19 percent; and Thailand, 2.26 percent.<sup>40</sup> The sum of these shares,

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<sup>34</sup> 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

<sup>35</sup> 19 U.S.C. § 1677(24)(C); see also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 856 (1994) ("SAA").

<sup>36</sup> 19 U.S.C. § 1677(24)(B).

<sup>37</sup> 19 U.S.C. § 1677(24)(B).

<sup>38</sup> CR at IV-6, PR at IV-5. In making our negligibility determinations, we have relied on official import statistics for the 12-month period from October 1999 through September 2000, augmented by microalloy data gathered from the questionnaires received in the course of these investigations. We note that several respondents argued that an alternative 12-month period, generally the period from September 1999 through August 2000, should be used for this negligibility determination. See, e.g., Thai Respondent's Postconference Brief at 8-12; Iscor Postconference Brief at n.16; Saldanha Postconference Brief at 4-5. The data we have used, however, are the most recent and accurate data available for a 12-month period preceding the filing of the petition.

<sup>39</sup> 19 U.S.C. § 1677(24)(A)(ii).

<sup>40</sup> CR at IV-6, PR at IV-5. Each of the four negligible countries with individually negligible levels of imports has been designated as a developing country by USTR and is therefore subject to the higher negligibility limits prescribed in 19 U.S.C. § 1677(24)(B). 63 Fed. Reg. 29945 (June 2, 1998). We have considered the argument presented by the Thai respondent concerning whether the higher negligibility limits prescribed in 19 U.S.C. § 1677(24)(B) should in fact be applied to countries designated as "least developed" rather than "developing," such as Indonesia. Thai Respondent's Postconference Brief at 4-8. The statute defines "developing country" as any country so designated by the U.S. Trade Representative. 19 U.S.C. § 1677(36)(A). The statute defines "least developed country" as a country which the Trade Representative determines is within the meaning of paragraph (a) of Annex VII to the Subsidies Agreement, or any country listed in Annex VII of that Agreement with a per capita

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at \*\*\* percent, exceeds the nine percent aggregate limit for negligibility for developing countries prescribed by statute. Therefore, we find subject imports from none of these countries to be negligible for purposes of the countervailing duty investigations.

#### IV. CUMULATION

##### A. In General

For purposes of evaluating the volume and price effects for a determination of reasonable indication of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.<sup>41</sup> In assessing whether subject imports compete with each other and with the domestic like product,<sup>42</sup> the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.<sup>43</sup>

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.<sup>44</sup> Only a “reasonable overlap” of competition is required.<sup>45</sup>

##### B. Analysis

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<sup>40</sup> (...continued)

GNP of less than \$1,000 per annum. 19 U.S.C. § 1677(36)(B). USTR’s designation clearly indicates that Indonesia should be treated as a developing country for purposes of determining which negligibility threshold applies, 63 Fed. Reg. at 29948 (June 2, 1998), and we hereby apply that threshold.

<sup>41</sup> 19 U.S.C. § 1677(7)(G)(i).

<sup>42</sup> The SAA expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA at 848, citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

<sup>43</sup> See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

<sup>44</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

<sup>45</sup> See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product.

## 1. Fungibility

Based on the evidence in the record, there appears to be a high level of substitutability between domestic and imported hot-rolled steel products and among subject imports.<sup>46</sup> Hot-rolled steel produced in the United States and that imported from subject countries generally are interchangeable, with price playing a significant role in purchasing decisions.<sup>47</sup>

A majority of domestic producers reported that domestically-produced U.S. hot-rolled steel products are “always” interchangeable with hot-rolled steel from the subject countries.<sup>48</sup> Similarly, a majority of importers reported that domestically-produced U.S. hot-rolled steel products are “always” or “frequently” interchangeable with imported hot-rolled steel products from the subject countries.<sup>49</sup> Nearly all U.S. producers reported that subject imports are “always” interchangeable.<sup>50</sup> Most importers also reported that subject imports are “always” or “frequently” interchangeable.<sup>51</sup>

The majority of domestic producers reported that, other than sales price, there are few significant factors distinguishing U.S. hot-rolled steel from subject imports.<sup>52</sup> While importers confirmed the importance of price, their responses noted at least some role for non-price factors in making purchasing decisions for hot-rolled steel products.<sup>53</sup>

Various respondents argued that subject imports from their respective countries were not in fact fungible with other subject imports or with the domestic like product. The Dutch and Thai respondents argued that their subject imports are of more advanced, highly-engineered, or specialized steels; the Romanian and Ukrainian respondents argued that quality differences separated their subject imports from others; South African respondents argued that subject imports from South Africa were \*\*\*.<sup>54</sup>

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<sup>46</sup> CR at II-7, PR at II-4.

<sup>47</sup> CR at II-7, PR at II-4.

<sup>48</sup> CR at II-11 and Table II-2, PR at II-4 and Table II-2.

<sup>49</sup> CR at II-11 and Table II-2, PR at II-4 and Table II-2.

<sup>50</sup> CR/PR at Table II-2.

<sup>51</sup> CR/PR at Table II-2.

<sup>52</sup> CR/PR at Table II-1.

<sup>53</sup> CR/PR at Table II-1.

<sup>54</sup> Dutch Respondent’s Postconference Brief at 5-12; Thai Respondent’s Postconference Brief at 21-25; Romanian Respondent’s Postconference Brief at 2-4; Saldanha Postconference Brief at 10; Iscor Postconference Brief at 19-21; Ukrainian Respondent’s Postconference Brief at 15.

Dutch respondent argued that subject imports from the Netherlands are highly engineered, advanced products. Dutch Respondent’s Postconference Brief at 9-10. However, Dutch respondent admits that at least some of its sales are of “the same type of hot-rolled steel” sold by other respondents, Dutch Respondent’s Postconference Brief at 10, and the record indicates that subject imports from the Netherlands do compete directly with the domestic like product. Petitioners’ postconference Brief at 30-31.

Thai respondent claimed that the majority of its subject imports, sold to \*\*\* customers, were highly specialized and therefore not fungible. Thai Respondent’s Postconference Brief at 21-24. The record indicates that \*\*\* of those customers also purchased hot-rolled steel for the same applications from domestic producers or other subject imports. Thai Respondent’s Postconference Brief at Exh. 5.

(continued...)

## 2. Geographic Overlap

Both the domestic like product and the subject imports are sold throughout the United States. In 1999, U.S. imports from nine of the 11 subject countries entered the United States through the Eastern region.<sup>55</sup> The Netherlands and South Africa accounted for the largest shares, 11.6 percent and 10.3 percent, respectively in the Eastern region. U.S. imports from 10 of the 11 subject countries were imported through the Gulf region in 1999.<sup>56</sup> India and China accounted for the largest shares, 17.1 percent and 13.5 percent, respectively, in the Gulf region. U.S. imports from 9 of 11 subject countries were imported through the Great Lakes region in 1999.<sup>57</sup> The Netherlands and Romania accounted for the largest shares, 21.6 percent and 11.0 percent, respectively, in the Great Lakes region. Finally, in 1999, U.S. imports from 7 of 11 subject countries were imported through the Western region.<sup>58</sup> Taiwan, China, and Indonesia accounted for the largest shares, 11.9 percent, 7.1 percent, and 6.4 percent, respectively, in the Western region.

## 3. Channels of Distribution

Both the domestic producers and importers sell their merchant-market steel to distributors, processors, service centers, manufacturers of tubular products, or other end users, although domestic producers also internally transfer significant production of hot-rolled steel to make downstream products. In 1999, slightly more than half of U.S. commercial shipments were sold to intermediaries (i.e., distributors, processors, or service centers), with the remaining share of U.S. commercial shipments almost equally divided between sales to manufacturers of tubular products and other end users.<sup>59</sup> Subject imports from all subject countries were predominantly (86.7 percent) sold to distributors, processors, and service centers.<sup>60</sup>

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<sup>54</sup> (...continued)

South African respondents claimed that grade and thickness differences meant subject imports from South Africa were not fungible with other subject imports. Saldanha Postconference Brief at 10; Iscor Postconference Brief at 19-21. While a \*\*\* of subject imports from South Africa are of thinner-gauge steel, the \*\*\* of such imports are of thicker steel, the shift to thinner-gauge subject imports is a recent one, and the domestic like product and subject imports from other countries are comprised of some thinner-gauged material. Petitioners' postconference Brief at 32; Saldanha Postconference Brief at Exh. 1.

Romanian respondent maintains that its product is not entirely fungible or interchangeable on the basis of quality differences, longer lead times, and no technical support. Romanian Respondent's Postconference Brief at 2-4. Ukrainian respondent similarly argues that quality differences separate subject imports from Ukraine from other subject imports. Ukrainian Respondent's Postconference Brief at 15. Both producers and importers typically reported subject imports from both Romania and Ukraine to be "always" or "frequently" interchangeable with both the domestic like product and all other subject imports. CR/PR at Table II-2.

<sup>55</sup> CR/PR at Table IV-3. There were no substantial imports in 1999 in the Eastern region from Kazakhstan or Thailand.

<sup>56</sup> CR/PR at Table IV-3. There were no substantial imports in 1999 in the Gulf region from Thailand.

<sup>57</sup> CR/PR at Table IV-3. There were no substantial imports in 1999 in the Great Lakes region from China or Thailand.

<sup>58</sup> CR/PR at Table IV-3. There were no substantial imports in 1999 in the Western region from Kazakhstan, Romania, South Africa, or Ukraine.

<sup>59</sup> CR/PR at Table I-1.

<sup>60</sup> CR/PR at Table I-1.

#### 4. Simultaneous Presence

A number of countries, such as Argentina, Indonesia, Kazakhstan, and Thailand, are relatively new entrants to the U.S. market. Nevertheless, the record indicates that substantial volumes of imports from each of the subject countries were present in the U.S. market in 1999 and 2000, if not throughout the period of investigation.<sup>61</sup>

#### 5. Conclusion

Based on the record in the preliminary phase of these investigations, we find there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. With respect to fungibility, we note that some product differentiation exists between the domestic like product and certain subject imports, as well as between subject imports from various countries. Both producers and importers, however, agree there is general interchangeability among domestic products and subject imports. Substantial quality issues were raised only in regards to subject imports from Ukraine; however, 74 of 84 importer comparisons indicated that the subject imports from Ukraine were interchangeable at least “sometimes” with all other subject imports.<sup>62</sup>

In terms of geographic overlap, there is some variation. Again, however, the standard is reasonable overlap, and subject imports from most countries had some presence in most or all regions of the United States during the period of investigation. In regards to simultaneous presence, subject imports from most countries were present for most of the period, although some countries had little or no presence in the earlier phase of the period of investigation. Likewise, subject imports and the domestic like product generally were sold in similar channels of distribution (although significant production of hot-rolled steel by the domestic industry was captively consumed).

We therefore find that a reasonable overlap of competition exists among the subject imports and between subject imports and the domestic like product. Consequently, we cumulate subject imports from all subject countries for the purpose of analyzing whether there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports.<sup>63</sup>

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

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<sup>61</sup> CR/PR at Tables IV-1 and IV-4.

<sup>62</sup> CR/PR at Table II-2.

<sup>63</sup> The Argentine respondent and other respondents have argued that the Commission is precluded from cumulating subject imports from countries whose subject imports individually account for less than three percent of all imports but do not qualify for termination under 19 U.S.C. §1677(24). See, e.g., Argentine Respondent’s Brief at 11-31. We considered, and rejected, this line of argument in our recent determination involving cold-rolled steel. Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 at 11 n.67 and at 30 (Dissenting Views of Chairman Lynn M. Bragg) (March 2000). Some respondents also have argued that subject imports from countries with very low levels of subject imports should not be cumulated, on the grounds that a reasonable overlap of competition cannot exist between such low levels of imports and subject imports in larger volumes or with the domestic like product. See, e.g., Argentine Respondent’s Postconference Brief at 31-34; Kazakh Respondent’s Postconference Brief at 18; Indonesian Respondent’s Postconference Brief at 2-12; Thai Respondent’s Postconference Brief at 28-29; Ukrainian Respondent’s Postconference Brief at 11 and 13-15. In determining whether to cumulate subject imports for purposes of our present material injury analysis, we consider whether there is a reasonable overlap of competition among the subject imports present in the market and between the subject imports and the domestic like product. See, e.g., Goss Graphic Systems, Inc., 33 F. Supp 2d at 1087.

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.<sup>64</sup> In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>65</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>66</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>67</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>68</sup>

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports.

## **A. Conditions of Competition**

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

### **1. Captive Production<sup>69 70</sup>**

The domestic industry captively consumes approximately 65 percent of its total shipments of the domestic like product in the production of downstream articles.<sup>71</sup> Accordingly, we have considered whether the statutory captive production provision requires us to focus our analysis primarily on the merchant market when assessing market share and the factors affecting the financial performance of the domestic industry.<sup>72 73 74 75</sup>

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<sup>64</sup> 19 U.S.C. §§ 1671b(a) and 1673b(a).

<sup>65</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also *Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>66</sup> 19 U.S.C. § 1677(7)(A).

<sup>67</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>68</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>69</sup> In determining whether the captive production provision applies, we have interpreted this provision as we did in the 1999 hot-rolled steel case. *Hot-Rolled Steel* at 31-35 (Views of Vice Chairman Marcia E. Miller, Commissioner Jennifer A. Hillman, and Commissioner Stephen Koplman Concerning Captive Production). Vice Chairman Okun was not a Commissioner at the time and did not participate in that determination, but she adopts the analysis used by Chairman Koplman and Commissioners Miller and Hillman.

<sup>70</sup> Commissioners Bragg and Askey do not join in the preceding footnote. In determining whether the captive production provision applies, they have interpreted the provision as they did in the 1999 hot-rolled steel case. *Hot-Rolled Steel* at 25-30 (Views of Chairman Lynn M. Bragg, Commissioner Carol T. Crawford, and Commissioner Thelma J. Askey Regarding the Captive Production Provision).

<sup>71</sup> CR at I-12, PR at I-9.

<sup>72</sup> The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), provides:

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

(continued...)

We find that the threshold provision of the captive production provision is met, as domestic producers internally transfer approximately 65 percent of their domestic production for captive consumption and sell the remaining 35 percent on the merchant market.

The first statutory criterion appears to be met. The record contains no evidence that hot-rolled product transferred for internal consumption was in fact sold on the merchant market in hot-rolled form.<sup>76</sup> The second statutory criterion is met, as hot-rolled steel typically accounts for between 60 to 80 percent of the value of the downstream products.<sup>77</sup>

For purposes of the preliminary phase of these investigations, we also determine that the third statutory criterion has been met, although our analysis is somewhat limited by the absence of purchaser questionnaire responses.<sup>78</sup> Based on the record evidence in the Commission's most recent investigations on hot-rolled steel products, three Commissioners found the third criterion satisfied.<sup>79</sup> The evidence available to us in the preliminary phase of these investigations does not indicate that the downstream production by both producers and merchant market purchasers has changed substantially from that found in the 1999

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(...continued)

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

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

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

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

<sup>73</sup> Commissioner Askey notes that the statute requires the Commission to analyze the impact of the subject imports on all domestic production operations, including both captive and merchant market shipments. See 19 U.S.C. §§ 1677(4)(A) and 1677(7)(B). Moreover, she notes that, even if the statutory provisions are met and the captive production provision applies, it merely permits the Commission to “focus primarily” on the merchant market operations of the industry; the provision does not allow the Commission to disregard the industry’s captive consumption completely. 19 U.S.C. § 1677(7)(C)(iv).

<sup>74</sup> Commissioners Bragg and Askey note that based upon the similarities between the facts in these investigations and the facts as set forth in the 1999 Hot-Rolled Steel investigations, it appears that under their analyses the captive production provision is not applicable. However, due to limited purchaser data regarding end uses, they will revisit the captive production issue in any final phase investigations. Commissioners Bragg and Askey therefore do not join in the remainder of the discussion regarding captive production.

<sup>75</sup> Commissioner Bragg notes that although she defers judgment regarding the applicability of the captive production provision until any final phase of these investigations, she has considered, within her discretion, the significant volume of captive production as a condition of competition in performing her injury analysis in these investigations.

<sup>76</sup> Petitioners’ postconference Brief at 39.

<sup>77</sup> CR at II-6-7, PR at II-4.

<sup>78</sup> The Commission does not send questionnaires to purchasers in the preliminary phase of investigations.

<sup>79</sup> Hot-Rolled Steel at 33-35 (Views of Vice Chairman Marcia E. Miller, Commissioner Jennifer A. Hillman, and Commissioner Stephen Koplán Concerning Captive Production). Vice Chairman Okun did not participate in that determination.

investigations. The record indicates that there is little overlap between the downstream products that are produced as a result of internal transfers and those that are produced as a result of merchant market sales. Cold-rolled steel is the predominant downstream product resulting from internal transfers, accounting for more than \*\*\* of all internally-transferred production in 1999.<sup>80</sup> The best evidence available in the preliminary phase of these investigations, including American Iron and Steel Institute data, suggests that the share of total merchant market purchases devoted to producing cold-rolled steel is less than 17.9 percent and is probably closer to five percent.<sup>81</sup>

We will explore further several issues related to captive production in any final phase of these investigations. We will seek more complete information on the merchant market and the downstream products produced from hot-rolled steel products purchased on the open market. In addition, approximately ten percent of all transfers classified by the domestic producers as captive consumption are in fact transferred to related parties;<sup>82</sup> we will seek further information on the nature of those related-party transfers. Nonetheless, based on the record available to us in the preliminary phase of these investigations, we find that the captive production provision applies, and we therefore focus our analysis primarily on the merchant market for hot-rolled steel products in considering market share and financial performance of the domestic industry.

## 2. Other Conditions of Competition<sup>83</sup>

Hot-rolled steel is typically used when surface finish and light weight are not crucial factors, although light weight is becoming more important as hot-rolled steel makers have begun producing rolls under 2 mm in thickness.<sup>84</sup> Large volumes of hot-rolled steel are used in construction, appliance, and automobile applications.<sup>85</sup> There are generally no cost-effective substitutes for hot-rolled steel in most applications.<sup>86</sup>

Distributors, processors, and service centers are important purchasers of hot-rolled steel. In 1999, over half of all domestically-produced merchant market shipments of hot-rolled steel went to distributors, processors, or service centers, as opposed to end users.<sup>87</sup> The share of subject imports destined for distributors, processors, or service centers was even higher.<sup>88</sup> Both domestic producers and respondents have argued that the buying habits and inventory practices of distributors and service centers have a

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<sup>80</sup> CR at III-9, PR at III-7. We consider cold-rolled sheet products as one downstream product, regardless of whether the cold-rolled steel is eventually coated or otherwise further processed.

<sup>81</sup> Petitioners' postconference Brief at 42, 44.

<sup>82</sup> See, e.g., Petitioners' postconference Brief at Vol. II, Exh. 17, Tab. III-7.

<sup>83</sup> Commissioners Bragg and Askey join in the remainder of this opinion.

<sup>84</sup> CR at I-11, PR at I-8.

<sup>85</sup> CR/PR at II-1.

<sup>86</sup> CR at II-6, PR at II-3-II-4.

<sup>87</sup> CR at I-12, PR at I-9.

<sup>88</sup> CR at I-12, PR at I-9.

significant impact on the market for hot-rolled steel and may increase market volatility.<sup>89</sup> Spot sales account for the majority of sales of both domestically-produced hot-rolled steel and subject imports.<sup>90</sup>

Demand for hot-rolled steel in the U.S. market is closely tied to the overall economy.<sup>91</sup> As a result, demand for hot-rolled steel during the period of investigation has been particularly strong.<sup>92</sup> Merchant market consumption of hot-rolled steel during the period of investigation peaked in 1998 at 31.0 million short tons.<sup>93</sup> Merchant market consumption fell somewhat in 1999 but remained above 1997 levels. Merchant market consumption increased 16.4 percent in interim (January-September) 2000 compared to the same time period in 1999.<sup>94</sup> Total demand for hot-rolled steel, including captive consumption, followed a similar pattern, with total apparent domestic consumption peaking in 1998 at 69.1 million short tons. Total consumption was lower in 1999 but still above 1997 levels. Total apparent domestic consumption was 11.1 percent higher in interim 2000 than in interim 1999.<sup>95</sup>

Commercial shipments of domestically-produced steel have followed a somewhat different trend than overall merchant market demand. Commercial shipments declined in 1998 while overall merchant market demand peaked.<sup>96</sup> In 1999, while overall merchant market demand weakened somewhat, shipments of domestically-produced hot-rolled steel reached their highest point for the years 1997-99.<sup>97</sup> Total U.S. shipments of domestically-produced hot-rolled steel, including steel intended for captive consumption, were essentially unchanged from 1997 to 1998 and then rose in 1999.<sup>98</sup>

The domestic industry consists of both integrated producers, using basic oxygen furnaces (“BOF”), and non-integrated producers, which use electric arc furnaces (“EAF”) or purchase, rather than produce, their slab needs.<sup>99</sup> Minimills are the most prominent examples of non-integrated producers. Integrated producers are more likely to utilize iron ore as a primary raw material, and minimill producers are more

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<sup>89</sup> In any final phase of these investigations we intend to explore distributor, processor, and service center purchasing practices and inventory levels and their effects on the volatility of demand for, and price of, hot-rolled steel.

<sup>90</sup> CR at V-10, PR at V-9. Over 70 percent of sales of subject imports are on a spot basis, and when contracts are used they were typically 90 days in length. Id. More than three-quarters of sales by domestic producers are on a spot basis and only 23 percent are made on a contract basis. Id. When contracts are used by domestic producers, the average length is six months or more, and contracts typically fix both price and quantity. Id. Some domestic producers publish price lists, but most prices are negotiated on a transaction-by-transaction basis. Id. Many producers offer discounts. Id.

<sup>91</sup> CR at II-1, PR at II-1.

<sup>92</sup> CR at II-1, PR at II-1; Tr. at p.17 (Mr. Wolff).

<sup>93</sup> Much of the Commission’s views focuses first on merchant market data and secondly on total market data. Although this order of discussion does not reflect the sequence of Commissioner Bragg’s analysis, she nonetheless joins in the discussion of volume, price, and impact, except as otherwise noted.

<sup>94</sup> CR/PR at Table C-2.

<sup>95</sup> CR/PR at Table C-1.

<sup>96</sup> CR/PR at Table IV-6.

<sup>97</sup> CR/PR at Table IV-6.

<sup>98</sup> CR/PR at Table IV-5.

<sup>99</sup> CR at I-6, I-7, PR at I-5-I-7.

likely to use steel scrap.<sup>100</sup> Minimill producers are typically more recent entrants to the market, have \*\*\*, and captively consume a significantly lower percentage of their production than do integrated producers.<sup>101</sup>

In the face of strong demand, domestic producers consistently increased their hot-rolled steel making capacity during the period. Overall hot-rolled capacity rose from 63.2 million short tons in 1997 to 71.2 million short tons in 1999.<sup>102</sup> Minimill capacity expanded at a faster rate, with minimills accounting for 17.7 percent of domestic capacity in 1997 and 22.2 percent by 1999.<sup>103</sup> Even as capacity was increasing, however, Acme Steel, Gulf States Steel, Geneva Steel, and WPS, sought bankruptcy protection.<sup>104</sup> Gulf States has ceased operations altogether.<sup>105</sup>

Raw material costs varied during the period of investigation. Prices of iron ore, the primary input for BOF mills, declined in 1997 and 1998. Prices for scrap, the primary input for EAF mills, generally declined. Energy costs are a significant factor in steel making, and natural gas prices increased 66 percent between May 1999 and September 2000.<sup>106</sup>

There appears to be a significant degree of substitutability among hot-rolled steel imported from the various subject countries, and there also appears to be significant substitutability between subject imports and domestically-produced hot-rolled steel. Both producers and importers agreed that domestically-produced hot-rolled steel and subject imports were “always” or “frequently” interchangeable.<sup>107</sup> Domestic producers overwhelmingly reported no significant factors other than price distinguishing U.S.-produced hot-rolled steel from subject imports, and a majority of importers agreed that non-price differences were “seldom” or “never” significant.<sup>108</sup>

Imports, both subject and nonsubject, played a significant role in the domestic market for hot-rolled steel. In 1997, total imports accounted for 24.1 percent of the merchant market and nonsubject imports accounted for 21.7 percent.<sup>109</sup> In 1998, imports from Brazil, Japan, and Russia increased significantly; total imports accounted for 36.5 percent of the merchant market, with nonsubject imports (including imports from Brazil, Japan, and Russia) accounting for 32.0 percent.<sup>110</sup> In 1999, an antidumping duty order was placed on imports from Japan, and suspension agreements were reached regarding subsidized imports from Brazil and dumped imports from Brazil and Russia;<sup>111</sup> total imports declined to 22.6 percent of the total merchant market, while nonsubject imports fell to 11.6 percent.<sup>112</sup>

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<sup>100</sup> CR at I-7, PR at I-6.

<sup>101</sup> CR/PR at Tables VI-2 and VI-6. In 1999, non-integrated producers shipped \*\*\* percent of their production to the merchant market, while integrated producers shipped \*\*\* percent of their production to the merchant market.

<sup>102</sup> CR/PR at Table III-3.

<sup>103</sup> Questionnaire data.

<sup>104</sup> Petition, Vol. II at 9; CR at III-1 and Table III-1, PR at III-1 and Table III-1.

<sup>105</sup> CR/PR at III-1 n.2.

<sup>106</sup> CR at V-1-V-2, PR at V-1.

<sup>107</sup> CR/PR at Table II-2.

<sup>108</sup> CR/PR at Table II-1.

<sup>109</sup> CR/PR at Table C-2.

<sup>110</sup> Tr. at 11-12 (Mr. Lighthizer); CR/PR at Table C-2.

<sup>111</sup> 64 Fed. Reg. 34778 (June 29, 1999) (Japan); 64 Fed. Reg. 38792 (July 19, 1999) (dumped subject imports from Brazil); 64 Fed. Reg. 38797 (July 19, 1999) (subsidized subject imports from Brazil); 64 Fed. Reg. 38642 (July 19, 1999) (Russia).

<sup>112</sup> CR/PR at Table C-2.

## **B. Volume of Subject Imports**

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>113</sup>

From 1997 to 1998, the volume of subject imports more than doubled, from 651,006 short tons to nearly 1.4 million short tons.<sup>114</sup> In 1999, subject imports again increased, rising more than 120 percent to nearly 3.1 million short tons, or 11.1 percent of total merchant market demand, even while merchant market demand softened, slipping from 31.0 million short tons in 1998 to 27.9 million short tons in 1999.<sup>115</sup> In interim 2000, subject imports were 3.6 million short tons, 15.7 percent of merchant market demand.<sup>116</sup> Total subject imports accounted for one percent of total domestic demand, including captive consumption, in 1997 but rose to 4.7 percent in 1999. In interim 2000, subject imports accounted for 6.8 percent of total domestic demand, compared to 4.0 percent in the same time period in 1999.<sup>117</sup>

The increase in the volume of subject imports is even more notable when considered against the trend in nonsubject imports and overall demand. Total imports surged in 1998, led by significant increases in imports from Brazil, Japan, and Russia. But in 1999, after an order on hot-rolled steel from Japan was imposed and suspension agreements reached on hot-rolled steel from Brazil and Russia, nonsubject imports (including imports from Brazil, Japan, and Russia) dropped sharply, falling from 9.9 million short tons in 1998 to only 3.2 million short tons in 1999.<sup>118</sup>

Subject imports apparently captured some of the market vacated by imports of hot-rolled steel from Brazil, Japan, and Russia, and have continued to increase. We find the increases in subject imports between 1997 and 1999 to be substantial and note that subject imports for interim 2000 were 3.6 million short tons, nearly 88 percent higher than during the same period in 1999.<sup>119</sup> Interim 2000 subject imports exceeded both total 1999 subject imports and total 1999 nonsubject imports.<sup>120</sup>

The increase in subject imports has been consistent and persistent throughout the period of investigation and has occurred independently of trends in other import volumes or in overall demand, especially in the merchant market. For purposes of these preliminary determinations, we find the volume of cumulated subject imports, both in absolute terms and relative to consumption in the United States, to be significant.

## **C. Price Effects of the Subject Imports**

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

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<sup>113</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>114</sup> CR/PR at Table IV-6.

<sup>115</sup> CR/PR at Tables IV-6 and C-2.

<sup>116</sup> CR/PR at Table C-2.

<sup>117</sup> CR/PR at Table C-1.

<sup>118</sup> CR/PR at Table IV-6.

<sup>119</sup> CR/PR at Table IV-6.

<sup>120</sup> CR/PR at Table IV-6.

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>121</sup>

Information from U.S. producers and importers indicates that domestically-produced hot-rolled steel and subject imports are generally interchangeable.<sup>122</sup>

Domestic prices for hot-rolled steel declined in 1997. That decline accelerated in 1998 and prices reached a low in the first quarter of 1999. After the order on hot-rolled steel imports from Japan was imposed, and suspension agreements were concluded on hot-rolled steel imports from Brazil and Russia, prices improved somewhat but never fully returned to 1997 levels. While prices increased in the first half of 2000, they weakened notably in the third quarter of 2000.<sup>123</sup>

The Commission collected pricing data on two hot-rolled steel products. Sales of these two products accounted for 10.3 percent of U.S. producers' merchant market shipments and approximately 21.4 percent of all subject imports.<sup>124</sup> Of the \*\*\* quarters with sales comparisons, subject imports \*\*\* domestically-produced steel in \*\*\* quarters, or \*\*\* percent of all observations.<sup>125</sup>

The combination of strong domestic demand and trade remedies on imports of hot-rolled steel from Brazil, Japan, and Russia would have been expected to result in sustainable price increases, yet the most recent data indicate that any price recovery has been halted or even reversed. The general patterns of underselling shown by the price/product data are supported further by the corroborated lost sales and lost revenue allegations made by the domestic producers. Those allegations show lost sales to lower-priced subject imports from most of the 11 countries, with many of these lost sales occurring in the most recent quarters.<sup>126</sup>

We find, for purposes of these preliminary determinations, that cumulated subject imports have depressed domestic prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree.<sup>127</sup>

#### **D. Impact of the Subject Imports**

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>128</sup> These factors include

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<sup>121</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>122</sup> CR/PR at Tables II-1 and II-2.

<sup>123</sup> CR at V-12, PR at V-10.

<sup>124</sup> CR at V-11, PR at V-10. In any final investigations we will consider expanding the number of products for which we seek pricing data.

<sup>125</sup> CR/PR at Table V-6.

<sup>126</sup> CR/PR at Table V-7.

<sup>127</sup> In finding that cumulated subject imports have suppressed or depressed domestic prices, we have considered respondents' argument that the domestic producers' own pattern of announced price increases, leading to significant service center inventory overhangs, has in fact caused the recent drop in domestic prices. *See, e.g.,* Tr. at 83-84 (Dr. Button). Lacking questionnaire data from purchasers, we are not in a position to fully evaluate this theory. As previously stated, we intend to gather additional data on purchasing practices and inventory levels of distributors, processors, and service centers in any final phase of these investigations.

<sup>128</sup> 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851, 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in (continued...)

output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>129 130 131</sup>

In the wake of an order imposed on unfairly traded imports from Japan and suspension agreements governing imports from Brazil and Russia in 1999, continued improvement in the condition of the domestic industry would be expected, especially in light of continued strong demand. This has not been the case. Rather, several important indicators of the industry’s condition have remained weak or deteriorated.

Capacity utilization rates peaked in the first quarter of 2000 and have since fallen.<sup>132</sup> Orders for the third quarter of 2000 were lower than for any other third quarter of the survey period save that of 1998.<sup>133</sup> The domestic industry’s share of both the merchant and total markets was lower in interim 2000 than in interim 1999, and that loss was to subject imports, which saw a large rise in market share.<sup>134</sup> One

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<sup>128</sup> (...continued)

some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” *Id.* at 885.).

<sup>129</sup> 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>130</sup> The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce estimated dumping margins as follows: Argentina, 36.61 to 44.59 percent; China, 34.34 to 38.97 percent; India, 11.12 to 51.99 percent; Indonesia, 59.25 percent; Kazakhstan, 143.71 to 167.24 percent; Netherlands, 19.36 percent; Romania, 75.38 to 88.62 percent; South Africa, 9.28 percent; Taiwan, 15.18 to 29.14 percent; Thailand, 10.35 to 20.30 percent; and Ukraine, 89.13 to 89.49 percent. 65 Fed. Reg. at 77571- 77577 (Dec. 12, 2000).

The alleged net subsidy rates are as follows: Argentina, nine countervailable programs with subsidies ranging from 8.32 percent to 22.10 percent; India, 12 programs with alleged subsidies totaling 40.66 percent; Indonesia, six programs with alleged subsidies totaling 39.54 percent; South Africa, four countervailable programs with alleged subsidies totaling 21.95 percent; and Thailand, 20 countervailable programs with alleged subsidies totaling 19.18 percent to 21.48 percent. CR at I-2 n.4, PR at I-2 n.4.

<sup>131</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

<sup>132</sup> Petitioners’ postconference Brief at Vol. II, Exh. 10.

<sup>133</sup> CR at III-11, PR at III-9.

<sup>134</sup> The domestic industry’s share of the merchant market was 75.9 percent in 1997, fell to 63.5 percent in 1998, and rose to 77.4 percent in 1999. CR/PR at Table C-2. The domestic industry’s share of the merchant market was 73.6 percent in interim 2000, compared to 78.3 percent in interim 1999. *Id.* Conversely, the share of that market held by subject imports was 2.4 percent in 1997, 4.5 percent in 1998, and 11.1 percent in 1999. *Id.* The share of the merchant market held by subject imports was 15.7 percent in interim 2000, compared to 9.7 in interim 1999. *Id.* For total demand, including production for captive consumption, the share of the market held by the domestic industry was 90.0 percent in 1997, 83.6 percent in 1998, and 90.4 percent in 1999. CR/PR at Table C-1. The domestic industry’s share of the total domestic market, including production for captive consumption, was 88.6 percent in interim 2000, compared to 91.0 percent in interim 1999. *Id.* For total demand, including production for captive

(continued...)

of the firms in bankruptcy before the filing of this petition, Gulf States, has ceased operations, and since this petition was filed, an additional firm, WPS, has also filed for bankruptcy.<sup>135</sup> The number of production and related workers fell in both 1998 and 1999 and further layoffs have occurred in recent months.<sup>136</sup> Inventories increased sharply, rising from 2.5 million short tons in 1997 to 2.9 million short tons in 1999. At the end of interim 2000, inventories were nearly 3.0 million short tons, up from 2.8 million short tons in interim 1999.<sup>137</sup> The ratio of inventory to shipments rose from 4.3 percent in 1997 to 4.9 percent in 1999.<sup>138</sup>

The financial position of the industry has deteriorated throughout most of the period under investigation. The number of firms reporting operating losses on commercial sales rose from 7 in 1997 to 12 in 1999.<sup>139</sup> The domestic industry reported operating losses on commercial sales in 1998 and those losses deepened in 1999.<sup>140</sup> For overall operations, including captive consumption, a similar number of firms reported losses in 1999, and operating income, which had remained positive in 1997 and 1998, became an operating loss in 1999.<sup>141</sup> From 1997 through 1999, even though the domestic industry's total sales quantities continuously increased, sales values decreased resulting in a decline in unit values per short ton over the period.<sup>142</sup> While the overall interim period of January through September 2000 shows \*\*\* for the industry, the quarterly data show \*\*\* in the third quarter that \*\*\* in the first two quarters of the year.<sup>143</sup> Profits fell even as domestic producers made significant productivity gains and unit production costs fell.<sup>144</sup> Capital expenditures fell sharply between 1997 and 1999, as did expenditures for research and development.<sup>145</sup>

Based on the record in the preliminary phase of these investigations, we find that the significant and increasing volume of low priced cumulated subject imports had a significant negative impact on the U.S. industry. Accordingly, we determine that there is a reasonable indication of material injury by reason of subject imports.

## CONCLUSION

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is materially injured by reason of imports of hot-rolled steel products from Argentina, India,

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<sup>134</sup> (...continued)

consumption, the share of the market held by subject imports rose from 1.0 percent in 1997 to 4.7 percent in 1999. Id. In interim 2000, subject imports accounted for 6.8 percent of all demand, compared to 4.0 percent in interim 1999. Id.

<sup>135</sup> CR/PR at Table III-1.

<sup>136</sup> CR/PR at Table III-6.

<sup>137</sup> CR/PR at Table III-3.

<sup>138</sup> CR/PR at Table III-3.

<sup>139</sup> CR/PR at Table VI-1.

<sup>140</sup> CR/PR at Table VI-1.

<sup>141</sup> CR/PR at Table VI-5.

<sup>142</sup> CR at VI-8, PR at VI-.

<sup>143</sup> INV-X-260, Table 1. We recognize that financial performance across the domestic industry is \*\*\*. See CR/PR at Tables VI-2 and VI-6. We intend to seek additional information and analysis on the reasons for this disparity, and any implications for our injury analysis, in any final phase of these investigations.

<sup>144</sup> CR/PR at Table III-7.

<sup>145</sup> CR/PR at Table VI-8.

Indonesia, South Africa, and Thailand that are allegedly subsidized and by reason of imports of hot-rolled steel products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine that are allegedly sold in the United States at less than fair value.