

UNITED STATES INTERNATIONAL TRADE COMMISSION

**CERTAIN COLD-ROLLED STEEL PRODUCTS FROM
ARGENTINA, AUSTRALIA, BELGIUM, BRAZIL, CHINA, FRANCE, GERMANY, INDIA,
JAPAN, KOREA, THE NETHERLANDS, NEW ZEALAND, RUSSIA, SOUTH AFRICA,
SPAIN, SWEDEN, TAIWAN, THAILAND, TURKEY, AND VENEZUELA**

Investigations Nos. 701-TA-422-425 and 731-TA-964-983 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3471, NOVEMBER 2001)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-422-425 and 731-TA-964-983 (Preliminary)

CERTAIN COLD-ROLLED STEEL PRODUCTS FROM
ARGENTINA, AUSTRALIA, BELGIUM, BRAZIL, CHINA, FRANCE, GERMANY, INDIA, JAPAN,
KOREA, NETHERLANDS, NEW ZEALAND, RUSSIA, SOUTH AFRICA, SPAIN, SWEDEN,
TAIWAN, THAILAND, TURKEY, AND VENEZUELA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured² or threatened with material injury³ by reason of imports from Argentina, Brazil, France, and Korea, of certain cold-rolled steel products, provided for in headings 7209, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of Argentina, Brazil, France, and Korea. The Commission further determines, pursuant to section 733(a) of the Act (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured² or threatened with material injury³ by reason of such imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela 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 of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation 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.

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 Commissioners Bragg, Miller, and Devaney determine that there is a reasonable indication that an industry in the United States is materially injured.

³ Chairman Koplán, Vice Chairman Okun, and Commissioner Hillman determine that there is a reasonable indication that an industry in the United States is threatened with material injury.

BACKGROUND

On September 28, 2001, petitions were filed with the Commission and Commerce by Bethlehem Steel Corporation, Bethlehem, PA; LTV Steel Co., Inc., Cleveland, OH; National Steel Corporation, Mishawaka, IN;⁴ Nucor Corporation, Charlotte, NC; Steel Dynamics Inc., Butler, IN; United States Steel LLC, Pittsburgh, PA; WCI Steel, Inc., Warren, OH); and Weirton Steel Corporation, Weirton, WV;⁵ alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized or LTFV imports of certain cold-rolled steel products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. Accordingly, effective September 28, 2001, the Commission instituted countervailing duty investigations Nos. 701-TA-422-425 (Preliminary) and antidumping investigations Nos. 731-TA-964-983 (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 October 5, 2001 (66 FR 51069). The conference was held in Washington, DC, on October 19, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

⁴ National is not a petitioner with respect to Japan.

⁵ Weirton is not a petitioner with respect to the Netherlands.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain cold-rolled steel products from Argentina, Brazil, France, and Korea that are allegedly subsidized and by reason of imports of certain cold-rolled steel products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela that are allegedly sold in the United States at less than fair value (“LTFV”).¹

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.² 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.”³

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁴ 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.”⁵ 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”⁶

¹ Commissioners Bragg, Miller, and Devaney find a reasonable indication of material injury. Their separate views are included at part VI of these views. Chairman Koplun, Vice Chairman Okun, and Commissioner Hillman find a reasonable indication of a threat of material injury. Their separate views are included at part VII of these views. All Commissioners join in parts I - V of these views, except as noted.

² 19 U.S.C. § 1671b(a); 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-355 (1996).

³ 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).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ Id.

⁶ 19 U.S.C. § 1677(10).

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.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁹ 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.¹⁰

B. Product Description

The scope of these investigations as defined by Commerce in its notice of initiation covers a range of cold-rolled steel products.¹¹

Steel is a combination of carbon and iron that is usefully malleable as first cast, in which iron predominates by weight over each of the other contained elements, and in which the carbon content is two percent or less, by weight.¹² The term “cold rolling” refers to a process in which the product is fed into a rolling mill at ambient temperature.¹³ Cold rolling is performed to reduce product thickness, to impart specific mechanical properties to the steel, or to give the steel specific surface texture.¹⁴ After cold rolling, the certain cold-rolled steel product is typically annealed and then temper-rolled.¹⁵ Certain cold-rolled steel

⁷ 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 (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).

⁸ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁹ 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.”).

¹⁰ 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 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹¹ 66 Fed. Reg. 51070 (antidumping duty) and 54218 (countervailing duty) (Oct. 26, 2001).

¹² CR at I-7, PR at I-6.

¹³ CR at I-8, PR at I-7.

¹⁴ Id.

¹⁵ CR at I-9, PR at I-7.

products have a variety of uses, including automotive, construction, container, and appliance applications.¹⁶

C. Domestic Like Product

We determine for the purpose of the preliminary phase of these investigations that there is one domestic like product consisting of all certain cold-rolled steel products. Certain respondents assert that specific cold-rolled steel items are domestic like products separate from certain cold-rolled steel products. Respondent Kern-Liebers USA Inc. (“Kern-Liebers”) argues that textured rolled carbon steel, also known as seat belt retractor steel, is a separate like product.¹⁷ We find that item to be part of the single domestic like product.¹⁸ Respondent Uddeholm Tolling Svenska AB (“Uddeholm”) argues that grades of wood bandsaw steel that are not already excluded from Commerce’s scope in these investigations should be excluded by the Commission or, in the alternative, that wood bandsaw steel should be found to be a separate like product.¹⁹ Concerning the exclusion request, it is the role of Commerce, not the Commission, to determine the scope of the subject merchandise.²⁰ Moreover, wood bandsaw steel is not produced in the

¹⁶ CR at I-10, PR at I-8.

¹⁷ Kern-Liebers Postconference Brief at 5-16.

¹⁸ Kern-Liebers argued for the same domestic like product breakout in the 1993 investigation, Certain Flat-Rolled Carbon Steel Products From Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, The Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and The United Kingdom, Invs. Nos. 701-TA-319-332, 334, 336-42, 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), and again in the recent five-year review, 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, Invs. 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), USITC Pub. 3364 at 7, n.24 (Nov. 2000). In each of those investigations, the Commission found that seat belt retractor steel was not a separate domestic like product. The limited record of the instant investigations on this issue does not warrant a different conclusion here. We find that, while this item is distinguished from other cold-rolled items to the extent it is heat treated prior to being cold-rolled, other aspects of production are similar to those for other cold-rolled steel products. Additionally, although the item has particular physical characteristics and end uses, is distributed primarily to end users, and has a price premium, we do not perceive a clear distinction between this narrow, specialized steel and the continuum of many different cold-rolled steels with unique specifications, processes, and end uses. See USITC Pub. 2664 at 93-94. Accordingly, we find that textured rolled carbon steel (seat belt retractor steel) is properly in the single domestic like product consisting of certain cold-rolled steel products.

¹⁹ Uddeholm Postconference Brief at 1.

²⁰ The Commission has consistently stated that it does not have the authority to “exclude” from its determination products that are included within the scope. See, e.g., Individually Quick Frozen Red Raspberries from Chile, Inv. Nos. 701-TA-416 and 731-TA-948 (Preliminary), USITC Pub. 3441 at 5, n.14 (July 2001), citing Sony Corp of America v. United States, 712 F. Supp. 978, 983-84 (Ct. Int’l Trade 1989); Fresh Garlic from the People’s Republic of China, Inv. No. 731-TA-683 (Final), USITC Pub. 2825, at I-7 n.17 (Nov. 1994), citing Sandvik AB v. United States, 721 F. Supp. 1322, 1333 (Ct. Int’l Trade 1989), aff’d, 904 F.2d 46 (Fed. Cir. 1990). This is true also with respect to the argument of the Association of German Specialty Cold Rolled Strip Processors (“AGS”) for exclusion of certain products from these investigations. AGS Postconference Brief at 2-5.

United States and, in the absence of a domestic product that is “like” wood bandsaw steel, we find the product most similar to be the continuum of certain cold-rolled steel products.²¹

In cases such as the present one, where the domestically manufactured merchandise is made up of a continuum of similar products, the Commission does not consider each item of merchandise to be a separate domestic like product that is only “like” its counterpart in the scope, but considers the continuum itself to constitute the domestic like product.²² While the record indicates some variations in characteristics and uses, channels of distribution, manufacturing processes, and pricing between and among individual types and grades of cold-rolled steel, more importantly, there are also broad similarities. Any differences do not constitute a clear dividing line between individual items, particularly given the spectrum of widely varying products that constitute cold-rolled steel products.

Accordingly, we find the domestic like product to be certain cold-rolled steel products, coextensive with the scope of these investigations.

D. Domestic Industry and Related Parties

1. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . .”²³ 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.²⁴ Based on our finding that the domestic like product consists of all certain cold-rolled steel products included within the scope of these investigations, for purposes of these preliminary determinations, we find that the domestic industry consists of all domestic producers of these products.

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves

²¹ Concerning its like product argument, Uddeholm acknowledges that bandsaw steel is not manufactured in the United States. Uddeholm Postconference Brief at 1 and Exhibit 4, p.2. In the absence of a domestic product that is “like” the subject imports, the “domestic like product” is the product “most similar in characteristics and uses with” the subject imports. 19 U.S.C. § 1677(10). We find that the product most similar in characteristics and uses with the wood bandsaw steel imports is certain cold-rolled steel products. See, e.g., Hot Rolled Steel Products from Argentina and South Africa, Invs. Nos. 701-TA-404, 731-TA-898 and 905 (Final), USITC Pub. 3446 at 6, n.11 (Aug. 2001) (hot rolled steel would be the like product in the absence of domestic production of a product like the specific subject imports). We therefore find that wood bandsaw steel is not a separate domestic like product.

²² Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Invs. Nos. 701-TA-368-371 (Final), USTIC Pub. 3075 at 7 (Nov. 1997).

²³ 19 U.S.C. § 1677(4)(A).

²⁴ See United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int’l Trade 1994), aff’d, 96 F. 3d 1352 (Fed. Cir. 1996).

importers.²⁵ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.²⁶

a. CSI, National, and UPI

CSI is half owned by Kawasaki, a Japanese producer and exporter of subject merchandise, and half owned by CIA Vale do Rio Doce, a Brazilian firm.²⁷ National is two-thirds owned by NKK, a Japanese producer of subject merchandise.²⁸ UPI is one-half owned by a Korean producer of subject steel products, Pohang Iron & Steel Co. Ltd. (POSCO).²⁹ These three firms may be related parties under sections (ii)(II) or (III) of the related parties provision.³⁰ Consequently, we consider whether "appropriate circumstances" exist to exclude any of these companies from the domestic industry. CSI accounted for *** of total domestic production in 2000, National Steel accounted for ***, and UPI accounted for *** percent.³¹ None of these producers imported certain cold-rolled steel from subject countries during the period of investigation.³² None of them appears to derive any concrete benefits or operate in a manner

²⁵ 19 U.S.C. § 1677(4)(B).

²⁶ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the date for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

²⁷ CR at Table III-1, PR at Table III-1.

²⁸ Id.

²⁹ Id. ***. CR at VII-34, n.1; PR at VII-19, n.1.

³⁰ 19 U.S.C. § 1677(4)(B)(ii)(II), (III). Although domestic producers Duferco Farrell, Ispat/Inland, SDI, and Theis are partly owned, directly or indirectly, by firms in subject countries, there is no indication that the foreign owners are exporters of subject merchandise or, therefore, that the foreign ownership renders the domestic producers "related parties" within the statutory meaning of that term.

³¹ CR at Table III-1, PR at Table III-1.

³² CR at IV-7, PR at Table IV-7. ***. In addition, the record indicates that nine other producers, ***, also purchased subject imports during the period of investigation. These companies would be "related parties" if their purchases of subject imports were so large as to amount to "direct or indirect control" of an importer or exporter of subject imports during the period examined. Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387-392 (Preliminary) and 731-TA-815-822 (Preliminary), USITC Pub. 3181 (Apr. 1999) at 12. The quantities of purchases of each of these firms do not appear large enough to warrant such a finding. *See* CR at IV-7, PR at IV-7. Nor is there any other basis for such a finding on this record. Consequently, we do not find that these companies are related parties on the basis of their purchases.

different from other domestic producers as a result of its relationship with the foreign producer or importer parent. The financial performance of National and UPI was ***, and the performance of CSI was *** during the period of investigation. CSI ***, National is a petitioner in all of the subject cases except that against Japan, and UPI ***. Accordingly, the interests of all three firms appear to be those of domestic producers. Based on the information available on the record at this time, we do not find that appropriate circumstances exist to exclude CSI, National, or UPI from the domestic industry.

III. NEGLIGIBLE IMPORTS

Imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.³³ The statute further provides that imports from a single country which comprise less than three percent of total imports of such merchandise may not be considered negligible if there are several countries subject to investigation with negligible imports and the sum of such imports from all those countries in the aggregate accounts for more than seven percent of the volume of all such merchandise imported into the United States.³⁴

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volumes of imports from the several countries with negligible imports will imminently exceed seven percent of all such merchandise imported into the United States.³⁵ By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.³⁶

In the case of countervailing duty investigations involving developing countries, the statute further provides that the negligibility limits are four percent and nine percent, rather than three percent and seven percent.³⁷ The statute defines "developing country" as any country so designated by the U.S. Trade Representative.³⁸

The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.³⁹

³³ 19 U.S.C. § 1677(24)(A)(I)(I).

³⁴ 19 U.S.C. § 1677(24)(A)(ii).

³⁵ 19 U.S.C. § 1677(24)(A)(iv).

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

³⁷ 19 U.S.C. § 1677(24)(B).

³⁸ 19 U.S.C. § 1677(36)(A).

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

A. The Antidumping Investigations

To evaluate negligibility, we considered adjusted official import statistics for the period September 1, 2000, through August 31, 2001.⁴⁰ Negligibility is an issue for eleven of the twenty subject countries that are individually below the 3 percent negligibility threshold: Australia with an import share at 2.0 percent of total imports, China at 2.6 percent, India at 0.2 percent, New Zealand at 0.8 percent, South Africa at 2.5 percent, Spain at 0.7 percent, Sweden at *** percent, Taiwan at 1.1 percent, Thailand at 1.0 percent, Turkey at 2.5 percent, and Venezuela at 1.6 percent. However, the combined import share of these eleven countries is more than 15 percent and exceeds the seven percent statutory negligibility threshold. We therefore find that none of the subject imports from these countries are negligible for purposes of our present material injury analysis for these antidumping investigations.^{41 42}

B. The Countervailing Duty Investigations

The petition included countervailing duty allegations against four countries: Argentina, Brazil, France, and Korea. Argentina and Brazil, have been designated developing countries by the U.S. Trade Representative.⁴³ France at more than 4 percent of total imports and Korea at 13.6 percent, clearly exceed the applicable negligibility level on an individual basis. Argentina's share of imports, at 4.3 percent, and Brazil's share of imports, near 7.0 percent, each exceeds the negligibility level for developing countries. We therefore find that none of the imports subject to countervailing duty allegations are negligible for purposes of our present material injury analysis.

IV. CUMULATION

A. In General

⁴⁰ CR at Table IV-3 , PR at Table IV-3.

⁴¹ Because these imports are not negligible, we need not consider, for purposes of an analysis of threat of material injury, the potential that these imports will imminently exceed the negligibility threshold. 19 U.S.C. § 1677(24)(A)(iv).

⁴² Aceralia and TradeARBED argue that, if certain *** imported from Spain during the period of investigation had been classified outside of chapter 72 of the HTSUS, they would have fallen under an exclusion listed in Commerce's notice of initiation, and that they have sought the prospective reclassification of the article from Customs under Chapter 73. Aceralia and TradeARBED Postconference Brief at 2. Respondents do not deny, however, that, whatever the future classification of their merchandise, imports of the merchandise during the period did not enter under the classification necessary to meet the exclusion. The merchandise therefore is within Commerce's scope. Moreover, as noted above, it is Commerce, not the Commission, that determines scope.

The Venezuelan respondent's argument that its import share does not exceed the individual country negligibility threshold (Venezuelan Respondent's Postconference Brief at 3-7) is not relevant as its imports are not negligible under the alternative 7-percent test when considered in the aggregate with those of other subject countries that do not individually meet the 3-percent threshold. Moreover, it would be contrary to the statute to adopt the Venezuelan respondent's proposal that the negligibility provision be read, in conjunction with Article 5.8 of the WTO Antidumping Agreement, to require an "injury" test in addition to a strict volume test. 19 U.S.C. § 1677(24)(A)(ii) (negligibility defined solely in terms of the percentage of total imports).

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

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(I) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.⁴⁴ In assessing whether subject imports compete with each other and with the domestic like product,⁴⁵ 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.⁴⁶

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.⁴⁷ Only a “reasonable overlap” of competition is required.⁴⁸

None of the four statutory exceptions to the general cumulation rule applies to these investigations.⁴⁹

For purposes of these preliminary determinations, with respect to all 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

⁴⁴ 19 U.S.C. § 1677(7)(G)(I).

⁴⁵ The SAA (at 848) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d 859 F.2d 915 (Fed. Cir. 1988).

⁴⁶ 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).

⁴⁷ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁴⁸ 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., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁴⁹ The applicable exception concerns countries as to which investigations have been terminated. The other three exceptions concern imports from Israel, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

Although the scope of these investigations covers a wide variety of cold-rolled steel products, classifiable under 46 HTSUS statistical categories, more than 70 percent of the subject imports enter the United States under three classifications; these three classifications also account for a majority of the imports from all but three of the individual subject countries.⁵⁰ For the other three countries, these classifications accounted for percentages that were also significant: 33 percent of subject imports from Australia, 17 percent of subject imports from Spain, and 29 percent of subject imports from Sweden.⁵¹ The German and Japanese respondents argue that they export primarily niche, high priced and specialty products, emphasizing a difference in tariff classifications under which their imports enter. However, we note that 67 percent of subject imports from Germany and 55 percent of subject imports from Japan entered under the same three tariff classifications, as did the majority of imports from most of the other subject countries.⁵²

To the extent the Australian respondent claims that there is not a reasonable overlap of competition between the subject merchandise from Australia and the domestic like product because it exports only two types of product, import data indicate that subject imports from Australia have entered largely under six of the HTSUS classifications, and to a lesser extent under an additional 10 classifications.⁵³

Also with regard to fungibility, a majority of responding U.S. producers reported that domestically produced and imported certain cold-rolled steel products from the individual subject countries are broadly interchangeable.⁵⁴ A majority of responding importers agree that domestically produced and imported certain cold-rolled steel are at least moderately interchangeable.⁵⁵ The majority of responding U.S. producers reported that non-price differences between U.S.-produced and subject imports are not a significant factor in their firms' sales of certain cold-rolled steel products.⁵⁶ A higher share of importers that responded concerning the issue indicated that non-price differences are significant in sales of certain cold-rolled steel products.⁵⁷

⁵⁰ CR at Table IV-5, PR at Table IV-5. By grade, most imports were certified to ASTM A-366. CR at Table IV-4, PR at Table IV-4.

⁵¹ CR at Table IV-5, PR at Table IV-5.

⁵² *Id.* Subject imports from Germany entered under 42 of the tariff classifications and subject imports from Japan entered under 46 of the tariff classifications. CR at Table F-4, PR at Table F-4.

⁵³ CR at Table F-4, PR at Table F-4; see also CR at Table IV-5, PR at Table IV-5.

⁵⁴ CR at Table II-2, PR at Table II-2.

⁵⁵ CR at Table II-3, PR at Table II-3. For all subject countries except India and Russia, a majority of importers familiar with the individual subject imports reported that the subject imports were always or frequently interchangeable with the U.S.-produced product; in the case of India and Russia, a majority reported that the subject imports were sometime interchangeable with the U.S. produced product.

⁵⁶ CR at Table II-4, PR at Table II-4. For all subject countries except Japan and the Netherlands, a majority of U.S. producers familiar with the individual subject imports reported that non-price differences are never a significant factor in purchasing decisions; in the case of Japan, a majority reported that the non-price differences were always, frequently, or sometimes a factor; in the case of the Netherlands, the number of producers reporting that non-price differences are never a factor was equal to the number reporting that non-price differences were always, frequently, or sometimes a factor.

⁵⁷ CR at Table II-5, PR at Table II-5.

2. Geographic Overlap

Cold-rolled steel products produced in the United States are shipped nationwide; *i.e.*, into each of the four quadrants into which the subject imports entered.⁵⁸ Subject imports from 17 of the 20 subject countries entered every quadrant of the United States during the period of investigation.⁵⁹ Imports from two of the subject countries—Spain and Venezuela—entered three of the four quadrants.⁶⁰ Only subject imports from New Zealand entered in only one quadrant, the West quadrant, during the POI.⁶¹ Further, although the subject imports from Australia, as noted, entered four quadrants during the POI, 98 percent of those imports entered the West quadrant.⁶² Accordingly, subject imports from Australia and New Zealand are the most geographically concentrated of the subject imports, although it is less clear whether the goods were actually shipped or offered for sale outside of the West quadrant. Nonetheless, the West quadrant was also an important entry point for imports from several other countries, including Belgium, China, Japan, Korea, the Netherlands, Taiwan, and Thailand.⁶³ Subject imports from India and Venezuela were also concentrated, although to a lesser extent: 91 percent of imports from India and 95 percent of imports from Venezuela were into the Gulf quadrant.⁶⁴ Again, however, the Gulf region was an important entry point for other subject imports, including those from Argentina, Brazil, China, Japan, Korea, Russia, South Africa, Sweden, Thailand, and Turkey. We do not view these geographic concentrations suggested by point of entry as sufficient to foreclose cumulation for purposes of these preliminary determinations, but intend to examine this issue, including where these imports were sold or offered for sale, more closely in the final phase of these investigations.

3. Channels of Distribution

A large share of domestically-produced merchandise is consumed internally or transferred to affiliates for extensive downstream processing. Of the open market sales by U.S. producers, about 58 percent are sold to end users (such as appliance and automotive manufacturers), and the remainder to distributors/service centers.⁶⁵ Significant percentages of subject imports are also sold to both end users and distributors/service centers.⁶⁶

⁵⁸ CR at Table IV-6, PR at Table IV-6.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id. The Australian exporter, although arguing that only other foreign sources, not the domestic producers, compete in the West Coast region, identify U.S. suppliers of the merchandise to its West Coast customers. It also identifies other U.S. producers of the items it exports to the United States. Australian (BPH) Postconference Brief at 5-8.

⁶⁴ CR at Table IV-6, PR at Table IV-6.

⁶⁵ CR at I-10, PR at I-8; CR at Table I-1, PR at Table I-1.

⁶⁶ CR at I-10, PR at I-8.

4. Simultaneous Presence

Domestically produced certain cold-rolled steel was present throughout the United States during the POI.⁶⁷ Imports from 11 of the 20 subject countries entered in every month of the POI; imports from another two countries entered in 41 of the 42 months covered.⁶⁸ Imports from South Africa entered in 40 of the 42 months; China, 38 of the 42 months; Argentina, 36 of the 42 months; and Turkey, 31 of the 42 months.⁶⁹ Imports from India entered in only two months of 1998 and four months of 1999, but were present every subsequent month through June 2001.⁷⁰ Among the 23 of 42 months that imports from Thailand entered, 10 months were in 2000 and three months in 2001, compared with only five months in each of the first two full years of the period.⁷¹ Imports from Venezuela also entered in 23 of the 42 months; those include, however, five of the six months at the end of the POI, in interim 2001.⁷²

5. Conclusion

In sum, we cumulate imports of certain cold-rolled steel products from all of the subject countries for purposes of our material injury analysis. Consideration of the four factors traditionally addressed in cumulation analysis shows that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic product. In terms of fungibility, many respondents have argued that their products are not fungible because their imports are concentrated in a few categories. These categories, however, include the same HTSUS classifications for a significant percentage of imports from each country. Both producers and importers agree there is at least a fair amount of interchangeability in general among subject imports and between the subject imports and the domestic like product.

In terms of geographic overlap, there is some variation, especially regarding Australia, India, New Zealand, and Venezuela, given that subject imports from each are concentrated in a quadrant. Again, however, the test is one of reasonable overlap, and subject imports from most countries had some presence in most or all quadrants, including the quadrant in which the concentrated imports entered.

There was also a significant simultaneous presence of subject imports. All subject countries' imports were present in a majority of months, the greatest coincidence of presence occurring in the latter part of the period of investigation.

⁶⁷ CR at IV-17, PR at IV-17.

⁶⁸ CR at Table IV-5, PR at Table IV-5.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Id. The Venezuelan respondent argues that the Commission is barred by the WTO Antidumping Agreement from cumulating the subject imports of countries whose imports would be negligible if considered individually. As the Commission concluded in response to the same argument the 2000 Cold-Rolled Steel determination, the Act does not contain a cumulation exception for imports from individual subject countries whose import volumes are below the three-percent single country negligibility threshold. Rather, its exception refers to those subject countries as to which the investigation has been terminated. See 19 U.S.C. § 1677(7)(G)(ii)(II); see Cold-Rolled Steel, USITC Pub. 3283 at 11, n.67. As discussed above, imports from none of the subject countries are eligible for termination under the negligible imports provision; hence the statutory cumulation exception does not apply.

V. CONDITIONS OF COMPETITION

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

A. Captive Consumption

The domestic industry captively consumes a significant share of its production of the domestic like product in the manufacture of downstream articles.⁷³ Thus, 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.⁷⁴ The petitioners argue that the provision is met; respondents do not object to application of the provision.⁷⁵

There is a question on this record as to whether the requirements of the captive production provision are met. However, we need not resolve the question for purposes of this preliminary determination because we consider the extent to which the domestic like product is captively consumed to be a relevant condition of competition.⁷⁶ We examine the individual criteria of the provision to some extent as follows.

We find that the threshold provision of the captive production provision has been met, as domestic producers internally transfer a significant share of their domestic production for captive consumption and

⁷³ CR at Table III-3, PR at Table III-3.

⁷⁴The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), provides:

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

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

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

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

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

⁷⁵ E.g., Bethlehem et al. Postconference Brief at 23 (assumption provision applies); Joint Respondents Postconference Brief at 2 (proposing that the Commission give the domestic industry the benefit of the doubt regarding application of the captive production provision).

⁷⁶ Commissioner Devaney does not join in the remainder of the opinion dealing with captive production. As the majority opinion, which I join, notes, ". . . we need not resolve the question for the purposes of this preliminary determination. . . ." Since we are not reaching the issue in this preliminary determination, the partial analysis which follows is unnecessary dicta. It is unconvincing at best and damaging at worst.

sell a significant share on the merchant market.⁷⁷ We find that the first statutory criterion is met; the record reflects that virtually all of the certain cold-rolled steel transferred for processing was in fact processed into downstream articles.^{78 79} We also find that the second statutory criterion has been met, as certain cold-rolled steel is the predominant material input for the relevant downstream articles.⁸⁰

With respect to the third factor, there is some question whether the domestic like product sold in the merchant market is or is not generally used in the production of the downstream article produced from internal transfers. We do not have the benefit of purchaser questionnaires in these preliminary phase investigations. To the extent production of the domestic like product sold in the merchant market is used in the production of the same downstream article produced from the captive production has been estimated,⁸¹ we find that the record contains insufficient information to make a conclusion regarding the third factor in these preliminary investigations.⁸² If these investigations proceed to final phase investigations, however, we intend to consider the impact of these factors, and others, such as ownership differences between the domestic producer and the related party, whether “the separate corporate structure of the related entity should be disregarded,” and whether “these transactions are treated by the domestic producer and related entity in the same manner as production that is transformed internally and processed into a downstream product by the domestic producer.”⁸³ For purposes of these preliminary investigations, however, we do not apply the captive production provision. We, nonetheless, take into consideration the existence of a significant volume of captive production as a relevant condition of competition for purposes of these preliminary determinations.⁸⁴

⁷⁷ CR at Table III-3, PR at Table III-3.

⁷⁸ CR at III-7, PR at Table III-7; CR at Table E-1, PR at Table E-1.

⁷⁹ Commissioner Bragg notes that, consistent with her captive production analysis, the record does not provide sufficient information (*i.e.*, lack of purchaser questionnaires) to determine the applicability of the first and third criteria of the captive production provision, even though the record contains new information and the petitioners’ contention suggests that the captive production provision applies. Accordingly, Commissioner Bragg finds that the captive production provision is not applicable in these preliminary investigations. Nonetheless, Commissioner Bragg considers the significant captive production as an important condition of competition.

In addition, Commissioner Bragg 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 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 production completely. 19 U.S.C. § 1677 (7)(C)(iv).

⁸⁰ CR at III-7, PR at Table III-7; CR at Table E-1, PR at Table E-1.

⁸¹ See INV-Y-234 (Nov. 9, 2001), PR at III-8.

⁸² Moreover, as in the 2000 cold-rolled steel final determination, the preliminary record contains insufficient information to determine that domestic producers’ transfers to related parties would be properly included among internal transfers rather than among merchant market sales. See USITC Pub. 3283 at 16-18.

⁸³ See USITC Pub. 3283 at 17.

⁸⁴ See, e.g., Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico, Invs. Nos. 731-TA-794-796 (Final), USTIC Pub. 3190 (May 1999) at 14.

B. Other Conditions of Competition

Demand for certain cold-rolled steel is closely tied to the level of demand in the appliance, automotive, construction, container, and other industries in which it is used.⁸⁵ Apparent consumption in the merchant market was fairly constant from 1998 to 2000 (an increase of 0.1 percent), then declined by 15.5 percent between interim 2000 and interim 2001.⁸⁶ Total apparent domestic consumption, including internal transfers, increased 3.1 percent from 1998 to 2000, then decreased 13.6 percent from interim 2000 to interim 2001.⁸⁷ The decrease in apparent domestic consumption in the 2001 interim period was preceded by a 9.3 percent decline in total apparent consumption in the second half of 2000 compared with the first half of 2000.⁸⁸

Total domestic production capacity increased by 2.6 percent between 1998 and 1999, and by 3.8 percent between 1999 and 2000, for an overall increase of 6.5 percent between 1998 and 2000.⁸⁹ Thus, between 1998 and 2000, capacity increased by a greater amount than did total apparent domestic consumption, both in percentage terms (6.5 percent versus 3.1 percent) and in terms of absolute volume (2.72 million tons versus 1.20 million tons).⁹⁰ A slight decrease in domestic production capacity, 0.1 percent, occurred in the interim 2001 period as compared to the same period in 2000.⁹¹ U.S. producers' capacity utilization rates increased from 84.2 percent in 1998 to 87.3 percent in 1999, and then returned to 84.2 percent in 2000. In the 2001 interim period, capacity utilization decreased to 75.6 percent compared with a rate of 89.4 percent in the interim 2000 period.⁹²

Approximately 58 percent of merchant market sales by U.S. producers is sold directly to end users, while the remaining 42 percent is sold to distributors or service centers.⁹³ Approximately 72 percent of subject imports is sold to distributors or service centers, while the remaining 28 percent is sold directly to end users.⁹⁴ Approximately 68 percent of sales by U.S. producers and 57 percent of sales by importers were on a contract basis, with the remainder on a spot basis.⁹⁵

Two companies, Bethlehem and LTV, filed for reorganization under Chapter 11 of the Bankruptcy code during the period examined.⁹⁶ Also relevant as conditions of competition in these investigations are recent investigations and reviews under the Act of cold-rolled steel products. In June 1999, the Commission and Commerce instituted antidumping and/or countervailing duty investigations of certain cold-rolled steel product from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa,

⁸⁵ CR at II-3, PR at Table II-3.

⁸⁶ CR at Table C-2, PR at Table C-2.

⁸⁷ CR at Table C-1, PR at Table C-1.

⁸⁸ CR at Table C-3, CR at C-12; PR at Table C-3, PR at C-12.

⁸⁹ CR at Table C-1; PR at Table C-1.

⁹⁰ Id.

⁹¹ CR at Table III-2; PR at Table III-2.

⁹² CR at Table C-1; PR at Table C-1.

⁹³ CR at I-11 and Table I-1; PR at I-8 and Table I-1.

⁹⁴ CR at Table I-1; PR at Table I-1.

⁹⁵ CR at V-12, PR at V-12.

⁹⁶ CR at III-4, PR at III-4.

Taiwan, Thailand, Turkey, and Venezuela, most of which are also subject countries in this investigation⁹⁷ In October through December 1999, the deposit of provisional antidumping and/or countervailing duties, or the posting of bond, was required on subject imports from those countries.⁹⁸ The provisional measures were lifted following the Commission's negative final determinations between March and July of 2000.^{99 100}

In addition, antidumping duty and/or countervailing duty orders were in place with respect to certain cold-rolled steel from Germany, Korea, the Netherlands, and Sweden throughout most of the period of investigation. The order on Sweden, which was issued in 1985, and the orders on Germany, Korea, and the Netherlands, which were issued in 1993,¹⁰¹ were revoked in December of 2000, following the Commission's determination in its five-year review of the orders that material injury was not likely to continue or recur if the orders were revoked.^{102 103} Accordingly, there have been no antidumping or countervailing duty orders since the end of 2000, and the provisional measures were ended in mid-year 2000.¹⁰⁴

⁹⁷ Petition filed June 2, 1999; Commission institution, June 9, 1999 (64 Fed. Reg. 31018); Commerce initiation, June 25, 1999 (64 Fed. Reg. 34194).

⁹⁸ USITC Pub. 3283 at I-3 - I-4. Customs was instructed by Commerce to impose these provisional measures following Commerce's affirmative preliminary determinations with respect to those countries.

⁹⁹ 65 Fed. Reg. 15008 (Mar. 20, 2000) (Argentina, Brazil, Japan, Russia, South Africa, Thailand); 65 Fed. Reg. 31348 (May 17, 2000) (Turkey, Venezuela); 65 Fed. Reg. 44076 (July 17, 2000) (China, Indonesia, Slovakia, Taiwan). Any continuation of the suspension of liquidation would have been under court order, not by reason of the determinations of Commerce or the Commission.

¹⁰⁰ Commissioner Bragg notes that, although the Commission's majority negative determinations ultimately removed the duty orders, she found in the affirmative in those previous investigations. She also found the domestic industry to be vulnerable to imports from several countries that are again subject to these investigations. See USITC Pub. 3283 (March 2000), Separate Views of Commissioner Lynn M. Bragg, at 29-40.

¹⁰¹ Certain Carbon Steel Products From Austria and Sweden, Invs. Nos. 701-TA-225, 231, USITC Pub. No. 1759 (Sep. 1985). Certain Flat-Rolled Carbon Steel Products From Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, The Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and The United Kingdom, Invs. Nos. 701-TA-319-332, 334, 336-42, 344, 347-353, 731-TA-573-579, 581-592, 594-597, 599-609, 612-619 (Final), USITC Pub. No. 2664 (Aug. 1993).

¹⁰² Notice of revocation, 65 Fed. Reg. 78467 (Dec. 15, 2000). 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, Invs. 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), USITC Pub. 3364 (Nov. 2000).

¹⁰³ Commissioner Bragg and Commissioner Miller note that, although the Commission's majority negative determination ultimately removed the duty orders, they each found in the affirmative in those previous investigations with respect to Germany, Korea, and the Netherlands. They also found the domestic industry to be vulnerable to imports from several countries that are again subject to these investigations. See USITC Pub. 3364 (Nov. 2000), Separate and Dissenting Views of Commissioner Lynn M. Bragg and Separate Views of Commissioner Marcia E. Miller on Cold-Rolled Carbon Steel Flat Products.

¹⁰⁴ We note the existence of an agreement signed on July 12, 1999, between Commerce and the Ministry of Trade of the Russian Federation, which limits subject imports from Russia to approximately half the level of 1998 imports. This agreement is in addition to the suspension agreement under 19 U.S.C. § 1673c(c)(1), which was signed on January 13, 2000. 65 Fed. Reg. 5500 (Feb. 4, 2000). Unlike a suspension agreement, this comprehensive agreement limits subject imports from Russia notwithstanding the Commission's negative

(continued...)

VI. VIEWS OF COMMISSIONERS BRAGG, MILLER AND DEVANEY ON REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND/OR LTFV IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.¹⁰⁵ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹⁰⁶ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹⁰⁷ 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.¹⁰⁸ 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.”¹⁰⁹

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing certain cold-rolled steel is materially injured by reason of imports of certain cold-rolled steel products from Argentina, Brazil, France, and Korea that are allegedly subsidized and by reason of imports of certain cold-rolled steel products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, that are allegedly sold in the United States at less than fair value.¹¹⁰

B. Volume

Section 771(C)(I) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹¹¹

The volume of subject imports increased steadily over the recent period, from 854,432 short tons in the first half of 2000, to 1,191,865 short tons in the second half of 2000, to 1,205,418 short tons in the first

¹⁰⁴ (...continued)

determination, USITC Pub. 3364, in the prior investigation regarding Russia.

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

¹⁰⁶ 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).

¹⁰⁷ 19 U.S.C. § 1677(7)(A).

¹⁰⁸ 19 U.S.C. § 1677(7)(C)(iii).

¹⁰⁹ 19 U.S.C. § 1677(7)(C)(iii).

¹¹⁰ For her present material injury analysis, Commissioner Miller focused on the most recent twelve-month period, July 2000 through June 2001, in considering increases in subject import volumes, price declines, and the impact of subject imports on the condition of the domestic industry.

¹¹¹ 19 U.S.C. § 1677(7)(C)(I).

half of 2001, even as apparent U.S consumption began to decline.¹¹² The market penetration of the subject imports similarly increased in the most recent 12 months of the period examined, while the market shares of both the domestic industry and nonsubject imports declined during the same period.¹¹³ The rise in the volume and market share of subject imports, as compared to prior portions of the period examined, coincided with the lifting of preliminary duties and final orders on imports from many of the subject countries beginning in March 2000.

Although the volume of cumulated subject imports decreased from 3.37 million short tons in 1998 to 2.75 million short tons in 1999, then decreased further to 2.05 million short tons in 2000,¹¹⁴ the decrease coincided with the Commission's and Commerce's antidumping and/or countervailing duty investigations, initiated in June 1999, of certain cold-rolled steel products from, among other countries, many of the subject countries in these investigations: Argentina, Brazil, China, Japan, Russia, South Africa, Taiwan, Thailand, Turkey, and Venezuela.¹¹⁵ Similarly, from 1998 to the beginning of 2000, domestic producers' share of consumption increased.¹¹⁶

The volume of subject imports, compared to domestic shipments, declined in 1999 and 2000, then increased in interim 2001, compared with interim 2000.¹¹⁷ For purposes of these preliminary determinations, we find the volume of subject imports and the increase in the volume of subject imports to be significant.

C. Price Effects of the Subject Imports

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹¹⁸

¹¹² CR at Table C-3; PR at C-3.

¹¹³ As a share of the merchant market, measured by quantity, subject imports increased to 15.4 percent in interim 2001, compared with 9.2 percent in interim 2000. CR at Table C-2; PR at Table C-2. The domestic industry's share of the merchant market decreased to 81.2 percent in interim 2001, compared with 85.7 percent in interim 2000. CR at Table C-2; PR at Table C-2. Subject imports' share of the entire market, including internal transfers, measured by quantity, increased to 6.7 percent in interim 2001, compared to 4.1 percent in interim 2000. CR at Table IV-9; PR at Table IV-9. The domestic industry's share of the entire market, measured by quantity, declined to 91.9 percent in interim 2001, compared to 93.7 percent in interim 2000. CR at Table IV-9; PR at Table IV-9.

¹¹⁴ CR at Table IV-1; PR at Table IV-1.

¹¹⁵ Petition filed June 2, 1999; Commission institution, June 9, 1999 (64 Fed Reg. 31018); Commerce initiation, June 25, 1999 (64 Fed. Reg. 34194).

¹¹⁶ CR at Table C-1 and C-2; PR at Table C-1 and C-2.

¹¹⁷ CR at Table IV-8 ; PR at Table IV-8 (entire market); CR at Table C-2, PR at Table C-2 (merchant market).

¹¹⁸ 19 U.S.C. § 1677(7)(C)(ii).

The evidence gathered in these investigations indicates that there is at least a moderate degree of substitutability between the subject merchandise and the domestic like product, and that price, quality, and ability to supply are all important considerations for purchasers.¹¹⁹

Price declines are significant when measured by the specific product pricing data obtained for products 1 and 2 in these investigations, which also reflect significant underselling by subject imports.¹²⁰ During those quarters for which data were reported, subject imports undersold domestic products in 282 quarters, or in 65 percent of all comparisons.¹²¹ Underselling margins in those quarterly comparisons ranged from 0.1 percent to 74.7 percent.¹²² We find this underselling to be significant. The specific product pricing data also showed significant price declines across all product/channel of distribution combinations.¹²³ Overall, U.S. prices ended the period at a level lower than at the beginning of the period, and the largest price drop occurred between interim 2000 and interim 2001. We find that the declining import prices, throughout the period examined, and particularly from the second half of 2000 onward, significantly depressed U.S. prices.

The average unit value of subject imports and the domestic like product are consistent with and confirm the pricing trends shown by the specific product pricing data. The average unit value for subject imports increased by 8.4 percent between 1998 and 2000, from \$432 to \$468.¹²⁴ The average unit value then fell by 21.0 percent, to \$380 in interim 2001, compared with \$480 in interim 2000.¹²⁵ In contrast, the average unit value for nonsubject imports decreased 7.3 percent between 1998 and 2000, from \$472 to \$438, then increased by 2.3 percent in interim 2001 to \$437, compared with \$427 in interim 2000.¹²⁶ The average unit value for domestic merchant market shipments fell 6.1 percent between 1998 and 2000, from \$471 to \$443, and dropped 11.1 percent between interim 2000 and interim 2001.¹²⁷ The average unit value for domestic shipments, including internal transfers, fell 5.7 percent between 1998 and 2000, from \$443 to \$418, and dropped 11.1 percent between interim 2000 and interim 2001.¹²⁸

Although we acknowledge that other factors in the current market may be placing pressure on domestic prices (e.g., the evolving presence of minimills, hot-rolled steel prices, and quality and other non-price differences among the products),¹²⁹ we find that subject imports themselves have depressed prices to a significant degree. We will examine these other factors further in any final phase investigations.

D. Impact

¹¹⁹ CR at II-4 - II-10; PR at II-3 - II-8.

¹²⁰ CR at Tables G-1 - G-4; PR at Tables G-1 - G-4.

¹²¹ CR at V-22; PR at V-13.

¹²² CR at Tables G-1 - G-4; PR at Tables G-1 - G-4.

¹²³ Id.

¹²⁴ CR at Table C-1; PR at Table C-1.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ We also note that the evidence on the extent to which spot sales may influence contract prices is inconclusive and will be examined more extensively in any final phase investigations.

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.¹³⁰ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{131 132 133}

We find that the subject imports had an adverse impact on the domestic industry’s performance, particularly from March 2000 onward when subject imports reentered the market even as overall U.S. consumption was declining. As noted previously, two producers declared bankruptcy during the period, Bethlehem and LTV. The industry’s financial condition deteriorated significantly over the period under investigation.

As prices dropped and subject imports increased after the duty orders and provisional measures were lifted, the industry, which as a whole was already vulnerable, suffered operating losses of \$299 million in 2000 and \$923 million in interim 2001.¹³⁴ In addition, the general trends of the individual producers also reflect significant operating losses from 1999 to 2001.¹³⁵ On merchant market sales, the industry’s operating income as a percentage of net sales declined from 3.0 percent in 1998, to a loss of 1.1 percent in 1999, and then improved slightly to a loss of 0.7 percent in 2000.¹³⁶ The industry’s operating income as a percentage of total net sales, including internal transfers, declined from 3.0 percent in 1998, to a loss of 1.7 percent in 1999, and a loss of 1.9 percent in 2000.¹³⁷ The slight improvement in profitability in 2000 on merchant market operations is attributable to an improvement in the first half of 2000, when

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

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

¹³² 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). Commerce’s initiated estimated dumping margins were as follows: Argentina, 89.89 percent; Australia, 24.06 percent; Belgium, 25.41 percent; Brazil, 26.4 percent; France, from 7.93 to 22.12 percent; Germany, from 25.78 to 35.02 percent; India, 128.38 percent; Japan, from 109.90 to 115.22 percent; Korea, from 45.77 to 53.72 percent; the Netherlands, from 58.50 to 58.61 percent; New Zealand, 21.72 percent; China, from 70.68 to 74.16 percent; Russia, from 130.58 to 137.33 percent; South Africa, 54.59 percent; Spain, 46.20 percent; Sweden, 40.54 percent; Taiwan, 16.8 percent; Thailand, from 112.09 to 142.78 percent; Turkey, 51.71 percent; and Venezuela, 53.9 percent. Commerce Fact Sheet, CR and PR at App. A.

¹³³ 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 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).

¹³⁴ CR at Table VI-5, PR at Table VI-5. In the merchant market, the industry had an operating loss of \$44 million in 2000 and an operating loss of \$332 in interim 2001. CR at Table C-2, PR at Table C-2.

¹³⁵ CR at Table VI-2, PR at Table VI-2.

¹³⁶ CR at Table VI-1, PR at Table VI-1.

¹³⁷ CR at Table VI-5, PR at Table VI-5.

certain subject imports were restrained by provisional measures imposed in the prior cold-rolled steel investigations.¹³⁸ The industry's results in the interim periods reflect a dramatic further decline, with an operating loss on merchant market sales of 12.5 percent in interim 2001, compared with operating income of 3.0 percent in interim 2000.¹³⁹ In the total market, including internal transfers, the industry experienced an operating loss of 14.5 percent in interim 2001, compared with operating income of 2.0 percent in interim 2000.¹⁴⁰ This decline was in large part due to lower average prices which were reflected in lower average values for net sales.¹⁴¹ The industry's capital expenditures also declined from \$469 million in 1998 to \$325 million in 2000.¹⁴² Capital expenditures increased in interim 2001 to \$116 million, compared with \$110 million in interim 2000.¹⁴³

The industry added capacity in the period and reported 41.8 million short tons of capacity in 1998 and 44.5 million short tons of capacity in 2000.¹⁴⁴ The industry's production increased from 35.2 million short tons in 1998 to 37.5 million short tons in 2000,¹⁴⁵ but its production dropped from 19.9 million short tons in interim 2000 to 16.8 million short tons in interim 2001.¹⁴⁶ Capacity utilization was 84.2 percent in 1998 and 2000, but it declined from 89.4 percent in the first six months of 2000, to 75.6 percent in the first half of 2001.¹⁴⁷

Domestic producers' share of merchant market sales declined, from 85.7 percent in interim 2000 to 81.2 percent in interim 2001.¹⁴⁸ The share of U.S. consumption accounted for by domestic producers in the merchant market had increased, from 76.9 percent in 1998 to 83.8 percent in 2000.¹⁴⁹ Similarly, the share of U.S. consumption accounted for by domestic producers in the total market, including internal transfers, increased slightly, from 89.5 percent in 1998 to 92.8 percent in 2000.¹⁵⁰ However, domestic producers' market share declined in the interim period comparison for the total market from 93.7 percent to 91.9

¹³⁸ CR at Table C-3, PR at Table C-3.

¹³⁹ CR at Table VI-1, PR at Table VI-1.

¹⁴⁰ CR at Table VI-5, PR at Table VI-5. 19 of 23 domestic producers reported losses in the first half of 2001.

Id.

¹⁴¹ CR at VI-8, PR at VI-5. The average value of net sales in the merchant market declined from \$473 per short ton in 1998 to \$446 per short ton in 2000. In interim 2001, the average value of net sales in the merchant market was further depressed to \$404, compared with \$453 in the first half of 2000. CR at Table VI-1, PR at Table VI-1. The average value of net sales in the entire market declined from \$444 per short ton in 1998 to \$419 per short ton in 2000. In interim 2001, the average value of net sales in the entire market was further depressed to \$379, compared with \$425 in interim 2000. CR at Table VI-5, PR at Table VI-5.

¹⁴² CR at Table VI-9, PR at Table VI-9.

¹⁴³ Id.

¹⁴⁴ CR at Table III-2, PR at Table III-2. Reported capacity was 22.2 million short tons in the first half of 2000 and the first half of 2001. Id.

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ Id.

¹⁴⁸ CR at Table IV-9, PR at Table IV-9.

¹⁴⁹ Id.

¹⁵⁰ Id.

percent.¹⁵¹ The industry's sales in the merchant market increased from 14.0 million short tons in 1998 to 15.2 million short tons in 2000, but then declined in the interim periods, when merchant market sales dropped from 8.2 million short tons in interim 2000 to 6.6 million short tons in interim 2001.¹⁵² The industry's total sales increased from 35.0 million short tons in 1998 to 37.4 million short tons in 2000, but then they declined in the interim periods, when total sales dropped from 19.8 short tons in interim 2000 to 16.8 million short tons in interim 2001.¹⁵³

Both productivity and the number of production-related-workers likewise declined in the most recent period of the period examined, after increasing somewhat from 1998 to 2000.¹⁵⁴ Domestic inventories were relatively unchanged during the period of investigation, but increased somewhat toward the end of the period.¹⁵⁵

We find that the increased volume of subject country imports in a declining market in the most recent period of the period of investigation had significant price depressing effects and adversely impacted the domestic industry, as reflected in declining profitability, capacity utilization, production, and shipments.

E. Conclusion

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing certain cold-rolled steel products is materially injured by reason of imports of certain cold-rolled steel products from the subject countries that are allegedly subsidized and by reason of imports of certain cold-rolled steel products that are allegedly sold in the United States at less than fair value.

VII. VIEWS OF CHAIRMAN KOPLAN, VICE CHAIRMAN OKUN, AND COMMISSIONER HILLMAN ON REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND/OR LTFV IMPORTS

A. Cumulation for Purposes of Threat

For purposes of determining if a threat of material injury exists, cumulation is discretionary. Under section 771(7)(H) of the Act, the Commission may "to the extent practicable" cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the

¹⁵¹ Id.

¹⁵² CR at Table VI-1. Similarly, the industry's U.S. shipments increased from 34.5 million short tons in 1998 to 36.9 million short tons in 2000, but then declined during the interim periods from 19.5 to 16.6 million short tons. CR at Table IV-8, PR at Table IV-8.

¹⁵³ CR at Table VI-5; PR at Table VI-5. Similarly, the industry's U.S. shipments increased from 13.5 million short tons in 1998 to 14.7 million short tons in 2000, but then declined during the interim periods from 7.9 to 6.3 million short tons. CR at Table C-2, PR at Table C-2.

¹⁵⁴ The industry's production related workers increased from 26,458 in 1998 to 27,225 in 2000. CR at Table III-5, PR at Table III-5. The number then declined from 27,797 in interim 2000 to 24,474 in interim 2001. Id. Productivity was 603 short tons per 1,000 hours in 1998 and 624 short tons per 1,000 hours in 2000. It declined from 637 short tons per 1,000 hours in interim 2000 to 623 short tons per 1,000 hours in interim 2001. Id.

¹⁵⁵ Inventories were 2.08 million short tons in 1998 and 2.06 million short tons in 2000. CR at Table III-4, PR at Table III-4. In the first half of 2001, inventories were just 1.91 million short tons in comparison to 2.15 million short tons in the first half of 2000. Id.

same day if the requirements for cumulation for material injury analysis are satisfied.¹⁵⁶ In addition to considering the four cumulation factors described above, the Commission also may consider the similarity of trends in the volume and price of subject imports from the countries under investigation.¹⁵⁷

We exercise our discretion to cumulate all subject imports for purposes of our analysis of whether there is a reasonable indication of threat of material injury by reason of the subject imports. In that regard, we have taken account of the four cumulation factors described above as well as the fact that imports from the subject countries exhibited similar pricing trends during the period for which data were collected.¹⁵⁸ The average unit value of subject imports from each country was lower in the interim period than they were in 1998.¹⁵⁹ Similarly, the price comparisons data for products 1 and 2 show lower prices for nearly all countries at the end of the period of investigation compared with the beginning of the period, and all subject countries' prices were lower for at least one of the two products.¹⁶⁰ On this basis, for purposes of these preliminary investigations, we have exercised our discretion to assess cumulatively the volume and price effects of the subject imports from all subject countries.

B. Reasonable Indication of Threat of Material Injury

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁶¹ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.¹⁶² In making our determination, we have considered all statutory factors that are relevant to these investigations,¹⁶³ including the rate of the increase in the volume and market penetration of subject imports, unused production capacity, and the substantial inventories of subject merchandise.

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports. For purposes of these preliminary determinations, we find that the record data reflects a significant rate of increase in cumulated

¹⁵⁶ 19 U.S.C. § 1677(7)(H).

¹⁵⁷ See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); 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).

¹⁵⁸ We acknowledge that the trends in volume are mixed for the subject countries. However, the trends for some of the subject countries were likely affected by the pendency of the cold-rolled steel investigations in 1999-2000. We will explore this issue further if cumulation for threat purposes is relevant in our final determinations.

¹⁵⁹ CR at Table C-1, PR at Table C-1.

¹⁶⁰ CR at Tables V-1, V-2; PR at Table V-1, V-2.

¹⁶¹ 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

¹⁶² 19 U.S.C. § 1677(7)(F)(ii).

¹⁶³ 19 U.S.C. § 1677(7)(F)(i). Factor VII is inapplicable in these investigations because it does not involve imports of a raw agricultural product.

volume and market penetration of the subject imports at the end of the period examined indicating the likelihood of substantially increased imports.

Although the volume of the cumulated subject imports decreased from 3.37 million short tons in 1998 to 2.05 million short tons in 2000, subject imports then increased in interim 2001 to 1.2 million short tons, compared to 0.85 million short tons in interim 2000.¹⁶⁴ When measured by total U.S. consumption, the subject imports followed a similar trend. The subject imports' share of the market declined from 1998 to 2000, then increased in interim 2001, compared with interim 2000, while the domestic industry's market share increased from 1998 to 2000, then declined in interim 2001, compared with interim 2000.¹⁶⁵ The volume of subject imports, compared to domestic shipments, declined in 1999 and 2000 then increased in interim 2001, compared with interim 2000.¹⁶⁶

We also find that producers in the subject countries have excess capacity that will permit them to significantly increase exports to the United States in the imminent future. Based on data for full year 2000, subject country producers had excess production capacity of more than 10 million short tons.¹⁶⁷ This would allow subject import volume to more than triple if the excess capacity were used to produce subject products that were exported to the United States.¹⁶⁸ Subject producers continued to have significant excess capacity, 5.3 million short tons, in the interim 2001 period. Moreover, the United States has been a significant market for the subject countries over the period examined.¹⁶⁹ It is also significant that cold-rolled steel exports from certain of the subject countries face antidumping duties or quantitative restrictions in a number of other foreign markets, potentially creating a further incentive for them to increase their exports to the United States.¹⁷⁰ There also were significant ending inventories of subject merchandise in the subject countries.¹⁷¹

¹⁶⁴ CR at Table IV-1; PR at Table IV-1.

¹⁶⁵ As a share of the merchant market, measured by quantity, subject imports declined from 19.1 percent in 1998 to 11.6 percent in 2000, then increased to 15.4 percent in interim 2001, compared with 9.2 percent in interim 2000. CR at Table C-2, PR at Table C-2. The domestic industry's share of the merchant market, measured by quantity, increased from 76.9 percent in 1998 to 83.8 percent in 2000, then decreased to 81.2 percent in interim 2001, compared with 85.7 percent in interim 2000. CR at Table C-2, PR at Table C-2. Subject imports' share of the total market, including internal transfers, measured by quantity, decreased from 8.7 percent in 1998 to 5.1 percent in 2000, then increased to 6.7 percent in interim 2001, compared to 4.1 percent in interim 2000. CR at Table IV-9, PR at Table IV-9. The domestic industry's share of the entire market, measured by quantity, increased from 89.5 percent in 1998 to 92.8 percent in 2000, then declined to 91.9 percent in interim 2001, compared to 93.7 percent in interim 2000. CR at Table IV-9, CR at Table IV-9.

¹⁶⁶ CR & PR at Table IV-8 (total market), CR & PR at Table C-2 (merchant market).

¹⁶⁷ CR at Table VII-18, PR at Table VII-18; see also Joint Respondents' Postconference Brief at 51-53 (acknowledging significant excess capacity).

¹⁶⁸ See CR at Table IV-1, PR at Table IV-1.

¹⁶⁹ CR at Table VII-18, PR at Table VII-18.

¹⁷⁰ CR at VII-31, PR at VII-16. Brazilian cold-rolled steel products are currently subject to suspension agreement in Argentina. Russian cold-rolled steel products are currently subject to antidumping findings in Mexico, Philippines, Colombia, Venezuela, Canada, and Egypt, are subject to antidumping duty investigations in South Africa and Thailand, and are subject to a minimum price in Argentina. Turkish cold-rolled steel products are currently subject to antidumping findings in Canada. The Government of Venezuela, before Sidor was privatized in February 1998, reached a deal with Mexico regarding cold-rolled steel products.

¹⁷¹ CR at Table VII-18, PR at Table VII-18. Ending inventories of producers in the subject countries were 3.24

(continued...)

As we discussed previously, domestically produced and imported cold-rolled carbon steel products are at least moderately interchangeable, and price is a significant factor in purchasing decisions. The record indicates that the subject imports undersold the domestic product in the majority of comparisons over the period examined, with underselling margins ranging from 0.1 percent to 74.7 percent.¹⁷²

The average unit value of subject imports and the domestic like product confirm the pricing trends shown by the specific product pricing data. The average unit value of subject imports increased by 8.4 percent between 1998 and 2000, from \$432 to \$468.¹⁷³ The average unit value for subject imports then fell by 21.0 percent, to \$380, in interim 2001, compared with \$480 in interim 2000.¹⁷⁴ In contrast, the average unit value for nonsubject imports decreased 7.3 percent between 1998 and 2000, from \$472 to \$438, then increased by 2.3 percent in interim 2001 to \$437, compared with \$427 in interim 2000.¹⁷⁵ The average unit value for domestic merchant market shipments fell 6.1 percent between 1998 and 2000, from \$471 to \$443, and dropped 11.1 percent between interim 2000 and interim 2001.¹⁷⁶ The average unit value for total domestic shipments, including internal transfers, fell 5.7 percent between 1998 and 2000, from \$443 to \$418, and dropped 11.1 percent between interim 2000 and interim 2001.¹⁷⁷

These price declines correlate with the increasing level of subject imports in interim 2001 discussed above. Nevertheless, the declining prices also coincided with decreasing demand for certain cold-rolled steel products. Apparent consumption of certain cold-rolled steel products in the merchant market declined by 15.5 percent from interim 2000 to interim 2001, following a 0.4 increase during 1998 to 2000.¹⁷⁸ Overall apparent consumption, including internal transfers, of certain cold-rolled steel products declined by 13.6 percent from interim 2000 to interim 2001, following a 1.0 percent decrease during 1998 to 2000.¹⁷⁹ The convergence of likely increasing subject imports and declining prices supports the view that increased imports are likely to suppress or depress future prices to a significant degree.¹⁸⁰

The data available at this preliminary phase of these investigations indicate that the increasing subject import volume and price suppressing or depressing effects will likely adversely impact the domestic industry's revenues and profitability. The increases in volume and market penetration of the subject imports at the end of the period examined are particularly significant in light of the already deteriorating performance and vulnerability of the domestic industry.

On merchant market sales, the industry's operating income as a percentage of net sales declined from 3.0 percent in 1998, to a loss of 1.1 percent in 1999, and then improved slightly to a loss of 0.7

¹⁷¹ (...continued)

million short tons in 1998 and 3.86 million short tons in 2000. They increased to 3.73 million short tons in interim 2001, compared with 3.50 million short tons in interim 2000.

¹⁷² CR at V-22, PR at V-13; CR at Tables G-1 - G-4, PR at Tables G-1 - G-4.

¹⁷³ CR at Table C-1, PR at Table C-1.

¹⁷⁴ Id.

¹⁷⁵ Id.

¹⁷⁶ CR at Table C-2, PR at Table C-2.

¹⁷⁷ CR at Table C-1, PR at Table C-1.

¹⁷⁸ CR at Table C-2, PR at Table C-2.

¹⁷⁹ CR at Table C-1, PR at Table C-1.

¹⁸⁰ We acknowledge that other factors in the current market may be placing pressure on domestic prices (e.g., demand for hot-rolled steel, the level of specialization of the product, and whether sales are on a contract or spot basis), we find that subject imports themselves have depressed prices to a significant degree. We will examine those other factors further in the final phase investigations.

percent in 2000.¹⁸¹ The industry's operating income as a percentage of total net sales, including internal transfers, declined from 3.0 percent in 1998, to a loss of 1.7 percent in 1999, and a loss of 1.9 percent in 2000.¹⁸² The slight improvement in profitability in 2000 on merchant market operations is largely attributable to an improvement in the first half of 2000, when certain subject imports were restrained by provisional measures in the prior cold-rolled steel investigations.¹⁸³ The industry's results in the interim period reflect a dramatic further decline, with an operating loss on merchant market sales of 12.5 percent in interim 2001, compared with operating income of 3.0 percent in interim 2000.¹⁸⁴ In the total market, including internal transfers, the industry experienced an operating loss of 14.5 percent in interim 2001 compared with operating income of 2.0 percent in interim 2000.¹⁸⁵ This decline was in large part due to lower average prices which were reflected in lower average values for net sales.^{186 187}

Other performance indicators demonstrate the likely adverse impact of increasing subject import volumes and adverse price effects. The industry's capacity during 1998-2000 increased from 41.8 million short tons to 44.5 million short tons, then remained essentially flat in the interim period at 22.2 million short tons.¹⁸⁸ The industry's production increased from 35.2 million short tons in 1998 to 37.5 million short tons in 2000,¹⁸⁹ but its production dropped from 19.9 million short tons in interim 2000 to 16.8 million short tons in interim 2001.¹⁹⁰ Capacity utilization was 84.2 percent in 1998 and 2000, but it declined from 89.4 percent in the first six months of 2000, to 75.6 percent in the first half of 2001.¹⁹¹

The share of U.S. consumption accounted for by domestic producers in the total market, including internal transfers, increased slightly, from 89.5 percent in 1998 to 92.8 percent in 2000.¹⁹² However, domestic producers' market share declined in the interim period comparison for the total market from 93.7 percent to 91.9 percent.¹⁹³ The share of U.S. consumption accounted for by domestic producers in the

¹⁸¹ CR at Table VI-1, PR at Table VI-1.

¹⁸² CR at Table VI-5, PR at Table VI-5.

¹⁸³ CR at Table C-3, PR at C-3.

¹⁸⁴ CR at Table VI-1, PR at Table VI-1.

¹⁸⁵ CR at Table VI-5, PR at Table VI-5. 19 of 23 domestic producers reported losses in the first half of 2001.

Id.

¹⁸⁶ CR at VI-8, PR at VI-5. The average value of net sales in the merchant market declined from \$473 per short ton in 1998 to \$446 per short ton in 2000. In interim 2001, the average value of net sales in the merchant market was further depressed to \$404, compared with \$453 in the first half of 2000. CR at Table VI-1, PR at Table VI-1. The average value of net sales in the entire market declined from \$444 per short ton in 1998 to \$419 per short ton in 2000. In interim 2001, the average value of net sales in the entire market was further depressed to \$379, compared with \$425 in interim 2000. CR at Table VI-5, PR at Table VI-5.

¹⁸⁷ The industry's capital expenditures also declined from \$469 million in 1998 to \$325 million in 2000, but increased in interim 2001 to \$116 million, compared with \$110 million in interim 2000. CR at Table VI-9, PR at Table VI-9.

¹⁸⁸ CR at Table III-2, PR at Table III-2. Reported capacity was 22.2 million short tons in the first half of 2000 and the first half of 2001. Id.

¹⁸⁹ Id.

¹⁹⁰ Id.

¹⁹¹ Id.

¹⁹² CR at Table IV-9, PR at Table IV-9.

¹⁹³ Id.

merchant market also increased, from 76.9 percent in 1998 to 83.8 percent in 2000,¹⁹⁴ but then declined in the interim merchant market comparison from 85.7 percent to 81.2 percent.¹⁹⁵ The industry's total sales increased from 35.0 million short tons in 1998 to 37.4 million short tons in 2000, but then they declined in the interim periods, when total sales dropped from 19.8 short tons in interim

2000 to 16.8 million short tons in interim 2001.¹⁹⁶ The industry's sales in the merchant market increased from 14.0 million short tons in 1998 to 15.2 million short tons in 2000, but then they declined in the interim periods, when merchant sales dropped from 8.2 million short tons in interim 2000 to 6.6 million short tons in interim 2001.¹⁹⁷ Both productivity and the number of production-related-workers increased during the period of investigation and then declined in the interim period comparisons.¹⁹⁸ Domestic inventories were relatively unchanged during the period of investigation.¹⁹⁹ We find that the likely increasing volume and suppressing and depressing price effects of subject imports will adversely impact the domestic industry.

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing certain cold-rolled steel products is threatened with material injury by reason of imports of certain cold-rolled steel products from the subject countries that are allegedly subsidized and by reason of imports of certain cold-rolled steel products that are allegedly sold in the United States at less than fair value.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing certain cold-rolled steel products is materially injured or threatened with material injury by reason of subject imports of certain cold-rolled steel products that are allegedly subsidized and/or sold in the United States at less than fair value.

¹⁹⁴ Id.

¹⁹⁵ Id.

¹⁹⁶ CR at Table VI-1, PR at Table VI-1. Similarly, the industry's U.S. shipments increased from 13.5 million short tons in 1998 to 14.7 million short tons in 2000, but then declined during the interim periods from 7.9 to 6.3 million short tons. CR at Table C-2, PR at Table C-2.

¹⁹⁷ CR at Table VI-1, PR at Table VI-1. Similarly, the industry's U.S. shipments increased from 34.5 million short tons in 1998 to 36.9 million short tons in 2000, but then declined during the interim periods from 19.5 to 16.6 million short tons. CR at Table IV-8, PR at Table IV-8.

¹⁹⁸ The industry's production related workers increased from 26,458 in 1998 to 27,225 in 2000. CR at Table III-5, PR at Table III-5. The number then declined from 27,797 in interim 2000 to 24,474 in interim 2001. Id. Productivity was 603 short tons per 1,000 hours in 1998 and 624 short tons per 1,000 hours in 2000. It declined from 637 short tons per 1,000 hours in interim 2000 to 623 short tons per 1,000 hours in interim 2001 Id.

¹⁹⁹ Inventories were 2.08 million short tons in 1998 and 2.06 million short tons in 2000. CR at Table III-4; PR at Table III-4. In the first half of 2001, inventories were just 1.91 million short tons in comparison to 2.15 million short tons in the first half of 2000. Id.