

UNITED STATES INTERNATIONAL TRADE COMMISSION

TOP-OF-THE-STOVE STAINLESS STEEL COOKING WARE FROM KOREA

Investigations Nos. 701-TA-267 and 731-TA-304 (Review) (Remand)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3485, February 2002)

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**VIEWS OF THE COMMISSION ON REMAND**

By opinion and order dated September 26, 2001,<sup>1</sup> Judge Donald C. Pogue of the U.S. Court of International Trade remanded the Commission's determinations in Top-of-the-stove Stainless Steel Cooking Ware from Korea. Upon consideration of the remand order, the Commission determines that the revocation of the antidumping and countervailing duty orders on top-of-the-stove stainless steel cooking ware from Korea would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup>

**I. BACKGROUND**

In March 2000, the Commission determined that revocation of the antidumping and countervailing duty orders on top-of-the-stove stainless steel cooking ware from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>3</sup> Korean producers and exporters of the subject merchandise appealed the Commission's determination on Korea to the U.S. Court of International Trade ("Court").<sup>4</sup> On

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<sup>1</sup>Cheflin Corporation, et. al. v. United States, Court No. 00-05-00212, Slip Op. 01-118 (September 26, 2001) ("Slip Op.").

<sup>2</sup>Vice Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg determine that revocation of the countervailing duty and antidumping duty orders on top-of-the-stove stainless steel cooking ware from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Vice Chairman Okun joins the cumulation and data issues discussion in the Opinion.

<sup>3</sup>See Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan, and Top-of-the-stove Stainless Steel Cooking Ware from Korea and Taiwan, Invs. Nos. 701-TA-267 and 268 (Review) and 731-TA-297-299, 304 and 305 (Review), USITC Pub. No. 3286 (Mar. 2000) ("Review Determinations"). Notice of the Commission's final determinations was published in the Federal Register at 65 Fed. Reg. 17,902 (April 5, 2000). Vice Chairman Okun and Commissioners Askey and Bragg determined that revocation of the countervailing duty and antidumping duty orders on top-of-the-stove stainless steel cooking ware from Korea and Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

<sup>4</sup>See Summons filed in United States Court of International Trade by Korean producers and exporters on May 4, 2001.

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September 26, 2001, the Court remanded the determination to the Commission, ordering the Commission to reconsider its finding that the subject imports from Korea and from Taiwan would be likely to have a discernible adverse impact, and to reconsider whether there is a reasonable overlap of competition between Korean and Taiwan cooking ware and domestic and Taiwan cooking ware sufficient to warrant cumulation of subject imports.<sup>5</sup>

On December 10, 2001, the Commission informed the parties to the review investigations that it had decided to reopen the record in these reviews for the limited purpose of seeking information regarding two issues identified by the Court: the nature of subject imports from Taiwan, and the possible inclusion of non-subject imports in official import data. After an extensive search for the identities of Taiwan manufacturers of subject merchandise, the Commission sent questionnaires to over 40 companies in Taiwan. No surveyed producer of top-of-the-stove stainless steel cooking ware from Taiwan provided data in response to the questionnaire. The Commission also telephoned several companies in Taiwan but received only limited information from one of them.<sup>6</sup>

In addition, the Commission sought information from the parties about the ratio of non-subject imports covered under HTSUS statistical reporting number 7323.93.00.30. The domestic interested party provided the Commission with U.S. market data maintained by the Cookware Manufacturers Association. The Committee argued that, based on this data, the Commission should conclude that at least 97 percent of imports covered by HTSUS 7323.93.00.30 during the period of review were of subject top-of-the-stove stainless steel cooking ware. Korean respondents did not provide the Commission with any information regarding the actual ratio of subject to non-subject imports covered by HTSUS 7323.93.00.30, but urged

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<sup>5</sup>Slip Op. at 26 - 27.

<sup>6</sup>INV-Y-249, December 31, 2001, at 1.

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the Commission not to rely on the HTSUS data.

We have considered the record as a whole in light of the instructions in the Court's opinion. Because the Court did not remand the issues of the domestic like product and industry, or the conditions of competition, we determine to adopt our prior views regarding these issues.<sup>7</sup> Below, we present our findings regarding cumulation of subject imports from Korea and Taiwan. Because we determine not to cumulate subject imports from Taiwan and Korea, we also make findings regarding the likely volume, price effects, and impact of the subject imports from Korea alone on the domestic industry if the antidumping and countervailing duty orders on top-of-the-stove stainless steel cooking ware from Korea are revoked.<sup>8</sup>

**II. CUMULATION**

**A. Framework<sup>9</sup>**

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<sup>7</sup>USITC Pub. 3286 at 5-11, 26-28.

<sup>8</sup> The only Commission determinations that were appealed were the affirmative determinations with respect to the antidumping and countervailing duty orders on Korea. The Commission determinations with respect to Taiwan were not appealed and therefore are not modified in the context of this remand proceeding. The determinations with respect to Taiwan are relevant only with respect to the issue of whether it was appropriate to cumulate subject imports from Korea and Taiwan. See, e.g., Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997). In Gerald Metals the Commission cumulated imports of magnesium from Russia, Ukraine, and China. Only Ukraine appealed the affirmative determination. Even though the appeal hinged on an issue relating to Russian magnesium, and even though the Commission cumulated imports from China, Russia, and Ukraine, the Commission remand resulted in a negative determination for the Ukraine investigation only. The orders on Russian and Chinese magnesium remained in place because they were not appealed.

<sup>9</sup>Commissioner Bragg affirms her negative determination based on the record developed by the Commission during the remand investigation. The additional information does not alter the basis for her conclusion in the sunset review investigations that imports from Korea would have no discernible adverse impact if the antidumping order were removed. She notes that the remand addressed concerns regarding the Commission's original conclusion that there was a reasonable overlap of competition between imports from Korea and imports from Taiwan. Although she joined this conclusion, she did not cumulate subject imports from Korea and Taiwan in the sunset review investigations. The conclusion that there is a reasonable overlap of competition was not necessary to her original determination; her finding of no

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Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.<sup>10</sup>

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.<sup>11</sup>

The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.<sup>12</sup> Only a

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discernible adverse impact would have been the same even if there were no reasonable overlap of competition. Her footnote 172 in the sunset review determinations makes clear, however, that had she reached the question of cumulation, she would have taken an adverse inference against exporters from Taiwan and other interested parties as appropriate; this likely would have addressed the Court's concerns regarding the Commission's original conclusion that there was an overlap of competition. In other review investigations, Commissioner Bragg has taken adverse inferences regarding non-participating interested parties.

<sup>10</sup>19 U.S.C. § 1675a(a)(7).

<sup>11</sup>19 U.S.C. § 1675a(a)(7).

<sup>12</sup>The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: 1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality-related questions; 2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; 3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and 4) whether the imports are simultaneously present in the market. See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (CIT 1989).

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“reasonable overlap” of competition is required.<sup>13</sup> In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists.<sup>14</sup>

In its opinion, the Court instructed the Commission to reconsider the issues of whether subject imports from Korea and Taiwan would have a discernible adverse impact, and whether there would likely be a reasonable overlap of competition between imports from each country and between such imports and the domestic like product. Under the statute, either a finding of no discernible adverse impact for either country, or a finding of no reasonable overlap of competition, is sufficient to preclude cumulation. On remand, as described below, we determine that there will likely be no reasonable overlap of competition between imports from Korea and Taiwan, and between imports from Taiwan and the domestic like product. Because this conclusion is dispositive of the cumulation issue, we do not address the issue of no discernible adverse impact.

**B. Reasonable Overlap of Competition**

In its Opinion, the Court notes that the domestic industry produces only high-end cooking ware and that the Commission provided insufficient support for finding that imports from Taiwan are likely to increase significantly in the high-end of the market.<sup>15</sup> Because Taiwan respondents did not cooperate with Commission requests for information during the review investigations and during the remand proceedings, the Commission had very little information on the quality of imports from Taiwan. The Court

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<sup>13</sup>See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>14</sup>Moreover, because of the prospective and discretionary nature of five-year reviews, even where we find a reasonable overlap of competition, we also examine other significant conditions of competition that are likely to prevail if the orders under review are revoked.

<sup>15</sup>Slip Op. at 20-21.

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found the evidence on the nature of subject imports from Taiwan to be insufficient for a finding of overlap of competition between subject imports from Taiwan and Korea and between subject imports from Taiwan and the domestic like product stating: “on remand the Commission must . . . reconsider its finding that there is a reasonable overlap of competition between Korean and Taiwan cooking ware and domestic and Taiwan cooking ware, given the lack of substantial evidence that Taiwan producers sell high-end products, and scant evidence that Taiwan producers sell through the direct sales channel of distribution.”<sup>16</sup>

Recognizing the need to supplement record evidence on the nature of subject imports from Taiwan in order to comply with the Court’s order, the Commission attempted to locate as many companies as possible in Taiwan that produced subject merchandise during the period of review. The Commission sent questionnaires to over 40 companies in Taiwan it believed might have produced stainless steel cooking ware, and made follow-up phone calls to several of them. No Taiwan producers of top-of-the-stove stainless steel cooking ware provided data in response to the Commission questionnaires, but the Commission did gather limited new information from telephone conversations. For instance, a representative of \*\*\*, a Taiwan producer, stated that her company produced low-, medium-, and high-end top-of-the-stove stainless steel cooking ware and that \*\*\* exported all three grades of stainless steel cooking ware to the United States market during the period of review.<sup>17</sup> However, the Commission was unable to ascertain whether what \*\*\* considered to be high-end merchandise was equivalent to the high-end merchandise sold on the U.S. market. Moreover, statements made by a representative of \*\*\*, the \*\*\* known importer of subject merchandise from Korea by volume, and one of the \*\*\* known importers

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<sup>16</sup>Slip Op. at 27.

<sup>17</sup>INV-Y-249, December 13, 2001, at 1.

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of subject merchandise from Taiwan, indicate that Taiwan product was of lower quality than Korean product, and that although Taiwan had the capability of producing higher-end stainless steel cooking ware, Taiwan producers were not as good at producing it.<sup>18</sup>

Although average unit values are of somewhat limited probative value for purposes of price comparisons in an industry with a disparate product mix, the considerable difference between the very low average unit values of cooking ware from Taiwan compared with the high unit values of Korean and domestic merchandise, appear to indicate that recent imports from Taiwan likely did not consist of a significant quantity of high-end cooking ware during the period of review.<sup>19</sup>

With respect to likely imports from Taiwan following revocation of the order, the additional information we have collected, described above, indicates that future imports from Taiwan could include some high-end product. However, we do not find that this information indicates that a significant share of imports of Taiwan would be of high-end merchandise such that there would be a reasonable overlap of competition with imports from Korea and domestic product. Moreover, there is no further information to indicate that Taiwan product would likely be sold in the direct sales channel of distribution.

Therefore, in light of the Court's determination that the Commission's finding of overlap of competition was not supported by substantial evidence, and given the Court's explicit direction that the

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<sup>18</sup>INV-Y-253, December 28, 2001, at 1.

<sup>19</sup>For example, importer questionnaire responses indicate that in 1997 and 1998 Korean average unit values were \*\*\* and \*\*\* respectively while Taiwan average unit values were \*\*\* and \*\*\*. Average unit values for Taiwan imports declined over the period reviewed. INV-Z-008, January 9, 2002, Table 1.

We note that in the review investigation most importers indicated that Taiwan product was generally used interchangeably with Korean and U.S. product, and that there were no differences in product characteristics and sales conditions between Taiwan product and Korean and U.S. product. We have considered this information but do not find it determinative given that importers did not address the issue of whether Taiwan imports included high-end merchandise, and given statements by several importers that Taiwan product was of lower-quality than Korean product. See INV-Y-237 (November 26, 2001) at 3-4.

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Commission should not make a finding of overlap of competition unless it can point to more conclusive evidence than was present on the record during the review proceedings, we find that there is insufficient evidence to support a finding that imports from Taiwan are likely to compete with subject imports from Korea and with the domestic like product if the orders are revoked.

Because we do not find there is a likelihood of a reasonable overlap of competition between subject imports from Taiwan and subject imports from Korea and with the domestic like product, we do not cumulate subject imports from Korea and Taiwan, and therefore, do not need to reach the issue of whether subject imports from Korea or Taiwan are likely to have no discernible adverse impact on the domestic industry.

**III. REVOCATION OF THE ANTIDUMPING AND COUNTERVAILING DUTY ORDERS ON TOP-OF-THE-STOVE STAINLESS STEEL COOKING WARE FROM KOREA WOULD BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

Because we are not cumulating subject imports from Korea and Taiwan, we are required to reexamine our determination that revocation of the antidumping and countervailing duty orders on top-of-the-stove stainless steel cooking ware from Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. We have reconsidered our original findings in light of the non-cumulation of top-of-the-stove stainless steel cooking ware from Taiwan and our reexamination of import data pursuant to the Court's order. As described below, we find that subject imports from Korea alone would be sufficient to cause material injury to the domestic industry in the event of revocation.<sup>20</sup> Much of the analysis contained in our original views, which focused mainly on imports

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<sup>20</sup>Vice Chairman Okun finds that revocation of the antidumping and countervailing duty orders on Korea will not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Dissenting Views of Vice Chairman Deanna Tanner Okun. She joins the following discussion of data issues on remand.

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from Korea rather than imports from Taiwan, is still applicable. We have reconsidered and revised those original views as appropriate.

**A. Likely Volume of Subject Imports**

**1. Data Issues**

On remand, the Court directed the Commission to reexamine the data used in its analysis of the likely volume of imports from Korean and to explain its methodology in relation to the methodology it used in the original investigation of top-of-the-stove stainless steel cooking ware from Korea. Specifically, the Court stated that “[w]hile it was reasonable for the Commission to rely on official import statistics given the lack of other data, it was not reasonable for the Commission to change its methodology without explanation.”<sup>21</sup>

*Official Import Statistics:* During the original investigation, the Commission relied on official import statistics and adjusted the data downward in order to account for non-subject imports covered by the Tariff Schedule of the United States (“TSUS”) item 653.94.<sup>22</sup> That item was a residual or “basket” tariff category that included not only subject imports of stainless steel top-of-the-stove cooking ware, but also imports of stainless steel kitchenware, kettles, and ovenware that were not subject to the scope of the investigations.<sup>23</sup> Petitioners stated that 60 percent of the quantity and 80 percent of the value of imports listed under TSUS item 653.94 were imports of top-of-the-stove stainless steel cooking ware. These

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<sup>21</sup>Slip Op. at 26.

<sup>22</sup>Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan, and Top-of-the-stove Stainless Steel Cooking Ware from Korea and Taiwan, Invs. Nos. 701-TA-267 and 268 (Final) and 731-TA-297-299, 304 and 305 (Final), USITC Pub. No. 1936 (January 1987), (“Original Determinations”) at A-33, Table 16, fn. 2.

<sup>23</sup>Original Determinations at A-33, Table 16, fn. 2.

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figures were validated by one of two Customs Service import specialists contacted by the Commission.<sup>24</sup>

In its determination, the Commission relied on the percentages provided by petitioner to determine the quantity and value of subject imports of top-of-the-stove stainless steel cooking ware.

Subsequently, in 1988, when the TSUS was replaced by the Harmonized Tariff Schedule of the United States (“HTSUS”), TSUS item 653.94 was broken down into several subheadings. The new statistical reporting number covering top-of-the-stove stainless steel cooking ware was HTSUS 7323.93.0030. This new category no longer covered non-subject kitchenware and kettles. However, it still included some non-subject products such as stainless steel bakeware and ovenware. Given the altered scope of the relevant tariff item, we find that the adjustments used by the Commission in its original investigations are no longer appropriate for purposes of these sunset reviews.

On December 10, 2001, the Commission sought comments from the parties regarding, *inter alia*, the ratio of non-subject merchandise from Korea covered under HTSUS statistical reporting number 732.93.00.30 during the period of review. The Stainless Steel Cookware Committee provided the Commission with a sworn declaration made by the Executive Vice President of the Cookware Manufacturers Association (“CMA”), Hugh Rushing.<sup>25</sup> One of Mr. Rushing’s responsibilities at CMA is to “compile statistics on the size of the U.S. market for various products.”<sup>26</sup> With respect to stainless steel cooking ware, CMA polls Association members and non-members and estimates the size of the top-

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<sup>24</sup>INV-Y-237, November 26, 2001, at 2, fn. 2.

<sup>25</sup>Mr. Rushing indicates that the CMA is a voluntary trade association representing U.S. and Canadian manufacturers and importers of cookware, stainless steel ovenware or bakeware. We note that Mr. Rushing testified during the Commission’s review proceeding on behalf of the Stainless Steel Cookware Committee, which represents domestic producers of top-of-the-stove stainless steel cooking ware (Regal Ware, Inc., All-Clad Metalcrafters, Inc., and Vita Craft Corp).

<sup>26</sup>Committee Remand Comments, December 20, 2001 at attachment 1.

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of-the-stove market and the size of the bakeware market (which includes ovenware).<sup>27</sup> Mr. Rushing asserts that the U.S. market for top-of-the-stove stainless steel cooking ware is many times larger than the U.S. market for stainless steel ovenware and bakeware. Specifically, he asserts that CMA data show that, from 1997-1999, stainless steel ovenware and bakeware accounted for only 2.4 to 2.9 percent of a combined category of top-of-the-stove stainless steel cooking ware, ovenware and bakeware sold in the United States. He explains that stainless steel is not a popular material for bakeware due to its poor conductivity and high price: “A brief tour of the bakeware section of any mass merchant such as K-Mart or Wal-Mart would demonstrate clearly that aluminum and other non-stainless steel materials are the dominant materials for bakeware. This has not changed since 1997-1999.”<sup>28</sup> Based on the percentage of the U.S. market accounted for by stainless steel bakeware, which is less than 3 percent, Rushing estimates that “during 1997-1999, over 97 percent of imports from Korea and Taiwan under HTSUS item number 7323.93.00.30 were top-of-the-stove stainless steel cooking ware.”<sup>29</sup>

A Customs Service import specialist could not confirm or deny CMA’s estimate.<sup>30</sup> However,

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<sup>27</sup>Committee Remand Comments, December 20, 2001 at attachment 1.

<sup>28</sup>Stainless Steel Cooking Ware Committee Remand Comments, December 20, 2001, Attachment 1.

<sup>29</sup>Committee Remand Comments, December 20, 2001 at attachment 1. We note that Korean Respondents did not provide the Commission with any information responsive to its request for a ratio of non-subject imports contained in HTSUS 7323.93.0030 and instead asserted that the Commission should not rely on the official statistics. Korean Respondents attempted to submit new factual information about the nature of non-subject imports covered by HTSUS 7323.93.0030 only after the record closing date. The information in question is contained in attachments 1 and 2 of Korean Respondents Remand Rebuttal Comments. Because submitting new factual information after the record closing date violates the governing statute, the Rules of the Commission, and the instructions set out in the Commission’s request for comments, and robs other parties of a opportunity to comment on it, we disregard this new factual information. See, 19 U.S.C. §1677m(g). Respondents did not assert that the information could not have been submitted by the December 20 deadline for new factual information.

<sup>30</sup> INV-Y-249, December 31, 2001, at 1.

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other record information does confirm CMA's estimate. Data of the Korean Metal Ware Association provided by responding Korean producers during the review investigations indicate that in 1997 and 1998 the total values of subject imports from Korea were \*\*\* and \*\*\* respectively.<sup>31</sup> HTSUS statistical reporting number 7323.93.0030 indicates that in the same years total imports from Korea were \*\*\* and \*\*\*, respectively. Therefore, comparing Korean respondents' own data to official import statistics would show that between 94.4 and 98.8 percent of imports reported under HTSUS statistical reporting number 7323.93.0030 are subject imports.<sup>32</sup>

Accordingly, we have used the HTSUS data as our primary measure of subject imports in this review, but have adjusted this data by subtracting out the estimated 3 percent accounted for by non-subject products.<sup>33</sup>

*U.S. Importer and Foreign Exporter Questionnaire Responses:* Although official import statistics offer far more comprehensive and accurate coverage of subject import volume, we also examined U.S. importer and Korean exporter data for purposes of these remand proceedings.<sup>34</sup> We note, however, that importer and exporter questionnaire responses appear to be fairly incomplete as compared to official statistics. Moreover, in accordance with Commission practice, Commission questionnaires requested Korean exporters to report data only in terms of quantity, not value.

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<sup>31</sup>Korean Respondents' Response to Notice of Institution of Sunset Reviews at 25.

<sup>32</sup>In terms of quantity, the figures provided by respondents represented between 85.2 and 91.0 percent of the quantity reported in HTSUS 7323.93.0030 for 1997 and 1998. Korean Respondents' Response to Notice of Institution of Sunset Reviews at 25. As described below, we have given greater weight to value data than quantity data in this determination.

<sup>33</sup>We recognize that the CMA data measures the entire U.S. market and not specifically imports from Korea. However, we believe this information is the most probative information available on the record, particularly given that the information provided by the Korean producers themselves corroborates it.

<sup>34</sup>See INV-Z-008, Jan. 9, 2002, Table 1 (revised), and CR and PR at Table IV-6.

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*Quantity versus value.* The Court’s opinion also requested that the Commission “consider whether using a value-based statistic instead of a quantity-based statistic would, as Cheflin suggests, give a more accurate picture of imports of Korean subject merchandise.”<sup>35</sup> In the original investigation, the Commission noted that data on import values may be more reliable than data on import volumes.<sup>36</sup> A Customs Service import specialist explained that the HTSUS data expressed in units are consistently reported and are usable.<sup>37</sup> However, the HTSUS quantity data are reported on a different basis than the data requested by the Commission in its questionnaires. Specifically, the HTSUS data include lids as separate units whereas Commission questionnaire data do not. By contrast, value is believed to have been reported on a comparable basis in both HTSUS data and questionnaire data. Accordingly, in this remand we have placed primary reliance on value data for imports but have cited quantity data where appropriate.<sup>38</sup>

## **2. Analysis**

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to the production or consumption in the United States.<sup>39</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories;

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<sup>35</sup>Slip Op. at 27.

<sup>36</sup>Original Determinations at 11, n. 27.

<sup>37</sup>INV-Y-249, December 31, 2001, at 1.

<sup>38</sup>HTSUS data would appear to accurately measure the trend in import quantity, given that quantity was consistently reported.

<sup>39</sup>19 U.S.C. §1675a(a)(2).

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(3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>40</sup>

In the original investigation, the Commission found that the cumulative value of subject imports increased by 28 percent from 1983 to 1985, and by 9.6 percent in the interim period of 1986, causing a significant increase in subject producers' U.S. market share.<sup>41</sup> The volume of cumulated subject imports was lower during the current review period than in the original investigation, which we find can be attributed to the effect of the antidumping duty order.

According to official import data and adjusting for the estimated 3 percent non-subject merchandise contained in HTS subheading 7323.93.00.30, subjects imports rose from \$26,885,000 in 1997 to \$30,765,000 in 1998. The value of Korean subject imports increased 44 percent between interim 1998 and 1999, from \$23,200,000 to \$33,572,000.<sup>42</sup> As a share of domestic consumption, subject imports decreased from 8.5 percent in 1997 to 8.0 percent in 1998, and rose from 8.0 percent in interim 1998 to 11.4 percent in interim 1999.<sup>43</sup>

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<sup>40</sup>19 U.S.C. § 1675(a)(2)(A)-(D).

<sup>41</sup>These market shares reflected total shipments worth \$56.1 million in 1983, \$72.5 million in 1984, \$73.0 million in 1985, with \$53.9 million in the first nine months of 1985 and \$60.3 million in the same period in 1986. Original Top-of-The-Stove Stainless Steel Cookware Staff Report, Table 16. The Commission found that the value data were more reliable than volume data, which showed that the cumulative volume of subject imports increased from 1983 to 1985, and increased again in the interim period of 1986. Original Determinations at 11-12.

<sup>42</sup>On an annualized basis, imports from Korea in interim 1999 were nearly 50 percent above full-year 1998 levels (\$44.8 million versus \$30.9 million). In terms of quantity, imports from Korea were 2.9 million units in 1997, 3.3 million units in 1998, 2.4 million units in interim 1998 and 4.2 million units in interim 1999. CR & PR at Table C-2.

<sup>43</sup>As noted above, importer questionnaire data are less complete than official statistics because not all importers responded to the Commission questionnaire. Importer questionnaire data show subject imports from Korea decreased from \*\*\* million to \*\*\* million but increased from \*\*\* million in interim

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Thus, the volume of subject imports during the period of review was significantly below the levels of the original investigation. However, a reduction in imports is to be expected following the imposition of antidumping and countervailing duty orders. Our task is to determine the likely volume of imports in the absence of the discipline of the orders. The figures described above show that subject imports from Korea held a more-than-modest share of the U.S. market during the period of review despite the orders. Moreover, subject imports steadily increased over the period of review, particularly in interim 1999, and so did subject imports' share of the U.S. market for top-of-the-stove stainless steel cooking ware.

Capacity to produce subject cooking ware in Korea declined significantly since the original investigation, under either respondents' or petitioners' estimates.<sup>44</sup> Nevertheless, significant capacity exists in Korea, and remains well above U.S. capacity.<sup>45</sup> U.S. capacity fell since the original investigations, as did U.S. production, shipments, and market share, as non-subject imports increased substantially. Thus, an increase in subject imports from Korea at the expense of the domestic industry would not need to be as large in absolute terms as it was during the original period of investigation to be significant under current conditions. This is especially so because, as noted below, the Korean industry is seeking to increase its share of the high-end market, the very market segment in which all remaining U.S. sales occur. Moreover, although there is some dispute about the correct levels of capacity utilization in the Korean industry,<sup>46</sup> the record indicates that Korean producers have the flexibility to increase their

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1998 to \*\*\* million in interim 1999. In terms of quantity, subject imports declined from \*\*\* units in 1997 to \*\*\* units in 1998 but increased between interim 1998 and interim 1999 from \*\*\* to \*\*\* units. INV-Z-008 dated January 9, 2002, Table 1.

<sup>44</sup>CR & PR, Table IV-7, as revised in memorandum INV-X-053, March 7, 2000.

<sup>45</sup>We note that after a decrease in 1998, top-of-the-stove stainless steel cooking ware production capacity reported by the Korean industry association increased in the first nine months of 1999.

<sup>46</sup>CR at IV-16 - IV-19, PR at IV-9 - IV-11.

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shipments to the United States by a substantial amount regardless of the stated capacity utilization.<sup>47</sup> On balance, taking into account our original determination and changes that have occurred since that time, we conclude that subject producers in Korea have the capability to increase substantially their shipments to the United States.

The record also indicates that subject producers have substantial flexibility to shift exports to the United States. Exports consistently represented between 63 and 68 percent of the volume shipped by the eight Korean producers who participated in these reviews, with exports to the United States accounting for less than one-third of total exports.<sup>48</sup> The distribution of shipments among the home market, the United States, and other export markets varied from year to year.<sup>49</sup>

The record also demonstrates that importers of the subject Korean merchandise maintained high levels of inventory (as a percentage of importers' shipments) throughout the review period.<sup>50</sup> The maintenance of such large inventories indicates a commitment to having a sizeable presence in the United States.<sup>51</sup>

The record indicates that the subject producers will use their ability to increase exports to the United States if the antidumping and countervailing duty orders are removed. As stated above, after increasing from 1997 to 1998, the volume, value, and market share of subject imports increased at a more

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<sup>47</sup>For example, even though Korean respondents reported high capacity utilization rates during the period of review, subject imports increased by 44 percent by value (74 percent by quantity) between interim 1998 and 1999. CR & PR Table C-2. This suggests that despite reported high capacity utilization rates, Korean producers are able to rapidly increase exports to the U.S. market.

<sup>48</sup>CR & PR, Table IV-6.

<sup>49</sup>CR & PR, Table IV-6.

<sup>50</sup>CR & PR, Table IV-4.

<sup>51</sup>With respect to barriers to exports from subject countries to third-country markets, we note that South Africa also imposed antidumping duties on cooking ware from Korea. CR at IV-18, PR at IV-11.

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rapid rate in the first nine months of 1999. Subject producers' desire to increase exports to the United States,<sup>52</sup> and their efforts to continue expanding into the high-end market are likely to accelerate this increase. Much high-end merchandise is sold via direct sales. Many direct sales companies and distributors that sell to them are large and sophisticated purchasers, so we expect that, if the antidumping and countervailing duty orders were revoked, Korean producers would face few barriers in making sales to those customers.<sup>53</sup> Moreover, the long-term trend of subject imports from Korea in the U.S. market confirms these findings. During the original period of investigation, the domestic industry produced some low-end cooking ware, but primarily sold mid-range and high-end merchandise, while Korean respondents sold mainly low- and mid-range cooking ware in the U.S. market.<sup>54</sup> By 1997, the domestic industry had

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<sup>52</sup>Memorandum from \*\*\*, to U.S. producer Regal Ware Inc., Jan. 22, 1999 at 1 (seeking assistance in removing the antidumping duty orders because they have been "insurmountable stumbling blocks for exporting stainless steel cooking ware from Korea to the states."), in Committee Prehearing Brief, Exh. 18.

<sup>53</sup>Hrg. Tr. at 37-38 (J. Reigle). Although brand-name recognition can be important in the direct sales sector, in most instances the brand is a private label that belongs to the direct sales company or distributor, not the manufacturer. Id. Thus, brand-name recognition does not represent a barrier to entry into the direct sales segment.

We note that the eight Korean producers who responded to our questionnaire indicated that at most \*\*\* percent of their U.S. sales were made via the direct sales segment. Since most U.S. stainless steel top-of-the-stove cooking ware is sold through the direct sales segment, a small share of subject imports in that segment would tend to attenuate somewhat the degree of direct competition between subject imports and the domestic product. Nevertheless, the retail store segment of the market, into which the remaining U.S. sales of the responding Korean producers have gone, represents a growing share of sales by U.S. producers. CR, PR at Table III-A-4. In any event, regardless of the Korean producers' current share of the direct sales business, we find that their sales into this segment are likely to increase substantially in the reasonably foreseeable future.

<sup>54</sup>"The products have changed since 1985 . . . U.S. production of top-of-the-stove SS cookware has also changed, as low- and mid-range top-of-the-stove SS cookware is no longer produced in the United States." CR & PR at II-4; "In the earlier years, the Korean product exported to the United States tended to be 18-0 grade, light gauge product for sale to the low- to middle-price market. Since 1983, imports of higher priced top-of-the stove stainless steel cooking ware have increased (for example, International Cookware's Korean imports of top-of-the-line cookware)." Original Top-of-The-Stove Stainless Steel Cookware Staff Report at A-30.

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ceased producing low- and mid-range cooking ware and was entirely concentrated in the high end of the market.<sup>55</sup> By this time, Korean producers had decreased their presence in the low end of the market, solidly held a large market share of the mid-range, and sold significant volumes of high-end cooking ware.<sup>56</sup> Moreover, evidence that Korean high-end cooking ware is now present in the direct sales channel of distribution further reinforces evidence that the long term trend of Korean imports has been to steadily push into market niches traditionally held by the U.S. industry.<sup>57</sup>

The large market share that the subject producers attained prior to the imposition of the antidumping and countervailing duty orders on top-of-the-stove stainless steel cooking ware,<sup>58</sup> their continued maintenance of a significant market share despite the discipline imposed by the orders and their ability to significantly increase exports to the U.S. market, among the other information described above, suggest that subject Korean producers will continue to accelerate exports to the United States upon revocation of the orders. Consequently, based on the record in these reviews, we conclude that the volume and market share of subject imports from Korea would likely be significant if the orders are revoked.

**C. Likely Price Effects**

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

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<sup>55</sup>“U.S. producers currently produce only the high-end top-of-the-stove SS cookware, which is made with layers of stainless steel around a more heat-conductive core of either copper, aluminum, or in some cases carbon steel.” PR & CR at II-1.

<sup>56</sup> PR & CR at II-3 - II-4; competition from lower priced low-end imports from other countries and increased demand in the U.S. for high-end cookware forced the Korean producers to either go out of business or to change to produce high-quality cookware. CR & PR at II-9 - II-10.

<sup>57</sup>Hrg. Tr. at 113.

<sup>58</sup>Subject imports from Korea were between 18.7 and 23.6 percent by value, and between 48.1 and 52.4 percent by quantity, of domestic consumption during the original period of investigation. Original Determinations at A-38.

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directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.<sup>59</sup>

In the original investigation, the Commission found that the pricing data were “mixed” because of the wide variety of configurations of stainless steel cooking ware. However, it found that pricing trends revealed a causal link between subject imports and harm to the domestic industry in that the prices for domestic products trended downward, while the prices for subject imports either stayed the same or trended downward in spite of the subject producers’ shift toward higher quality products. Subject imports were typically sold to retailers at prices far lower than comparable domestic products.<sup>60</sup> During the review period, domestic products were sold primarily to distributors and the subject imports were sold primarily to retailers, which left the Commission with relatively few price comparisons of similar merchandise at the same level of trade. The \*\*\* in the small number of price comparisons is some indication that imports undersold the domestic like product.<sup>61</sup> In general, the prices for domestic products either increased or remained approximately unchanged, while prices for the subject merchandise generally declined.<sup>62</sup>

We find that the domestic industry is currently sensitive to price-based competition. As noted

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<sup>59</sup>19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>60</sup>Original Determinations at 13.

<sup>61</sup>CR at V-25, PR at V-9. However, in light of the differences among the products covered by the pricing data and the small volume of the data, we do not place great weight on this information.

<sup>62</sup>CR at V-22, PR at V-8.

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above, high-end subject merchandise is sold in some of the same retail chains, such as Williams-Sonoma, that sell high-end domestic top-of-the-stove stainless steel cooking ware. In the event of revocation, subject producers will have the incentive and the capability to export merchandise competitive with all of the products made in the United States. Moreover, the similarity in the features offered by domestic and subject producers ensures that importers would have ready access to high-end subject merchandise that is directly competitive with the domestic like product. The closing of the quality gap between the subject merchandise and the domestic like product means that price is likely to play an even greater role in competition in the foreseeable future, and that the prices charged for subject imports will influence the prices received by the domestic industry.

The growth in the volume of subject imports that would likely follow the revocation of the antidumping and countervailing duty orders is likely to lead to price suppression and depression. Since subject merchandise would be equal or close to the quality to the domestic like product, importers are likely to offer price concessions to regain market share lost during the pendency of the orders and to continue to expand in the direct sales distribution channel where they are relative newcomers. These developments are likely to result in price suppression and depression.

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

**D. Likely Impact**

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales,

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market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>63</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>64</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>65</sup>

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<sup>63</sup>19 U.S.C. § 1675a(a)(4).

<sup>64</sup>19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy” in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year review investigations as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In its reviews, Commerce found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following margins: 0.75 to 31.23 percent for certain named companies in Korea, with 8.10 percent for all others. 64 Fed. Reg. at 40572. Although the statute does not expressly define the “magnitude of the net countervailable subsidy” to be used by the Commission in five-year reviews, it states that “[t]he administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated.” 19 U.S.C. § 1675a(b)(3). In its final five-year review determinations, Commerce determined that the magnitude of the countervailable subsidy that is likely to prevail if the countervailing duty order is revoked is 0.77 percent for subject merchandise from Korea. 64 Fed. Reg. at 48374, 64 Fed. Reg. at 48377.

In five-year reviews concerning countervailing duty orders, the Commission is required to consider “information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(b)(6). In its final five-year review determination, Commerce found that all of the four programs at issue in the review regarding Taiwan, and four of the five programs at issue (short-term export financing, export tax reserves, business loans to promising companies, and duty drawback) in the review regarding Korea, fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. 64 Fed. Reg. at 48374, 64 Fed. Reg. at 48378.

<sup>65</sup>The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing

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In the original investigation, the Commission found that even though apparent domestic consumption of stainless steel cooking ware increased over the investigation period, the domestic producers' market share declined steadily. In terms of volume, domestic producers' market share decreased from a high of 26.4 percent of the units sold in 1983 to 20.4 percent in the first nine months of 1986. In terms of value, domestic producers' market share fell from 68.2 percent in 1983 to 54.3 percent in the first nine months of 1986.<sup>66</sup>

By 1997, these figures had fallen further. In terms of volume, the domestic producers' market share was 13.4 percent in 1997, 10.0 percent in 1998, 9.9 percent in the first nine months of 1998, and 7.8 percent in the same period of 1999. In terms of value, market share had decreased to 42.5 percent in 1997, decreased again to 36.4 percent in 1998, with 36.6 percent in the first nine months of 1998 and 30.1 percent in the same period in 1999.<sup>67</sup>

The Commission observed in the original determination that the domestic industry's production, capacity, and capacity utilization decreased from the beginning to the end of the investigation period, although some of these figures improved slightly in the interim period of 1986.<sup>68</sup> Employment figures also declined.<sup>69</sup> Operating income margins decreased sharply, from 19.2 percent in 1983 to 9.7 percent in

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to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

<sup>66</sup>Original Determinations at 7-8. Domestic producers' shipments were worth \$135.2 million in 1983, \$134.5 million in 1984, and \$122.6 million in 1985, and interim period sales of \$89.5 million in 1985 and \$87.1 million in 1986. Original Top-of-the-Stove Stainless Steel Cooking ware Staff Report, Table 3.

<sup>67</sup>CR & PR, Table I-11. These figures reflect shipments of 4.7 million units in 1997, 4.3 million units in 1998, 3.1 million units in January-September 1998, and 3.0 million units in January-September 1999. These shipments had a value of \$137.5 million in 1997, \$128.7 million in 1998, \$94.8 million in January-September 1998, and \$96.6 million in January-September 1999.

<sup>68</sup>Original Determinations at 7.

<sup>69</sup>Id. at 8.

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1985, with 9.7 percent in the first nine months of 1985 and 6.8 percent in the same period of 1986.<sup>70</sup>

During the review period, production capacity increased steadily but modestly, while production decreased, resulting in a steady drop in capacity utilization.<sup>71</sup> By 1997, operating income margins had increased to 11.1 percent. They increased again in 1998 to 13.1 percent, and then fell to 12.3 percent in the first nine months of 1999, compared with 13.5 percent for the same period in 1998.<sup>72</sup>

The imposition of the antidumping and countervailing duty orders in early 1987 led to an immediate and sharp reduction in the volume of subject imports.<sup>73</sup> This reduction apparently gave the domestic producers of low-end and mid-range cooking ware a respite from import competition, and may have led to an increase in domestic production of those products.<sup>74</sup> However, increased competition from non-subject imports apparently eroded the benefits of the orders, and contributed to the decisions by Farberware and Revere to cease production in the United States.<sup>75</sup>

Producers of high-end top-of-the-stove stainless steel cooking ware also felt the effects of the order. During the original investigation period, sales in the door-to-door channel of distribution, which was the precursor to the current direct sales channel of distribution, experienced a \*\*\* decline in profitability.<sup>76</sup>

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<sup>70</sup>Id. at 8, Original Top-of-the-Stove Stainless Steel Cooking ware Staff Report, Table 7.

<sup>71</sup>CR, Table III-A-2, PR, Table III-2.

<sup>72</sup>CR Table III-B-5, PR Table III-13.

<sup>73</sup>See Memorandum INV-X-067.

<sup>74</sup>See D. Fusaro, Cooking ware makers returning output to US plants, Metalworking News, Jan. 18, 1988 at 5 (“[s]purring these moves by domestic manufacturers is decreased low-cost competition from overseas, weakened by both the devalued dollar and duties on products ruled by U.S. trade authorities to have been dumped here.”).

<sup>75</sup>Hrg. Tr. at 99 (S. Jones); J. Messina, Farberware set to flee Bronx, Crains N.Y. Bus., Feb. 12, 1996, at 1.

<sup>76</sup>Original Top-of-the-Stove Stainless Steel Cooking Ware Staff Report at A-38.

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All-Clad, although \*\*\*, had total revenues of less than \*\*\* percent of their current value.<sup>77</sup> However, by 1997, All-Clad had higher \*\*\* than in 1985, and had a \*\*\* volume of shipments.<sup>78</sup> We are hesitant to place great weight on these figures in the absence of data on domestic producers' operations in the intervening ten years. However, we also attribute the fact that the volume of subject imports from Korea remained far lower in 1997 than it was in 1985 at least in part to the pendency of the orders. Given the high degree of substitutability between the subject merchandise from Korea and the domestic like product, this reduction in the volume of subject merchandise is likely to have helped the domestic industry to maintain market share and profitability. In light of this information, we conclude that the antidumping and countervailing duty orders had a positive effect on the domestic producers of high-end top-of-the-stove stainless steel cooking ware by slowing the Korean producers' shift to the high-end of the market, although some of the benefit may have been eroded by increased quantities of non-subject imports.

In spite of the effect of the orders and the growing demand for high-end cooking ware, the industry's condition is a mixed picture. For the entire industry, the operating income margin has remained high, although it decreased slightly in the first nine months of 1999.<sup>79</sup> Shipment volume, net sales revenue, market share, production volume, and capacity utilization all declined in 1998, and then again in the first nine months of 1999.<sup>80</sup> This lackluster performance masks a significant change in the relative fortunes of the domestic producers. All-Clad's sales, which were exclusively in the retail distribution channel, increased in 1998 and then again in the first nine months of 1999, while the aggregate sales of the

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<sup>77</sup>Compare CR at III-B-6, PR at III-7 with Original Top-of-the-Stove Stainless Steel Cooking ware Staff Report at A-36.

<sup>78</sup>CR Table III-B-6, PR Table III-14.

<sup>79</sup>CR, Table III-B-5, PR, Table III-B-13. Profits would actually have increased if SG&A expenses had not risen dramatically.

<sup>80</sup>CR & PR, Table I-11, CR, Tables III-A-2 & III-B-5, PR, Tables III-2 & III-13.

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companies in the direct sales channel declined. The \*\*\* between All-Clad and the other three companies also widened. In light of this information we find that the evidence is mixed as to whether the domestic industry is vulnerable at this time.

We note that subject importers maintained a large share of the domestic top-of-the-stove stainless steel cooking ware market during the original investigation period, and find that even a partial return toward pre-order levels would result in material injury to the domestic industry. The factors discussed above indicate that this would be likely to occur if the orders were revoked. The increase in subject imports and slight decrease in domestic shipments at the end of the review period suggest that the even at fairly traded prices, the subject imports are already causing the domestic industry's condition to worsen to a small degree.<sup>81</sup> The significant increase in the volume of subject imports from Korea that is likely to follow revocation of the antidumping and countervailing duty orders would likely be sold at prices that would undersell the domestic like product and depress U.S. prices. These conditions would lead to a further erosion in the domestic industry's market share. The negative effects are likely to be particularly severe because the revocation of the orders would aid Korean producers' efforts to expand their shipments of high-end cooking ware, which would likely occur to a substantial degree in the direct sales sector of the market, where a large portion of U.S. sales of high-end cooking ware take place and where the domestic industry's financial performance is \*\*\*. As noted above, we are aware of no inherent barriers to increased participation in the direct sales sector by subject imports in the event of revocation. On balance, we conclude that revocation of the antidumping and countervailing duty orders on subject

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<sup>81</sup>CR & PR, Table I-9. We note that non-subject imports increased at the same time. Since the record indicates that these consist primarily of low-end and mid-range merchandise (CR & PR at II-19 - II- 20), we conclude that non-subject imports are not affecting the domestic cooking ware producers during the review period. Nor, for the same reason, would increased subject imports simply replace non-subject imports.

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imports from Korea would significantly accelerate the decline in the domestic industry's financial performance.<sup>82</sup>

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

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

**CONCLUSION**

For the foregoing reasons, we determine that revocation of the antidumping and countervailing duty orders on imports of top-of-the-stove stainless steel cooking ware from Korea would be likely to lead to continuation or recurrence of material injury to the U.S. top-of-the-stove stainless steel cooking ware industry within a reasonably foreseeable time.<sup>83</sup>

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<sup>82</sup>In this regard, it is significant that increased import penetration resulted in a rapid decrease in the top-of-the-stove stainless steel cooking ware industry's performance over the original investigation period.

<sup>83</sup>Vice Chairman Okun and Commissioner Bragg dissenting.

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**DISSENTING VIEWS OF VICE CHAIRMAN  
DEANNA TANNER OKUN**

Section 751(d) of the Tariff Act of 1930, as amended, requires that the Department of Commerce (“Commerce”) revoke a countervailing duty order or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.<sup>84</sup> As noted above, I join the Majority’s discussions and findings on remand with respect to cumulation and data issues. Because I am not cumulating subject imports from Korea and Taiwan, I am required to reexamine my determination that revocation of the antidumping and countervailing duty orders on top-of-the-stove stainless steel cooking ware from Korea would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. I have reconsidered my original findings in light of the non-cumulation of top-of-the stove cooking ware from Taiwan and reexamined the import data pursuant to the Court’s order. As described below, I again determine that revocation of the antidumping duty and countervailing duty orders covering top-of-the-stove stainless steel cooking ware (“top-of-the-stove SS cookware”) from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Much of the analysis is contained in my original views. I have reconsidered and revised those original views as appropriate.

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<sup>84</sup>19 U.S.C. §§ 1675(d)(2), 1675a(a)(1) (1994).

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**I. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON TOP-OF-THE-STOVE COOKING WARE FROM KOREA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

*A. Likely Volume of Subject Imports*

In evaluating the likely volume of imports of subject merchandise if an antidumping order is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>85</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>86</sup>

In the original determination, the Commission found that the domestic industry was materially injured by reason of imports of top-of-the-stove SS cookware from Korea and Taiwan that were subsidized and sold at less than fair value.<sup>87</sup> The Commission found that cumulated subject imports from Taiwan and Korea held a combined market share of 50.0-50.2 percent by quantity in 1983-85; Korea held

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<sup>85</sup>19 U.S.C. § 1675a(a)(2).

<sup>86</sup>19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>87</sup>Top-of-the-Stove Stainless Steel Cookware, USITC Pub. 1934 (Jan. 1987) at 13 (“Original determination”).

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shares of 49.0-49.5 percent while Taiwan held shares of 0.7-1.0 percent.<sup>88</sup> The Commission noted that while the market share of imports by quantity remained stable during the period examined, the market share by value increased, by 5.5 percentage points, and that the value of imports was a more reliable indicator of impact on the domestic industry.<sup>89</sup>

Korean imports were high prior to the order but remained relatively stable throughout the period examined.<sup>90</sup> According to official import data and accounting for the estimated 3 percent nonsubject merchandise contained in HTS subheading 7323.93.00.30, subject imports' market share by quantity declined from 8.5 to 8.0 percent between 1997 and 1998, and was 11.4 percent in interim (January - September) 1999 compared with 8.0 percent in interim 1998.<sup>91</sup> By value, subject imports' market share increased slightly from 8.4 percent in 1997 to 8.9 percent in 1998, and was 10.9 percent in interim 1999 compared with 9.1 percent in interim 1998.<sup>92</sup> While the parties dispute the current Korean production capacity levels, using either number, the evidence demonstrates that Korean capacity has declined significantly since the time of the original investigation, by between \*\*\* and \*\*\* percent.<sup>93</sup> Available foreign producer data for the period examined in these reviews shows little unused Korean producer capacity.<sup>94</sup> In addition, current data indicates that Korean producer inventories are relatively low and

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<sup>88</sup>CR at I-6, PR at I-5.

<sup>89</sup>Original determination at 12.

<sup>90</sup>Id.

<sup>91</sup>CR & PR, Table I-4.

<sup>92</sup> Importer questionnaire data show subject imports from Korea declined from \*\*\* million in 1998 to \*\*\* million in 1998, and was \*\*\* million in interim 1999 compared with \*\*\* million in 1998. In terms of quantity, subject imports from Korea declined from \*\*\* units in 1997 to \*\*\* units in 1998, and was \*\*\* units in interim 1999 compared with \*\*\* units in interim 1998. INV-Z-008 dated January 9, 2002, Table 1-Revised. I note that the interim 1999 data includes \*\*\* which may contain some inaccuracies.

<sup>93</sup>CR & PR, Table IV-7.

<sup>94</sup>CR and PR, Table IV-6. U.S. producers dispute the capacity and capacity utilization figures submitted by KMWIA and the individual Korean producers. See CR at Table IV-7. However, the

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declined during the period of review.<sup>95</sup> Korean producers may face a barrier to importation in South Africa, which imposed antidumping duties on imports of stainless steel cookware (“holloware”) from Korea in 1998.<sup>96</sup> The record suggests that product-shifting is not likely because it is not possible for top-of-the-stove stainless steel cookware producers to use the same production lines and workers to produce other cookware.<sup>97</sup>

The record indicates that the market has changed considerably since the time of the original investigation. Particularly relevant are the substantial increase in the market share held by nonsubject imports, whose share has risen from one-quarter to three-quarters of the market,<sup>98</sup> and the increase in competition from other types of cookware, most notably from aluminum cookware.<sup>99</sup> Between 1997 and 1998 alone, nonsubject imports increased their market share by 9.7 percentage points.<sup>100</sup> At the same time, Korean market share declined by 0.4 percent and domestic market share declined by 3.4 percentage points.<sup>101</sup> While Korean market share increased during the interim period, nonsubject market share also increased. Generally, nonsubject market share has been increasing as both subject import and domestic producer market shares have declined. Given that nonsubject imports hold more than three-quarters of

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reported data by individual firms indicate relatively high capacity utilization.

<sup>95</sup>CR & PR, Table IV-6. Korean end-of-period inventories declined from 236,000 units in 1997 to 197,000 units in 1998, and were 176,000 units in interim 1999 compared with 245,000 units in interim 1998. As a percentage of production, Korean inventories declined from 3.1 percent in 1997 to 2.9 percent in 1998, and were 2.4 percent in interim 1999 compared with 3.7 percent in interim 1998. *Id.*

<sup>96</sup>CR at IV-18, PR at IV-11.

<sup>97</sup>CR at I-22, PR at I-16.

<sup>98</sup>CR & PR, Table I-4.

<sup>99</sup> The more widespread use of non-stick surfaces on top-of-the-stove stainless steel cookware may account for some increased competition between aluminum and stainless steel cookware. *See* CR at I-28, II-6 and II-19-20, PR at I-20, II-4, and II-12.

<sup>100</sup>CR & PR, Table I-4.

<sup>101</sup>*Id.*

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the market, and given the declining capacity and high reported capacity utilization of Korean imports, it is likely that any increases in subject market share would come largely at the expense of nonsubject imports.

Given the relatively stable import volume of Korean imports, decreased Korean producer capacity, high reported capacity utilization, and low current and projected dumping and CVD margins for most producers,<sup>102</sup> it is unlikely that Korean imports would rise appreciably should the orders be revoked.

Therefore, I do not find that the past and current volume levels indicate that there will be a significant adverse volume effect on the industry if the orders covering Korea are revoked.

*B. Likely Price Effects*

In evaluating the likely price effects of subject imports if an antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.<sup>103</sup>

In the original determination, the Commission found that the pricing data was mixed but that pricing trends established a causal link between material injury and the subject imports in light of the import trends.<sup>104</sup> Current pricing data is extremely minimal and, therefore, is of limited probative value.<sup>105</sup>

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<sup>102</sup>CR at I-12, I-14, PR at I-10, I-11.

<sup>103</sup>19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>104</sup>Original determination at 12-13.

<sup>105</sup>Price data for top-of-the-stove stainless steel cookware reported by U.S. producers accounted for only \*\*\* percent of U.S. producers’ shipments in 1998, while price data for imports from Korea accounted for \*\*\* percent of shipments of imports from Korea in 1998. CR at V-7, PR at V-5.

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The record evidence indicates that there is limited competition between subject imports and the domestic product due to differences in channels of distribution.<sup>106</sup> Therefore, subject imports, at any volume, do and would continue to have limited, if any, price effects on the domestic product. While both Korean and domestic producers serve the high end market, the record shows that their respective sales are predominantly in different channels of distribution; Korean product is mostly marketed in retail outlets while domestic product is primarily marketed through direct sales.<sup>107</sup> Accordingly, there is only limited competition between Korean imports and the domestic like product.

Moreover, there is limited price sensitivity in the high end of the top-of-the-stove SS cookware market<sup>108</sup> and limited side-by-side competition, particularly in the direct sales channel that is dominated by the domestic industry. Additionally, purchasers generally identified quality as the most important factor in making their purchasing decisions, with price predominantly appearing as the third among a variety of factors,<sup>109</sup> further limiting the likelihood that subject import pricing affects domestic prices.

Therefore, based on these factors, I find that the subject imports from Korea would not be likely to have a significant negative effect on domestic prices within a reasonably foreseeable time if the orders are revoked.

*C. Likely Impact*

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<sup>106</sup>CR at II-3, PR at II-2.

<sup>107</sup>Information on the record indicates that \*\*\* Korean producers had any sales in the direct sales channel of distribution. See Posthearing brief of Korean Respondents at 36. I further note that these sales accounted for a small portion (\*\*\*) of total sales of subject Korean imports. Based on this small presence, the record does not indicate that Korean top-of-the-stove stainless steel cookware producers are likely to increase their presence in the direct sales channel in the reasonably foreseeable future.

<sup>108</sup>CR at II-35, PR at II-22.

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

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In evaluating the likely impact of imports of subject merchandise if an antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>110</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>111</sup>

As instructed by the statute, I have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if those orders are revoked.<sup>112</sup> In these reviews, the record shows that the

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<sup>110</sup>19 U.S.C. § 1675a(a)(4).

<sup>111</sup> *Id.* Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy” in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). In my analysis, I have taken note of the margins and countervailable subsidies that Commerce found to be likely in the event that the orders are revoked. *See* 64 Fed. Reg. 40572 (July 27, 1999); 64 Fed. Reg. at 48374 (Sept. 3, 1999); 64 Fed. Reg. at 48377 (Sept. 3, 1999); *Top-of-the-Stove Stainless Steel Cookware from Korea*, 64 Fed. Reg. at 48378.

In five-year reviews concerning countervailing duty orders, the Commission is required to consider “information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(b)(6). In its final five-year review determination, Commerce found that four of the five programs at issue (short-term export financing, export tax reserves, business loans to promising companies, and duty drawback) in the review regarding Korea, fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. *See Top-of-the-Stove Stainless Steel Cookware from Korea*, 64 Fed. Reg. at 48378.

<sup>112</sup>The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry,

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domestic industry is in extremely sound condition financially. Industry gross profits are healthy and have been increasing since 1997, rising from \$57.5 million in 1997 to \$58.8 million in 1998 and increasing a further 8.2 percent comparing interim periods. Operating income as a ratio to net sales increased from 11.1 percent in 1997 to 13.1 percent in 1998, and was 12.3 percent in interim 1999 compared with 13.5 percent in interim 1998. Productivity has increased and unit COGS have declined. These positive indicators are consistent with an industry that is focusing on the high end of a market that has been booming in recent years, with consumption increasing by 21.1 percent between 1997 and 1998 and a further 22.7 percent between interim periods.<sup>113</sup> I note that the industry is enjoying this extremely positive performance 14 years after the orders were put in place, and despite substantially increased nonsubject imports, declining market share and the continued presence of subject imports in the market.

Moreover, as discussed above, there is only limited competition between the Korean imports and the domestic like product. Accordingly, given my finding that increases in subject imports, if any, are not likely to have any significant volume or price impacts on the domestic industry, I also find that subject imports would not be likely to have a significant impact on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, or investment within a reasonably foreseeable time in the event the order is revoked. Further, I find that revocation of the order is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise

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they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

<sup>113</sup>CR & PR, Table C-2. Some indicators are not positive. I note that domestic shipments have been down slightly and export shipments more substantially, and that operating income and unit operating income declined slightly in the interim period. I also note that capital expenditures have fluctuated and are down somewhat between 1997 and interim 1998. *Id.* However, I do not view these indicators, when compared with the other strong positive indicators, as depicting an industry that is anything but in sound financial condition.

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capital, or return on investments within a reasonably foreseeable time.

Accordingly, I find that there is not likely to be a significant impact on the domestic industry if the orders covering the subject imports from Korea are revoked.

**II. CONCLUSION**

For the reasons stated above, I determine that revocation of the antidumping duty orders on top-of-the-stove SS cookware from Korea would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.