

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STAINLESS STEEL PLATE FROM BELGIUM, CANADA,  
ITALY, KOREA, SOUTH AFRICA, AND TAIWAN

Investigations Nos. 701-TA-376, 377, and 379 (Final) and  
731-TA-788-793 (Final) (Remand)

VIEWS OF THE COMMISSION  
(USITC Publication No. 3541, September 2002)

## VIEWS OF THE COMMISSION ON REMAND

In May 1999, the Commission determined, by a four-to-two vote, that an industry producing certain cold-rolled stainless steel plate in coils in the United States was not materially injured or threatened with material injury by reason of imports of cold-rolled stainless steel plate in coils from Belgium and Canada.<sup>1</sup> By the same vote the Commission determined that the volume of subject imports of cold-rolled stainless steel plate from Italy, Korea, South Africa and Taiwan were negligible. On August 28, 2000, the United States Court of International Trade (“CIT”) affirmed the determinations as being in accordance with law and supported by substantial evidence.<sup>2</sup> On April 19, 2002, the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) vacated the lower court ruling, finding that the Commission’s negative determination regarding volume and impact analysis with respect to cold-rolled stainless steel plate was not in accordance with law and that its pricing analysis for cold-rolled plate was unsupported by substantial evidence.<sup>3</sup> On June 18, 2002, Judge Evan J. Wallach of the CIT remanded the Commission’s final negative determination on cold-rolled stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa and Taiwan pursuant to the decision of the Federal Circuit.

On remand, the Commission determines that an industry in the United States is materially injured by reason of imports of certain stainless steel plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan that the U.S. Department of Commerce determined were sold in the United States at less than fair value, and the subject imports from Belgium, Italy, and South Africa that the U.S. Department of Commerce determined were subsidized.<sup>4 5 6 7 8</sup>

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<sup>1</sup>Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Inv. Nos. 701-TA-376, 377, and 379 (Final) and 731-TA-788-793 (Final), USITC Pub. 3188 (May 1999). Commissioners Bragg and Koplán dissented; specifically, they found one domestic like product in these investigations, certain (hot-rolled and cold-rolled) stainless steel plate in coils and determined that an industry in the United States was materially injured by reason of imports of certain stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan that are subsidized and/or sold in the United States at less than fair value.

<sup>2</sup>*Allegheny Ludlum Corp. v. United States*, 116 F. Supp. 2d 1276 (CIT 2000). No party challenged the Commission’s negligibility findings *per se*, but there was a challenge to the Commission majority’s definition of the domestic like product, upon which its negligibility findings were based.

<sup>3</sup>*Allegheny Ludlum Corp. v. United States*, 287 F.3d 1365 (Fed. Cir. 2002).

<sup>4</sup>Commissioners Bragg and Koplán adopt their original determination that the domestic industry is materially injured by reason of the subject imports.

<sup>5</sup>Commissioner Bragg reaffirms the analyses and conclusions that she joined in the Dissenting Views of Chairman Lynn M. Bragg and Commissioner Stephen Koplán. See Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa and Taiwan, Invs. Nos. 701-TA-376-377 and 379 (Final) and 731-TA-788-793 (Final), USITC Pub. 3188 at 29-31 (May 1999). Since the Court’s order of remand does not address her original dissenting views, and in the absence of further direction from the Court, Commissioner Bragg declines to augment her original views in these proceedings.

<sup>6</sup>Commissioner Koplán has considered the new information gathered on remand. As explained in the original dissenting views, however, the volumes of domestically produced and imported cold-rolled stainless steel plate are so small that they do not materially alter the analysis set out in the original views.

<sup>7</sup>Chairman Okun, who did not participate in the original determination because her term as a Commissioner had not yet begun, also adopts the original determination of Commissioners Bragg and Koplán. Not having participated in the original determination, Chairman Okun examined the entire record, including new information gathered during the remand investigation, in reaching her decision. Her adoption of the original determination of Commissioners Bragg and Koplán embraces all issues treated there, including the definition of the like product and the domestic industry. Having considered the entire record, Chairman Okun notes that the volumes of domestically produced and imported cold-rolled

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stainless steel plate are so small that they do not materially alter the analysis set out in the original views.

<sup>8</sup>Vice Chairman Hillman and Commissioner Miller find that the domestic industry is not materially injured or threatened with material injury by reason of subject imports of cold rolled stainless steel plate from Belgium and Canada that are subsidized and/or sold at less than fair value, and that subject imports from Italy, Korea, South Africa and Taiwan are negligible. *See* their dissenting views.

# DISSENTING VIEWS ON REMAND OF VICE CHAIRMAN JENNIFER A. HILLMAN AND COMMISSIONER MARCIA E. MILLER

## BACKGROUND

In May of 1999, the Commission made final determinations in Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Invs. Nos. 701-TA-376, 377 and 379 and 731-TA-788-793 (Final), USITC Pub. 3188. Vice Chairman Hillman and Commissioners Miller, Crawford and Askey found two domestic like products: hot-rolled stainless steel plate in coils (“SSP”) and cold-rolled stainless SSP. We reached an affirmative material injury determination with respect to subject imports of hot-rolled SSP from each of the six named countries. As to cold-rolled SSP, we reached negative material injury and threat determinations with respect to subject imports from Belgium and Canada, and found the volume of subject imports from Italy, Korea, South Africa and Taiwan to be negligible. Commissioners Bragg and Koplman found one like product, and reached affirmative material injury determinations encompassing subject imports of both hot-rolled SSP and cold-rolled SSP.

The Commission’s affirmative determinations as to hot-rolled SSP were appealed to the U.S. Court of International Trade (CIT). The appellants (respondents in the investigations) argued that the Commission’s like product determination was erroneous because it should have included stainless steel sheet and strip.<sup>9</sup> The CIT affirmed the Commission’s like product determination in *Acciai Speciali Terni v. United States*, 118 F. Supp. 2d 1298 (CIT 2000) .

The Commission’s cold-rolled SSP determination was the subject of a separate appeal. The appellants (domestic producers of SSP) argued that the Commission erred in finding separate domestic like products for hot- and cold-rolled SSP. They also argued that the Commission’s volume, price and impact findings were flawed. Appellants did not challenge the Commission’s findings that the volume of subject imports from Italy, Korea, South Africa and Taiwan were negligible.<sup>10</sup> Nor did they challenge our decision to cumulate subject imports from Belgium and Canada, or our determination as to no threat of material injury.<sup>11</sup>

The CIT upheld the Commission’s like product determination as supported by substantial evidence and being in accordance with law.<sup>12</sup> It also upheld the Commission’s negative material injury determination, despite what it found to be flaws in the Commission’s price and impact findings. On subsequent appeal to the Federal Circuit, that Court found the Commission’s analysis of the volume, price effects, and the impact of subject imports to be flawed; the CIT’s affirmance of the Commission’s determination of separate like products was not appealed, as the Federal Circuit noted. The Federal Circuit found that the Commission invoked the product line provision of the statute (19 U.S.C. § 1677(4)(D)) without having sought data from the cold-rolled stainless steel plate domestic industry.<sup>13</sup> The Federal Circuit also found the Commission’s price effects analysis unsupported by substantial evidence because it relied on average unit values (“AUVs”) without accounting for the possibility of differences in product mix. In accordance with the decision of the Federal Circuit, on June 18, 2002 the CIT vacated its decision in *Allegheny Ludlum Corp.* and remanded to the Commission with instructions to make determinations not inconsistent with the decision of the Federal Circuit. For the reasons discussed below, we again make negative determinations and dissent from the Commission’s determination of injury.

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<sup>9</sup>Commerce defined the subject merchandise in relevant part to include “flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness.” *E.g.*, 64 *Fed. Reg.* 15444 (March 31, 1999).

<sup>10</sup>*Allegheny Ludlum Corp. v. United States*, 116 F. Supp. 2d 1276, 1279 n.4 (2000) (vacated on other grounds).

<sup>11</sup>*Allegheny Ludlum*, 116 F. Supp. 2d 1276.

<sup>12</sup>*Allegheny Ludlum*, 116 F. Supp. 2d at 1288.

<sup>13</sup>*Allegheny Ludlum Corp. v. United States*, 287 F.3d 1365, 1373 (Fed. Cir. 2002).

We have considered the record as a whole, including information gathered during the remand investigation. We adopt our prior views regarding the domestic like product and industry, the negligibility of the volume of subject imports from Italy, Korea, South Africa and Taiwan, cumulation of subject imports from Belgium and Canada, and threat of material injury.<sup>14</sup>

In the original investigations, the Commission sent questionnaires to all known domestic producers of stainless steel plate seeking data for both the hot-rolled and cold-rolled SSP industries. The questionnaires sought prices on various SSP products, none of which was a cold-rolled product. In reviewing drafts of the questionnaires, no party requested that prices be gathered on a cold-rolled product. In fact, the domestic producers did not report that they produced cold-rolled SSP in their responses to the questionnaires, but only did so later at the hearing. At that time, the Commission sought corrected data from the relevant domestic producers, who provided trade data for their cold-rolled SSP production, but indicated that they were unable to provide separate financial data for their cold-rolled SSP operations.<sup>15</sup> No party requested and the Commission did not seek pricing data for any cold-rolled product given the advanced stage of the investigations when the fact that there was some domestic cold-rolled SSP production came to light.

On remand, pursuant to the Federal Circuit's holding that the Commission improperly invoked the product line provision because it failed to request data regarding the domestic cold-rolled SSP industry, the Commission re-issued questionnaires to domestic producers and importers of SSP. The Commission also initiated numerous telephone inquiries, and invited the submission of briefs regarding the significance of the information gathered on remand. As in the original investigations, only two domestic producers -- J&L Specialty Steel ("J&L") and Allegheny Ludlum Corp. ("Allegheny") -- reported production of cold-rolled SSP during the period January 1, 1995 through September 30, 1999. Both producers reported that they did not \*\*\*.<sup>16</sup> They each provided estimates in an effort to comply with the Commission's request, as directed by the Court.<sup>17</sup>

Two importers reported imports of subject cold-rolled SSP in the original investigations, whereas a third importer also reported such imports in response to the questionnaires issued in the remand proceedings.<sup>18</sup> Despite the new data from the third importer, the aggregate data on remand show a lower volume of subject imports than during the original investigations, due to a previous misclassification that led to overreporting in the original investigation.<sup>19</sup>

In regard to prices, prior to issuing the questionnaires in the remand proceeding Commission staff consulted with the parties to identify representative cold-rolled SSP products with precise specifications that are sold by both domestic producers and importers.<sup>20</sup> There were no common specifications among domestic and imported products, however.<sup>21</sup> Instead, because total sales by producers were very small, each domestic producer was asked to report detailed information on all its sales of cold-rolled stainless steel plate during January 1995 through September 1998.<sup>22</sup> Because of their greater volume of sales, importers were asked to provide quarterly price data on only their largest two products.

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<sup>14</sup>To the extent that our threat analysis relies on our analysis of present material injury in the original determinations, we amend our threat analysis to rely on our analysis of present material injury in these remand determinations.

<sup>15</sup>The term "trade data" refers to factors such as capacity, production, and shipments whereas the term "financial data" refers to factors relating to costs and profitability.

<sup>16</sup>Remand Confidential Staff Report ("RCR") and Remand Public Staff Report ("RPR") at II-1 n.1.

<sup>17</sup>RCR and RPR at II-1.

<sup>18</sup>RCR and RPR at II-1.

<sup>19</sup>RCR at II-1 to II-2, RPR at II-1.

<sup>20</sup>RCR at III-7, RPR at III-4.

<sup>21</sup>RCR at III-7, RPR at III-4.

<sup>22</sup>RCR at III-7, RPR at III-4.

## NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.<sup>23</sup> 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.<sup>24</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>25</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>26</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>27</sup>

### Volume

We must consider whether the subject import volumes are significant “either in absolute terms or relative to production or consumption in the United States.”<sup>28</sup> The statute also instructs us to consider “such other economic factors as are relevant to the determination” as well as any “conditions of competition that are distinctive to the affected industry.”<sup>29</sup>

The volume of U.S. shipments of cumulated subject imports rose from \*\*\* short tons in 1995 to \*\*\* short tons in 1996, and then fell to \*\*\* short tons in 1997.<sup>30</sup> In interim (January through September) 1997 the volume of subject imports was \*\*\* short tons compared to \*\*\* short tons in interim 1998.<sup>31</sup>

The absolute volume of subject imports is \*\*\* than production in the United States, and accounts for the vast majority of consumption in the United States. Nevertheless, we believe certain record evidence contradicts a finding that the volume is significant for purposes of our analysis of material injury in these remand investigations. While the volume of subject imports \*\*\* from \*\*\* short tons in 1995 to \*\*\* short tons in 1996, domestic production increased \*\*\* from \*\*\* short tons to \*\*\* short tons in the same years, respectively.<sup>32</sup> While the volume of subject imports declined somewhat to \*\*\* short tons in 1997, it remained \*\*\* higher than in 1995.<sup>33</sup> Nevertheless, domestic production continued to increase to \*\*\* short tons in 1997.<sup>34</sup> While the volume of subject imports was only somewhat lower in interim 1998 than in interim 1997, domestic production was \*\*\* lower, at \*\*\* short tons in interim 1997 as compared to \*\*\* short tons in interim 1998.<sup>35</sup>

The data are similar when considered relative to consumption in the United States. The market

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<sup>23</sup> 19 U.S.C. §§ 1671d(b) and 1673d(b).

<sup>24</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). *See also Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>25</sup> 19 U.S.C. § 1677(7)(A).

<sup>26</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>27</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>28</sup> 19 U.S.C. § 1677(7)(C).

<sup>29</sup> 19 U.S.C. § 1677(7)(B) & (7)(C)(iii).

<sup>30</sup> RCR and RPR at Table II-1.

<sup>31</sup> RCR and RPR at Table II-1.

<sup>32</sup> RCR and RPR at Table II-1.

<sup>33</sup> RCR and RPR at Table II-1.

<sup>34</sup> RCR and RPR at Table II-1.

<sup>35</sup> RCR and RPR at Table II-1.

share held by subject imports was essentially flat in 1995 and 1996, falling from \*\*\* percent to \*\*\*

percent, while the market share held by the domestic producers fell from \*\*\* percent in 1995 to \*\*\* percent in 1996.<sup>36</sup> Subject imports' market share was higher in 1997, at \*\*\* percent, yet the domestic industry's share also rose in 1997 to \*\*\* percent.<sup>37</sup> Nonsubject imports, by contrast, lost considerable market share over the period, from \*\*\* percent in 1995 to \*\*\* percent in 1997.<sup>38</sup> Any gain in market share by subject imports thus appears to be at the expense of nonsubject imports, not domestic production.

Trends in domestic volume and market share are mixed, with limited correlation to subject import trends. However, we do not place significant reliance on trends because of the sporadic nature of the domestic industry's sales of this product. The sporadic nature of domestic sales appears to reflect the industry's view of this product as a \*\*\*.<sup>39</sup> The Senior Vice President-Commercial for Allegheny Ludlum, Mr. Robert W. Rutherford, testified before the Commission that:

We have, at Allegheny Ludlum, the capability of making cold-rolled coiled plate, but there just isn't market for it, as we see it. Occasionally somebody will need cold rolled product, but it's so infrequent that we just don't see a market for it . . . .<sup>40</sup>

On behalf of J&L, Vice President-Commercial Mr. David Pudelsky testified that

J&L does have the ability to make a cold-rolled product, but there really has not been a market for that, and that is why we have not produced cold-rolled plate.<sup>41</sup>

There is no indication that domestic producers actively promote or seek out sales for this product.<sup>42</sup>

The episodic nature of production is borne out by an examination of the experience of J&L and Allegheny. J&L accounted for \*\*\* of the domestic production of \*\*\* short tons in 1995 and \*\*\* short tons in 1996, but then it produced \*\*\* short tons domestically produced in 1997, and then again \*\*\* of the \*\*\* short tons domestically produced in interim 1998.<sup>43</sup> Allegheny, on the other hand, reported \*\*\* production during 1995, 1996, or interim 1998, but \*\*\* short tons domestically produced in 1997.<sup>44</sup> The differing experience of the individual producers suggests that factors other than subject imports accounted for their changes in production levels from year to year.

Accordingly, while the volume of subject imports viewed alone would appear to be significant, the record also shows that despite the increase in the volume of subject imports in 1996 and 1997

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<sup>36</sup>RCR and RPR at Table II-1.

<sup>37</sup>RCR and RPR at Table II-1. In interim 1997, subject imports' market share was \*\*\* percent, and \*\*\* percent in interim 1998. The domestic industry's market share in interim 1997 was \*\*\* percent, and \*\*\* percent in interim 1998. RCR and RPR at Table II-1. The absolute subject import volume and domestic production figures show that both declined, however. Because of the sporadic nature of domestic sales, and the shorter interim time periods examined, these data do not necessarily show that subject imports displaced the domestic industry late in the period investigated, when it had not previously.

<sup>38</sup>RCR and RPR at Table II-1.

<sup>39</sup>See the J&L remand questionnaire response at Table II-12 and the Allegheny remand questionnaire response at Table IV-B-13.

<sup>40</sup>Transcript of March 23, 1999 hearing ("Tr.") at 50.

<sup>41</sup>Tr. at 51. Mr. Pudelsky's statement appears to indicate that he is unaware that his company even makes cold-rolled SSP. J&L is not a petitioner in the investigations involving Belgium. Original Confidential Staff Report ("OCR") and Original Public Staff Report ("OPR") at I-1, n.2.

<sup>42</sup>As noted above, the domestic industry does not maintain \*\*\*.

<sup>43</sup>Remand questionnaire responses of J&L and Allegheny.

<sup>44</sup>Remand questionnaire responses of J&L and Allegheny.

compared to 1995, there was no corresponding decrease in domestic production or market share over the same period. Rather, fluctuations in domestic volume appear consistent with the industry's view of cold-rolled SSP as a specialty product, for which there is almost no market.

### **Price Effects**

In evaluating the effect of imports of such merchandise on prices, 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.<sup>45</sup>

In analyzing price effects, we consider factors that may affect competition between subject imports and the domestic like product. Subject imports from Belgium accounted for all but a small share of total subject imports. Of the subject imports from Belgium, about \*\*\* were 61 inches wide or wider, whereas all domestic production was 48 inches wide.<sup>46</sup> The narrower product requires more welding by purchasers than the wider product.<sup>47</sup> Some purchasers stated that the wider product was more suitable for pressure vessel applications and, because it required less finishing, saved time and expense.<sup>48</sup> The domestic producers stated that subject imports and the domestic product were \*\*\* interchangeable. However, one domestic producer stated that differences between the subject imports from Belgium and the domestic product were \*\*\* significant, and conceded that \*\*\*.<sup>49</sup> An importer of subject imports from Canada stated that such imports were \*\*\*.<sup>50</sup> An importer of subject imports from Belgium reported that those subject imports were \*\*\* with the domestic product, but that differences between them were \*\*\* significant.<sup>51</sup>

Despite considerable efforts, the Commission obtained only limited data from purchasers regarding competition between subject imports and the domestic like product.<sup>52</sup> Two purchasers compared subject imports from Belgium with the domestic product produced by \*\*\*. One ranked the U.S. product inferior (higher) in price, comparable in availability, packaging, and product range, and superior in other measures.<sup>53</sup> The other ranked the subject imports from Belgium as greatly superior to the product sold by \*\*\* because of a superior finish that helps end users maintain the purity of liquids in tanks made of SSP.<sup>54</sup> That purchaser ranked the two comparable in price.<sup>55</sup> Three other purchasers ranked subject imports from Belgium and the domestic product comparable in price.<sup>56</sup> We find that the record evidence indicates that competition between subject imports and the domestic product is attenuated

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<sup>45</sup>19 U.S.C. § 1677(7)(C).

<sup>46</sup>ALZ Prehearing Brief, Exhibit A, 1997 export statistics (combining \*\*\*); ALZ Posthearing Brief at 4; RCR at III-7 to III-8.

<sup>47</sup>RCR at III-5 and RPR at III-3.

<sup>48</sup>RCR at III-4 to III-5, RPR at III-3, Tr. at 71.

<sup>49</sup>RCR at III-2 to III-3, RPR at III-2.

<sup>50</sup>RCR and RPR at III-2.

<sup>51</sup>RCR at III-2 to III-3, RPR at III-2.

<sup>52</sup>RCR at III-3 to III-5, RPR at III-2 to III-3.

<sup>53</sup>RCR at III-3 to III-4, RPR at III-2.

<sup>54</sup>RCR at III-4 to III-5, RPR at III-3.

<sup>55</sup>RCR at III-5, RPR at III-3.

<sup>56</sup>RCR at III-5, RPR at III-3.

by differences in the products, although they remain fungible in many respects.

The record does not demonstrate that there was significant price underselling of the domestic like product by the subject imports. The record contains no price comparisons of precisely the same products because there were no sales of subject imports with the same specifications found among the sparse quantities of domestic product sold.<sup>57</sup> A small quantity of the subject imports from Belgium were similar, although not identical, to the domestic product.<sup>58</sup>

One available price comparison is between subject imports and domestic products sold in 1997 that are 48 inches wide and made of 304 grade stainless steel. The products varied in thickness, however: the subject product from Belgium was \*\*\* inches thick, the subject product from Canada was \*\*\* inches thick; and the domestic product (made by \*\*\*) was \*\*\* inches thick.<sup>59</sup> \*\*\* differences in thickness reportedly make little difference in most applications, but this remains a point of contention.<sup>60</sup> The average price for the subject product from Belgium was \$\*\*\* per ton, while the average price for the subject product from Canada was \$\*\*\* per ton, compared to the \*\*\* price for the domestic product of \$\*\*\* per ton.<sup>61</sup> Thus, there was no underselling by subject imports of the domestic product in this price comparison for 1997.

Another price comparison is possible between subject imports from Belgium and a similar although not identical domestic product in 1997 and interim 1998. The subject product from Belgium was \*\*\*.<sup>62</sup> The domestic product (made by \*\*\*) was \*\*\*.<sup>63</sup> A 2B finish is more polished than a 2D finish, but the difference in price is reportedly small.<sup>64</sup> The average price of the subject product described above was \*\*\* at \$\*\*\* per ton in 1997 and at \$\*\*\* per ton in interim 1998 than the generally comparable domestic product, which was priced at \$\*\*\* per ton in 1997 and \$\*\*\* in interim 1998.<sup>65</sup> For 1997, the probativeness of this comparison is limited, however, because the product examined made up only a very small share of subject imports from Belgium and the domestic product that year (\*\*\* out of \*\*\* short tons).<sup>66</sup> Accordingly, the limited available price comparison data do not demonstrate significant price underselling.

Nor do we find other evidence indicative of significant price underselling. As noted above, one purchaser indicated that subject imports from Belgium were lower in price than the domestic like product, whereas another described them as comparable in price, and two others described all subject imports and the domestic product as comparable in price.<sup>67</sup> The Commission also contacted domestic producers and purchasers regarding possible lost sales or revenues due to competition with the subject imports. Those efforts yielded no specific allegations of lost sales or revenues, often due to insufficient records.<sup>68</sup> In sum, the mixed nature of the limited available price comparisons and other evidence examined leads us to find that the record does not indicate that there was significant price underselling of the domestic like product by the subject imports.

Despite accounting for the vast majority of U.S. sales, prices for the subject merchandise

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<sup>57</sup>RCR at III-9, III-12; RPR at III-4 to III-5.

<sup>58</sup>RCR at III-12, RPR at III-5.

<sup>59</sup>RCR at III-12 to III-13, RPR at III-5.

<sup>60</sup>RCR at III-9 n.11 and RPR at III-5, n.11 (\*\*\* differences reported of little importance in most applications), Remand Brief of ALZ and TrefilARBED at 10-12, 14 (asserting that \*\*\* differences in thickness are significant).

<sup>61</sup>RCR at III-12 to III-13, RPR at III-5 to III-6.

<sup>62</sup>RCR at III-12 to III-13, RPR at III-5.

<sup>63</sup>RCR at III-13, RPR at III-5.

<sup>64</sup>RCR at III-9 n.11, RPR at III-5, n.11.

<sup>65</sup>RCR at III-13, RPR at III-5.

<sup>66</sup>Questionnaire responses of J&L and Allegheny, RCR and RPR at Table II-1, RCR at III-12 and RPR at III-5.

<sup>67</sup>RCR at III-4 to III-5, RPR at III-2 to III-3.

<sup>68</sup>RCR at III-13 to III-14 & n.13, RPR at III-6 & n.13.

declined over the period investigated. Due to the small number of sales by U.S. producers and the varied products sold, the record contains no price series for a domestically-produced cold-rolled SSP product over the period investigated. Although the average unit values of the domestic product declined over the

period investigated, this is not necessarily the result of falling prices because of differences in product mix sold in different years of the period. Accordingly, we find no clear evidence of trends in the price of domestic products.<sup>69</sup> Absent evidence of a decline in prices for the domestic products, we do not find that subject imports depressed prices for the domestic like product to a significant degree.<sup>70</sup>

Nor do we find that the subject imports suppressed price increases for the domestic like product that otherwise would have occurred. An inability to raise prices despite rising costs is often evidence of price suppression. In these investigations, unit costs (costs of goods sold (COGS) combined with selling, general, and administrative costs (SG&A)) \*\*\* from 1995 to 1996, then \*\*\* in 1997.<sup>71</sup> However, the fact that unit COGS and SG&A were \*\*\* in 1997 than in 1995 or 1996 does not necessarily indicate \*\*\* costs. In 1997 a different product was produced, and by a different producer, than in 1995 or 1996.<sup>72</sup> Accordingly, we find that the record does not indicate that subject imports had significant adverse price effects in these investigations.

## **Impact**

The Commission's examination of the impact of subject imports on the domestic industry must include all relevant economic factors, including but not limited to those listed in the statute.<sup>73 74</sup> As noted previously, while the domestic producers reported most trade related data on a cold-rolled-specific basis, they \*\*\*, because the market is for a specialty product and is very small relative to their production of

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<sup>69</sup>Prices for subject imports may have been influenced by declining prices for hot-rolled SSP. Hot-rolled SSP forms the main input for cold-rolled SSP.

<sup>70</sup>Although it is possible in a given investigation that prices are already depressed at the beginning of the period investigated, we do not believe that to be the case here because the domestic industry generated \*\*\* in both 1995 and 1996.

<sup>71</sup>RCR and RPR at Table II-1.

<sup>72</sup>Remand questionnaire responses of J&L and Allegheny, RCR and RPR at Table II-1. Higher units COGS in interim 1998 compared to interim 1997 likely reflects the very small volume of sales in interim 1998 (\*\*\* tons).

<sup>73</sup>19 U.S.C. § 1677(7)(C)(iii). The statute lists actual and potential decline in output, sales, market share, profits, productivity, return on investment and utilization of capacity; factors affecting prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and the magnitude of the dumping margin.

<sup>74</sup>As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA at 850. Section 771(35)(C) of the Act, 19 U.S.C. § 1677(35)(C), defines the "margin of dumping" to be used by the Commission in a final determination as the last margin or margins published by Commerce prior to the closing of the administrative record in the Commission's investigations. In its final determinations, Commerce identified dumping margins as follows: Belgium - 9.86 percent; Canada - 11.10-15.35 percent; Italy - 39.69-45.09 percent; Korea - 16.26 percent; South Africa - 41.63 percent; and Taiwan - 7.39-10.20 percent. Commerce's margins cover both hot- and cold-rolled SSP. OCR and OPR at Table I-1.

hot-rolled SSP. Thus, reported financial data are \*\*\*, the reliability of which is difficult to assess.<sup>75</sup> Discerning trends from the data provided is also difficult because one producer accounted for \*\*\* domestic production in 1995, 1996, and interim 1998, while the other producer accounted for \*\*\* domestic production in 1997. In addition, those producers did not produce cold-rolled SSP to the same specifications. Accordingly, data for 1997 \*\*\* reflects a different producer producing a different product

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<sup>75</sup>RCR and RPR at II-1.

than in 1995, 1996 or interim 1998.

As noted previously, domestic production was higher in 1996 than in 1995, and higher in 1997 than in 1996.<sup>76</sup> U.S. producers' U.S. market share also increased from 1995 to 1997. Domestic production and market share were lower in interim 1998 than in interim 1997, but due to the sporadic nature of sales these data are of relatively limited usefulness.<sup>77</sup> \*\*\* reported \*\*\* capacity devoted to cold-rolled SSP in 1996 than in 1995, \*\*\* capacity in 1997 and during interim 1998.<sup>78</sup> \*\*\* did not provide capacity figures, but its production in 1997 was \*\*\* than \*\*\* reported capacity for 1995 or 1996.<sup>79</sup> Because \*\*\* did not report capacity, an examination of capacity utilization over the period investigated is not meaningful.

As a result of the higher volume of U.S. shipments, the value of the domestic industry's shipments increased from \$\*\*\* in 1995, to \$\*\*\* in 1996, and to \$\*\*\* in 1997.<sup>80</sup> In interim 1997, the value of the domestic industry's U.S. shipments was \$\*\*\* compared to \$\*\*\* in interim 1998.<sup>81</sup> While the value of U.S. shipments by the domestic industry increased, unit values were \$\*\*\* per ton in 1995, \$\*\*\* per ton in 1996, and \$\*\*\* per ton in 1997.<sup>82</sup> In interim 1997, the unit value was \$\*\*\* per ton compared to \$\*\*\* per ton in interim 1998.<sup>83</sup> The domestic industry generated operating \*\*\* per ton in 1995, and of \$\*\*\* per ton in 1996.<sup>84</sup> The domestic industry generated operating \*\*\* per ton in 1997. For interim 1997, the domestic industry generated operating \*\*\* per ton compared to operating \*\*\* per ton during interim 1998.<sup>85</sup> Comparisons between data from 1995 and 1996 on the one hand and 1997 on the other are not probative in these investigations because they involve different products and producers. A comparison of 1995 data to 1996 data is insufficient to demonstrate a clear trend in our view, and comparisons of the interim periods are even less probative. The same is true for unit value comparisons regarding COGS and SG&A and operating income/loss.

Moreover, even if the data showed a deteriorating trend in profitability over the period investigated, we would not attribute it in significant part to competition with subject imports. As noted above, we discern no relationship between the volume of subject imports and the volume of domestic production or sales. Indeed, both the volume of domestic production and market share held by domestic product increased from 1996 to 1997, despite the increasing market shares of subject imports. The record suggests that other factors account for fluctuations in the volume of domestic production: that domestic sales volumes are so low that a year-to-year change in one or two orders can produce a wide swing in volume. Moreover, we do not attribute the industry's low sales volume to subject imports, but instead to U.S. producers' limited focus on this market.<sup>86</sup> Accordingly, while the volume of subject imports is far greater than domestic production, we do not find that subject imports had an observable adverse impact on the condition of the domestic industry.

The record also does not demonstrate significant price underselling of the domestic product by subject imports, or that subject imports caused significant depression of prices for the domestic product,

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<sup>76</sup>RCR and RPR at Table II-1.

<sup>77</sup>RCR and RPR at Table II-1.

<sup>78</sup>RCR and RPR at Table II-1.

<sup>79</sup>RCR and RPR at Table II-1.

<sup>80</sup>RCR and RPR at Table II-1.

<sup>81</sup>RCR and RPR at Table II-1. As noted previously, we give less weight to data from the interim periods because the shorter time period examined may lead to fluctuating results due to the sporadic nature of sales, rather than a trend.

<sup>82</sup>RCR and RPR at Table II-1.

<sup>83</sup>The previous observation regarding the significance of comparisons of interim periods applies to unit values, and each of the other measures mentioned in the remainder of this opinion.

<sup>84</sup>RCR and RPR at Table II-1.

<sup>85</sup>RCR and RPR at Table II-1.

<sup>86</sup>The market for cold-rolled SSP, though small compared to hot-rolled SSP, was not minuscule, ranging from \$\*\*\* to \$\*\*\* per year. RCR and RPR at Table II-1.

or significantly suppressed prices for the domestic product that otherwise would have occurred. Nor does the record indicate that prices for the domestic product are necessarily falling over time, despite much higher volumes of subject imports. Differences in the product ranges offered and a lack of lost sales or revenues further indicate that competition between the subject imports and the domestic like product is attenuated and support our finding of no adverse impact on the domestic industry by subject imports.<sup>87</sup>

### **CONCLUSION**

Based on the foregoing, we determine in these remand investigations that the domestic cold-rolled SSP industry is not materially injured by reason of subject imports from Belgium and Canada.

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<sup>87</sup>We take note that J&L, one of the two domestic producers, specifically wrote to inform the Commission that it had been mistakenly identified as a petitioner in the remand briefs of \*\*\* stating that it “does not support, in any way, the allegations of injury to the domestic cold-reduced plate industry as a result of imports of subject merchandise from Belgian imports.” Letter of September 11, 2002, from J&L Arcelor Group. Belgium was by far the main source of subject cold-rolled SSP imports. RCR and RPR at Table II-1.