

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN CARBON STEEL PRODUCTS (CUT-TO-LENGTH PLATE) FROM
BELGIUM AND GERMANY

Investigations Nos. 701-TA-319 and 322 and 731-TA-573 and 578 (Review) (Remand)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3587, March 2003)

VIEWS OF THE COMMISSION

I. Introduction

These Views respond to the second order of remand by the United States Court of International Trade (CIT).¹

The decision of the CIT remanding these reviews to the Commission stated that the Commission had adequately explained all the issues on which the determinations were remanded.² However, because the United States Court of Appeals for the Federal Circuit ruled that floor plate is not within the scope of the 1993 antidumping and countervailing duty orders that form the basis of these reviews, contrary to the Department of Commerce's finding,³ the CIT again remanded the determinations so that the Commission could review the pertinent data without consideration of floor plate. The CIT instructed the Commission on this second remand to "(1) reconsider whether Belgian

¹ The Commission's initial Views in these reviews, as well as its first Remand Views, are hereby adopted as further elaborated herein. *See* Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, The Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and The United Kingdom, Inv. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review), USITC Pub. 3364 (Nov. 2000); Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, The Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and The United Kingdom, Inv. Nos. AA1921-197 (Remand), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Remand), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Remand), USITC Pub. 3526 (July 2002).

² Usinor Industeel, S.A. v. United States, Consol. Ct. No. 01-00006, Slip Op. 02-152 at 23 (Dec. 20, 2002).

³ Duferco Steel, Inc. v. United States, Court No. 01-1443 (Fed. Cir. July 12, 2002).

imports should be cumulated with other subject imports; and (2) explain the impact of Duferco [Steel, Inc. v. United States] on its cumulated analysis.”⁴

Following receipt of the CIT decision, the Commission reopened the administrative record, requested specific data from the Belgian producers pertaining to cut-to-length carbon steel plate exclusive of floor plate, and permitted the parties to comment on the data. Accordingly, in this second remand the Commission considers, with floor plate removed from subject imports, whether we should exercise our discretion to cumulate the likely volume and effect of subject imports from Belgium with other subject imports, whether imports from 11 subject countries should again be cumulated, and whether subject imports are likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.⁵

⁴ Slip Op. 02-152 at 24.

⁵ The Commission initially cumulated the likely volume and effect of subject imports from all countries except Canada because of the significant differences in conditions of competition pertaining to the Canadian product. *See* USITC Pub. 3364 at 22-23; USITC Pub. 3526 at 15.

We have treated U.S. imports of floor plate as non-subject imports.⁶ Accordingly, there were no U.S. imports of the subject merchandise from Belgium during the period of review.⁷ However, as explained below, the exclusion of floor plate from the scope does not change the overall body of data significantly, as floor plate accounted for a very small share of overall Belgian plate production and shipments, and of subject imports of cut-to-length plate generally, during both the period examined in the original investigations and the current period of review. We therefore again cumulate subject imports from 11 countries, including Belgium, and reach an affirmative determination in these reviews.

⁶ We include floor plate in the domestic like product, as we did in the original determinations, even though floor plate is no longer included in the scope of the investigations. *See* USITC Pub. 3364 at 5-7. The CIT did not instruct us to revisit the definition of the like product, and nothing in the record of this remand proceeding indicates that there is a sufficiently clear dividing line between domestically produced floor plate and the continuum of other domestically produced plate to warrant not including floor plate in the domestic like product. To the contrary, floor plate is produced using the same manufacturing process as other forms of cut-to-length plate, except for the final rolling pass; it is produced in common thicknesses and without restrictive chemical or mechanical requirements; and it is used in general structural applications. *See* INV-AA-026 (Second Remand CR) at I-2 n.8 (Mar. 5, 2003), Second Remand Public Report (Second Remand PR) at I-2 n.8. It is well-established that the Commission may include articles in the domestic like product that are in addition to those described in the scope of investigation. *See, e.g., Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561 (Fed. Cir. 1996).

⁷ *See* Second Remand CR/PR at Table II-2. We note that we did not rely solely on the level of imports from any subject country during the period of review in making our determinations in the initial reviews or on remand. While Belgium may have been one of the largest sources of cut-to-length carbon steel plate among the cumulated countries during the review period before floor plate was removed from the data, *see* Confidential Report for the review investigations (CR)/Public Report for the review investigations (PR) at Table PLATE-IV-1, its imports in 1999 represented only 1.4 percent of imports of cut-to-length carbon steel plate (including floor plate) from all sources. Indeed, in that year imports of cut-to-length carbon steel plate from each of the cumulated countries ranged from 0.0 percent of all imports (Taiwan) to 12.2 percent (Mexico). *Id.*

II. Cumulation⁸

The Commission determines in this second remand that, with floor plate removed from subject imports, imports of the subject cut-to-length carbon steel plate from Belgium would not be likely to have no discernible adverse impact if the orders were revoked, and that a reasonable overlap of competition among subject imports from Belgium and other subject countries, and the domestic like product, likely would exist if the orders were revoked. The Commission further determines that, as stated in its initial Views and first Remand Views, subject imports from each of the 12 countries (including Canada) would not be likely to have no discernible adverse impact on the domestic industry if the orders were revoked, and that a reasonable overlap of competition between the subject imports and the domestic like product likely would exist if the orders were revoked.⁹ We exercise our discretion to cumulate subject imports from 11 countries, but do not cumulate subject imports from Canada because of the significant differences in conditions of competition as explained in the Commission's initial Views and incorporated herein.

A. Likelihood of No Discernible Adverse Impact^{10 11}

⁸ Commissioner Koplan joins in this discussion with respect to Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and Taiwan, but not with respect to the United Kingdom. *See* Dissenting Views of Chairman Stephen Koplan and Commissioner Thelma J. Askey in *Cut-to-Length Carbon Steel Plate from the United Kingdom*, USITC Pub. 3364 at 59-61.

⁹ We note that in this remand determination we apply the term "likely" consistent with the Court's most recent opinion in this case. *See Usinor Industeel*, Slip Op. 02-152 at 4-6 (*citing Usinor Industeel*, Slip Op. 02-75 and *Usinor Industeel*, Slip Op. 02-39).

¹⁰ As noted in the Commission's initial Views in these reviews, for a discussion of the analytical framework of Vice Chairman Hillman and Commissioners Miller and Koplan regarding the application of the "no discernible adverse impact" provision, *see Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand*, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348

In its second opinion in this case, the CIT found, as to Germany, that the Commission’s finding of likely volume, for the purposes of determining the likelihood of no discernible adverse impact, was supported by substantial evidence, but instructed the Commission to “recalculate its findings regarding capacity, production and export orientation without consideration of floor plate data and review its conclusion as to likely Belgian volume” in assessing likelihood of no discernible adverse impact for its cumulation analysis.¹² Factors we consider in our analysis, as we did in our initial and first Remand Views, for assessing likelihood of no discernible adverse impact include, among others: size of the industry in each subject country relative to the U.S. market; each subject country’s capacity to produce all types of plate; actual production of subject plate; export orientation; and substitutability of U.S. product and subject country imports. The Commission also considered and, in the CIT’s view, reasonably rejected plaintiffs’ arguments that changes in the European Union (EU) would preclude

(Review). For a further discussion of Commissioner Koplan’s analytical framework, *see* Iron Metal Construction Castings From India; Heavy Iron Construction Castings From Brazil; and Iron Construction Castings From Brazil, Canada, and China, Inv. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplan Regarding Cumulation).

¹¹ In both original and five-year review determinations, *see* USITC Pub. 3364 at 15, the Commission’s consideration of trends with respect to cumulation is not the equivalent of an injury analysis thereof. Neenah Foundry Co. v. United States, 155 F. Supp.2d 766, 774 (Ct. Int’l Trade 2001).

¹² Slip Op. 02-152 at 20.

shipments of subject imports to the United States.¹³ Finally, the Commission took into account the weakened condition of the U.S. industry during the review period.¹⁴

The size of the cut-to-length plate industry in Belgium is significant relative to the U.S. market. Its capacity to produce subject plate was *** short tons in 1999, which was equivalent to *** percent of apparent U.S. consumption in 1999, the last full year of the period of review.¹⁵ Its capacity utilization fell steadily from 1997 to 1999, reaching *** percent in 1999.¹⁶ Its unused capacity to produce the subject plate was *** short tons in 1999.¹⁷ We have taken into account Belgian producers' high reported capacity utilization in interim (January-March) 2000 (exceeding ***

¹³ Slip Op. 02-152 at 20, 22.

¹⁴ Slip Op. 02-152 at 22 & n.23.

¹⁵ Compare Second Remand CR/PR at Table II-4 (after Belgian capacity adjusted for removal of floor plate production) with Second Remand CR/PR at Table II-2 (apparent U.S. consumption). The ratio of Belgian capacity after the removal of floor plate to apparent U.S. consumption was *** percent in 1997, *** percent in 1998, *** percent in Jan.-Mar. 1999, and *** percent in Jan.-Mar. 2000. *Id.* Because floor plate is produced on the same equipment as other plate, we have removed floor plate production from the plate capacity figures to arrive at capacity figures for subject plate alone. Floor plate production was minor compared to overall plate capacity, representing less than *** percent of Belgian capacity in 1998 and 1999, and peaking at *** percent of Belgian capacity in interim 2000. *Id.* at Table II-4.

¹⁶ See Second Remand CR/PR at Table II-4 (calculated after capacity adjusted for removal of floor plate production). For the period of review as a whole, capacity utilization was *** percent in 1997, *** percent in 1998, *** percent in 1999, and *** percent in Jan.-Mar. 2000. *Id.* at Table II-4 (calculated after capacity adjusted for removal of floor plate production).

¹⁷ Second Remand CR/PR at Table II-4 (calculated after capacity adjusted for removal of floor plate production).

percent),¹⁸ which appears to reflect a ***.¹⁹ However, we decline to place decisive weight on one quarter year of data in light of the clear downward trend in capacity utilization shown by the annual data.

In addition to the *** tons of reported capacity allocated to the production of cut-to-length carbon steel plate (including floor plate), Belgian producers allocated an additional *** tons of capacity in 1999 to the production of cut-to-length alloy steel plate.²⁰ This capacity can be used to produce subject cut-to-length plate, given the ability of producers in this industry to shift production from one type of plate to another.²¹ The plate industry is one in which it is important to operate at a high level of capacity utilization in order to be profitable.²² Thus, there is an incentive for the Belgian producers to maximize plate production, they have demonstrated the ability to operate near *** reported full capacity levels, and they maintain the capacity to shift from the production of non-subject plate to the production of subject plate.

¹⁸ Second Remand CR/PR Table II-4. Duferco's capacity utilization was *** percent in Jan.-Mar. 2000 (adjusted for removal of floor plate production), while Usinor's capacity utilization was *** percent during that period. Duferco's and Usinor's Remand Investigation Questionnaire Responses.

¹⁹ In the first quarter of 2000, total Belgian exports were *** short tons compared to *** short tons in the first quarter of 1999. Second Remand CR/PR at Table II-4.

²⁰ Compare INV-X-227 at Table CTL-SUPP-1 (capacity for all cut-to-length plate) with Second Remand CR/PR at Table II-4 (capacity for subject cut-to-length plate plus floor plate).

²¹ See CR at PLATE-I-28, PR at PLATE-I-26; Second Remand CR/PR at I-2 n.8.

²² See CR at PLATE-II-38, PR at PLATE-II-32.

In addition, the Belgian plate industry has been and remains export-oriented, contrary to Duferco's assertions.²³ In 1992, the last year of the period for which data were collected in the original investigations, *** percent of Belgium's total shipments of cut-to-length carbon steel plate were exports to the United States – *** than shipments to its home market – and it exported *** percent of its shipments to other markets.²⁴ Belgian producers exported *** percent of their total shipments of cut-to-length carbon steel plate (excluding floor plate) in 1999.²⁵ While most of Belgium's exports are now shipped to the EU,²⁶ the Belgian producers report that approximately *** percent of Belgian plate is shipped elsewhere.²⁷ Thus, the Belgian industry is primarily focused on exports, including significant exports to non-EU markets.²⁸

²³ Duferco's Comments on New Data at 9-12.

²⁴ Original CR/PR at Table 52. The Belgian producers were not able to provide data in this second remand on Belgian capacity, production, inventories, and shipments of subject plate, excluding floor plate, for the period examined in the original investigations. The record of the original investigations does show, however, that U.S. imports of Belgian floor plate were minuscule – they totaled *** short tons between 1990-92 as compared to U.S. imports of all other subject plate from Belgium totaling *** short tons between 1990-92. *Id.* at Table F-1 (product 13); Second Remand CR/PR at Table III-1.

²⁵ Second Remand CR/PR at Table II-4. Exports account for the substantial majority of the Belgian industry's shipment volume. Over the period of review as a whole, exports accounted for *** percent of total subject plate shipments in 1997, *** percent in 1998, *** percent in 1999, and *** percent in Jan.-Mar. 2000. *Id.*

²⁶ In 1999, more than *** percent of Duferco's total sales were to Europe. CR at PLATE-IV-2, PR at PLATE-IV-1.

²⁷ Duferco's Comments on New Data at 12 n.34.

²⁸ Contrary to Duferco's claims, the Commission in its Views and the CIT in its rulings on this case did not address the changes in the European market only with respect to Germany. Duferco's Comments on New Data at 8. The CIT stated that "Plaintiffs argued that the recent changes in the

The Belgian industry producing cut-to-length plate continued to demonstrate its interest in the U.S. market over the period of review. Between 1997 and 1999, the Belgian cut-to-length plate industry shipped *** short tons of microalloy cut-to-length plate to the United States (*** percent of the *** short tons shipped to all markets during that thirty-six month period).²⁹ Similarly, the Belgian cut-to-length plate industry shipped *** short tons of now-excluded floor plate to the United States between January 1998 and March 2000 (*** percent of the *** short tons of floor plate shipped to all markets (including the home market) during that twenty-seven month period).³⁰

We have no reason to conclude that, in the absence of the antidumping and countervailing duty orders, the Belgian industry would continue to limit its participation in the U.S. market to non-subject

European Community have made it unlikely that Belgian and German producers would shift sales to the U.S.” Slip Op. 02-39 at 17; Slip Op. 02-152 at 13. We also note that Germany, like Belgium, claimed the EU to be its home market. *See* German Producers’ Initial Brief on Appeal at 22 (July 20, 2001).

In addition, contrary to Duferco’s claims, the Commission need not quantify the volume of any likely increase in subject imports. Duferco’s Comments on New Data at 8. We note that Duferco provides no support for its assertion, as indeed no such support exists.

²⁹ INV-X-227 at Table CTL-SUPP-1. Belgium’s exports of microalloy cut-to-length plate to the United States were *** short tons in 1997, *** short tons in 1998, and *** short tons in 1999, which represented *** percent, *** percent, and *** percent of the Belgian industry’s overall shipments (domestic plus export) of microalloy cut-to-length plate in 1997, 1998, and 1999, respectively. *Id.*

While cut-to-length plate of carbon steel is not identical to cut-to-length plate of microalloy steel, the products are sufficiently similar to allow comparisons between the production, marketing, and sales of the two products. *See* USITC Pub. 3364 at 6 (review of the six-factor test typically relied upon by the Commission provides some evidence that microalloy plate could be included in the domestic like product); *see also* CR at PLATE-I-30 n.44, PR at PLATE-I-27 n.44 (domestic plate producers included microalloy products in data).

³⁰ Second Remand CR/PR at II-9. The share of Belgium’s total floor plate shipments (domestic plus export) that were exported to the United States was *** percent in 1998, *** percent in 1999, and *** percent in interim 2000. *Id.*

products. The Belgian industry is highly dependent upon the production and sale of the subject plate products. Following the rescue of Duferco's plate mills in 1997, subject cut-to-length plate has accounted for approximately three-quarters of total reported cut-to-length plate production in Belgium.³¹ Moreover, as the Court has previously noted, a significant percentage of the cut-to-length carbon steel plate products that are produced by Duferco, which is by far the larger of the two Belgian producers, consists of standard products.³² Floor plate represented only *** percent of Belgium's total production of cut-to-length carbon steel plate in 1998, *** percent in 1999, and *** percent in interim 2000.³³ In contrast, approximately *** percent of Belgian producers' total shipments of subject plate plus floor plate consists of structural, shipbuilding, and pressure vessel quality plate, compared to a similar *** percent for the U.S. industry's commercial shipments.³⁴

Both Duferco and Usinor Industeel have U.S. affiliates that import and sell in the United States significant quantities of imported plate from other sources.³⁵ These entities provide a ready avenue

³¹ INV-X-227 at Table CTL-SUPP-1, adjusted to treat floor plate as excluded, rather than subject, plate.

³² Slip Op. 02-39 at 15 n.16.

³³ Second Remand CR/PR at Table II-4.

³⁴ Compare INV-X-230 at Table CTL-SUPP-13 with INV-X-229 at Table D-4. A substantial portion of Belgian cut-to-length plate, like that produced in the United States, is basic structural plate. *** percent of Belgian producers' plate shipments comprise carbon structural steel plate, compared to *** percent of U.S. producers' plate shipments. *** percent of Belgian producers' plate shipments comprise high-strength, low-alloy structural steel plate, compared to *** percent of U.S. producers' plate shipments. Compare INV-X-230 at Table CTL-SUPP-13 with INV-X-229 at Table D-4.

³⁵ See Duferco's, Usinor's, and Fabrique de Charleroi's Importer Questionnaire Responses. Between January 1997 and March 2000, Duferco imported *** short tons from "other" (non-subject) sources; Usinor imported *** short tons ("primarily" from ***); while Fabrique de Charleroi imported

through which Belgian producers can access the U.S. market with imported subject cut-to-length plate in the event of revocation of the subject orders.

We have considered, but remain unpersuaded by, Dufenco's argument that the Belgian industry is not likely to seek to participate significantly in the U.S. market because the ownership of the two Belgian producers has changed since the original investigation.³⁶ As discussed above, both the Belgian industry and related U.S. importers have demonstrated significant interest in the U.S. plate market. Further, the record evidence detailed above concerning Belgian capacity and the nature of plate production indicate that the Belgian industry has both the ability and the incentive to increase exports of subject plate to the United States. A change in ownership does not alter these facts.

The data on subject imports without floor plate do show that there were no subject imports from Belgium during the period of review.³⁷ The Commission, however, has never viewed the absence of subject imports during the review period as compelling a finding of no discernible adverse impact, given that the imposition of antidumping and countervailing duty orders is expected to, and often does, have a significant restraining effect on the volume of subject imports.³⁸ In these reviews, other countries

*** short tons. *Id.* Usinor's *** import activities render less significant its *** effective July 2000. *See* Usinor's Posthearing Brief at 3.

³⁶ Dufenco's Comments on New Data at 10, 15.

³⁷ Second Remand CR/PR at Table II-2. For all other countries, there were imports during at least one full year of the period. *Id.*

³⁸ *See, e.g.*, 19 U.S.C. § 1675a(5) (no one statutory factor shall necessarily give decisive guidance); Uruguay Round Trade Agreements Statement of Administrative Action (SAA) at 883-886 (noting the "counterfactual" nature of the inquiry, unlike the inquiry involved in assessing a threat of material injury, as well as noting that the order would be expected to affect the marketing of subject imports). *Compare, e.g.*, 19 U.S.C. § 1677(7)(I) (in original investigations post-petition declines in

besides Belgium as to which we reached affirmative determinations had no or minimal levels of subject imports to the United States during some portions of the review period as follows (in short tons):³⁹

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>Jan.-Mar.</u> <u>1999</u>	<u>Jan.-Mar.</u> <u>2000</u>
Finland	34	656	28	10	0
Poland	4,171	477	71	55	0
Romania	56	620	348	0	0
Spain	0	446	356	10	0
Sweden	123	0	188	0	52
Taiwan	0	223	0	0	16

In addition, in the initial Views in these five-year reviews, we recognized that floor plate from Belgium, then assumed to be included in subject merchandise, was a high-value, specialty product, the importation of which during the review period was not necessarily probative of the level or type of plate that would be exported to the United States from Belgium if the orders were revoked:

[T]he fact that Duferco is exporting only niche products while subject to the antidumping and countervailing duty orders is not necessarily indicative of its behavior in the event of revocation of those orders. We note that a significant percentage of the plate products that Duferco manufactures are standard products that likely would compete closely with domestic plate.⁴⁰

The Commission has reached affirmative determinations in other five-year reviews despite the absence of subject imports during the review period. In Furfuryl Alcohol From China and Thailand,⁴¹

imports may be disregarded); SAA at 854 (“imposition of provisional duties [in original investigations] in particular, can cause a reduction in import volumes”).

³⁹ Second Remand CR/PR at Table III-1.

⁴⁰ USITC Pub. 3364 at 21 n.108.

⁴¹ Inv. Nos. 731-TA-703 & 705 (Review), USITC Pub. 3412 (Apr. 2001), *aff’d*, Indorama Chemicals (Thailand) Ltd. v. United States Int’l Trade Comm’n, Slip Op. 02-105 (Ct. Int’l Trade Sept. 4, 2002).

there were no subject imports from China during the review period. Because the size of the industry was significant and capacity in China was sizeable, and because China devoted considerable resources to its export markets, the Commission found that the likely imports from China would have a discernible adverse impact on the domestic industry and elected to cumulate subject imports from China and Thailand in making its determinations.⁴² On appeal, the CIT affirmed the determinations.⁴³

In another five-year review, Ferrovandium and Nitrided Vanadium From Russia,⁴⁴ the Commission made an affirmative determination even though there had been no subject imports in the U.S. market since shortly after issuance of the antidumping duty order. The Commission found, among other facts, that there was significant excess capacity in Russia to manufacture the subject merchandise; that the Russian industry was export-oriented; and that there was substantial flexibility in shifting sales between national markets such that increased sales to the United States would be likely to occur rapidly.⁴⁵

In sum, the record on remand, with floor plate excluded from the subject merchandise, supports a finding that subject imports from Belgium are not likely to have no discernible adverse impact in the event of revocation of the subject orders, notwithstanding the absence of subject imports from Belgium during the review period. The factors supporting this finding include: the Belgian industry's export orientation and ability to redirect and increase production; the size of the Belgian industry; the Belgian

⁴² USITC Pub. 3412 at 9-11.

⁴³ Slip Op. 02-105 at 15.

⁴⁴ Inv. No. 731-TA-702 (Review), USITC Pub. 3420 (May 2001).

⁴⁵ USITC Pub. 3420 at 12-16.

industry's substantial capacity to produce all types of plate products; its actual production of significant volumes of subject plate as well as other plate; its participation in the U.S. market for non-subject, but similar, products; and the weakened state of the U.S. industry. We also find that the incentive for steel producers to increase sales to maximize the use of available capacity, as well as the role of increasingly consolidated service centers in seeking out sources of low-cost supplies,⁴⁶ further support the conclusion that revocation of the subject orders on Belgium likely would not result in no discernible adverse impact on the domestic cut-to-length plate industry.

As the Commission stated in its initial Views and first Remand Views, and remains unchanged in this second remand, the size of the industry producing cut-to-length carbon steel plate in each subject country is significant;⁴⁷ each has substantial capacity to produce a variety of plate products; actual production of subject plate as well as other plate is significant; and most countries export a substantial share of their production.⁴⁸ Because the types of plate products manufactured in the subject countries do not differ dramatically from those produced in the United States, we again find that imports from each of the subject countries likely would be substitutable for, and competitive with, domestically produced plate. We also again find that competition likely would be on the basis of price, as stated in the Commission's initial Views. Thus, for the foregoing reasons, as explained in more detail in those

⁴⁶ See USITC Pub. 3364 at 28.

⁴⁷ Consideration of floor plate as an excluded form of cut-to-length carbon steel plate does not affect this characterization. In 1999, floor plate accounted for *** percent of total shipments of cut-to-length carbon steel plate from Belgium, and *** percent or less for all of the other reporting subject countries. INV-X-230 at Tables CTL-SUPP-13-24.

⁴⁸ USITC Pub. 3364 at 20; USITC Pub. 3526 at 15-16.

Views, and in light of the weakened condition of the U.S. industry, as described in the first remand and our initial determinations, the likely imports of plate from each of the subject countries would have a discernible adverse impact on the domestic industry.⁴⁹

B. Reasonable Overlap of Competition

As the Commission explained in its initial Views in these reviews, as well as on the first remand, there is a reasonable overlap in the types of subject plate produced in each subject country and in the United States.⁵⁰ The CIT has sustained this finding.⁵¹

In particular, in the initial reviews we considered the fact that, although subject countries such as Belgium may have exported specialty plate products to the United States during the review period and argued that their products did not compete with the domestic like product, the record showed that they continued to produce commodity plate in significant quantities such that there would likely be a reasonable overlap of competition with the domestic like product. We noted Duferco's argument that its exports to the United States do not compete with the vast majority of domestic plate production. We found, however, that the fact that Duferco has exported only niche products (*i.e.* floor plate, which is now non-subject product) to the United States while subject to the orders is not necessarily indicative of its behavior upon revocation of those orders, as the majority of Belgian production is of standard

⁴⁹ See USITC Pub. 3364 at 20; USITC Pub. 3526 at 15-16.

⁵⁰ USITC Pub. 3364 at 21-22; USITC Pub. 3526 at 16-17.

⁵¹ Slip Op. 02-152 at 20-21; Slip Op. 02-39 at 14-16.

plate products that likely would compete closely with domestic plate.⁵² We affirm this analysis in these Remand Views. The removal of floor plate as subject merchandise does not change our analysis. As stated previously, Belgian production of floor plate accounted, as a share of its total production of carbon steel cut-to-length plate, for only *** percent in 1998, *** percent in 1999 and *** percent in interim 2000,⁵³ while a substantial majority of Belgium's production in 1999 was of standard subject grades that compete with the vast majority of U.S. production, as well as with shipments by producers in the other subject countries.⁵⁴

With respect to respondent's argument as to channels of distribution, we stated in our initial Views in these reviews that both domestic producers and importers ship plate to end users, distributors

⁵² USITC Pub. 3364 at 21 n.108. In fact, as noted above, the Belgian industry's mix of plate products is quite similar to the domestic industry's. *Compare* INV-X-230 at Table CTL-SUPP-13 with INV-X-229 at Table D-4.

⁵³ Second Remand CR/PR at Table II-4.

⁵⁴ *See* INV-X-229 at Table D-4, INV-X-230 at Tables CTL-SUPP-13-24. We do not find it likely that the Belgian cut-to-length plate industry would limit U.S. shipments to floor plate, as floor plate is a niche product with little appreciable volume. *See, e.g.*, Second Remand CR/PR at III-1 (floor plate accounted for less than *** percent of U.S. and Belgian producers' cut-to-length carbon steel plate offerings in the United States during 1990-92). Producers of cut-to-length carbon steel plate simply do not devote substantial capacity or sales efforts to producing and marketing floor plate. In 1999, floor plate accounted for *** percent of cut-to-length carbon steel plate commercial shipments by U.S. producers; *** percent of cut-to-length carbon steel plate total shipments by producers in Belgium; *** percent by producers in Brazil and the United Kingdom; *** percent by producers in Finland; *** percent by producers in Germany; and *** percent by producers in Canada (subject), Mexico, Romania, Spain, and Sweden. INV-X-229 at Table D-4; INV-X-230 at Tables CTL-SUPP-13-24.

and service centers/processors.⁵⁵ The CIT upheld this finding.⁵⁶ The fact that Belgian producers did not export subject plate to the United States during the period of review does not alter our finding of overlapping channels of distribution, as related importers shipped non-subject Belgian plate to ***.⁵⁷ The use of common and overlapping channels of distribution by U.S. importers, including those related to the Belgian producers, in their sales of cut-to-length carbon steel plate from subject and non-subject countries, as well as in their sales of related non-subject plate products, leads us to conclude that the channels of distribution for cut-to-length carbon steel plate likely would overlap if the subject orders were revoked.⁵⁸

In light of the importance of distributors/steel service centers that are dispersed throughout the United States, it is likely that subject imports from Belgium would be simultaneously present in the U.S. market as a whole and in the same geographical markets as other subject imports and the domestic like product. The fact that in the original investigations the Commission found that subject imports competed with each other and with the domestic like product further supports our finding, as does the fact that during the review period Belgium shipped to the United States significant quantities of microalloy plate, which is similar (though not identical) to subject plate, as explained above. The

⁵⁵ USITC Pub. 3364 at 21.

⁵⁶ Slip Op. 02-39 at 15.

⁵⁷ *See* Duferco's Importer Questionnaire Response at 8; Slip Op. 02-39 at 15 & nn. 17-18. The fact that Duferco uses its related importer exclusively to ship plate to the United States is irrelevant. Duferco ships to ***, as do importers of the subject imports and domestic like product. *See* Duferco's Importer Questionnaire Response; CR/PR at PLATE-II-1; Slip Op. 02-39 at 15 & nn.17-18.

⁵⁸ *See, e.g.*, Duferco's, Usinor's, and Fabrique de Charleroi's Importer Questionnaire Responses.

Belgian plate industry clearly has an interest in the U.S. market. Upon revocation of the orders, subject imports from Belgium are likely to be substitutable for and competitive with domestically produced plate on the basis of price,⁵⁹ especially in view of the fact that Belgium produces a significant amount of subject plate and exports a substantial portion of its production.⁶⁰

In sum, we find that a reasonable overlap of competition upon revocation is likely. The Belgian plate industry, like the plate industries in other subject countries and the United States, continues to produce, as it did in the original investigations, a variety of plate products. These products include substantial volumes of commodity cut-to-length plate that account for a large share of the U.S. market, notwithstanding the exportation of certain specialized, including non-subject, plate to the United States as a result of the orders. Furthermore, subject plate and the domestic product generally are interchangeable and compete substantially on price. Finally, service centers, a major distribution channel for both the U.S. product and subject imports, have consolidated since the original investigations and enhanced their ability to purchase and hold in inventory sizeable quantities of imported plate.⁶¹

⁵⁹ See USITC Pub. 3364 at 21-22, USITC Pub. 3526 at 16-17.

⁶⁰ The safeguard duties referred to by Duferco, *see* Duferco's Comments on New Data at 13, were imposed subsequent to the period of review and subsequent to the Commission's five-year review determination; they comprise new information that was raised before neither the Commission nor the CIT.

⁶¹ See USITC Pub. 3364 at 21-22; USITC Pub. 3526 at 17.

The CIT has approved the Commission's findings regarding a reasonable overlap in competition and has rejected Duferco's challenges to them.⁶² The record, as supplemented pursuant to these remand proceedings, provides no need or basis to change these findings. The basic facts and reasoning contained in our findings remain supported by the record and any changes in the data resulting from the removal of floor plate are quite small in absolute terms and with respect to observed trends in the data.⁶³

Accordingly, as we did in the initial reviews and the first remand, we exercise our discretion to cumulate subject imports from Belgium with those from all countries subject to these reviews with the exception of Canada.⁶⁴

C. Other Considerations/Conditions of Competition

In our initial review and first remand determinations, we found no significant differences in conditions of competition among subject imports from all subject countries other than Canada.⁶⁵ We reaffirm that finding here, and do not cumulate subject imports from Canada with those from the 11 other subject countries, including Belgium, for our analysis of likelihood of continuation or recurrence of material injury.

⁶² See Slip Op. 02-39 at 14-16.

⁶³ Compare, e.g., Second Remand CR/PR at Table II-4 with CR/PR at Table PLATE-IV-3. For example, Belgian production of subject plate increased significantly between 1997 and 1998, and fell *** between 1998 and 1999; total exports followed the same trend; and capacity utilization fell steadily between 1997 and 1999.

⁶⁴ See USITC Pub. 3364 at 22-23, 33-34 for an explanation of our findings with respect to Canada.

⁶⁵ USITC Pub. 3364 at 22-23; USITC Pub. 3526 at 17-18.

III. Revocation of the Orders on Subject Plate Imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time^{66 67}

A. Likely Volume of Subject Imports

We adopt our findings in our initial review and first remand determinations and find that, in these reviews, the volume of cumulated subject imports likely would be significant within a reasonably foreseeable time if the orders are revoked.⁶⁸ The CIT has found no error in our reasoning or in our reliance upon the material in the record that supports this reasoning.⁶⁹

We note that the record indicates that the amount of floor plate shipped to the United States in the original investigations, as in these reviews, was limited.⁷⁰ Of the 11 cumulated countries, there were only three for which there were reported U.S. imports of floor plate during the original investigations: Belgium, Finland, and Mexico. In 1992, the last full year of the period examined in the original

⁶⁶ Commissioner Koplan joins in this discussion with respect to Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and Taiwan, but not with respect to the United Kingdom. *See* Dissenting Views of Chairman Steve Koplan and Commissioner Thelma J. Askey in Cut-to-Length Carbon Steel Plate from the United Kingdom, USITC Pub. 3364 at 59-61.

⁶⁷ Because the interim data for 1999 and 2000 cover only limited three-month periods, we have placed less emphasis on interim period comparisons.

⁶⁸ USITC Pub. 3364 at 26-28; USITC Pub. 3526 at 23-24.

⁶⁹ Slip Op. 02-152 at 22. The CIT also found our explanation of our rejection of plaintiffs' arguments pertaining to the EU to be reasonable. *Id.* at 22.

⁷⁰ Imports of floor plate from all subject countries during the period examined in the original investigations were as follows: *** short tons in 1990, *** short tons in 1991 and *** short tons in 1992. During the period of review, they were as follows (excluding Canada): 623 short tons in 1997, 25,268 short tons in 1998 and 9,153 short tons in 1999. *Compare, e.g.,* Second Remand CR/PR at Table III-1 *with* CR/PR at Table PLATE-I-1.

investigations, imports of floor plate from these three countries totaled only *** short tons⁷¹ when total subject plate imports from the 11 cumulated countries were *** short tons in that year.⁷² Further, none of the subject countries' import market shares for any of the years of the period examined in the original investigations changed as a result of the exclusion of these imports of floor plate.⁷³ Thus, to the extent we considered the volume of subject imports in the original investigations in analyzing likely volume in the five-year reviews, the removal of floor plate as subject merchandise does not materially change our analysis.

B. Likely Price Effects of Subject Imports

We adopt our findings in our initial review and first remand determinations and find that, in these reviews, the significant increased volumes of cumulated subject imports likely would undersell domestic plate products to a significant degree and have significant price suppressing and depressing effects within a reasonably foreseeable time if the orders are revoked.⁷⁴ We note that the CIT has found no error in our reasoning or in our reliance upon the material in the record that supports this reasoning.⁷⁵

⁷¹ The record indicates that Mexico was the only subject country for which U.S. imports of floor plate were reported in 1992. *See* Second Remand CR/PR at III-1 n.1, Table III-1; *see also* Original CR/PR at Table F-1.

⁷² Second Remand CR/PR at Table III-1. We note that plate from one of the 11 cumulated countries, Taiwan, was not subject product during the 1993 investigations inasmuch as it was already covered by an existing antidumping duty order. However, there were no imports of floor plate from Taiwan in 1992. *See* INV-X-225 at Table S-1.

⁷³ *Compare* CR/PR at Table PLATE-I-1 *with* Second Remand CR/PR at Table III-1; *see also* Second Remand CR/PR at III-1 n.1.

⁷⁴ USITC Pub. 3364 at 29; USITC Pub. 3526 at 24-25.

⁷⁵ Slip Op. 02-152 at 22 n.23.

C. Likely Impact of Subject Imports

We adopt our findings in our initial review and first remand determinations and find that, in these reviews, if the orders are revoked, cumulated subject imports likely would enter the U.S. market in sufficient quantities and at prices below those of the domestic product so as to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.⁷⁶ We find in particular that while the domestic industry's indicators of economic health improved toward the end of the review period, it remains in a weakened state.⁷⁷ We note that the CIT has found no error in our reasoning or in our reliance upon the material in the record that supports this reasoning.⁷⁸

CONCLUSION

Accordingly, based on the record in these reviews and pursuant to the Court's instructions upon remanding the first remand determinations to the Commission, we conclude that revocation of the antidumping and countervailing duty orders on cut-to-length plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom,⁷⁹ would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

⁷⁶ USITC Pub. 3364 at 30-33; USITC Pub. 3526 at 25-29.

⁷⁷ USITC Pub. 3364 at 30-32.

⁷⁸ Slip Op. 02-152 at 22 n.23.

⁷⁹ Commissioner Koplán dissenting with respect to the United Kingdom.