UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STAINLESS STEEL SHEET AND STRIP FROM
FRANCE, GERMANY, ITALY, JAPAN, KOREA, MEXICO,
TAIWAN, AND THE UNITED KINGDOM
Investigations Nos. 701-TA-380-382 and 731-TA-797-804 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3118, AUGUST 1998)

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CERTAIN STAINLESS STEEL SHEET AND STRIP FROM FRANCE, GERMANY, ITALY, JAPAN, THE REPUBLIC OF KOREA, MEXICO, TAIWAN, AND THE UNITED KINGDOM

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured[2] or threatened with material injury[3] by reason of imports from France, Italy, and the Republic of Korea (Korea) of certain stainless steel sheet and strip,[4] that are alleged to be subsidized by the Governments of France, Italy, and Korea. The Commission also determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured[2] or threatened with material injury[3] by reason of imports from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom of certain stainless steel sheet and strip, that are alleged to be sold in the United States at less than fair value.

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

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

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Bragg and Commissioner Crawford determine that there is a reasonable indication that an industry in the United States is materially injured.

[3] Vice Chairman Miller determines that there is a reasonable indication that an industry in the United States is threatened with material injury.

[4] The merchandise subject to these investigations is stainless steel sheet and strip in coils and is currently classified in the following subheadings of the Harmonized Tariff Schedule of the United States (HTS): 7219.13.00, 7219.14.00, 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00, 7219.90.00, 7220.12.10, 7220.12.50, 7220.20.10, 7220.20.60, 7220.20.70, 7220.20.80, 7220.20.90, and 7220.90.00.

BACKGROUND

On June 10, 1998, petitions were filed with the Commission and Commerce by counsel for Allegheny Ludlum Corporation; Armco, Inc.;[5] J&L Specialty Steel, Inc.;[6] Washington Steel Division of Bethlehem Steel Corp.; the United Steelworkers of America, AFL-CIO; Butler Armco Independent Union; and Zanesville Armco Independent Organization, Inc., alleging that an industry in the United States is materially injured by reason of subsidized imports of certain stainless steel sheet and strip from France, Italy, and Korea, and LTFV imports from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom. Accordingly, effective June 10, 1998, the Commission instituted countervailing duty investigations Nos. 701-TA-380-382 (Preliminary) and antidumping investigations Nos. 731-TA-797-804 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of June 17, 1998 (63 FR 33092). The conference was held in Washington, DC, on July 1, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[5] Armco, Inc., Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. are not petitioners in the antidumping investigation relating to Mexico.

[6] J&L Specialty Steel, Inc. is not a petitioner in the countervailing duty and antidumping investigations relating to France.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of stainless steel sheet and strip from France, Italy, and Korea that are allegedly subsidized and imports of stainless steel sheet and strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom that are allegedly sold in the United States at less than fair value ("LTFV").[1]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations whether there is a reasonable indication that a domestic industry is materially injured, or threatened with material injury, by reason of the allegedly unfairly traded imports.[2] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[3]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of the subject imports, the Commission first defines the "domestic like product" and the "industry."[4] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[5] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[6]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[7] No single factor is dispositive, and the Commission may

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[1] Vice Chairman Miller finds that there is a reasonable indication that a domestic industry is threatened with material injury by reason of the subject imports. *See* Separate Views of Vice Chairman Marcia E. Miller. She joins in sections I-III and IV.A of these Views.

[2] 19 U.S.C. §§ 1671b(a),1673b(a); *see also* American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. United States, 794 F. Supp. 377, 381 (Ct. Int'l Trade 1992).

[3] American Lamb, 785 F.2d at 1001; *see also* Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[4] 19 U.S.C. § 1677(4)(A).

[5] *Id.*

[6] 19 U.S.C. § 1677(10).

[7] *See, e.g.*, Nippon Steel Corp. v. United States, 19 CIT 450, 455, Slip Op. 95-57 at 11 (Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2)

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consider other factors it deems relevant based on the facts of a particular investigation.[8] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[9] Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise allegedly subsidized and sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[10]

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as

> . . .certain stainless steel sheet and strip in coils. Stainless steel is an alloy containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc*.) provided that it maintains the specific dimensions of sheet and strip following such processing.[11]

The stainless steel sheet and strip ("SSSS") subject to these investigations closely follow industry distinctions for sheet and strip product thickness and width, as detailed by the American Society of Testing Materials ("ASTM"), the Iron and Steel Society ("ISS"), ASM International ("ASM"), and the American Iron and Steel Institute ("AISI").[12] According to these industry definitions, sheet is at least 24 inches in width, whereas strip is less than 24 inches wide.[13]

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[7] (...continued)
interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See* Nippon Steel at 11, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[8] *See, e.g.*, S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[9] Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991).

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

[11] Notice of Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom, 63 Fed. Reg. 37521 (July 13, 1998); Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea, 63 Fed. Reg. 37539-40 (July 13, 1998). Confidential Report ("CR") and Public Report ("PR") at Appendix A. Commerce has excluded from the scope of the investigations the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire, and (5) razor blade steel. *Id*.

[12] CR at I-7, PR at I-6; CR and PR at Table I-2.

[13] *Id*.

Only coiled SSSS that has been annealed (heat treated) and pickled (descaled) is subject to investigation.[14] At this stage, the product is referred to as white-band, or hot-rolled, annealed and pickled ("HRAP"). The vast majority of HRAP SSSS is further processed into cold-rolled SSSS, to achieve tighter tolerances, better surface quality, and reduced thicknesses.[15]

C. Domestic Like Product Issues

Petitioners argued that the Commission should find one like product coextensive with the scope, *i.e.*, certain stainless steel sheet and strip in coils. Several Respondents, including producers and importers of subject products from Mexico, Italy, Germany, Taiwan, Japan and Korea, argued that the Commission should find three like products: all HRAP flat products, regardless of thickness (*i.e*, sheet, strip, and plate); cold-rolled sheet and strip in coils, other than foil; and stainless steel foil.[16] In the following sections, we consider three domestic like product issues: (1) whether stainless steel plate should be included in the domestic like product; (2) whether hot-rolled and cold-rolled SSSS should be defined as separate domestic like products; and (3) whether foil should be defined as a separate like product from other SSSS.[17]

1. Whether the domestic like product should be defined more broadly than the subject merchandise to include stainless steel plate

Many respondents argued that HRAP stainless steel plate should be included in the domestic like product.[18] They contend that the only demarcation between SSSS and stainless plate is the thickness, which does not, in their view, create a clear dividing line.[19] Applying the Commission's traditional six-

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[14] CR at I-9; PR at I-8.

[15] CR at I-9, PR at I-8; CR and PR at Table I-3.

[16] Various other respondents argued that the Commission should find separate like products corresponding to the specialty or "niche" products that they export to the United States. *See. e.g.*, Postconference Brief of Ergste at 1-6; Postconference Brief of Hitachi Metals America ("HMA"). These respondents contended that their products do not compete with any domestic products. Even if these respondents were correct that there are no domestic products exactly like the imports, the Commission would still be required to define the domestic product "most similar in characteristics and uses with, the subject imports." 19 U.S.C. § 1677(10). *See* Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Preliminary), USITC Pub. 2071 at 7 (March 1988). In light of common size and chemical requirements, production methods and machinery, channels of distribution to end users, customization for end users, and pricing relative to value and cost added, we would define SSSS as the appropriate like product in any event. We have, however, taken respondents' arguments concerning "niche" products into consideration in the context of competition for cumulation purposes and conditions of competition.

[17] In the event of any final phase of these investigations, Commissioner Crawford requests the parties to address whether SSSS in coils and SSSS not in coils should be included in the same like product.

[18] Postconference brief of Italian Respondents Acciai Speciali Terni ("AST") at 2-13. Respondents representing producers and importers from Mexico, Germany, Japan, Taiwan, and Korea summarily supported this argument.

[19] These respondents suggest that their argument is supported by the Commission's findings in its investigations concerning carbon steel that hot-rolled carbon steel plate and hot-rolled carbon sheet and strip constituted one like product. In those cases, Commerce's scope included all hot-rolled carbon steel flat products, including plate. Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, Inv. Nos. 701-TA-319-354, 731-TA-573-620 (Preliminary), USITC Pub. 2549 (Aug. 1992) at 12-16; Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the

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factor analysis to the record in these investigations, we determine that the domestic like product should not be expanded to include HRAP stainless steel plate. In evaluating the domestic like product in these investigations, we note that Commerce's scope does not include all flat products, but rather, is limited to sheet and strip.[20]

i. Physical Characteristics and Uses

SSSS and stainless steel plate are considered flat-rolled corrosion-resistant steel products. The ASTM, ASM, ISI, and AISI have developed industry standards that distinguish sheet and strip from plate.[21] According to these standards, sheet and strip are less than 0.1875 inch thick, whereas plate is 0.1875 inch or greater in thickness.[22] Sheet, strip, and plate may be sold either in coil form or as flat, rectangular shapes.[23] The chemical composition of the stainless steel is dependent on the end use requirements, although SSSS and stainless plate are both used in the stainless pipe and tube production.[24]

To a large extent, the differences in thickness appear to dictate different end uses. Stainless steel plate is sold primarily into the capital goods sector for heavy-duty applications such as the fabrication of large storage tanks, process vessels and other types of industrial equipment where its corrosion resistance is needed.[25] Stainless sheet and strip are used in a wide variety of other consumer and industrial applications where its thinner gauge is suitable.[26] The primary end uses of stainless sheet and strip are for automotive

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[19] (...continued)
United Kingdom, Inv. Nos. 701-TA-319-332, 334, 336-342, 344, 347-353, 731-TA-573-579, 581-592, 594-597, 599-609, 612-619 (Final), USITC Pub. 2664 (Aug. 1993) ("1993 Carbon Steel") at 12-14. Petitioners suggest that the Commission's determinations in its previous stainless steel cases (*e.g.*, Stainless Steel Sheet and Strip from the Federal Republic of Germany and France and Stainless Steel Sheet and Strip and Plate from the United Kingdom, Inv. Nos. 701-TA-195 and 196 and 731-TA-92 and 95 (Final), USITC Pub. 1391 at 5-6 (June 1983)), as well as the Commission's recent decision in the Stainless Steel Plate case, (Stainless Steel Sheet and Strip from the Federal Republic of Germany and France and Stainless Steel Sheet and Strip and Plate from the United Kingdom, Inv. Nos. 701-TA-195 and 196 and 731-TA-92 and 95 (Final), USITC Pub. 1391 at 5-6 (June 1983); Stainless Steel Sheet and Strip from Spain, Inv. No. 731-TA-164 (Final), USITC Pub. 1593 (Oct. 1984), rather than the carbon steel cases, provides better guidance for determining whether to expand the like product in the current investigations to include plate. We note that the Commission is not bound by prior determinations concerning similar imported products. Nippon, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169, n.5 (Ct. Int'l Trade 1988) ("Asocoflores")(particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

[20] In general, when making a like product determination, Chairman Bragg first attempts to identify a domestic product that is "like" the merchandise subject to the scope of the investigation identified by Commerce, and only in the absence of a product that is "like" the subject merchandise does she attempt to identify a product that is "most similar in characteristics and uses." For purposes of these preliminary determinations, Chairman Bragg finds that the domestic product like that identified by Commerce as subject merchandise is limited to certain stainless steel sheet and strip in coils.

[21] CR at I-7-8, PR at 6-7; CR and PR at Table I-2.

[22] CR and PR at Table I-2.

[23] CR at I-8, PR at I-8.

[24] CR at I-9-10, PR at I-8-9; CR and PR at Table I-3.

[25] Transcript of Conference (July 1, 1998) ("Conference Tr.") at 85-86 and Stainless Steel Plate, USITC Pub. 3107 at 11.

[26] CR at I-9, PR at I-8.

trim, exhaust and emission control systems, and wheel covers, and for consumer durables such as cookware, sinks, and flatware.[27]

ii. Interchangeability

The interchangeability between SSSS and plate is limited by the inherent differences in their thickness and appearance.[28] Thinner sheet or strip cannot be used in the heavy duty industrial applications for which plate is used, and plate generally is too thick to be shaped into the household and automotive products for which sheet and strip generally are used.[29] Thus, SSSS and stainless plate generally are not interchangeable.[30]

iii. Channels of Distribution

Stainless steel plate is sold predominantly to service centers and distributors, which account for approximately 86 percent of domestic plate shipments.[31] In contrast, approximately 61.2 percent of domestic shipments of SSSS is sold directly to end users, with the remaining shipments going to service centers and distributors.[32]

iv. Customer and Producer Perceptions

Industry standards explicitly distinguish between plate and sheet and strip.[33] U.S. producers indicated that they view sheet and strip as distinct from plate, in light of the additional processing entailed in finishing SSSS and differences in end uses.[34] Producers' sales staffs and their customers perceive significant differences between plate and sheet and strip.[35]

[27] CR at I-9-10, PR at I-8-9; CR and PR at Table I-3; Conference Tr. at 85-86.

[28] Conference Tr. at 79-83, 85-87.

[29] *Id*.

[30] The only limited exception to the general lack of interchangeability is with respect to uses for pipes and tubes. It appears, however, that virtually every type of stainless steel, whether hot band, HRAP or cold-rolled is potentially interchangeable for use in pipes and tubes. *See, e.g*., CR and PR at Table I-3.

[31] CR and PR at Table I-3.

[32] *Id*.

[33] CR at I-7-8, PR at 6-7; CR and PR at Table I-2. ASTM, ASM and AISI all distinguish SSSS from stainless plate. The AISI distinguishes between plate and sheet for stainless products but not for carbon steel products. Specifically, the AISI views coiled carbon flat products in plate gauges as coiled sheet, rather than plate, whereas the AISI definition expressly differentiates stainless steel plate from stainless steel sheet based on thickness, and not according to whether the products are in coils. Petitioners' Postconference Brief at 17, n. 20.

[34] Conference Tr. at 29-30, 78-81, 86-87.

[35] Conference Tr. at 82-83, 85-87.

v. Manufacturing Processes, Facilities and Employees

As a general matter, the initial processes for producing plate and sheet and strip are the same. Both products entail the melting and refining of stainless steel, usually followed by the casting of slabs (semifinished flat rolled products) and then the hot-rolling of the slabs.[36] Technological advances in the production processes for stainless steel products have resulted in the ability to make plate from the same type of continuous-cast process generally used for sheet and strip, in which the long slabs are eventually rolled down to the desired thickness and coiled.[37] However, some gauges, particularly heavy-gauge or very thick plate, still cannot easily be cast and are instead rolled from ingots that are individually poured.[38]

In many cases the initial processing of plate and sheet and strip shares common manufacturing facilities and employees. Also, coiled sheet and strip and coiled plate may be annealed and pickled using the same processes and, in some cases, at the same facilities, to achieve the appropriate microstructure, remove surface defects, and impart corrosion resistance.[39]

However, similarities in the production process for plate and sheet and strip end once the product is annealed and pickled. At that point, the great majority of stainless plate is sold as a finished product.[40] By comparison, except for the approximately two percent of HRAP sheet and strip that is sold for conversion into pipe and tube, all other HRAP sheet and strip is cold-rolled before it is considered a finished product suitable for end use applications.[41]

Cold-rolling adds substantially to the cost of producing cold-rolled sheet and strip.[42] Moreover, the cold-rolling reduces the thickness of the product anywhere from 10 to 90 percent,[43] thereby further distinguishing the finished sheet and strip product from the plate product in terms of thickness and consequent acceptable end use applications.

Cold-rolling entails the use of different machinery from that used for hot rolling.[44] In some instances, integrated U.S. producers perform the cold-rolling process at different facilities, using different employees, from those used for hot rolling.[45] One integrated domestic SSSS producer and numerous domestic SSSS rerollers do not produce stainless steel plate, although all domestic producers of stainless steel plate produce SSSS.[46]

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[36] CR at I-8-9 and 11, PR at I-8 and 10.

[37] CR at I-11& n.18, PR at I-10 & n.18; Conference Tr. at 132. *See* Stainless Steel Plate (1998 preliminary), USITC Pub. 3107 at 12.

[38] CR at I-11, n.18, PR at I-10, n.18.

[39] CR at I-11-14, PR at I-10-13.

[40] As found in the preliminary determination in the recent Stainless Plate Investigations, even the very small percentage of stainless steel plate that is "cold-rolled," actually undergoes only a cold-worked process or a light skin pass. USITC Pub. 3107 at 12.

[41] Conference Tr. at 56.

[42] CR and PR at Table I-5. Using the weighted average of data presented in questionnaire responses, the cold-rolling process accounts for approximately 38 percent of total production costs.

[43] Conference Tr. at 27.

[44] CR at I-11-16, PR at I-10-13.

[45] *See, e.g*, CR at III-3, n.2, PR at III-1, n.2 (Armco); Staff field visit with Allegheny Ludlum, July 8, 1998.

[46] *Compare* CR and PR at Table III-1 *with* Stainless Steel Plate (1998 preliminary), USITC Pub. 3107 at III-1.

vi. Price

Because prices for all hot-rolled stainless steel are based on weight and grade, HRAP plate would be more expensive than HRAP sheet of similar grade and size.[47] This formula, however, does not apply the same way in comparing HRAP plate with cold-rolled sheet and strip. On a per-pound basis, finished (*i.e.* cold-rolled) sheet and strip generally costs more than finished (*i.e.*, HRAP) plate, because the sheet or strip has more value added to it.[48]

Thus, finished stainless plate generally is priced at a set price per ton, assuring consistently higher prices for heavier shipments. In contrast, the prices for finished sheet and strip do not necessarily correlate to higher prices for heavier shipments. Rather, the per-ton price depends on the extent of processing and other finishing operations, so that the price per ton generally is higher for thinner material, which would have undergone more extensive cold-reduction.[49] Because of these differences in pricing practices, stainless steel producers price sheet and strip based on different schedules from those used for plate.[50]

vii. Conclusion

Although all flat stainless products share similar chemical compositions and properties, the industry has established a specific thickness-based distinction between plate on the one hand, and sheet and strip, on the other. To a large degree, these distinctions correspond to different end uses and channels of distribution, and result in limited interchangeability. While sheet and plate generally are produced by similar, and sometimes, common initial manufacturing processes and equipment, virtually all sheet and strip undergoes the more extensive additional processing of cold-rolling before being sold for end use. The cold-rolling process used to finish sheet and strip entails the use of different employees and equipment from that used for hot-rolling, and is usually performed in different facilities, and in some instances, by different producers. The additional processing adds substantial value to the sheet and strip and results in different pricing practices from those used for plate. For these reasons, we do not include plate in our definition of the domestic like product.[51]

[47] USITC Pub. 3107 at 13.

[48] CR at V-1, PR at V-1; Conference Tr. at 84.

[49] CR at V-1, PR at V-1.

[50] Conference Tr. at 84-85.

[51] In the recent Stainless Steel Plate investigations, the Commission addressed virtually the same like product issue raised here. Additional information in the record of the instant investigations further supports the Commission's preliminary conclusion in Plate not to expand the like product to include SSSS in that case, and vice versa in these preliminary investigation phases.

2. Whether HRAP and cold-rolled stainless sheet and strip should be defined as separate domestic like products

Several Respondents, including producers and importers of subject products from Mexico, Italy, Germany, Taiwan, Japan and Korea, argued that HRAP stainless flat products in coils and cold-rolled stainless sheet and strip in coils are separate like products.[52] As discussed above, we have determined that the domestic like product consists of all SSSS in coils, and does not include plate.

Respondents' assertion that there are "substantial independent end uses for HRAP stainless flat products in commercial markets"[53] is not borne out when the like product is not expanded to include plate. Rather, approximately 97 percent of all hot-rolled stainless sheet and strip production is used for the production of cold-rolled product.[54] Consistent with the Commission's general practice of employing a semifinished product analysis rather than the traditional six-factor analysis when addressing whether a product at an earlier stage of its production process is "like" a finished or further processed product, particularly where, as here, both products are within Commerce's scope, we have applied the semifinished product analysis to determine whether HRAP and cold-rolled SSSS constitute one like product.[55]

Using a semifinished products analysis, we determine to include HRAP SSSS within the same domestic like product as cold-rolled SSSS. First, as to whether the upstream product is dedicated to the production of the downstream product, almost all HRAP SSSS is dedicated for use in the production of cold-rolled SSSS. Of total HRAP SSSS production, 87.8 percent is internally consumed for processing into a cold-rolled product, and 8.2 percent is sold to rerollers for processing into a cold-rolled product.[56] The small remaining amount of hot-rolled product is sold mainly to pipe and tube manufacturers.[57] With the exception of this small percentage of hot-rolled product that is used for pipes and tubes, HRAP SSSS generally has no independent uses aside from the production of cold-rolled SSSS.[58]

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[52] *See, e.g.*, Postconference Brief of German Respondents Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products ("Krupp") at 3-18; Postconference Brief of Mexican respondents Mexinox S.A. de C.V. and Mexinox USA ("Mexinox") at 2-4.

[53] Krupp's Postconference Brief at 7.

[54] CR and PR at Table I-3; Conference Tr. at 56.

[55] In a semifinished product analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. *See, e.g.*, Stainless Steel Plate, USITC Pub. 3107 at 9, 14; Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA 736 and 737 (Final), USITC Pub. 2988 at 6, n.23 (Aug. 1996); Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 at 6-7 (July 1996); Stainless Steel Bar from Brazil, India, Japan and Spain, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 at I-6-8 (Feb. 1995).

[56] CR and PR at Table I-3; Conference Tr. at 56. The reroller figure includes HRAP that integrated producers transfer to related or affiliated firms that reroll. *See* CR and PR at Table I-4 (95.3 percent of HRAP SSSS is internally consumed or transferred.)

[57] CR and PR at Table I-3; Conference Tr. at 56.

[58] CR and PR at Table I-3.

As to whether the markets are perceived to be separate, data in the record show that there is only a limited market for HRAP SSSS. The vast majority of HRAP SSSS is produced and captively consumed by the domestic SSSS producers for cold-rolled SSSS production.[59] [60]

In comparing the characteristics and functions between the hot-rolled and cold-rolled product, we note that both must conform to the industry thickness and width specifications for sheet and strip, and both embody the physical characteristics of corrosion-resistant stainless steel. In addition, the integrated producers generally know the intended end use or customer of the finished (cold-rolled) product before they make the hot-rolled sheet or strip, and customize the chemical composition during the melting stages of the production process.[61] As such, with respect to at least the 88 percent of HRAP production that is captively consumed, the intermediate (HRAP) product is specifically customized for processing into the finished (cold-rolled) product. Although the finished product will have the improved tolerances and finish that ensue from the cold-rolling process, technological advances in the industry allow producers to achieve tighter tolerances and thinner gauges in hot-rolling, thus minimizing these differences.[62] Thus, virtually every SSSS slab is followed from the melting stages at the beginning of production to the end of the cold-rolling processes, with an intermediate stage at which it has undergone hot-rolling, annealing and pickling.

With regard to cost differences and extent of further processing, the hot-rolled product can undergo a variety of transformation processes, which consequently add to the cost and value of the product. The significance and cost of these processes varies widely, depending upon the degree of reduction required and other customer preferences or requirements.[63] Each additional step of processing adds to the value and cost of the finished product.[64] The differences in the extent of cold-rolled processing are reflected in the wide range of producer responses to questions concerning the relative costs of processing HRAP into cold-rolled SSSS.[65] According to these responses, on average, cold-rolling represents approximately 38 percent of the cost of the finished cold-rolled SSSS.[66] Although the value added by cold-rolling is significant, on average it accounts for less than 50 percent of the final production cost.[67] We do not place a great deal of weight on the value added during cold-rolling, because the relative importance of particular value-added factors varies greatly depending on the type of SSSS produced.

Based on the above considerations, we find that HRAP SSSS is part of the same domestic like product as cold-rolled SSSS.

3. Whether stainless steel foil should be defined as a separate like product from stainless sheet and strip

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[59] Even the very small amount of HRAP SSSS that is not dedicated to the production of cold-rolled SSSS is sold in the pipe and tube market, where 7.7 percent of cold-rolled SSSS is also sold. CR and PR at Table I-3.

[60] Commissioner Crawford notes that, unlike stainless steel bar, cold-rolled SSSS is produced only from HRAP SSSS, and not from some other intermediate product. *See* Stainless Steel Bar, USITC Pub. 2856 at I-26 (Dissenting Views of Commissioner Carol T. Crawford).

[61] Conference Tr. at 24-25.

[62] Conference Tr. at 59.

[63] CR at I-15-16 and V-1, PR at I-13 and V-1.

[64] CR at V-1, PR at V-1.

[65] *See* CR and PR at Table I-5.

[66] *Id*.

[67] *Id*.

Japanese Respondents Kawasaki, Nippon, Nisshin, and Sumitomo argued that stainless steel foil, the thinnest form of flat stainless steel, should be defined as a separate like product from stainless steel sheet and strip.[68] As discussed below, application of the six traditional like product factors leads us to find that foil is not a separate like product.

i. Physical Characteristics and Uses

Foil is the thinnest and lightest (in weight) form of stainless steel product. ASM and ISS define "foil" as cold-finished product of a thickness of 0.005 inch and less, and less than 24 inches in width.[69] The width requirements are the same for strip and foil; it is the thickness that generally distinguishes one from the other.[70] Because of its light weight, foil is measured and sold on the basis of kilograms or pounds, whereas other stainless sheet and strip are typically weighed and sold by tonnage.

The Japanese respondents list the following uses for foil: metal substrates for catalytic converters, suspension assemblies in hard disc drives, springs in switches, adhesives for structural steel, and solar batters.[71] Some domestic producers indicated that they produce, or have the capacity to produce, stainless steel precision-rolled foil to various industry and international standards; and these products, like all of their engineered products, are "produced to customers' exact temper, width, and gauge tolerance, surface finish, required edge, mechanical properties, and chemistry."[72]

Although foil has some unique qualities due to its thinness and light weight, it nonetheless contains the same physical properties of other SSSS, such as corrosion-resistance. In addition, while it is manufactured for highly specialized and sometimes proprietary uses, the same is true of a large portion of SSSS production.[73]

ii. Interchangeability

As with end uses, although a particular foil product may be "highly engineered and designed for a particular end use, and therefore . . . not interchangeable with other foil products, much less sheet and strip,"[74] the lack of item-specific interchangeability is true for the large portion of SSSS, which generally is custom-produced.[75]

iii. Channels of Distribution

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[68] Postconference Brief of Kawasaki, Nippon, Nisshin, and Sumitomo ("joint Japanese Respondents") at 2-13. Respondents representing producers and importers from Mexico, Germany, Italy, Taiwan, and Korea summarily supported this argument.

[69] CR and PR at Table I-2.

[70] *Id*. Given the overlapping thickness distinctions, ASM notes that this product may be referred to as either strip or foil (*ASM Specialty Handbook: Stainless Steels*, 1994, p. 39).

[71] Postconference Brief of joint Japanese Respondents at 8. They state that there is no head-to-head competition between imported Japanese foil and domestically-produced foil, but that there may be other uses for foil in the United States as to which they are unfamiliar. *Id.* at n.5.

[72] Petitioners Postconference Brief, Exhibit 3.

[73] Conference Tr. at 23-25, 86-87.

[74] Postconference Brief of joint Japanese Respondents at 9.

[75] Conference Tr. at 24, 86.

Foil products generally are designed for and sold to specific end users.[76] More than one-third of all finished SSSS is also distributed directly to end users.[77]

iv. Customer and Producer Perceptions

While ASM and ISI define foil as a particular subset of sheet and strip, other industry groups, particularly ASTM and AISI do not define foil separately from strip.[78] As noted above, several U.S. producers indicated that they view foil as just another type of specialty SSSS product.

v. Manufacturing Processes, Facilities and Employees

*** integrated U.S. producers, ***, and various rerollers indicated that they produce foil, and have the capability and certifications necessary to produce a customer's specially-engineered foil.[79] While the production of foil is labor intensive and may require six or more passes of annealing and rerolling for the product to achieve the desired thickness and tolerance levels,[80] production of certain other types of SSSS may require equally extensive processing.[81] Furthermore, production of foil entails use of the same types of manufacturing equipment as that used in production of other types of SSSS.[82]

vi. Price

As is true generally for SSSS, additional processing adds to the cost of the finished foil. The additional processing needed to produce foil of the necessary thinness and tolerance levels adds to the cost, and consequently the price of foil, placing foil at the high end of the price spectrum for SSSS products.[83] In this regard, however, prices for foil fall in the same general range as those for other specialty strip products.[84]

[76] Postconference Brief of joint Japanese Respondents at 11.

[77] CR and PR at Table I-3.

[78] CR and PR at Table I-2.

[79] CR and PR at Table III-1; Petitioners Postconference Brief at Exhibit 3.

[80] CR at I-15, PR at I-13; Postconference Brief of joint Japanese Respondents at 13.

[81] *See* CR at V-1-2, PR at V-1; Conference Tr. at 28.

[82] CR at I-15, PR at I-13. To manufacture foil, the producers' change the size and speed of the rolls, and increase the number of the cold-rolling passes through the mill.

[83] CR at I-15 and V-1, PR at I-13 and V-1.

[84] *Compare* CR and PR at Table E-8 (unit values for foil imports, excluding suspension foil, which is outside the scope of these investigations, and according to respondents, is not produced domestically) *with* CR and PR at Table III-4 (unit values for rerollers' products).

vii. Conclusion

Foil is somewhat more specialized than other types of stainless steel strip on the SSSS continuum. By its thinness, light weight, and high prices, it appears to fall toward one end of the SSSS continuum, but nonetheless foil falls on that continuum of specialty SSSS products. We therefore include foil in the single SSSS like product in these preliminary investigations.[85]

D. Domestic Industry and Related Parties

1. Definition of the Industry

The domestic industry is defined as "the producers as a [w]hole of a domestic like product."[86] In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll produced, captively consumed, or sold in the domestic merchant market.[87] Because we have found that the domestic like product consists of all SSSS, for purposes of these preliminary investigations we also find that the domestic industry consists of all domestic producers of SSSS.

In deciding whether a firm qualifies as a domestic producer, the Commission examines the overall nature of a firm's production-related activities in the United States.[88] In these preliminary phase investigations, we have found that the companies that purchase HRAP or cold-rolled SSSS and "reroll" or further process it as cold-rolled SSSS engage in sufficient production-related activity to be included in the domestic industry. Petitioner argued that these rerollers should be included in the domestic industry. No party argued otherwise.

The record shows that the rerollers incurred substantial capital expenditures during the POI, although the exact nature of these expenditures is unclear.[89] In general, the rerollers, by the nature of their operations, tend to produce the more extensively-processed products, as reflected in the high unit values reported by the rerollers. Consistently, during the period of investigation, the average unit values reported by the rerollers were more than double those of the integrated producers.[90]

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[85] Commissioner Crawford intends to revisit this question in any final phase of these investigations.

[86] 19 U.S.C. § 1677(4)(A).

[87] *See* United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

[88] The Commission has examined six specific factors in this regard: (1) the extent and source of a firm's capital investment; (2) the technical expertise involved in U.S. production activity; (3) the value added to the product in the United States; (4) employment levels; (5) the quantities and types of parts sourced in the United States; and (6) any other costs and activities in the United States leading to production of the like product, including where production decisions are made. *See, e.g.*, Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-761-763 (Final), USITC Pub. 3098, at 9, n. 59 (Apr. 1998); Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine, Inv. Nos. 731-TA-753-756 (Preliminary), USITC Pub. 3009 at 6, n.25 (Dec. 1996); Large Newspaper Printing Presses, USITC Pub. 2916 at 6 and n. 23.

[89] CR and PR at Table C-7. Rerollers who responded to the questionnaires reported capital expenditures in the amount of *** in 1995, *** in 1996, and *** in 1997.

[90] CR and PR at Table III-4.

In 1997, the rerollers accounted for *** percent of domestic SSSS shipments by quantity, and *** percent by value.[91] Also that year, the rerollers employed *** full time production workers.[92] Both the size of, and wages paid to, the workforce were up from the previous years. For the most part, the rerollers purchase their intermediate product used to produce their finished cold-rolled product from integrated U.S. producers, or ***.[93] The rerollers add approximately 35.7 percent to the value of the product.[94]

Based on this information, we find that the rerollers invest in sufficient production related activity to be included in the domestic industry producing SSSS.[95]

2. Related Parties

In defining the domestic industry, the Commission must further determine whether any producer of the domestic like product should be excluded from the domestic industry under the statutory "related parties" provision.[96] Applying the provision involves two steps. First, the Commission must determine whether a domestic producer is a related party or an importer of the subject merchandise. Second, the Commission may exclude such a producer from the domestic industry if "appropriate circumstances" exist.[97]

One integrated U.S. producer of SSSS, J&L Specialty Steel Corp., is *** percent owned French Respondent Usinor, the principal producer of subject imports from France.[98] In this respect, J&L meets the statutory definition of "related party," because Usinor is "legally or operationally in a position to exercise restraint or direction over" it.[99]

We find that appropriate circumstances do not exist to exclude J&L from the domestic industry.[100] It does not itself import subject merchandise from France or elsewhere,[101] and even the imports of the importer (Uginox) with whom it is has an affiliated relationship were small compared to J&L's domestic production

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[91] CR and PR at Table III-1.

[92] CR and PR at Table C-7.

[93] CR at III-5, PR at III-4; CR and PR at Table III-1.

[94] CR and PR at Table I-5.

[95] Commissioner Crawford concurs in her colleagues' conclusion to include rerollers in the domestic industry. However, she bases her conclusion principally on the fact that the product produced by the rerollers is the like product.

[96] 19 U.S.C. §1677(4)(B).

[97] 19 U.S.C. §1677(4)(B). Factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a domestic producer include the percentage of domestic production attributable to the importing producer; the reason the U.S. producer has decided to import the product subject to investigation; whether inclusion or exclusion of the domestic producer will skew the data for the rest of the industry; the ratio of import shipments to U.S. production for such producers; and whether the primary interest of the producer lies in domestic production or importation. *See, e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). *See also*, Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Final), USITC Pub. 3042 (June 1997), at 10 n.26.

[98] CR at III-3, PR at III-3. Usinor's Ugine Division produces the stainless steel products subject to these investigations, while its Uginox subsidiary imports and sells those products in the United States. Conference Tr at 111.

[99] *See* 19 U.S.C. § 1677(4)(B) and (4)(B)(ii)(II).

[100] J& L is ***. CR and PR at Table III-4. In 1997, it accounted for domestic shipments of *** short tons of SSSS, representing approximately *** percent of U.S. producers' 1997 domestic shipments. *Id.* and J&L's questionnaire response.

[101] CR at III-3, n.4, PR at III-3, n.4 .

and sales.[102] [103] In addition, J&L has recently invested in a new annealing and pickling line at its Midland, PA facility, and has also ***.[104]

These facts indicate that J&L is committed to domestic production of SSSS, and that its primary interest lies in domestic production and not importation. Accordingly we find that appropriate circumstances do not exist to exclude J&L from the domestic industry.

III. CUMULATION

Section 771(7)(G)(I) requires the Commission to cumulate imports from all countries as to which petitions were filed on the same day, if such imports compete with each other and with domestic like products in the United States market.[105] The only cumulation issue in these investigations is whether the subject imports compete with each other and with the domestic like product. In assessing whether imports compete with each other and with the domestic like product,[106] the Commission has generally considered four factors, including:

(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;[107]

(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.[108]

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[102] In contrast to the large volume of J&L's domestic shipments, shipments of subject imports from France accounted for 20,198 short tons of subject imports in 1997. CR and PR at Table IV-2.

[103] Chairman Bragg also notes that the data do not indicate that J&L is deriving a financial benefit from its relationship with Usinor. *See* CR and PR at Table VI-2.

[104] CR at III-3, n.3 and VI-10; PR at III-3, n.3.

[105] 19 U.S.C. § 1677(7)(G)(I). None of the four statutory exceptions to the general rule on cumulation apply to these investigations. *See* 19 U.S.C. § 1677(7)(G)(ii).

[106] The Statement of Administrative Action submitted to Congress in connection with the Uruguay Round Agreements Act ("URAA") (P.L. 103-465, approved Dec. 8, 1994) expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." Uruguay Round Agreements Act, Statement of Administrative Action , H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. (1994) ("SAA") at 848 *citing* Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

[107] Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. See Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan and Spain, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

[108] *See* Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280, USITC Pub. 1845 (May 1986), *aff'd*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade 1988),

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While no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.[109] Only a "reasonable overlap" of competition is required.[110]

We find a sufficient degree of fungibility among subject imports from all eight countries and with the domestic like product. Petitioners argued that the criteria for cumulation have been satisfied in this case.[111] Certain respondents representing producers or importers of subject imports from France, Germany, Italy and Japan maintained that the criteria for cumulation have not been satisfied because their respective subject imports did not compete with the domestic product. According to each of these respondents, no domestic product competes with the particular so-called "niche" products that they produce and export to the United States.[112]

For purposes of these preliminary determinations, we find that each of the criteria for cumulation is met in these investigations. The parties do not dispute that subject imports from all eight countries were present in the U.S. market throughout the period of investigation.[113] Nor do they dispute that subject imports from all eight countries and the domestic like product compete in the same geographical markets nationwide.[114] The record shows that there is also an overlap in the channels of distribution of the subject imports and the domestic like product, in that most domestic producers, as well as most importers of subject imports sold SSSS to a combination of service centers/distributors and end users.[115]

Subject imports from all eight countries appear to be fungible given the general conformity of both domestic and imported products to ASTM specifications, and the common grades and or gauge categories under which many fall. Domestic and imported products made to the same specifications are considered physically interchangeable by all domestic producers and most importers.[116] Data provided by importers indicated that specialty or niche products accounted for as little as ***, but in no case more than *** of the

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[108] (...continued)
aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[109] *See, e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[110] *See* Wieland Werke, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group, 873 F. Supp. at 685-86.

[111] Petitioners' Postconference Brief at 32.

[112] These respondents identify a number of these "niche" products, including Italian floor plate, German bright annealed 300 and 400 series, 60-inch-wide 300 series, certain German strip known as side cuts, Japanese Nirosta 4003, French bright annealed and polished stainless steel at widths at 36 inches or greater, and Japanese foil. *See* Usinor's Postconference Brief at 3-4, Krupp's Postconference Brief at 20, and AST's Postconference Brief at 15. *See also* Conference Tr. at 109, 105, 110, 112, 121, and 135.

[113] *See* CR and PR at Table IV-3.

[114] CR and PR at Tables II-1 and II-3.

[115] CR and PR at Table I-3.

[116] CR and PR at Tables II-1 and II-3.

subject imports from any country.[117] Thus, even despite the presence of these claimed "niche" products, there is a substantial percentage of apparently fungible subject imports from each of the eight countries.[118]

Based on the evidence in the record of the general fungibility among the subject imports and the domestic like product, nationwide sales, similar channels of distribution, and the simultaneous presence of all the subject imports in the U.S. market, we find a reasonable overlap of competition among imports from all eight subject countries and the domestic like product for purposes of these preliminary determinations. Therefore, we find that subject imports compete with each other and with the domestic like product in the U.S. market. Consequently, we cumulate subject imports from all subject countries for purposes of analyzing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports.

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS

In preliminary antidumping and countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the allegedly subsidized and LTFV imports under investigation.[119] [120] In making this determination, the

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[117] The niche or speciality products claimed by respondents to be unique to a particular country's exports occupy the following shares of the total subject imports from that country to the United States in 1997: (1) *** and bright annealed product from France –*** percent of the total imports from France; (2) Bright annealed, Nirosta 4000, sheet mostly 60 inches, side cuts, and material produced to European specifications from Germany –*** percent; (3) foil and cutting/flapper valve steel from Japan–*** percent; (4) floor plate from Italy –*** percent and *** from the United Kingdom --less than *** percent. In addition to information regarding its bright annealed product, Uginox also provided information on its imports of polished subject product, which account for an additional *** percent of imports of subject products from France. If Usinor's polished subject product were included as a niche product, the total of reported niche/specialty products would account for *** percent of imports from France. CR at IV-6-7 & n.5, PR at IV-6 &n.5; CR and PR at Table E-8.

[118] Commissioner Crawford concurs that, overall, subject imports are fairly good substitutes for each other and for the domestic product. She concurs that the very small percentages of foil and cutting/flapper valve steel from Japan, of floor plate from Italy, and *** from the United Kingdom do not reduce substitutability, since the large remaining percentages of subject imports from those countries competed with the domestic product. However, she finds that substitutability is reduced somewhat with respect to the specialty products from France and Germany, which respectively accounted for *** of subject imports from France and *** percent of subject imports from Germany, and which competed with about *** percent of the domestic shipments of SSSS. *See* CR and PR at Table E-8. Accordingly, she finds that subject imports from France and Germany are only moderate substitutes for the domestic product, while the subject imports from the other six countries are fairly good substitutes for each other and domestic product. Notwithstanding the reduced substitutability with respect to the specialty products from France and Germany, she finds that there is a reasonable overlap of competition from imports from France and Germany because at least *** percent of the subject imports from France and Germany are not specialty products.

[119] 19 U.S.C. § 1673b(a).

[120] Commissioner Crawford notes that the statute requires that the Commission determine whether there is a reasonable indication that a domestic industry is materially injured "by reason of" the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the

(continued...)

Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[121] [122] [123] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[124]

In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of allegedly subsidized and LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[125] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are

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[120] (...continued)
legislative history that the "ITC will consider information which indicates that harm is caused by factors other than the less-than-fair-value imports." S. Rep. No. 96-249 at 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 96-317 at 46-47 (1979). The Commission is not to determine if the unfairly traded imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 96-249 at 74. Rather, it is to determine whether any injury "by reason of" the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 100-71 at 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford's analytical framework, *see* Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final) USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with Commissioner Crawford's mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff'g* 873 F. Supp. 673, 694-95 (Ct. Int'l Trade 1994).

[121] 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 . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[122] As part of its consideration of the impact of imports, the statute as amended by the URAA specifies that the Commission is to consider "the magnitude of the margin of dumping" in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA 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. The statute, 19 U.S.C. § 1677(35)(C)(I), defines the "magnitude of the margin of dumping" to be used by the Commission in a preliminary determination as "the dumping margin or margins published by the administering authority [Commerce] in its notice of initiation of the investigation." In its notice of initiation, Commerce identified estimated dumping margins for France ranging from 10.02 to 39.20 percent; for Germany, ranging from 11.81 to 41.98 percent; for Italy, ranging from 0.15 to 35.54 percent; for Japan, ranging from 19.9 to 57.87 percent; for Mexico, ranging from 30.09 to 51.95 percent; for Korea, ranging from 5.58 to 58.79 percent; for Taiwan, ranging from 8.23 to 77.08; and for the United Kingdom, ranging from 5.42 to 29.37. 63 Fed. Reg. 37521 (July 13, 1998).

[123] Chairman Bragg notes that she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

[124] 19 U.S.C. §1677(7)(A).

[125] 19 U.S.C. § 1677(7)(C)(iii).

considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[126]

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing SSSS is materially injured by reason of allegedly unfairly traded imports from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom.[127]

A. Conditions of Competition[128]

The following conditions of competition are pertinent to our analysis in these investigations. The data in the record indicate that apparent consumption and demand of SSSS are increasing, both domestically and worldwide.[129] Accompanying the increasing demand, producers in the United States and in several of the subject countries have recently increased their capacity to produce SSSS.[130] We also note that SSSS are generally classified as "specialty steel" products, but that there is broad overlap in certain standard grades. Although substitutability may be somewhat limited among certain incompatible specialty products, a sizable portion of the volume of both U.S. production and subject imports consists of commodity grades of SSSS that are substitutable. Further, all or most SSSS producers are capable of producing any of a wide range of SSSS products to meet specific customer demands, and typically produce SSSS to order.[131] The substitutability of common grades of SSSS products and the universal ability to produce to a customer's specification suggest that prices are very important in purchasing decisions.

B. Volume of Subject Imports

In these preliminary investigations, the quantity of the subject imports was significant and increased during the period examined. The quantity of cumulated subject imports increased 18 percent, from 232,756

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[126] *Id.* No party has alleged that the captive production provision, 19 U.S.C. § 1677(7)(C)(iv), should be applied. Although most domestically-produced hot-rolled SSSS is internally transferred for production into the downstream cold-rolled product, the SAA indicates that, where a domestic like product is transferred internally for the production of another article coming within the definition of the domestic like product, such transfers do not constitute internal transfers for the production of a "downstream article" for purposes of the captive production provision. H.Doc. No. 103-316 at 853 (1994). Since that precisely describes the factual circumstances in these investigations, we have not applied the captive consumption provision.

[127] Vice Chairman Miller finds that there is a reasonable indication that the domestic industry producing SSSS is threatened with material injury by reason of the cumulated subject imports. *See* Separate Views of Vice Chairman Marcia E. Miller. She joins in the Conditions of Competition discussion that follows, but not in the remaining sections of these Views.

[128] According to the official import statistics (as adjusted), in 1997, subject imports from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom, accounted individually for 6.0 percent, 4.3 percent, 7.5 percent, 16.3 percent, 9.7 percent, 23.4 percent, 9.2 percent, and 5.6 percent, respectively, of the total volume of all U.S. imports of SSSS in 1997. CR and PR at Table IV-1. Consequently, we find that imports from none of the subject countries should be deemed negligible pursuant to 19 U.S.C. §§ 1671b(a) and 1673b(a).

[129] *See* CR and PR at Tables IV-3 and C-1; Conference Tr at 37; Usinor's Postconference Brief at 6-7 (discussing expanding European market).

[130] CR and PR at Table III-2; Petitioners' Postconference Brief at 43-45.

[131] Conference Tr. at 24-25, 80-83 and 86-87.

short tons in 1995 to 274,716 short tons in 1997.[132] For the first half of 1998, the cumulated subject import volume was 15.8 percent higher than the volume for the first half of 1997.[133]

The value of the cumulated subject imports dropped by 3.8 percent, from $506.3 million in 1995 to $487.0 million in 1997.[134] However, during the first half of 1998, the value of the cumulated subject imports was 8.8 percent higher than the value of the cumulated imports during the same period a year earlier.

The market share held by subject imports increased throughout the period examined. When measured on a quantity basis, the share of the overall SSSS market held by the subject imports increased from 14.7 percent in 1995 to 15.9 percent in 1997.[135] In interim 1998, subject imports accounted for 16.5 percent of the market, compared to 15.4 percent in interim 1997.[136]

When measured on a value basis, the market share of the subject imports increased from 13.8 percent in 1995 to 14.9 percent in 1996 and remained at 14.9 percent in 1997.[137] In interim 1998, subject imports accounted for 15.8 percent of the market value, compared to 14.1 percent in interim 1997.[138]

Despite the growth in U.S. apparent consumption, the market share held by the domestic industry fluctuated between 1995 and 1997, but declined irregularly during the period of invesitgation. By quantity, domestic producers' shipments accounted for 81.5 percent of apparent consumption in 1995, 80.4 percent in 1996, and 80.6 percent in 1997.[139] By value, their share was 81.6 percent in 1995, 80.1 percent in 1996, and 80.8 percent in 1997. In terms of both quantity and value, the domestic producers held higher shares of the market during the first half of 1997 than they held during the first half of 1998.[140] Thus, their share of the quantity in interim 1998 was 79.2 percent as compared to 81.1 percent for interim 1997, and their share of the value in interim 1998 was 79.4 percent, compared to 81.6 percent in interim 1997.[141]

Nonsubject imports accounted for less than 5 percent of apparent consumption throughout the period of investigation.[142] By both quantity and value, nonsubject imports first increased their market share from 1995 to 1996, but then lost market share in 1997.[143][144]

C. Price Effects of Subject Imports

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[132] CR and PR at Tables IV-2 and C-1.

[133] *Id*.

[134] CR and PR at Tables IV-2 and C-1. Subject imports' unit value declined from $2,175 per short ton in 1995 to $1,989 per short ton in 1996 to $1,773 per short ton in 1997.

[135] CR and PR at Table IV-3.

[136] CR and PR at Table C-1.

[137] CR and PR at Table IV-3.

[138] CR and PR at Table C-1.

[139] CR and PR at Table IV-3.

[140] CR and PR at Table C-1.

[141] *Id*.

[142] CR and PR at Table IV-3.

[143] *Id*. The quantity of market share held by nonsubject imports rose from 3.8 percent in 1995 to 4.1 percent in 1996, before falling to 3.5 percent in 1997. By value, their share was 4.6 percent in 1995, 5.0 percent in 1996, and 4.2 percent in 1997.

[144] Commissioner Crawford finds that the volume of subject imports is significant in light of its price effects and impact.

1. In General

The record evidence in these investigations shows that despite some perceived differences in non-price factors and in the product mix, all U.S. producers and most of the importers consider the subject merchandise to be generally substitutable with the domestic like product.[145] [146] The Commission was able to collect only limited comparable price data in these preliminary investigations, covering only a small percentage of overall U.S. production and of imports from nearly all subject countries.[147]

2. Analysis of Chairman Bragg

Chairman Bragg notes that the data that were obtained show a somewhat mixed pattern of overselling and underselling by the subject imports, with underselling occurring in the vast majority of all comparisons. The subject imports undersold the domestic merchandise in 131 of 188 possible price comparisons between 1995 and 1997.[148]

For all three product categories for which price comparisons were made, prices of domestic merchandise declined from mid-1995 to the end of 1997.[149] These declines occurred as prices for comparable imported products from subject countries also fell, in every price series for which partial or full data were provided.[150] In addition to declining prices, the average unit value of both the subject imports and the domestic like product declined by similar amounts from 1995 to 1997.[151]

In light of the general substitutability of the domestic and subject merchandise, the significant underselling by the subject merchandise, and the declines in prices for both the domestic like product and subject imports during a period of growing demand, Chairman Bragg finds that, for purposes of these preliminary determinations, the subject imports have depressed domestic prices to a significant degree.[152]

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[145] CR and PR at Tables II-1 and II-2.

[146] As she noted in the discussion of cumulation, Commissioner Crawford finds that the subject imports from France and Germany are only moderate substitutes for the domestic product. She finds that the other subject imports are fairly good substitutes for each other and the domestic product.

[147] CR at V-11, PR at V-8. In addition to incomplete coverage, the volatility in some of the prices reported by importers suggests that some importers may have reported prices for varying thicknesses and widths of the product types, rather than exclusively for the product in the dimensions described in the questionnaire. Further, some importers reported estimated, rather than actual, prices.

[148] CR and PR at Table V-5.

[149] CR and PR at Tables V-2, V-3 and V-4. Domestic prices for product 2 began to recover in 1997, but declined again during the last two quarters of 1997 and first quarter of 1998. PR and CR at Table V-3.

[150] CR and PR at Tables V-2, V-3 and V-4.

[151] Subject imports' average unit value declined by 18.5 percent from 1995 to 1997, while the average unit value of sales of the domestic like product declined by 18.7 percent. CR and PR at Table C-1.

[152] The record contains a large number of allegations by domestic producers that they lost sales to imports of the subject merchandise. CR at V-21, PR at V-16. Some of these allegations have been investigated, and the results have not been conclusive. As also noted, the price data collected in the preliminary phase of these investigations are limited. Chairman Bragg expects that further data collection and investigation of the allegations of lost sales in any final phase of these investigations will shed more light on the price effects of the subject imports. For the purpose of these preliminary determinations, Chairman Bragg finds that the limited available pricing evidence establishes a reasonable indication of price effects causing material injury. *See* American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986).

3. Analysis of Commissioner Crawford

Commissioner Crawford does not find that the subject imports are having significant effects on domestic prices. To evaluate the effects of the alleged subsidies and dumping on domestic prices, Commissioner Crawford compares domestic prices that existed when the imports were allegedly subsidized and dumped with what domestic prices would have been if the imports had been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased.

In these investigations, no subsidy margins have been calculated, and the estimated dumping margins vary by country. Thus, prices for the subject imports from the different countries likely would have risen by different amounts if they had been priced fairly. Nevertheless, subject imports would have become more expensive relative to the domestic product and other alternative sources for the product (*e.g.*, nonsubject imports). In such a case, if the products are substitutable, demand would have shifted away from subject imports and towards the relatively less-expensive products. As noted above, Commissioner Crawford finds that subject imports from France and Germany are only moderate substitutes for the domestic product and the other subject imports, and that subject imports from the other six countries are fairly good substitutes for each other and for the domestic product. Nonsubject imports are a very small factor in the domestic market, accounting for only a 3.5 percent market share in 1997, and thus most of any shift in demand away from subject imports would have been captured by the domestic industry. The shift in demand to the domestic product would have been significant, as follows.

Mexico accounts for the largest single market share, 4.5 percent, followed by Japan, which holds 3.2 percent of the market.[153] Both countries also have relatively large estimated dumping margins, ranging from 30.09 to 51.95 percent for Mexico and 19.9 to 57.87 percent for Japan. Given that the imports from these countries are fairly good substitutes for the domestic product, it is likely that, at fairly traded prices, most of the combined 7.7 percent market share would have shifted to the domestic product. As noted, imports from Germany and France are only moderately substitutable for the domestic product, but they each have estimated dumping margins from in the middle range for the subject imports, from 11.81 to 41.98 percent for Germany and 10.02 to 39.20 percent for France. Thus, at fairly traded prices, some of their combined market share of 2.0 percent likely would have shifted to the domestic industry. The remaining four countries fell in the middle with respect to their market share, and their respective estimated margins were wide-ranging (0.15 to 35.54 percent for Italy; 5.58 to 58.79 for Korea; 8.23 to 77.08 percent for Taiwan; and 5.42 to 29.37 percent for the United Kingdom). Given that the imports from these countries are fairly good substitutes for the domestic product, at least some of the combined 6.2 percent market share likely would have shifted to the domestic product. The combination of the large shift in demand from Japanese and Mexican imports and the moderate shift in demand from France, Germany, Italy, Korea, Taiwan, and the United Kingdom likely would have been significant.

However, the significant shift in demand would not have allowed the domestic industry to raise its prices. Based upon the data in the record of the preliminary phase of these investigations, it appears that the domestic industry has a large amount of unused capacity [154] and substantial inventories that would have been

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[153] CR and PR at Table IV-3.

[154] Commissioner Crawford notes that the domestic industry's capacity utilization was only 74.2 percent in 1995. CR and PR at Table III-2. Since 1995 has been characterized as a very good year in the market, it can be inferred that the domestic industry was operating at a fairly high level of capacity utilization, and thus that the industry's actual, practical

(continued...)

available to satisfy the increase in demand. There are six integrated domestic producers and a number of rerollers that compete among themselves. Thus, the available capacity and inventories, and competition within the domestic industry, would have enforced price discipline in the market. Consequently, Commissioner Crawford finds that subject imports are not having significant effects on domestic prices for SSSS.

D. Impact of the Subject Imports on the Domestic Industry

1. In General

During the period of investigation, the domestic industry's net sales quantities increased from 1.33 million short tons in 1995 to 1.45 million short tons in 1997.[155] However, the value of the domestic industry's net sales fell during that same period, from $3.1 billion in 1995 to $2.7 billion in 1997.[156] Industry profitability declined each year from 1995 to 1997.[157] Thus, operating income for the domestic industry fell a total of 69.6 percent, declining from $486 million in 1995 to $226 million in 1996, and again to $148 million in 1997.[158]

While U.S. producers increased both production capacity for, and production of, cold-rolled SSSS, their production did not increase commensurate with the expanded capacity.[159] Thus, despite increased apparent consumption and increases in U.S. producers' production, domestic capacity utilization declined from 74.2 percent in 1995 to 70.8 percent in 1996, and to 69.5 percent in 1997.[160] [161] The domestic industry's shipments of SSSS did not keep up with its increases in production, resulting in a 23.7 percent increase in domestic producers' inventories of cold-rolled SSSS during the period of investigation.[162] [163]

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[154] (...continued)
maximum capacity utilization rate is something less than 100 percent. Therefore, in any final phase of these investigations, Commissioner Crawford intends to seek information to establish the domestic industry's actual, practical capacity utilization.

[155] CR and PR at Table C-1.

[156] *Id*.

[157] *Id*.

[158] *Id*. For the integrated producers, gross profits as a share of net sales were 19.9 percent in 1995, 12.3 percent in 1996, and 9.5 percent in 1997. CR and PR at Table VI-1.

[159] CR and PR at Tables III-2 and C-1. Domestic producers' capacity to produce cold-rolled SSSS increased from 1.7 million short tons in 1995 to 1.9 million short tons in 1996, and then to 2.0 million short tons in 1997. Production of cold-rolled SSSS increased from 1.32 million short tons in 1995 to 1.35 million short tons in 1996, and to 1.41 million short tons in 1997.

[160] CR and PR at Tables III-2 and C-1.

[161] As noted by Commissioner Crawford in her discussion of price effects, she intends to seek more accurate information in any final phase of these investigations to establish the domestic industry's actual, practical capacity utilization.

[162] CR and PR at Tables III-5 and C-1. With respect to employment indicators, although the number of production workers increased by less than one percent, productivity increased 8.4 percent and hourly wages increased by 18.2 percent, and per unit labor costs increased 7.7 percent. CR and PR at Tables III-6 and C-1.

[163] Commissioner Crawford joins in the factual discussion of the statutory impact factors. However, she does not rely on an analysis of the trends in the statutory impact factors in her analysis of the impact of the subject imports on the domestic industry or her determination of a reasonable indication of material injury by reason of the subject imports. Her analysis of impact is presented separately below.

2. Analysis of Chairman Bragg

Chairman Bragg finds that there is a reasonable indication that subject imports are having a significant adverse impact on the domestic industry. She finds that the increased volume, market share and declining prices of subject imports have adversely affected the domestic industry during the period of investigation. Throughout the period of investigation, the volume of cumulated subject imports increased while their prices declined and they often undersold the domestic product. Prices for domestic product followed subject import prices downward, resulting in a fall in domestic profitability.[164]

The domestic industry's net sales value was 11.7 percent lower in 1997 than in 1995 despite an 8.9 increase in its net sales quantity for the same period.[165] Consequently, the domestic industry's unit sales values declined from 1995 to 1997.[166] The disparity between sales quantity and sales value is especially notable when comparing 1995 to 1996, the same period in which the value of cumulated subject imports peaked. During that year, the domestic industry's net sales increased 1.1 percent by quantity, but declined 10.9 percent by value, starting the plummet in profitability for the domestic industry.[167] The industry's profitability has continued to decline since then, despite increases in the volume of its sales. Thus, the domestic industry's operating income as a share of net sales declined from 15.8 percent in 1995 to 8.2 percent in 1996, and to 5.4 percent in 1997.[168]

The declines in profitability continued in 1998, as indicated by a comparison of the data for the first half of 1998 as compared to the data for the first half of 1997. During interim 1997, the industry reported operating income of $46.6 million and an operating income margin of 6.8 percent, but for interim 1998, operating income was only $4.1 million, resulting in an operating income margin of only 0.6 percent.[169] As noted in the discussion of volume and price effects, these interim declines corresponded to large comparative increases in the volume and value of the cumulated subject imports, and to further declining prices of those imports.

Thus, Chairman Bragg finds that the significant and increasing volume of subject imports, priced below comparable domestic products, has resulted in declining prices, revenues, and weak financial performance for the domestic industry. Accordingly, she finds a reasonable indication that the subject imports have had a significant adverse impact on the domestic industry producing certain stainless steel sheet and strip in coils.

3. Analysis of Commissioner Crawford

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[164] CR and PR at Table C-1.

[165] CR and PR at Table C-1.

[166] The domestic industry's unit sales values for SSSS declined each year during the period of investigation from $2,320 per short ton in 1995 to $2,046 per short ton in 1996, and declined again to $1,880 per short ton in 1997. CR and PR at Table C-1. Comparing the first quarters of 1997 and 1998, unit values showed declines from $1,864 to $1,698. *Id*.

[167] As unit sales values declined by 19.0 percent from 1995 to 1997, costs of goods sold per short ton declined 9.2 percent, from $1,856 per short ton in 1995 to $1,783 per short ton in 1996, and then to $1,685 in 1997. During that same period, SG&A expenses per short ton declined 4.5 percent, from $97 in 1995 to $95 in 1996, and to $93 in 1997. The domestic industry's cost of goods sold as a share of net sales was 80.0 percent in 1995, 87.1 percent in 1996, and 89.6 percent in 1997. CR and PR at Table C-1.

[168] CR and PR at Table C-1.

[169] *Id.*

Commissioner Crawford concurs that the subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of allegedly subsidized and dumped imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when the imports allegedly were subsidized and dumped with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of the subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the allegedly subsidized and dumped imports, and so she gauges the impact of the alleged subsidization and dumping through those effects. In this regard, the impact on the domestic industry's prices, sales and overall revenues is critical, because the impact on the other industry indicators (e.g., employment, wages, etc.) is derived from this impact.

As she noted earlier, Commissioner Crawford finds that the domestic industry would not have been able to increase its prices had subject imports been priced fairly. Therefore, any impact of the allegedly dumped and subsidized imports on the domestic industry would have been on the domestic industry's output and sales. Competition from nonsubject imports is not significant, and thus, had the subject imports not been unfairly traded, most of the demand satisfied by the subject imports would have shifted to the domestic product. The increase in demand for the domestic product likely would have been significant, and the domestic industry could have increased its production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for subject imports that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been dumped and subsidized. Therefore, the domestic industry likely would have been materially better off if the subject imports had been fairly traded. Consequently, Commissioner Crawford determines that there is a reasonable indication that the domestic industry is materially injured by reason of allegedly subsidized and LTFV imports of certain stainless steel sheet and strip in coils from the subject countries.

CONCLUSION

For the foregoing reasons, we determine that there is a reasonable indication that the domestic industry producing stainless steel sheet and strip is materially injured by reason of imports of stainless steel sheet and strip from France, Italy and Korea that are allegedly subsidized and imports of stainless steel sheet and strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom that are allegedly sold in the United States at LTFV.

SEPARATE VIEWS OF VICE CHAIRMAN MARCIA E. MILLER ON REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND/OR LTFV IMPORTS

I determine that there is a reasonable indication that the industry in the United States producing stainless steel sheet and strip is threatened with material injury by reason of imports of stainless steel sheet and strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom that are alleged to be sold in the United States at less than fair value and that are alleged to be subsidized by the Governments of France, Italy, and Korea. I join my colleagues in the findings with respect to like product, domestic industry and related parties, and cumulation, and I join their discussion of conditions of competition.

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[1] The Commission may not make such a determination "on the basis of mere conjecture or supposition,"[2] and considers the threat factors "as a whole."[3] In making my determination, I have considered all statutory factors[4] that are relevant to these investigations.[5]

As a threshold question, I have cumulated all of the subject imports for purposes of my threat analysis. Under section 771(7)(H) of the Act, the Commission may "to the extent practicable" cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation for material injury analysis are satisfied.[6] In section III above, the Commission determined that the requirements for cumulation for material injury analysis are satisfied in these investigations. I have determined to exercise my discretion to cumulate the subject imports for this threat analysis. In this regard, I have taken into account the fact that imports from all of the subject countries exhibited generally similar declining pricing trends during the period of investigation. I also note, however, that imports from subject countries exhibited divergent volume trends. In the event of any final investigations, I intend to examine further the question of whether cumulation of all subject imports is appropriate.

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[1] 19 U.S.C. §1671(b)(a), 1673b(a) and 1677(7)(F)(ii).

[2] 19 U.S.C. §1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), *citing* American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). *See also* Calabrian Corp. v. United States, 794 F. Supp. 377, 387 & 388 (Ct. Int'l Trade 1992), *citing* H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

[3] While the language referring to imports being imminent (instead of "actual injury" being imminent and the threat being "real") is a change from the prior provision, the SAA indicates the "new language is fully consistent with the Commission's practice, the existing statutory language, and judicial precedent interpreting the statute." SAA at 184.

[4] The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the Antidumping and Subsidies Agreements, although "[n]o substantive change in Commission threat analysis is required." SAA at 185.

[5] 19 U.S.C. § 1677(7)(F)(I). Factor VII regarding raw and processed agriculture products is inapplicable to the products at issue. *See* 19 U.S.C. § 1677(7)(F)(iii)(I).

[6] 19 U.S.C. § 1677(7)(H).

For purposes of my analysis, I have taken into account the vulnerability of the domestic industry. Until the three month period, January-March 1998, the domestic industry showed reasonable financial results. Operating returns, though declining, were healthy, particularly in 1995 and 1996.[7] Throughout the period, the domestic industry was able to sustain significant capital expenditures, most of which were concentrated in improving efficiency and modernizing existing facilities.[8] In addition, one new company, Nucor, entered the stainless steel sheet and strip market in 1997, ***.[9] Capacity to produce, and production of, cold-rolled stainless steel sheet and strip increased in each year of the period examined. Production of hot-rolled sheet and strip also increased over the period.[10]

That said, the financial performance of the industry, while positive throughout the period, was deteriorating. Net sales value, gross profits, and operating income all declined over the period, on both an absolute scale and as a share of net sales.[11] Unit operating income was falling substantially faster than unit cost of goods sold.[12] This deteriorating performance culminated in a near negative operating result in the first quarter of 1998. I believe that it is difficult to reach an affirmative determination of material injury, even under the relatively low standard that applies to the Commission's preliminary decision, based on a three month interim period. Nevertheless, because of these declines, I find that the industry is vulnerable to the adverse future effects of the cumulated subject imports.

Based on an evaluation of the relevant statutory factors, I find that there is a reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom. From 1995 to 1997, U.S. consumption of stainless steel sheet and strip increased by 9.3 percent, and increased 7.9 percent comparing January-June 1998 with January-June 1997. The volume of subject imports rose by 18 percent from 1995 to 1997, and increased further, by almost 16 percent, when comparing the interim periods.[13] The market penetration of the subject imports, however, changed little, showing an increase during 1995-1997 of only 1.2 percentage points, and an increase of about 1 percentage point comparing the interim periods.[14] While I do not find that there has been a significant increase in the market penetration of the subject imports, the absolute rate of increase continues to grow at a pace faster than that of domestic demand. I find that this rate of increase indicates a likelihood of substantially increased imports.

Although the subject countries showed generally high rates of capacity utilization based on existing capacity, all showed strong increases in both capacity to produce and actual production levels during the period.[15] In addition, at least some producers in all subject countries manufacture products other than stainless steel sheet and strip on the same equipment and machinery, indicating the ability to shift production

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[7] CR at Table C-1.

[8] CR at Table C-1 and III-7; PR at Table C-1 and III-6.

[9] CR at Table VI-2.

[10] CR at Table III-2.

[11] CR at Table C-1.

[12] CR at Table C-1.

[13] Cumulated subject imports were 232,756 short tons in 1995, 251,294 short tons in 1996, and 274,716 short tons in 1997. In January-June 1998, subject imports totaled 157,563 short tons, compared with 136,060 short tons in January-June 1997. CR at Table C-1.

[14] CR at Table C-1.

[15] Over the period, capacity to produce in Japan declined, but increased in the interim period. Capacity utilization for producers in Mexico was below rates for the other countries. Producers in Taiwan showed generally stable capacity, but much greater utilization over the period examined. *See*, CR at Tables VII-1-VII-8. *See also*, Transcript at 47-49.

to the subject product, and thus increase exports to the United States. While the U.S. market appears to have been of only limited importance to the foreign producers during the period, all subject countries shipped significant amounts of stainless steel sheet and strip to their home markets and third countries during the period examined.[16] This suggests that the potential exists to divert shipments to the U.S. market from these other markets, thereby substantially increasing imports into the United States. In addition, inventories of the cumulated subject imports in the United States increased as a ratio of total subject imports, from 11.8 percent in 1995 to approximately 15 percent, in interim 1998.

The record in these preliminary investigations suggests that a substantial portion of domestic and subject imported stainless steel sheet and strip consists of commodity grades, and similar grades and dimensions are interchangeable.[17] After a general upward movement in prices in the domestic market in 1995, prices then fell throughout the remainder of the period.[18] Although raw material prices also fell, as reflected in the declining unit cost of goods sold,[19] the decrease in prices exceeded the decrease in costs.[20] Underselling was prevalent for virtually all of the countries, with cumulated subject imports priced below the domestic counterparts in 131 of 189 possible comparisons.[21] I find that the subject imports are entering the U.S. market at prices that are likely to depress or suppress domestic prices to a significant degree, and are likely to increase demand for further imports.

Finally, although the domestic industry reported considerable investments in productive facilities during the investigation period, such investments declined somewhat over the period, and interim 1998 investments were well below those in the comparable 1997 period. Thus, contrary to the arguments of respondents,[22] the extent of production and development efforts of the domestic producers does not cause me to change my conclusion that there is a reasonable indication that the subject imports threaten to cause material injury to the domestic industry.[23] [24]

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[16] CR at Tables VII-1 - VII-8.

[17] CR at II-8; PR at II-5.

[18] CR at Tables V-2 - V-4.

[19] CR at Table C-1.

[20] The U.S. producers' unit selling price fell 19 percent during 1995-97, compared to a decrease of 9.2 percent in unit COGS. *Compare*, CR at Tables V-2 - V-4 to Table C-1.

[21] Largely due to the variety of stainless steel sheet and strip products sold, for most of the subject countries, price data and possible comparisons with domestic sheet and strip prices were limited. In addition, it appears that some importers may have reported prices for the product types described in the questionnaire, but for different dimensions than what were specified, or reported estimated rather than actual prices. In any final, I would seek prices for a broader range of products from all subject countries, to gain a better picture of competition in the market.

[22] Mexinox Brief at Attachment 1, Joint Economic Presentation, p. 9, and Transcript at p. 153.

[23] I also note that Commerce has initiated countervailing duty investigations for the purpose of examining whether producers of stainless steel sheet and strip in France, Italy, and Korea have benefitted from government subsidies. Commerce has not yet issued a determination with respect to these subsidies nor announced estimated subsidy rates. Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea, 63 Fed. Reg. 37539 (July 13, 1998).

[24] Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, "...the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury tot he domestic industry." At this time, the Commission has no evidence that any such findings or remedies exist.

CONCLUSION

For the foregoing reasons, I determine that there is a reasonable indication that the domestic industry producing stainless steel sheet and strip is threatened with material injury by reason of the subject imports from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom.